

# Senate Ethics Committee

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## ADVISORY OPINION #93-6

To: Members, South Carolina Senate

From: Hugh K. Leatherman, Sr.  
Chairman, Senate Ethics Committee

Date: August 27, 1993

Re: Appointment of a member to the Trident Region's Better Economic Solutions Together (B.E.S.T.) Policy Committee

An inquiry has been submitted to the Committee as to whether a member could serve on the Trident Region's Better Economic Solutions Together (B.E.S.T.) Policy Committee.

Section 8-13-770 states:

A member of the General Assembly may not serve in any capacity as a member of a state board or commission, except for the State Budget and Control Board, the Advisory Commission on Intergovernmental Relations, the Legislative Audit Council, the Legislative Council, the Legislative Information Systems, the Reorganization Commission, the Judicial Council, the Sentencing Guidelines Commission, the Commission on Prosecution Coordination, and the joint legislative committees.

Except for those entities listed, Section 8-13-770 clearly and expressly prohibits members of the General Assembly from serving on boards and commissions. The section also exempts certain entities that are not labeled as a board or commission (i.e. the Legislative Audit Council, the Legislative Council, the Legislative Information Systems, the Judicial Council and joint legislative committees). Consequently, this analysis is not as simple as merely suggesting that the name of an entity is the controlling consideration. If that were the case, the exceptions referenced above would not have been necessary.

Created by Executive Order 93-17, the BEST Committee's objectives are to "coordinate planning and efforts to redevelop vacated military bases, implement said plans and efforts, ameliorate the economic adverse effects of military force reductions and base closures, and promote Charleston's and South Carolina's assets to preserve and locate future military missions within the Trident region (Berkeley, Charleston, and Dorchester Counties)". The BEST Committee is composed of two members of each county council, one member of each city or town council, four members of the business community, Commander of the Charleston Naval Base, Chairman of the State Ports Authority, Chairman of S.C. State Development Board, Presidents of the area colleges and universities, one member of the Trident Economic Development Authority, one member of the Charleston Trident Chamber of Commerce, both U.S. Senators or their designees, U.S. Congressmen of the first and sixth districts or their designees, one resident State Senator elected by the resident State Senators of Berkeley, Charleston, and Dorchester Counties, and one resident State Representative elected by the resident state Representatives of Berkeley, Charleston, and Dorchester Counties with the total membership not to exceed 39 members. Within the BEST Committee, there exists an internal Executive Committee consisting of eleven members. The Executive Committee is able to create ad hoc committees and sub-committees and nominate additional members for election by a two-thirds vote of a lawful quorum of the BEST Committee.

Although this entity is a creation of the executive, it seems wholly inappropriate to suggest that it is , or that it could be, an independent executive agency. It is obvious that the General Assembly has exclusive and absolute power to create agencies and departments of government.<sup>1</sup> Article XII of the Constitution empowers the General Assembly to create the agencies and departments of government while the Governor has no such specific grant of authority. Even without this provision, our Supreme Court has consistently held that the Constitution is a limitation on the General Assembly's power while the Constitution serves as a grant of authority to the Governor. Put simply, only the General Assembly may establish the agencies and departments of government and the chief executive and the executive departments execute the statutory mission provided by the General Assembly for those entities.

Given the inclusion of entities other than boards and commissions within the exemptions, it seems appropriate to assume that Section 8-13-770 is intended to clearly recognize the

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<sup>1</sup>State ex rel. Riley v. Martin, 274 S.C.106,262 S.E.2d 404 (S.C. 1980). See also Ducan v. York County, 276 S.C. 327, 228 S.E.2d (1976).

separation of power<sup>2</sup> between the executive or administrative branch of government which exercises certain sovereign powers and the legislative branch which exercises other sovereign powers. In this instance, the chief executive has chosen to include legislators on the BEST Committee. It is problematic at best to suggest that an independent agency exercising the sovereign powers could be created by executive order. Although it is not within the jurisdiction of this committee to resolve this question, in this instance, it is assumed that the BEST Committee would not be exercising the sovereign powers of the State.<sup>3</sup> Therefore, the limitation the General Assembly chose to place upon its members with regard to service on the governing boards of independent state agencies would not be applicable.

Based on the forgoing, the Committee concludes that Section 8-13-770 would not preclude a member of the Senate from serving on the BEST Committee.

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<sup>2</sup>It may also be helpful to note that legislative service on the governing board of executive entities was held to be constitutionally permissible in State ex rel. McLeod v. Edwards, 269 S.C. 75, 236 S.E. 2d 406 (1977).

<sup>3</sup> It is the opinion of the committee that Section 8-13-770 would preclude a member of the Senate from serving on a board, commission, or other governmental entity exercising the sovereign powers of the State except as authorized by the exemptions provided therein.