

SEC AO2004-001

January 21, 2004

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 does not have an economic interest and is not required to recuse himself pursuant to Section 8-13-700(B).

QUESTION: A petition to rezone property from current single-family to planned community development is to be considered by a municipality. A public official of the municipality owns property in the general vicinity, but not adjacent to the property at issue. The question presented is whether the public official may participate in the zoning decision?

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 rezone property in a subdivision from current S-1 (single family) to a planned community development with zoning of R-1, R-2 and R-3. A public official of the municipality owns and resides on a parcel of land in the subdivision, but not adjacent to the property to be rezoned. The question presented is whether the public official may participate in, vote on, or influence or attempt to influence an official decision on this zoning issue?

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. Clearly, if a rezoning matter dealt directly with a public official's property, then he would be required to recuse himself. In that case the public official's economic interest is clear. Less clear is whether owning property in the general vicinity to the property to be rezoned creates a conflict for the public official. Under the facts provided and a previous opinion the change in zoning from residential to planned community development does not appear to affect the public official's economic interest, in that the public official's property is not adjacent.

CONCLUSION: Under the facts presented a public official does not need to recuse himself from voting, deliberating or taking any action on the rezoning of property in the general vicinity of his own.

KEY WORDS:	conflict of interest, recusal, economic interest
------------	--

ANNOTATIONS:	8-13-100(11) and 8-13-700(B)
--------------	------------------------------