

**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>.**

SEC AO92-119

March 25, 1992

SUBJECT: ARCHITECTS SERVING ON LOCAL DESIGN REVIEW COMMISSION

SUMMARY:

An architect would be prohibited from serving on a design review board unless such service is authorized by statute or ordinance. If his service is authorized by statute or ordinance, his firm would not be prohibited from representing clients before the Board if he follows the procedures of Section 8-13-700(B).

QUESTION:

The Director of the SC Department of Archives and History requests an opinion concerning the federal historic preservation program. To participate as a Certified Local Government, a community is required to have local zoning that protects the historic character of a neighborhood by providing a local design review commission to ensure compatible construction and appropriate alterations for historic buildings. The commission is required to have professional expertise in various professional areas, chiefly architects. The Director questions whether the Ethics Reform Act prohibits an entire firm from practicing before the board if one member of the firm serves on that board, and whether an architect who serves on a board may occasionally have a job which requires design review approval.

DISCUSSION:

This opinion is rendered in response to a letter dated February 5, 1992 requesting an opinion from the State Ethics Commission.

The 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 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-730 provides:

Unless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated.

Section 730 basically mirrors Section 8-13-450 of the previous Ethics Act. In S. C. Coastal Council

et. al. v. S.C. State Ethics Commission, Op. No. 23496 (S.C. Sup. Ct. filed October 14, 1991), the Supreme Court examined whether Section 8-13-450 applied to members of the Coastal Council. The Court first reviewed in detail the Coastal Management Act (Act) and the regulations promulgated pursuant to that Act. See, S.C. Code Ann. Section 48-39-10, et. seq., (1987) and 23 S.C. Code Ann. Reg. 30-2-11 and 12 (1976). The Court then held based on its reading of the above law that Coastal Council regulated the "use of critical areas by a business" but not the specific way a particular business is operated. Therefore, the issue pursuant to Section 8-13-730 is whether the design review commissions regulate the specific way an architect operates his business.

However, since the laws and promulgating regulations of the design review commissions are not before this Ethics Commission, it is unclear from the request letter whether those commissions are regulatory agencies. If the design review commissions specifically regulate the operation of architects, Section 8-13-730 applies to this situation. Otherwise Section 8-13-730 is not applicable.

Upon determination that Section 8-13-730 does not preclude a member of the design review commission from serving, the impact of Section 8-13-740 must be considered. Section 8-13-740 provides in part as follows:

(4) A public official, public member, or public employee of a county, 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 county except:

- (a) as required by law; or
- (b) before a court under the unified judicial system.

(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 except as required by law.

Represent is defined in Section 8-13-100(28) as:

"Represent" or "representation" means making an appearance, whether gratuitous or for compensation, before a state agency, office, department, division, bureau, board, commission, or council, including the General Assembly, or before a local or regional government office, department, division, bureau, board, or commission.

If an architect does not serve pursuant to a statute specifically providing for the service of an architect upon the design review commission, then these provisions apply. However, a statutory provision should be given reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E. 2d

837, (1979). And, "[t]he real purpose and intent of the law makers will prevail over the literal import of the words." Greenville Baseball, Inc. v. Bearden, Sheriff, et al., 200 S.C. 363, 20 S.E. 2d 813, 815 (1942). Therefore, the Commission finds that if the local county or city ordinances or regulations authorize that an architect serves on the design review commission and that architect serves pursuant to that authorization, Section 8-13-740 would not prohibit that person or the individuals or businesses with which the architect is associated from representing clients before the design review commission.

The Commission advises that the provisions of Section 8-13-700(B) would apply to continued service if allowed as mentioned above. Section 8-13-700(B) provides:

(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;

* * *

(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 advises that, if the architect is allowed to serve in accordance with the above discussion, members of his architectural firm would not be prohibited from representing clients before the commission, provided the member follows the procedures of Section 8-13-700(B).

As to the second question, the State Ethics Commission advises that such member, if allowed to serve in accordance with the above discussion, would not be prohibited from having jobs which require Board approval. The member, however, is advised to follow the procedures of Section 8-13-700(B) when required to take official action or make decisions affecting those jobs.

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