

SEC AO2005-003

May 18, 2005

SUBJECT: COUNTY COUNCIL MEMBER VOTING ON CLERK OF COURT BUDGET

SUMMARY: A county council member is advised not to vote on matters relating to his spouse's salary or other economic interests. He may vote on the county budget as a whole. He may vote on a specific matter relating only to the clerk's office; however, he may wish to avoid even an appearance of impropriety.

QUESTIONS: A county attorney asks whether a county council member whose wife is clerk of court may vote on the county budget under four different scenarios.

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.

Section 8-13-700(B) 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;

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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.

Economic Interest is defined in Section 8-13-100(11) as:

- (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'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.

The Commission has issued many Advisory Opinions setting forth the proper procedure to which a public official must adhere when required to take an official action on a matter that would affect the economic interest of a business with which he is associated. See SEC AO92-14, AO92-77, AO92-115, AO92-131, AO92-145, AO92-152, AO92-221, AO95-10 and AO98-09. The Commission in AO92-014 stated“(t)hus on matters affecting the economic interests of business or individual where there is an association, there are three steps which should be taken:

1. The preparation of a written statement describing the matter of potential conflict, which is to be made a part of the meeting minutes, 2. Abstention or recusal from action, vote, and deliberation on the matter, and 3. To avoid any influence, absenting oneself from the meeting location.”

In addition, the Commission has reviewed those situations in which the public official has not had to recuse himself because he is a member of a large class. See SEC AO92-64, AO92-92 and AO92-201. The opinions primarily deal with council members who are also school district employees or spouses of school district employees and the question posed is whether those council members could vote on the school board appropriation. The Commission in AO92-201 stated:

“(s)ince the four Council Members are either school district employees or married to a school district employee, their interest is potentially no greater or less than that of all other members of the group of school employees. Therefore, the State Ethics Commission sees no prohibition against the four Council Members participating in the deliberations and votes on the school district budget issue. The members are advised, however, that issues directly affecting their own economic interests to greater extent than other members of the school district employee group will necessitate following the procedures of Section 8-13-700(B).”

In addition issues directly affecting the economic interest of an immediate family member, i.e. a spouse, require a public official to follow the recusal provisions of Section 8-13-700(B). The large class exception is just that: an exception to the recusal requirements of Section 8-13-700(B) for public officials and businesses with which they are associated. This exception must be reviewed on a case-by-case basis to determine whether a large class exists.

1. Whether the County Council member can vote on a motion to approve the entire budget as recommended by all of the subcommittees for all of the departments in the county including the Clerk of Courts office (Simply a motion to approve the budget as recommended);

The council member may vote on a motion to approve the entire county budget as recommended by the various subcommittees as this action would fall under the large class exception to the definition of economic interest. His spouse’s interest is potentially no greater or lesser than that of all other county employees or departments.

2. Whether the council member could vote on a motion that deals specifically with a budget issue dealing with Clerk of Courts budget for personnel, equipment and supplies but not affecting the compensation for the Clerk herself;

The council member may vote on a motion that deals specifically with a budget issue dealing with the clerk of court’s budget for personnel, equipment and supplies, but not affecting the compensation or other economic interest for the clerk herself. He should consider, however, the intent of the legislature as expressed in the preamble to the Ethics Reform Act that, “[o]fficials should . . . remove themselves from a decision . . . or process that **even appears to be a conflict**

of interest." (Emphasis added.) The council member may wish to avoid even the appearance of impropriety and refrain from voting on a matter that only affects the clerk of court's office.

3. Whether the council member could vote on a motion to increase pay for all elected officials in the county;

The council member may not vote or take part in the deliberations on a motion to increase pay for all elected officials in the county. The group of elected officials is far too small to contemplate a large class exception. Moreover, the spouse/clerk of court clearly has an economic interest in a pay increase.

4. Whether the council member could vote on a motion to increase compensation for the Clerk of Court specifically.

The council member may not vote or take part in the deliberations on a motion to increase compensation for the clerk of court specifically. Clearly, the clerk of court clearly has an economic interest in a pay increase.

CONCLUSION: A county council member is advised not to vote on matters relating to his spouse's salary or other economic interests. He may vote on the county budget as a whole. He may vote on a specific matter relating only to the clerk's office; however, he may wish to avoid even an appearance of impropriety.

KEY WORDS: economic interest

ANNOTATIONS: 8-13-700(B), 8-13-100(11)
