

SUBJECT: MEMBERSHIP IN COASTAL ELECTRIC COOPERATIVE, INC., BY MEMBERS OF COLLETON COUNTY COUNCIL.

SUMMARY: Colleton County Council members who are also customers and, therefore, members of Coastal Electric Cooperative Inc. do not have a conflict of interests in substance or by appearance that would preclude participation in voting upon a Colleton County initiative to purchase real property from Coastal Electric Cooperative, Inc.

QUESTION: The Colleton County attorney has requested an opinion on behalf of the Colleton County Council concerning the following matter. There are five (5) members on the Colleton County Council. Four (4) of the members purchase their electric power as customers from the Coastal Electric Cooperative, Inc. Coastal is a member owned cooperative, with membership totaling approximately 7500, and is the exclusive provider of electric services in certain parts of Colleton County. Membership is not optional in order to receive electrical services.

Coastal is governed by a Board of Trustees; none of the Colleton County council members are Trustees. According to the **ARTICLE VIII** Disposition of Property,¹ "[the Cooperative may not sell, lease or otherwise dispose of all or any substantial portion of its property unless such sale, lease or other disposition is authorized by the affirmative vote of not less than two-thirds (2/3) of the members."

The issue concerns an initiative for the Colleton County Council to negotiate for the purchase of the Coastal Electric Cooperative's former offices and facilities, which are located adjacent to the Colleton County jail.

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). 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.

The Commission notes Section 8-13-700 which provides in part as follows:

- (A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to

¹ Bylaws of Coastal Electric Cooperative, Inc. October 4, 1997

or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

- (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;
- * * *
- (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;

* * *

A "business with which he is associated" is defined in Section 8-13-100(4) to mean a "business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class."

Section 8-13-100(11)(a) further explains an economic interest:

- (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.

The State Ethics Commission advises that , when a member of a county council is a captive customer of a public utility provider and votes on a matter involving that provider when the council member has only an incidental economic interest that may accrue to that public official as a member of a large class, there is no disqualification required. If, however, a member serves as an officer, director, or

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employee of the cooperative, then the cooperative becomes a "business with which he is associated" and the recusal provisions of Section 8-13-700(B) above apply.