

**OPINION OVERTURNED IN PART BY AMENDMENT TO SECTION 8-13-740(4) AND (5).
EFFECTIVE APRIL 12, 2007. SEE R12, H3226 FROM THE 2007 TERM AT
<http://www.scstatehouse.net/index.html>.**

SEC AO92-145

September 16, 1992

SUBJECT: MEMBERSHIP ON COUNTY REGULATORY BOARDS

SUMMARY:

(1) An engineer or steel company president are not prohibited from serving on County Boards. (2) Professionals are not prohibited from performing ministerial functions but may not represent clients before any agencies or units of county government. (3) A debris hauler is not prohibited from serving on the county Recycling Committee. (4) The Public Works Director is advised to recuse himself from issues benefitting the county as a result of his service on a regional Authority.

QUESTION:

The Deputy County Attorney for Charleston County questions:

(1) The Charleston County Mental Retardation Board is created by ordinance, and its purpose is to develop, provide, coordinate, improve and operate community-based programs to serve the mentally handicapped. The Board budgets and spends money for the direct delivery of services to the mentally retarded. Presently, there is an engineer, who is the father of a severely retarded child, serving on the Mental Retardation Board who regularly does business with the County of Charleston's Public Works Department. Is this engineer's service on the Mental Retardation Board precluded by S.C. Code Section 8-13-700(B)? Along the same lines, can a person who is president of a steel company which sells steel to the County serve on the Board of Adjustment?

(2) Charleston County's Planning Board and Zoning Board of Adjustment have several realtors serving. If a realtor regularly sells property in Charleston County, but does not represent any clients before the Planning Board, can he serve on the Planning Board? Also, is a surveyor who routinely sends plats through the Planning Department precluded from serving on the Planning Board? Finally, can a contractor, engineer, architect, or land developer, assuming each of them routinely do business with the county, serve on these Boards if they recuse themselves from any matters that concern them or their clients?

(3) Can a person whose business is hauling debris, and who routinely uses the County's waste facilities for his business, serve on the County's Recycling Committee?

(4) The Public Works Director of Charleston County has been appointed by the Governor to serve on the Lowcountry Resource Conservation and Development Authority. The County provides funds to this organization in an amount of \$500 per year. As one of the Commissioners, the Public Works Director can and does vote to have Charleston County selected for drainage projects funded by the State Conservation Commission. Is it inappropriate for the County to fund an organization that

provides monetary benefit to the County? Is it inappropriate for the Public Works Director to use his position on the Commission to benefit the County?

DISCUSSION:

This opinion is rendered in response to a letter dated February 26, 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.

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;

* * *

(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.

Section 8-13-700(B) provides a procedure for recusal when a public member has a conflict of interests which will affect his economic interests. Thus, as to the first question, neither Section 8-13-700(B) nor any other provision of the Ethics Reform Act prohibits a member of the County Mental Retardation Board who is also an engineer from serving on that Board. Further, a president of a steel company is not precluded from serving on the Board of Adjustment.

The State Ethics Commission calls attention to the provisions of Section 8-13-740 which provides in part as follows:

(4) A public official, public member, or public employee of a county, an individual with whom the public official, public member or public employee is associated, or a

business with which the public official, public member, or public employee is associated may not knowingly represent a person before any agency, unit, or subunit of that county except:

- (a) as required by law; or
- (b) before a court under the unified judicial system.

Individual with whom he is associated is defined in Section 8-13-100(21) as:

...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, 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.

Business with which he is associated is defined in Section 8-13-100(4) as:

...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.

Thus, as to the second question, any public member of a county board, or any individual or business with whom he is associated is prohibited from representing clients before any units of county government. From the facts as submitted, it appears that the realtor, surveyor, contractor, engineer, architect, or land developer who are routinely submitting permits, plats, or plans to county departments are performing ministerial duties and are not representing clients before any county agency or unit. Such public members are advised to follow the disclosure and disqualification procedures of Section 8-13-700(B) on matters requiring their official action or decision which affect their economic interests.

As to the third question, it does not appear, from the facts as submitted, that a debris hauler is prohibited from serving on the County's Recycling Committee.

With regard to the fourth question, the Ethics Reform Act does not address the propriety of funding an organization which provides monetary benefit to the county. In prior opinions, the State Ethics Commission has advised that a public officeholder who serves on more than one public position should follow the procedures of Section 8-13-700(B) if required to take action or make decisions in one position affecting the other public position. The Public Works Director would be advised to follow those procedures when required to vote on issues concerning approval of funding for Charleston County.