

State of South Carolina
State Ethics Commission

BRIAN M. BARNWELL, CHAIR
VICTOR K. LI, VICE CHAIR
DONALD GIST
DON JACKSON



BRANDOLYN THOMAS PINKSTON
RICK REAMES III
CHILDS CANTEY THRASHER
ASHLEIGH R. WILSON

5000 THURMOND MALL, SUITE 250
COLUMBIA, S.C. 29201

STEVEN W. HAMM
INTERIM EXECUTIVE DIRECTOR

SEC AO2018-001

July 18, 2017

SUBJECT: Conflict of Interest in a Zoning Matter

SUMMARY: This opinion presents substantially similar facts to the question presented in State Ethics Commission Advisory Opinion 2015-003 (November 19, 2014), as both opinions were requested by officials of the Town of Blythewood related to zoning regulations in Cobblestone Park ("Cobblestone"). Here, the Commission reaffirms its previous conclusion in SEC AO 2015-003 that Town officials who are members of the Cobblestone property homeowner's association and the golf and tennis club are not required to recuse from a zoning decision on Cobblestone.

APPLICABLE LAW:

S.C. Code Ann. § 8-13-700 states in part:

(A) No public official... may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated....

(B) No public official... 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 family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official... 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 family member, 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 an agency, commission, board, or of a 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 states in part:

(4) "Business with which he is associated" means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

...

(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... may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official...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...is incidental to the public official's... position or which accrues to the public official...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.

...

(27) "Public official" means an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office.

DISCUSSION

Section 8-13-700(B) requires that a public official recuse himself from matters that affect his economic interest, or the economic interest of a family member, an individual with whom he is associated, or a business with which he is associated. However, an exception to this rule exists in cases where the benefit that would accrue to public official is no greater than the benefit accruing to all members of that class. See Section 8-13-100(11)(b). Several years ago, the Commission issued an opinion on a virtually identical request with respect to Town of Blythewood officials who were members of the Cobblestone property homeowner's association and the golf and tennis club. See Op. S.C. State Ethics Commission, SEC AO2015-003 (November 19, 2014). That opinion concluded that recusal from these public officials was not required. In essence, this Commission is being asked to reaffirm the previous opinion.

The Commission affirms the conclusions and rationale expressed in SEC AO2015-003. First, as it relates to a public official's membership in the golf and tennis club, we agree with the earlier conclusion that membership in a club does not make that club a "business with which [a person] is associated." The definition of that term in Section 8-13-100(4) clearly excludes club membership. Secondly, we also agree with the previous opinion that the large class exception applies to public officials who are members of the Cobblestone property homeowner's association. The information provided is that the class consists of "over one hundred-fifty (150) residences and several hundred vacant lots owned by a large number of individual and corporate owners." Provided the benefit that would accrue to these public officials from a decision is no greater than the benefit accruing to all members of that class, they would not be required to recuse on decision related to Cobblestone. However, if the decision directly impacts that public official's property, or otherwise affects that person's economic interest to a greater extent than the larger class, then the large class exception would not be applicable. Although the Commission has never found there to be a strict numerical determination on what constitutes a large class, a large class has previously been found with well under one-hundred class members.¹

¹ See, e.g. Op. S.C. State Ethics Commission, SEC AO2010-004, May 19, 2010 (Large class exception applicable where council member was one of fifty-six property owners with an assumed economic interest in improvements to the boardwalk).