

SUBJECT: CITY COUNCIL MEMBER PARTICIPATING IN WATER RATE INCREASE MATTER

SUMMARY:

A City Council member who works for a business which sells treated water to the city would not be prohibited from voting on the city budget which includes provision for passing on the water rate increase to customers.

QUESTION:

The Lancaster City Administrator questions the intent of Section 8-13-700(B). One of the Council members works for Springs Industries which sells treated water to the City for distribution to the city's customers. Each year a cost increase is received from Springs Industries, and Council usually adopts an ordinance calling for passing this increase on to the water customers. The Council member does not deliberate or vote on the ordinance. The Administrator questions whether Section 8-13-700(B) allows the Council member to vote on the budget which includes the increased water rates.

DISCUSSION:

This opinion is rendered in response to a letter dated January 6, 1992 requesting an opinion from the State Ethics Commission. The 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 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

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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(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body 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 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 the disqualification and reasons for it to be noted in the minutes;

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

(11) (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.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Business with which he is associated is defined in Section 8-13-100(4) as:

"Business with which he is associated" means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

In Advisory Opinion AO92-064, the Commission advised Hospital board members who were also school district employees that they would not be prohibited from deliberating and voting on the hospital's participation in the State Blue Cross Plan since the economic benefits would accrue to all members of a large class. In Advisory Opinion AO92-155, the Commission advised that members of a redevelopment commission would not be prohibited from deliberating and voting on matters which would not affect their economic interests to any greater extent than other members of the large class, i.e., all owners of properties in the affected area.

In accordance with Section 8-13-700(B), if a particular matter would affect the economic interests to any greater extent than other members of the large class, the public official would be required to

abstain from all actions in accordance with that code section. From the facts as submitted, the council member's participation in the budget approval would not be prohibited.