

**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 AO93-023

October 21, 1992

SUBJECT: CPA AS COUNTY COUNCIL MEMBER

SUMMARY:

A potential County Council member who is a CPA must follow the procedures of Section 8-13-700(B) if he is required to take actions which affect the economic interests of his CPA firm.

QUESTION:

A Certified Public Accountant who is a candidate for Anderson County Council raises several questions concerning the involvement of his firm in their relationships with local political subdivisions.

DISCUSSION:

This opinion is rendered in response to a letter dated June 12, 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.

1. We usually conduct audits on one or more of the municipalities in Anderson County. Could we still conduct the audits?

It does not appear, from the facts as submitted, that County Council has any authority to determine who conducts audits of municipalities within the county. The State Ethics Commission knows of no reason why the possible Council member's CPA firm could not continue to conduct such audits. If the Council member is required to take official actions or make decisions affecting the economic interests of his CPA firm as a result of such municipal audits, he is advised to follow the procedures of Section 8-13-700(B) which 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;

* * *

(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 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 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;

2. We sometimes conduct audits of some of the School Districts in Anderson County. The County Council does not vote on their budgets. Could we still conduct the audits?

The State Ethics Commission sees no procedural difference between his question and the preceding one. The Commission knows of no reason why the Council member's firm could not audit the school districts, however, the Council member is advised to follow the provisions of Section 8-13-700(B) on issues affecting the economic interests of his CPA firm.

3. We prepare property tax returns that are filed with Anderson County as well as the State of South Carolina. Would this be a conflict?

4. Sometimes we have to sort out problems with the property tax returns. Would this be a conflict?

As to these two related questions, the Commission calls attention to the provisions of Section 8-13-740 which 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 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.

* * *

(7) The restrictions set forth in items (1) through (6) of this subsection do not apply

to:

- (a) purely ministerial matters which do not require discretion on the part of the governmental entity before which the public official, public member, or public employee is appearing;
- (b) representation by a public official, public member, or public employee in the course of the public official's, public member's, or public employee's official duties;
- (c) representation by the public official, public member, or public employee in matters relating to the public official's, public member's, or public employee's personal affairs or the personal affairs of the public official's, public member's, or public employee's immediate family.

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

"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, or commission.

The CPA firm is prohibited from representing clients before the county treasurer's office since such representation is not required by law nor is it a court under the unified judicial system. However, the preparation and filing of property tax returns is a ministerial matter which requires no discretion on behalf of the county Treasurer's office. Any appeal of such property tax returns, however, is not a ministerial matter and, consequently, the Council member's firm would be precluded by Section 8-13-740 from representing clients before the Treasurer's office in any such appeal.

5. We conduct audits on commissions like the Anderson-Oconee Alcohol and Drug Abuse Commission and the Anderson County Mental Retardation Board. In both cases, could we still conduct the audit if I abstained from the vote on the appointment of board members and the appropriation of funds? County Council is not involved in any way with their operations.

It does not appear, from the facts as submitted, that County Council has any authority to determine who conducts audits of the county Commission or Board. The State Ethics Commission knows of no reason why the possible Council member's CPA firm could not continue to conduct such audits. If the Council member is required to take official actions or make decisions affecting the economic interests of his CPA firm as a result of such audits, he is advised to follow the procedures of Section 8-13-700(B).

6. From time to time our clients will get Industrial Revenue Bonds that have a perfunctory approval by County Council. Is there a conflict here?

The State Ethics Commission advises that, if the Council member is required to take official actions or make decisions affecting the economic interests of his CPA firm as a result of approval of the Industrial Revenue Bonds, he follow the procedures of Section 8-13-700(B).

7. Sometimes clients will be recipients of State grants. We seldom, if ever, negotiate these grants, but we may perform audits of these clients. Is there a conflict here?

The State Ethics Commission knows of no reason why the clients of the Council member's firm could not continue to apply for and receive State grants. The State Ethics Commission advises that, if the Council member is required to take official actions or make decisions to approve such State grants and which will affect the economic interests of his CPA firm as a result, he follow the procedures of Section 8-13-700(B).