

SEC AO2003-001

July 17, 2002

SUBJECT: Conflict of Interest

SUMMARY: The question of whether a public official has an economic interest in a zoning issue before his government entity must be answered on a case-by-case basis. In the situation outlined, the public official has an economic interest and should recuse himself pursuant to Section 8-13-700(B).

QUESTION: An ordinance to rezone property from residential to commercial is to be considered by a municipality through passage of an ordinance. A public official of the municipality owns property adjacent to the property at issue. The question presented is may the public official participate in the consideration or disposition of the ordinance? Specifically, the issue is (i) may the public official make a motion to pass the ordinance; and (ii) may the public official vote in favor of the ordinance?

DISCUSSION: The State Ethics 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 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

The developer of real property petitions a municipality to change the zoning classification for two adjoining parcels of land. The developer seeks to construct a gas station and car wash on the property. At the time of the rezoning request, the property was located within a residential district. Developer petitioned that municipality to change the

zoning classification for the property to commercial. A public official of the municipality owns and resides on a parcel of land adjoining the property to be rezoned.

The question presented is may the public official participate in the consideration or disposition of the ordinance? Specifically, the issue is (i) may the public official make a motion to pass the ordinance; and (ii) may the public official vote in favor of the ordinance?

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

(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.

Section 8-13-700(B) provides 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 8-13-700(B) requires that, in the event of a conflict of interest, a public official must recuse himself from participating in certain governmental actions or decisions. The public official is prohibited from voting, deliberating or taking any other action relating to the conflict. In the question presented, if the public official has a conflict, he could neither make the motion, nor vote on the matter. The question is does the public official have an economic interest in the rezoning matter.

Clearly, if a rezoning matter dealt directly with a public official's property, then he would be required to recuse himself. The public official's economic interest is clear. Less clear is whether owning adjacent property to the property to be rezoned creates a conflict for the public official. Under the facts provided, the change in zoning from residential to commercial affects the public official's economic interest. An argument could be made that rezoning could adversely affect the value of his adjacent property, but the public official would still have an economic interest in the rezoning.

CONCLUSION: Under the facts presented a public official must recuse himself from voting, deliberating or taking any action on the rezoning of property adjacent to his own.

KEY WORDS: conflict of interest, recusal, economic interest
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ANNOTATIONS: 8-13-100(11) and 8-13-700(B)
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