

SUBJECT: TOWN COUNCIL MEMBER'S PARTICIPATION IN SOLID WASTE AGREEMENT WITH COUNTY

SUMMARY:

A County employee who also serves on Town Council may vote on a solid waste agreement in which the Town agrees to cooperate with the County on the establishment of a Recycling Program.

QUESTION:

The Cherokee County Administrator requests an advisory opinion regarding a County employee who works in the County Vehicle Maintenance Department and also serves on the Blacksburg Town Council. Specifically, the County Administrator inquires whether the employee may vote as a council member on a solid waste agreement in which the Town of Blacksburg will agree to cooperate with Cherokee County on the establishment of a Recycling Program. Such a program is mandated by the State Solid Waste Bill.

DISCUSSION:

This opinion is rendered in response to a letter dated November 23, 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) requires that in the event of a conflict of interest, a public official must recuse himself from participating in governmental actions or decisions. 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 the 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 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.

In Advisory Opinion SEC 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 SEC AO92-155, the State Ethics 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.

Based on the limited facts submitted, it does not appear that a solid waste agreement between the Town of Blacksburg and Cherokee County would affect the employee/council member's financial interests. However, assuming an economic interest would be affected by such an agreement, it does not appear that any potential benefit would accrue to any greater extent to the employee/council

member than it would to other members of a large class, i.e., county employees. For these reasons, the State Ethics Commission advises that the employee/council member would not be prohibited from participating in deliberations and votes on a solid waste agreement between the Town of Blacksburg and Cherokee County.