

SEC AO2011-002

July 21, 2010

SUBJECT: Conflict of Interest

SUMMARY: A city is considering an upgrade to a city boardwalk. City regulation requires that connections to the boardwalk must also be upgraded with the same materials and design as the boardwalk upgrade. A city council member, whose property is connected to the boardwalk, would be required to recuse from the city council's boardwalk upgrade discussion or vote if the connection upgrade costs \$50 or more.

QUESTION: May a city council member discuss or vote on the upgrade to a city boardwalk when the upgrade may result in an expense to the city council member?

DISCUSSION: This opinion is rendered in response to a letter dated June 14, 2010 requesting an opinion from the State Ethics Commission. 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.

A member of city council owns property that adjoins a city owned and maintained boardwalk. The city council member has a deck connected to the boardwalk and a finger pier on the water side of the boardwalk. The city is considering an upgrade to the boardwalk. A city regulation requires that the connections to the boardwalk be in the same materials and design as the boardwalk. Unless a waiver is granted, the city council member will have to expend monies to upgrade the connections from the member's deck and the

pier to the boardwalk.

Section 8-13-100(11) provides as follows:

(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.

Section 8-13-700(B) provides 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;

Section 8-13-700(B) requires that, in the event of a conflict of interest, a public official must recuse himself from participating in certain governmental actions or decisions. The public official is prohibited from voting, deliberating or taking any other action relating to the conflict.

Whether the city council member may participate in the boardwalk upgrade discussion and votes requires a determination of whether the economic interest is distinct from the public and other members of the class of property owners. Although there are 56 property owners along the boardwalk, only 22 property owners have connections to the boardwalk and would be required to make the upgrade to their connections. This is not an issue of speculating on whether the city council member receives some value from the upgrade, but whether there is an expense to the member in the upgrade. A city council member has an economic interest when an upgrade would require an expenditure of \$50 or more to upgrade the council member's connections to the boardwalk.

CONCLUSION: A city council member, whose property is connected to the boardwalk, would be required to recuse from the city council's boardwalk upgrade discussion or vote if the connection upgrade costs \$50 or more.

KEY WORDS:	conflict of interest, recusal, economic interest
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ANNOTATIONS:	8-13-100(11) and 8-13-700(B)
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