

SUBJECT: COUNTY COUNCILMAN'S BUSINESS PRECLUDED FROM BIDDING ON COUNTY PROJECT

SUMMARY:

A County Councilman who is the Vice President of a Savings and Loan Association may participate in decisions regarding a loan to be made to the County. His company, however, is prohibited by Section 8-13-775 from bidding on the loan since the Councilman is authorized to perform an official function unless the loan is awarded in accordance with the Consolidated Procurement Code.

QUESTION:

The Marion County Attorney questions whether a financial institution, whose Vice President is a County Councilman, may participate in bidding on a loan to be made to the county. The County Council would accept the bids and award the loan.

DISCUSSION:

This opinion is rendered in response to a letter dated August 13, 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;

(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;

Section 8-13-100(11) provides as follows:

(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 is incidental 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.

The Councilman's participation in matters affecting the loan to be made to the County would not be prohibited by this section, since all bidding financial institutions would be equally affected.

The State Ethics Commission, however, notes that Section 8-13-775 provides:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State.

The Savings and Loan Association with which the Councilman is associated is prohibited from

bidding on the loan to the County if he is authorized to perform any official function on the loan through writing or preparing specifications, acceptance of bids, award of the loan, or other action on the preparation or award of such loan, regardless of whether he followed the provisions of Section 8-13-700. From the facts submitted, it appears that the Marion County Council is authorized to perform an official function, as defined in Section 8-13-775, with regard to the loan.

Section 8-13-785(B) provides as follows:

The provisions of Articles 1 through 11 of this chapter do not prohibit a public official from contracting with the State or a governmental entity when the contract is awarded in accordance with Chapter 35 of Title 11.

Therefore, the public official's firm may have an interest in the contract only if the contract is awarded in accordance with the provisions of Chapter 35 of Title 11 (the Consolidated Procurement Code).

Accordingly, the Councilman's company would be prohibited from bidding on the loan on which the Councilman is authorized to perform an official function unless it awarded in accordance with the Consolidated Procurement Code.

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