

**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>.**

**State Ethics Commission  
5000 Thurmond Mall, Suite 250  
Columbia, South Carolina 29202**

SEC AO2007-006

January 17, 2007

**SUBJECT: COUNTY COUNCIL MEMBER'S FIRM REPRESENTING CLIENTS BEFORE  
THE PLANNING DEPARTMENT STAFF**

**SUMMARY:** The Horry County Planning Department is an agency, unit or subunit of Horry County government. An Horry County Council member's business associate may submit land development plans to the Horry County Planning Department for its consideration and approval/rejection. Decisions at staff level are per se ministerial and non-discretionary and therefore are subject to the exception in Section 8-13-740(A)(7)(a).

**QUESTION:**

The Horry County Attorney asks whether the Horry County Planning Department would be or would not be considered an agency, unit or subunit of Horry County government and if the answer is in the affirmative, would a business associate of a sitting member of Horry County Council be prohibited from submitting land development plans to the Horry County Planning Department for its consideration and approval/rejection?

**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 8-13-740(A)(4) provides:

- (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, or a business with which the public official, public member, or public employee is associated may not knowingly represent a person before an agency, unit, or subunit of that county for which the public official, public member, or public employee has official responsibility except:

- (a) as required by law; or
- (b) before a court under the unified judicial system.

The first question is whether Horry County Planning Department (hereinafter “the Planning Department”) is an agency, unit or subunit of Horry County. The Commission opined in SEC AO93-070 that a county assessor’s office was an agency, unit or subunit of county government; therefore, the Commission finds that that the Planning Department is an agency, unit or subunit of Horry County government.

The second question requires a review of the Planning Department’s procedures for the acceptance and approval of land development plans to determine whether the procedures are ministerial or discretionary on the part of the Planning Department staff. Section 8-13-740(A)(7)(a) provides:

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;

The Commission has not defined ministerial as it relates to Section 8-13-740(A)(7)(a); however, in an opinion reviewing Section 8-13-785 the Commission opined in SEC AO92-109 that ministerial actions could include information gathering, procedural questions, or requests for information. Discretionary matters would include presenting evidence, testimony, or argument concerning a person's position on a contested issue.

In describing the various functions of city government, the City of Lancaster states that duties performed as required by law without exercise of independent judgment are referred to as ministerial duties. For example, the issuance of a license or permit to an applicant who meets all requirements of the applicable law is an example of a ministerial duty. A ministerial duty is one which a person performs in obedience to a mandate of legal authority without regard to the exercise of his own judgment upon the propriety of the act to be done. In Interest of Tyson, 282 S.C. 212, 318 S.E.2d 279 (Ct. App. 1984). A duty is ministerial even though an officer has to determine the existence of the facts that make it necessary for him to act. Bd. of Co. Supervisors of Prince William Co. v. Hylton Enterprises, Inc., 216 Va. 582 (1976). A duty is regarded as ministerial when it has been absolutely imposed by law and is not dependent upon the official’s judgment or discretion.

Horry County planners and plan reviewers review and approve sketch plans and minor plats (10 or fewer lots); communicate with developers and their engineering firms; and make recommendations to the planning commission on major developments and projects of regional significance. Planning Department staff and the Planning Commission administer and interpret the land development regulations and zoning ordinance on a daily basis. In reviewing a major development plan Planning Department staff regularly seeks additional information and clarification from the engineering firms as they shepherd the plan from submission to final approval. This information gathering and requests for information is ministerial. The Planning Commission may exercise its discretion in reviewing major developments and projects of regional significance.

**CONCLUSION:**

The Horry County Planning Department is an agency, unit or subunit of Horry County government. An Horry County Council member's business associate may submit land development plans to the Horry County Planning Department for its consideration and approval/rejection. Decisions at staff level are per se ministerial and non-discretionary and therefore are subject to the exception in Section 8-13-740(A)(7)(a).

<b>KEY WORDS:</b> ministerial; discretionary
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<b>ANNOTATIONS:</b> Sections 8-13-740(A)(4) and 740(A)(7)(a)
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