

# *State of South Carolina*

## *State Ethics Commission*

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**SEC AO2017-003**

**March 15, 2017**

**SUBJECT:** Whether, in light of Section 8-13-740 of the Ethics Reform Act, a municipal public official may own and operate a bail bonding business and issue bonds in the court system for that municipality.

**SUMMARY:** S.C. Code Ann. § 8-13-740(5) prevents a bail bondsman who is a municipal public official from issuing bonds in the court system for that municipality. Given that a bondsman is subject to the jurisdiction of the court upon the default of the bond, thus necessitating representation under Section 8-13-740(5), a municipal public official is also prohibited from owning a bail bonding business which conducts business in the court system for that municipality.

**QUESTION:** The South Carolina Department of Insurance has requested an advisory opinion seeking the Commission's interpretation on the extent to which Section 8-13-740(5) impacts a municipal public official who owns a bail bonding business that conducts business in the court system for that municipality.

**APPLICABLE LAW:**

S.C. Code § 8-13-100 provides in part:

(28) "Represent" or "representation" means making an appearance, whether gratuitous or for compensation, before a state agency, office, department, division, bureau, board, commission, or council, including the General Assembly, or before a local or regional government office, department, division, bureau, board, or commission.

Section 8-13-740 provides in part:

(5) A public official of a municipality may not knowingly represent a person before any agency, unit, or subunit of that municipality for which the public official has official responsibility except as required by law.

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(7) 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;
- (b) representation by a public official, public member, or public employee in the course of the public official's, public member's, or public employee's official duties;
- (c) representation by the public official, public member, or public employee in matters relating to the public official's, public member's or public employee's personal affairs or the personal affairs of the public official's, public member's, or public employee's immediate family.

#### DISCUSSION:

The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (the "Ethics Reform Act"). 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 prohibits a public official of a municipality from representing another person in that municipality's court system. While "represent" and "representation" are terms that can be broadly interpreted, in the case of a municipal official subject to the Ethics Reform Act "representation" is specifically defined as "making an appearance" before a local or regional government office, department, division, bureau, board, or commission. The term "appearance" is not defined in the Ethics Act, but Black's Law Dictionary defines it as "[a] coming into court as a party or interested person, or as a lawyer on behalf of a party or interested person." APPEARANCE, Black's Law Dictionary (10th ed. 2014).

In our view, although a bail bondsman does not himself make an appearance through the mere act of completing or filing a bond, by taking such actions a bondsman always subjects himself to *the possibility* of being called before that court upon default of the bond. Accordingly, we believe there is an irreconcilable conflict between the representation prohibitions of Section 8-13-740(5) and a municipal public official issuing bonds in the court system for that municipality. Taking the analysis a step further, given that the bonding company itself is subject to being a party to a court action in the event of default, if a municipal public official owns a bail bonding business, we believe that business may not issue bonds in the municipal court for which that official serves in an official capacity. This would potentially subject the public official to an enforcement action for violation of Section 8-13-740(5) regardless of whether or not another individual actually completed or filed the bond.