

State Ethics Commission
5000 Thurmond Mall, Suite 250
Columbia, South Carolina 29201

SEC AO2004-2010

May 19, 2010

SUBJECT: Conflict of Interest

SUMMARY: The question of whether a public official has an economic interest in the maintenance and repair of a city asset, which is before her government entity, must be answered on a case-by-case basis. In the situation outlined, the public official has an economic interest, but she is a member of a large class of property owners and thus she may participate in the discussions and votes.

QUESTION: A City of Georgetown council member questions whether she can vote on matters involving the maintenance and repair of a city asset, i.e. the municipal boardwalk on the Sampit River, when she is one of fifty-six (56) property owners that adjoin the boardwalk?

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.

A newly elected City of Georgetown Council Member owns property that adjoins a municipal boardwalk on the Sampit River that was constructed in the 1980's. Discussions were begun by Georgetown City Council about the repair and maintenance of the boardwalk prior to the council member's election. As a property owner and a citizen, the council member was involved in those discussions. The Georgetown Mayor and City Administrator have proposed a total replacement of the planks, as well as new railings and lighting of which the council member is opposed. While various proposals were being reviewed, the council member questioned whether the city had sought the proper

permitting required from DHEC's Ocean and Coastal Resource Management (OCRM) in addition to concerns regarding the financing of the project.

The question is whether the council member can vote on matters involving the maintenance and repair of the municipal boardwalk, when she is one of fifty-six (56) property owners that adjoin 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 council member may participate in the boardwalk discussion and votes, to include permitting and financing, requires a determination of whether her economic interests are distinct from the public and other members of the class of property owners. A council member would appear to have an economic interest in taking actions that would directly impact her property; however, the definition of economic interest provides for the large class exception.

The large class exception is just that, an exception to the recusal requirements of Section 8-13-700(B) for public officials. Prior Commission opinions have primarily dealt with council members who were also school district employees or spouses of school district employees and the question posed was 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 interest to greater extent than other members of the school district employee group will necessitate following the procedures of Section 8-13-700(B).**" (Emphasis added.)

"Large class" as found in Section 8-13-100(11)(b) of the definition of economic interest is not defined and the Commission has never made a numerical determination of what a large class is. The Commission prefers to review these questions on a case by case basis since each set of facts is unique.

The council member is one of fifty-six (56) property owners with an assumed economic interest in the repair and maintenance of the municipal boardwalk; however, whether that economic interest would result in increased income for her business is purely speculative. Therefore, it is the Commission's opinion that her economic interest is no more than that of all other property owners.

CONCLUSION: The question of whether a public official has an economic interest in the maintenance and repair of a city asset, which is before her government entity, must be answered on a case-by-case basis. In the situation outlined, the public official has an economic interest, but she is a member of a large class of property owners and thus she may participate in the discussions and votes.

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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