

SUBJECT: SUBMISSION OF EMPLOYMENT APPLICATION FOR COUNTY PUBLIC WORKS DIRECTOR WHILE SERVING AS CHAIR OF COUNTY COUNCIL

SUMMARY: The Chair of the Colleton County Council may submit an application for the position of County Public Works Director while continuing as Chair of the County Council provided that the abstention and disclosure provisions are followed.

QUESTION 1:

Is it necessary for the Chair of the Colleton County Council to resign prior to submitting an employment application for County Public Works Director or will it be acceptable to await the outcome of the selection decision?

QUESTION 2:

Are there recommendations to help avoid an ethical question?

DISCUSSION:

The State Ethics 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 of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

The S.C. Ethics Reform Act of 1991 establishes a framework for avoiding conflicts of interests when public officials, members, and employees take official action on matters in which they have an economic interest.

Section 8-13-700 provides:

Section 8-13-700.

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which

does not result in additional public expense.

(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;

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(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;

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§ 8-13-100(11) defines an "economic interest."

(11)(a) 'Economic interest' means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the

public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Thus, a public official may not knowingly use his/her official office to obtain an economic interest for himself or herself. The public official must not make, participate in or in any way attempt to use his or her office to influence a governmental decision in which he has an economic interest. A chair of a county council, who in the discharge of official responsibilities, is required to make a decision which would affect his or her economic interest, shall deliver a written statement to the presiding officer of the governing body on which the official serves and describe the matter requiring decision or action and the nature of the conflict or potential conflict. Then, the public official must abstain from participating in any votes, deliberations, or other actions on the matter in which the economic interest or potential conflict of interests exists.

Therefore, the Chair of the Colleton County Council who is seeking the County Public Works Director position is not required by the S.C. Ethics Reform Act to resign prior to submission of an application for employment as the County Public Works Director, however, the Chair is required to comply with the abstention and disclosure provisions of Section 8-13-700. In this case, the Chair would deliver the appropriate disclosure information to the acting Chair and then abstain. This procedure must be followed on all issues affecting the application process, to include, but not be limited to, setting the position description, salary, establishing the hiring procedure, screening of applications, or any other action on the hiring process.

KEY WORDS:	SEEKING EMPLOYMENT CONFLICT OF INTERESTS ABSTENTION
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ANNOTATIONS:	SEC ADVISORY A092-137 SEC ADVISORY A093-041 SEC ADVISORY AO98-002
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