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Advisory Opinion 1992-115

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Download date	2024-10-13 20:59:13
Link to Item	https://dc.statelibrary.sc.gov/handle/10827/49393

SUBJECT: CITY COUNCIL MEMBER SERVING ON ARTS COUNCIL ELECTRICAL CONTRACTOR SERVING ON BOARD OF ELECTRICAL EXAMINERS

SUMMARY:

A City Council member who serves on an area Arts Council is advised against participating in the appropriation of accommodations tax fund revenues. An electrical contractor serving on a city Board of Electrical Examiners may bid on a city project provided he takes no action in inspecting or administering the project.

QUESTION:

The Florence City Attorney raises the following questions about the effect of the Ethics Reform Act:

1. A member of the City Council of Florence is currently serving on the Florence Area Arts Council. The Florence Area Arts Council is a recipient of funds from the accommodation tax revenues under SC Code Section 6-4-5 et seq. The City Council of Florence appoints members to an advisory committee who makes recommendations for the accommodation tax allocation; however, the Florence City Council actually makes the appropriations.
2. Whether the Council member can continue serving on the Florence Area Arts Council as long as the organization receives funding from the accommodation tax revenues?
3. If the Council member abstains from participating in the appropriation of funds for the organization, can he continue to serve on the Florence Area Arts Council?
4. Should the Council member abstain from participating in the appropriation of the accommodation tax fund revenues in its entirety?
5. A local electrical contractor currently serves on the City of Florence Board of Electrical Examiners pursuant to the City of Florence Code of Ordinances. This board consists of 10 members. Attached please find a copy of the Ordinance which governs this board. The local electrical contractor is interested in bidding on Florence city projects involving electrical contracts.

DISCUSSION:

This opinion is rendered in response to a letter dated February 3, 1992 requesting an opinion from the State Ethics Commission. The 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 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.

The State Ethics Commission knows of no reason why a City Council member could not serve on an area Arts Council. The Commission notes, however, Section 8-13-700(B) which 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 reasons for it to be noted in the minutes;

In prior advisory opinions, the State Ethics Commission has advised that, when a person serves in more than one official capacity, he should follow the provisions as outlined in Section 8-13-700(B) when required to take action in one position affecting the other. Such action would be mandated when required to vote on appropriations or other action affecting the Arts Council.

As to the third part of the question, the State Ethics Commission advises that the Council member follow the procedures outlined in Section 8-13-700(B) on the appropriation of accommodation tax revenues.

As to the second question, the State Ethics Commission notes the provisions of Section 8-13-730 which provides in part as follows:

Unless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated.

The Ordinance establishing the Board of Electrical Examiners provides for appointment of electricians with certain ratings and/or experience. It appears that the electrician in question is

authorized under the Ethics Reform Act to serve since his expertise is mandated by ordinance.

The State Ethics Commission knows of no reason why the electrician could not bid on city projects provided he takes no action regarding the inspection or administration of the project. He is advised of the provisions of Section 8-13-700(B) which 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;

(5) if he is a public member, he shall furnish a copy to the presiding officer 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 shall 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 such disqualification and the reasons for it to be noted in the minutes.