

**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 AO92-118

March 25, 1992

**SUBJECT: BUSINESSMAN SERVING ON BUSINESS LICENSE/SOLID WASTE
DISPOSAL BOARD**

SUMMARY:

A business man is not prohibited by the Ethics Reform Act from serving on the Business License/Waste Disposal Fee Board.

QUESTION:

A member of the Charleston County Business License/Solid Waste Disposal Fee Board questions whether there is a conflict with his service on that Board. He owns and manages a marina and a mechanical contracting firm in the Charleston area and also serves on the Board of Berkeley Electric Co-op. The mechanical consulting firm may from time to time perform work for the county through bidding on publicly advertised projects.

DISCUSSION:

This opinion is rendered in response to a letter dated February 4, 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, neither Section 8-13-700(B) nor any other provision of the Ethics Reform Act prohibits a member of the Business License/Solid Waste Disposal Fee Board who is also a businessman from serving on that Board.

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, the businessman is not prohibited from serving on the Business License/Solid Waste Disposal Fee Board, however, he or any business or individual with whom he is associated is prohibited from

representing clients before any agency or unit of county government.

F:\APPS\WPWIN60\ADVISORY\AO92118N.NEW