

SUBJECT: COUNTY COUNCIL MEMBER WITH INTEREST IN SOLID WASTE ISSUES

SUMMARY:

A Council Member who is associated with a solid waste company may participate in the deliberations and votes on the general business issues which do not affect that firm to any greater extent than other business firms. However, on issues directly affecting his firm, he is required to follow the provisions of Section 8-13-700(B).

QUESTION:

The Lexington County Attorney requests an opinion concerning a member of County Council who is an employee and also a stockholder of a solid waste disposal company. The company does business throughout the State and outside the State. It also does business within the County but not for the County. In the past, the Council Member has not taken part in discussions and has excused himself from any votes on issues related to solid waste in the County. Many times the issue does not pertain to his solid waste company but generally with solid waste issues. The Attorney questions whether this Council Member should continue to excuse himself from any and all discussions and/or votes related to solid waste in the County regardless of whether it specifically pertains to the company with which he is associated.

DISCUSSION:

This opinion is rendered in response to a letter dated May 28, 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

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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 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.

(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's, public member's, 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:

...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.

On matters such as licensing, business taxes, etc., the Council Member's interest is potentially no greater or less than that of any other business person, therefore, the State Ethics Commission sees no prohibition against the Council Member participating in the deliberations and votes on those issues. The Council Member is advised, however, that issues directly affecting the economic interests of his firm to a greater extent than other solid waste firms will necessitate his following the procedures of Section 8-13-700(B).