

SUBJECT: CONFIDENTIALITY PROVISIONS OF ETHICS ACT

SUMMARY:

A city council member who has a complaint filed against him may request council in executive session to provide legal counsel for his defense without providing details of the complaint. An open session vote can be taken without disclosing the nature of the complaint or the agency with which the complaint was filed.

QUESTION:

A city attorney requests an opinion concerning the confidentiality provisions of the Ethics Act. An elected official of the town has had a complaint filed against him. The town ordinance provides that the city attorney is the exclusive provider of legal advice and legal representation to council members. In order to direct the city attorney to provide a legal service, a majority vote of council is required. No vote of council may occur except in a public hearing. The attorney states that the councilperson charged who wishes the city attorney to defend him must receive the public vote of a majority of council. He questions whether this public vote would violate the confidentiality rules of the State Ethics Commission.

DISCUSSION:

This opinion is rendered in response to a letter dated February 18, 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 8-13-320(10)(g) provides:

All investigations, inquiries, hearings, and accompanying documents must remain confidential until final disposition of a matter unless the respondent waives the right to confidentiality. The wilful release of confidential information is a misdemeanor, and any person releasing such confidential information, upon conviction, must be fined not more than one thousand dollars.

Further, R52-3.9 provides:

All complaints, proceedings, and documents relating to these matters are private. No persons associated with a complaint including the complainant, respondent, counsel, counsel's secretaries, Commission members or employees,

reporters, or investigators, shall mention the existence of such proceedings or disclose any information pertaining thereto except to persons directly involved, and then only to the extent necessary for proper disposition of the complaint.

The State Ethics Commission advises that the city in question could handle the provision of legal counsel by having the council go into executive session. The council member could advise fellow council members of the fact that a complaint has been filed with the State Ethics Commission without disclosing material facts or allegations contained therein. The Council could then go into open session and vote on a motion to provide legal counsel to the affected council member, again without mentioning the facts or allegations or even the agency with which such complaint is filed. The council then could vote in open session on such a motion without violating the provisions of Section 8-13-320(10)(g) and R52-3.9.