

SUBJECT: CITY COUNCILMAN ASSOCIATED WITH DEVELOPMENT CORPORATION

SUMMARY:

A nonprofit development corporation would not be prohibited from contracting with the city with which a City Councilman is associated, however the Councilman is required to follow the disclosure and disqualification procedures of Section 8-13-700, (B).

QUESTION:

The Attorney for the City of Liberty is seeking an opinion on behalf of a member of City Council. The Councilman is President of a non-profit organization whose purpose is to "stimulate, promote, maintain and encourage the general economic, business and industrial development of greater Liberty, South Carolina". There are occasions in which the City Council has to take action on matters involving the organization, including a proposed contract between the city and the organization. The Councilman receives no remuneration as a director of the organization. The attorney questions whether there is a conflict of interests which requires him not to participate in matters affecting the organization.

DISCUSSION:

This opinion is rendered in response to a letter dated October 10, 1991 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act (Act No. 248 of 1991; Section 8-13-100 et. seq., 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

The State Ethics Commission has advised in prior advisory opinions that a public official may contract with public agencies, including his own, providing the official took no official action regarding such contract in accordance with the provisions of Section 8-13-460. Under the recently-enacted Ethics, Governmental Accountability, and Campaign Reform Act of 1991, Section 8-13-700(B) provides that a public member is required to provide a written statement describing a conflict of interests and then must not participate in any matter affecting his economic interests of \$50 or more. 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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(5) if he is a public member, he shall furnish a copy to the presiding officer 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 shall 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 such disqualification and the reasons for it to be noted in the minutes.

The State Ethics Commission therefore advises that the non-profit Corporation would not be prohibited from contracting with the City. However, the City Councilman would be prohibited from participating in the contracting process in accordance with Section 8-13-700 (B).