

SUBJECT: STATUS OF ADVISORY BOARD MEMBERS

SUMMARY:

Members of an advisory board appointed by a city manager are not public members and, thus, are not subject to the restrictions of the Ethics Reform Act.

QUESTION:

The Greenville City Attorney has requested an advisory opinion concerning a citizen technical advisory committee, comprised of engineers and architects to provide input on the city's capital improvement plan, public works efforts, and the process for utilization of city crews or contracting out. The committee would receive no compensation, no confidential information, and be purely advisory to the city manager. He questions whether such committee members are public members and, if so, whether they would be prohibited from contracting with the city. He also questions whether members who have an interest in a piece of property benefitting from proposed public improvements should follow the provisions of Section 8-13-700(B).

DISCUSSION:

This opinion is rendered in response to a letter dated March 23, 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.

The State Ethics Commission notes Section 8-13-100(26) which provides:

'Public member' means an individual appointed to a noncompensated part-time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services.

The City Attorney informed the Commission that the citizen advisory committee was created by the City Manager to be purely advisory to the City Manager. Furthermore, the advisory committee does not exist pursuant to statute or ordinance. Since the committee is created merely as an advisory body with no authority to make a decision concerning capital improvements or public works, the committee is not a government entity. Accord S.C. Atty. Gen. Opin. No. 4190 (November 20, 1975); and S.C. Atty. Gen. Op. (December 14, 1973). Therefore, since the members of the advisory committee are not "public members" as defined by Section 8-13-100(26) of the Ethics Reform Act, the members of the committee are not subject to its restrictions.