

SUBJECT: MAYOR PURCHASING PROPERTY FROM TOWN

SUMMARY: A Mayor is advised against entering a purchase contract with the town since he participated in decisions affecting the sale of the property.

QUESTION: The Attorney for the Town of Hilton Head Island(Town) questions whether the Mayor may make an offer on a piece of property which is being offered for sale by the Town. The property was acquired by auction in 1992. In early 1997, the Town decided to offer two lots for sale to the general public with public notice and information packages available upon request. No offers have been received in the interim on the sale of one lot. The Mayor has expressed an interest in the property but questions whether this causes a conflict under Section 8-13-775. The Mayor was a member of Council when the decision was made to put the lot on the market. The Mayor did not prepare documentation regarding the public information.

DISCUSSION:

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 2-17-5 et seq. and 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 8-13-775 provides:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of the contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State nor does it prohibit the award of contracts awarded through a process of public notice and competitive bids if the public official, public member, or public employee has not performed an official function regarding the contract.

The Mayor is prohibited from contracting with the Town for the purchase of the property if he is authorized to perform any official function on the contract through writing or preparing specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract, regardless of whether he followed the provisions of Section 8-13-700. From the facts as submitted, it appears that the Town Council is authorized to perform an official function, as defined in Section 8-13-775, with regard to contracts, in this case, making the determination to offer the lot for sale. We note that the sale of the property is through a public offering, allowing anyone to make an offer. Since the Mayor participated in the decision to market the property, the State Ethics Commission advises that Section 8-13-775 prohibits the Mayor from bidding on the property since he has previously performed an official function regarding the property.