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Advisory Opinion 2002-007

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SEC AO2002-007

January 16, 2002

SUBJECT: CONFLICT OF INTEREST

SUMMARY: A town council member who is no longer a director or an officer of a homeowner's association does not have a conflict of interest under Section 8-13-700 if matters concerning the association come before town council. If the town council member is a named defendant in a lawsuit brought by town council, he then has a conflict of interest requiring recusal from discussion, deliberations and votes conducted by town council regarding the lawsuit.

QUESTION: What is required of a town council member who is personally named as a defendant in a lawsuit brought by the town council? What is the legitimacy of a complaint filed against a council member?

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.

In previous opinions, the State Ethics Commission has advised that the Ethics Reform Act does not address the issue of who may serve on boards and commissions. Instead, 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.

Section 8-13-700(B) provides in part 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;

* * *

(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;

Economic Interest is defined in Section 8-13-100(11) as:

(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.

"Business", as defined in Section 8-13-100(3), "means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association [or] organization...." "Business with which he is associated" is defined in Section 8-13-100(4) as "a business of which the person ... is a director, an officer, owner, employee [or] a compensated agent...."

The town council member had previously been on the board of the homeowner's association. While on the board the association was a business with which the council member was associated. Upon leaving the board, mere membership in the association does not create a conflict of interest for the council member when matters affecting the association come before town council.

The State Ethics Commission reviewed a similar matter in SEC AO93-081. The public official was an officer in an association, a business with which he was associated. The association was a plaintiff in a lawsuit brought against the school board. The economic interest at issue in that lawsuit was the association's, not the public official's. In the present matter the town council member may be named as a defendant in a lawsuit

brought by town council. The council member's economic interest is at issue, not the homeowner's association on which he previously served as a board member. The Ethics Reform Act requires the town council member to recuse himself, pursuant to Section 8-13-700(B), from participating in any deliberations, discussions or votes about a lawsuit filed by town council in which he is named as a defendant.

As to the second question the State Ethics Commission cannot comment on the legitimacy of the filing of a complaint in the abstract. Upon the filing of a complaint, the procedures set forth in the Ethics Reform Act would be followed.

CONCLUSION:

A town council member who is no longer a director or an officer of a homeowner's association does not have a conflict of interest under Section 8-13-700 if matters concerning the association come before town council. If the town council member is a named defendant in a lawsuit brought by town council, he then has a conflict of interest requiring recusal from discussion, deliberations and votes conducted by town council regarding the lawsuit.

KEY WORDS:	business with which associated, economic interest
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ANNOTATIONS:	8-13-700, 8-13-100(3)(4) and (11)
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