

SUBJECT: COUNCIL MEMBERS PARTICIPATING IN MATTERS AFFECTING AN INDIVIDUAL WITH WHOM AND A BUSINESS WITH WHICH THEY ARE ASSOCIATED

SUMMARY:

A County Council chairman is not prohibited from participating in matters affecting the economic interest of the president of the chairman's employing agency; however, the Commission would advise against participation, to avoid even the appearance of impropriety.

A council member who also serves as legal counsel for a special purpose district, is prohibited from participating in matters which would affect the economic interest of the district with which she is associated.

QUESTIONS:

The Charleston County Attorney questions whether it is "ethically appropriate" for the Chairman of the Charleston County Council and a Council member to vote on an issue involving the purchase of real estate by the county, when they both have associations with owners of the proposed sites.

The Chairman is employed as a physician with the Medical University of South Carolina. One of the proposed sites is either owned in whole or part by Dr. James B. Edwards, President of the Medical University.

The Council member is legal counsel for the St. Paul Fire District which encompasses both sites.

DISCUSSION:

This opinion is rendered in response to a letter dated November 4, 1991, requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act (Act No. 248 of 1991; Section 8-13-100 et. seq., 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-700(B)(1)(4) 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

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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 8-13-100(4), (11)(a)(b) and (21) provides in part as follows:

"Business with which he is associated" means 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.

(11)(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.

(21)"Individual with whom he is associated" means an individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner,

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employee, 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.

Thus on matters affecting the economic interests of business or individual where there is an association, there are three steps which should be taken:

1. The preparation of a written statement describing the matter of potential conflict, which is to be made a part of the meeting minutes,
2. Abstention or recusal from action, vote, and deliberation on the matter, and
3. To avoid any influence, absenting oneself from the meeting location.

While the Chairman of County Council does not appear to have any "association" with Dr. Edwards, to avoid even the appearance of impropriety, the State Ethics Commission would advise that he not participate in the matter.

As to the legal counsel of the St. Paul Fire District, the State Ethics Commission has advised in prior advisory opinions, that a person who is associated with two public entities should follow the procedures of Section 8-13-700 (B) in matters requiring action in one public position affecting the other public entity.