

1975 S.C. Op. Atty. Gen. 30 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3959, 1975 WL 22257

Office of the Attorney General

State of South Carolina

Opinion No. 3959

February 3, 1975

*1 Honorable Abney A. Smith

Member

South Carolina Public Service Commission

Post Office Drawer 11649

Columbia: South Carolina 29211

Dear Mr. Smith:

You have requested my opinion as to whether you are disqualified to sit as a member of the Public Service Commission in a hearing in which the South Carolina Electric and Gas Company is a party. I am informed that your son, a graduate of West Point, is presently employed with South Carolina Electric & Gas Company as a Quality Assurance Analyst. He has been employed with the Company since January 15, 1973. He reports directly to the Quality Assurance Manager. It is my understanding that he is not an officer-director nor does he hold any similar executive position with the Company.

Based on the minimal facts above set forth, it is my opinion that you are not disqualified from sitting as a matter of law, but that you should closely consider the filing guidelines.

Due process requires that a fair hearing be conducted and that one who sits in judgment must be impartial. There are no specific standards established in this State to govern the conduct of administrative officers, in circumstances such as this, but the Code of Judicial Conduct, adopted by the Supreme Court of South Carolina, effective February 12, 1974, provides rules which, if not controlling, are highly persuasive in setting forth criteria by which you may be governed. The Code stresses that specific facts which may require a judge to disqualify himself do not necessarily exclude other facts which may also be a valid basis for disqualification. Canon 3(c) provides:

A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned—.

The fact that a judge may not come within the specific relationships which might indicate a mandatory disqualification under the Code does not necessarily mean that a judge is not disqualified if his impartiality may reasonably be questioned. Therefore, a determination must be made as to whether your ‘impartiality might reasonably be questioned,’ as that phrase is used in Canon 3(c). This responsibility rests upon you.

In my opinion, you should consider all of the facts and circumstances and make a determination as to whether there is any reasonable basis for questioning your impartial consideration of the matter before you. If there appears to be a reasonable basis for questioning your impartiality, you should disqualify yourself.

Very truly yours,

Daniel R. McLeod

Attorney General

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