

# *State of South Carolina*

## *State Ethics Commission*

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SEC AO2012-002

March 21, 2012

**SUBJECT: CONFLICT OF INTEREST**

**SUMMARY:** A county planning commissioner, who first served on a mining task force as a mining representative, is not required to recuse on the changes to the county zoning mining ordinance based solely on his service as a mining representative. If his employer owns a county mine subject to the zoning ordinance, then he must recuse on those mining matters that come before the planning commission.

**QUESTION:** Must a member of a county planning commission, who first served on a mining task force as a mining representative, recuse on the change to the county zoning ordinance for mining because of his previous service on the task force and his employment with a mining customer?

**DISCUSSION:** This opinion is rendered in response to a letter dated March 2, 2012 requesting a formal advisory opinion.. The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act no. 248 of 1991; Section 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

In previous opinions, the State Ethics Commission has advised that the Ethics Reform Act does not address the issue of multiple service on various boards and commissions. Instead, Section 8-13-700(B) requires that in the event of a conflict of interest, a public member must recuse himself from participating in governmental actions or decisions.

Section 8-13-700(B) provides in part as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

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(5) if he is a public member, he shall furnish a copy to the presiding officer of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

Economic Interest is defined in Section 8-13-100(11) as:

(a) "Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

"Business", as defined in Section 8-13-100(3), "means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association [or] organization...." "Business with which he is associated" is defined in Section 8-13-100(4) as "a business of which the person ...is a director, an officer, owner, employee [or] a compensated agent...."

The requester is a member of a county planning commission who prior to that appointment served on a county mining task force. He was a mining representative on the task force and his employer was a customer of a mine in the county.

appointment served on a county mining task force. He was a mining representative on the task force and his employer was a customer of a mine in the county. The task force reviewed the county zoning ordinance as it related to mining and made a recommendation to the planning commission for changes to the zoning ordinance. The mining zoning recommendation is before county council. If it returns to the planning commission, must the planning commissioner recuse.

The public member of the planning commission must recuse if a business with which he is associated has an economic interests in the change to the zoning ordinance. The fact that he originally served on the mining task force does not require a recusal. The planning commissioner's service on the mining task force has ceased, but more importantly it was not a business with which he was associated when he did serve. The fact that the public member's employer is a customer of a mine, subject to the ordinance change, does not make that mine a business with which the public member is associated. The economic interest of a customer of a mine in a zoning change to mining is speculative; however, if a direct economic interest should arise, then public member may need to recuse. If the customer of the mine becomes the owner of the mine, then the public member of the planning commission must recuse if his employer has an economic interests in the mining zoning ordinance before the planning commission.

**CONCLUSION:** A county planning commissioner, who first served on a mining task force as a mining representative, is not required to recuse on the changes to the county zoning mining ordinance based solely on his service as a mining representative. If his employer owns a county mine subject to the zoning ordinance, then he must recuse on those mining matters that come before the planning commission.

<b>KEY WORDS:</b> conflict of interest, business with which associated
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<b>ANNOTATIONS:</b> 8-13-700, 8-13-100(4)
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