

SUBJECT: COUNTY COUNCILMAN VOTING ON ROAD PAVING PROJECTS

SUMMARY:

A County Councilman who is a road paving contractor may participate in matters affecting the road paving program. However, he is prohibited by Section 8-13-775 from contracting with the county on any contracts requiring action by the County Council.

QUESTION:

The Greenville County Attorney requests an interpretation of Sections 8-13-100(11)(a) and (b) and 8-13-775 as to a councilman's ability to participate in matters involving him as a member of a profession or occupation. Specifically, she questions involvement by a Councilman who is a paving contractor who may vote on county paving projects.

"So long as he receives no greater benefit than all other paving contractors, is he allowed to discuss, vote on, and attempt to influence the County's decision to enter into a major road paving program?"

DISCUSSION:

This opinion is rendered in response to a letter dated October 24, 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) 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;

Section 8-13-100(11) provides as follows:

(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.

The Councilman's participation in matters affecting a contract on which he may be a bidder would not be prohibited by this section since all paving contractors would be equally affected by such contract.

The State Ethics Commission, however, notes that Section 8-13-775 provides:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State.

The Councilman's firm is prohibited from contracting with the county if he is authorized to perform any official function on the contract through writing or preparing specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract, regardless of whether he followed the

provisions of Section 8-13-700.

SEC AO92-010(Supplemental)

March 25, 1992

SUBJECT: COUNTY COUNCILMAN VOTING ON ROAD PAVING PROJECTS

SUMMARY:

A County Councilman is not prohibited from contracting with the county if he is not authorized to perform an official function regarding such contracts.

QUESTION:

The Greenville County Attorney has requested that the State Ethics Commission issue a supplemental opinion concerning Advisory Opinion SEC AO92-010. In that opinion, the Commission advised that the Councilman could not contract with the county if he is authorized to perform an official function regarding such contract. The Attorney advises that Section 7-110(b) of the Greenville County Purchasing Ordinance provides that any purchase over \$10,000 shall require formal sealed bids following public advertisement. The contract is awarded by the county administrator after receiving recommendations from the purchasing department. The purchasing director prepares specifications with assistance from the using agencies. The only time County Council approves a contract is when the award of a contract over \$10,000 to someone other than the low bidder.

DISCUSSION:

This opinion is rendered in response to a letter dated March 6, 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.

In Advisory Opinion SEC AO92-010, the State Ethics Commission advised that a County Councilman who is a road paving contractor may participate in matters affecting the road paving program. However, such Councilman is prohibited by Section 8-13-775 from contracting with the county if he is authorized to perform any official function regarding such contracts.

The Greenville County Purchasing Ordinance provides that the county administrator performs official functions related to the award of contracts by the county. It does not appear from the facts as submitted that the county council members have such "official function" as defined in Section 8-13-775. The function of the County Council is to award contracts only when not awarded to the low

bidder when the contract exceeds \$10,000. Consequently, the State Ethics Commission advises that a County Council member would not be precluded from bidding on a county contract because County Council only becomes involved with award of a contract only when there is a problem with awarding a contract to the low bidder.

A Council member is advised that he may contract with the county when the official functions are not authorized to be performed by the Council. He is further advised to follow the provisions of Section 8-13-700(B) on matters coming before the Council which affect such contracts. 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;

