

OPINION OVERTUNED IN PART BY AMENDMENT TO SECTION 8-13-740(4) AND (5). EFFECTIVE APRIL 12, 2007. SEE R12, H3226 FROM THE 2007 TERM AT <http://www.scstatehouse.net/index.html>.

SEC AO92-072

March 25, 1992

SUBJECT: ENGINEER SERVING ON COUNTY PLANNING COMMISSION

SUMMARY:

An engineer would not be prohibited from serving on a County Planning Commission if such service is authorized by local statutes or ordinances. If so authorized, the State Ethics Commission would not find a violation for the engineer to serve and for members of his firm to represent clients before county agencies in order to carry out the functions of their profession.

QUESTION:

A member of the Greenville County Planning Commission is a Civil Engineering Designer and Construction Coordinator for an engineering firm. He questions whether there is a violation in his serving on the Planning Commission.

DISCUSSION:

This opinion is rendered in response to a letter dated January 7, 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 8-13-730 provides in part as follows:

Unless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated.

Section 8-13-730 basically mirrors Section 8-13-450 of the previous Ethics Act. In S. C. Coastal Council et. al. v. S.C. State Ethics Commission, Op. No. 23496 (S.C. Sup. Ct. filed October 14, 1991), the Supreme Court examined whether Section 8-13-450 applied to members of the Coastal Council. The Court first reviewed in detail the Coastal Management Act (Act) and the regulations promulgated pursuant to that Act. See, S.C. Code Ann. Section 48-39-10, et. seq., (1987) and 23 S.C. Code Ann. Reg. 30-2-11 and 12 (1976). The Court then held based on its reading of the above law that Coastal Council regulated the "use of critical areas by a business" but not the specific way a particular business is operated. Therefore, the issue pursuant to Section 8-13-

730 is whether the Planning Commission regulates the specific way an engineer operates his business.

However, since the laws and promulgating regulations of the planning Commission are not before this Ethics Commission, it is unclear from the request letter whether the Planning Commission is a regulatory agency. If the Planning Commission specifically regulates the operation of engineers in Greenville County, Section 8-13-730 applies to this situation. Otherwise Section 730 is not applicable.

Upon determination that Section 8-13-730 does not preclude a member of the Planning Commission from serving, the impact of Section 8-13-740 must be considered. Section 8-13-740 provides in part as follows:

- (4) A public official, public member, or public employee of a county, an individual with whom the public official, public member or public employee is associated or a business with which the public official, public member, or public employee is associated may not knowingly represent a person before any agency, unit, or subunit of that county except:
 - (a) as required by law; or
 - (b) before a court under the unified judicial system.

Represent is defined in Section 8-13-100(28) as:

"Represent" or "representation" means making an appearance, whether gratuitous or for compensation, before a state agency, office, department, division, bureau, board, commission, or council, including the General Assembly, or before a local or regional government office, department, division, bureau, board, or commission.

If an engineer does not serve pursuant to a statute specifically providing for the service of an engineer upon the Planning Commission, then these provisions apply. However, a statutory provision should be given reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E. 2d 837, (1979). And, "[t]he real purpose and intent of the law makers will prevail over the literal import of the words." Greenville Baseball, Inc. v. Bearden, Sheriff, et al., 200 S.C. 363, 20 S.E. 2d 813, 815 (1942). Therefore, the Commission finds that if the Greenville County ordinances or regulations authorize that an engineer serves on the Planning Commission and that engineer serves pursuant to that authorization, Section 8-13-740 would not prohibit that person or the individuals or businesses with which the engineer is associated from representing clients before the Planning Commission.

The Commission advises that the provisions of Section 8-13-700(B) would apply to continued service if allowed as mentioned above. Section 8-13-700(B) provides:

- (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;

* * *

(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.

The State Ethics Commission advises that, if the engineer is allowed to serve in accordance with the above discussion, members of his engineering firm would not be prohibited from representing clients before the Planning Commission, provided the member follows the procedures of Section 8-13-700(B) on all matters affecting the economic interests of the engineering firm.