

**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>.**

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SEC AO98-006

January 21, 1998

SUBJECT: CITY COUNCIL MEMBER'S FIRM REPRESENTING CLIENTS BEFORE CITY AGENCIES

SUMMARY: A City Council member's firm may appear before various city approval and permitting boards as required by appropriate statutes. His firm may conduct engineering services to the Commission of Public Works provided he performs no official function regarding such contracts.

QUESTION:

A Charleston City Council member is an officer in a consulting engineering firm. The firm is often required to appear before agency boards, commissions and councils during the permitting/approval processes. The firm often is required to appear before the City Planning and Zoning Commission, Board of Adjustment, Technical Review Board, CPW Commission, and, occasionally, City Council. He questions the applicability of Section 8-13-740(A)(5).

The Council member also questions whether the firm may continue to provide engineering services (i.e., utility design services) to the Commissioners of Public Works.

DISCUSSION:

This opinion is rendered in response to a letter dated December 22, 1997 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act, S.C. Code §2-17-10; 8-13-100 (Supp. 1996). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-740(A)(5) provides:

(5) A public official, public member, or public employee of a municipality, 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 municipality for which the public official, public member, or public employee has official responsibility except as required by law.

In Advisory Opinion SEC AO92-145, the State Ethics Commission advised that "...any public member of a county board, or any individual or business with whom he is associated is prohibited from representing clients before any units of county government. From the facts as submitted, it appears that the realtor, surveyor, contractor, engineer, architect, or land developer who are routinely submitting permits, plats, or plans to county departments are performing ministerial duties and are not representing clients before any county agency or unit. Such public members are advised to follow the disclosure and disqualification procedures of Section 8-13-700(B) on matters requiring their official action or decision which affect their economic interests. Section 8-13-700(B) provides in part as follows:

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;

From the facts as submitted, it appears that the appearances before the various boards are ministerial in nature and are not adversarial in nature but are conducted for the purpose of seeking appropriate approval or permits. Further, it appears that such representation is "...required by law", i.e., that various ordinances require such approvals or permits.

The State Ethics Commission advises that the Council member follow the procedures of Section 8-13-700(B) concerning appointments to these various boards to avoid even the appearance of impropriety. The procedures of Section 8-13-700(B) should also be followed on any matters coming before City Council in which his firm has an economic interest.

As to the second question, Section 8-13-775 provides as follows:

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 the contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State nor does it prohibit the award of contracts awarded through a process of public notice and competitive bids if the public official, public member, or public employee has not performed an official function regarding the contract.

In an earlier advisory opinion, SEC AO92-048, the State Ethics Commission determined that "a subcontractor would have an economic interest in a contract ... [if] the effect would benefit the subcontractor \$50 or more." According to the facts presented in Advisory Opinion SEC AO93-078, the County Council approved the award of the contract to a construction company after the councilman had taken office. Thus, notwithstanding the date the councilman's business submitted its bid, the councilman was authorized to perform an official function within the meaning of Section 8-13-775 at the time the contract was approved. Accordingly, the State Ethics Commission advised that, subject to the provisions of the then-current Section 8-13-775, the county councilman could not have an economic interest in the construction contract regardless of whether the requirements of Section 8-13-700(B) were followed.

In 1995, the General Assembly amended Section 8-13-775 to allow a public official to have an economic interest in a contract with the State or its political subdivisions if the contract is awarded through a process of public notice and competitive bids, and the public official otherwise complies with Section 8-13-700(B). Provided that the City Council member participates in no official function regarding any contract with the Commission of Public Works and the services are provided through a public notice and competitive bidding process, he would not be prohibited from conducting engineering services to the Commission of Public Works.