

SUBJECT: BOARD MEMBER CONDUCTING BUSINESS WITH AGENCY

SUMMARY: A Board Member is not prohibited by the Ethics Reform Act from contracting with the Board if he is not authorized to perform an official function regarding such contracts.

QUESTION: A Board Member for the Gaffney Board of Public Works requests an opinion concerning his engaging in business with that Board. He is the owner/operator of an implement company. His company has engaged in business with the Board prior to his election and since his election to the Board. The Board's purchasing policy provides that purchasing is carried out by the purchasing agent and the superintendents of the Board subject to the supervision of the Manager. The Board's responsibility involves the budgeting process and the passage of the Purchasing Policy and Procedures. Those procedures do not require Board approval of specific goods or services.

DISCUSSION:

This opinion is rendered in response to a letter dated April 10, 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.

In Advisory Opinion SEC AO92-010, the State Ethics Commission advised that a County Councilman who is a road paving contractor may participate in matters affecting the road paving program. However, such Councilman is prohibited by Section 8-13-775 from contracting with the county if he is authorized to perform any official function regarding such contracts. In that opinion, the county purchasing ordinance provides that the county administrator performs official functions related to the award of contracts by the county. The State Ethics Commission advised that the County Council member would not be precluded from bidding on a county contract because County Council only becomes involved with award of a contract only when there is a problem with awarding a contract to the low bidder.

The Board Member's firm is prohibited from contracting with the Board if he is authorized to perform any official function on the contract through writing or preparing specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract, regardless of whether he followed the provisions of Section 8-13-700.

Based upon the facts as submitted, it appears that the Board Member is not prohibited by Section 8-13-775 of the Ethics Reform Act from contracting with the Board when the official functions are not authorized to be performed by the Board.

He is further advised to follow the provisions of Section 8-13-700(B) on matters coming before the Board which affect such contracts. 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;

* * *

(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.