

SUBJECT: COUNTY COUNCILMAN'S INVOLVEMENT IN REAL ESTATE TRANSACTION WITH COUNTY

SUMMARY:

A County Councilman may not participate in rezoning or sales approval of property being sold to the County Development Board since he represents a prospective seller. A Councilman is not prohibited from purchasing from or selling property to a School District so long as he has no official function regarding the transactions and does not participate in Council action regarding such matter.

QUESTION:

Two Sumter County Councilman have questioned their involvement with a real estate transaction with the county. One member represents a client who has been approached by the County Development Board to sell land to the County for an industrial park. He began work with a seller in 1989 and received interest in the property in October 1991. He questions whether his activities regarding this sale are prohibited by the Ethics Reform Act if he recuses himself from action on the rezoning or sale. The other councilman questions:

(1) Our school districts budgets are voted on by County Council each year. As a member of Sumter County Council would it be a violation of the Ethics Law if I as a real estate broker representing a company I own, bought and sold public land from a School District which comes under my jurisdiction for budget approval?

(2) Would it be unethical or illegal according to the Ethics Law for me to bring this land up for zoning to Sumter County Council even though I excuse myself from discussion and voting on the schools land which I purchased?

(3) I have an exclusive right to sell property for a client and will receive a commission for my efforts provided that the land is zoned heavy industrial by Sumter County Council. If I excuse myself from all discussion and voting on the zoning request, would it be legal according to the Ethics Law or other South Carolina laws, for me to bring up zoning of this land (100 acres) to Sumter County Council which will be purchased by Sumter County with a State grant, local tax dollars or a Federal grant?

DISCUSSION:

This opinion is rendered in response to letters dated January 5 and 8, 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 has advised in advisory opinions prior to January 1, 1992 that a public official may contract with public agencies, including his own, providing the official took no official action regarding such contract in accordance with the provisions of Section 8-13-460. Under the recently-enacted Ethics, Governmental Accountability, and Campaign Reform Act of 1991, Section 8-13-700(B) provides that a public member is required to provide a written statement describing a conflict of interests and then must not participate in any matter affecting his economic interests of \$50 or more. 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.

The Commission also notes the provisions of Section 8-13-775 which 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 State Ethics Commission advises that the Councilman's client would not be prohibited from

selling the property to the County Development Board since this matter was pending prior to the effective date of the Ethics Reform Act. However, the Councilman would be prohibited from participating in the rezoning or sales process in accordance with Section 8-13-700(B).

As to the questions raised by the other Councilman, the State Ethics Commission advises that a Councilman would not be prohibited from purchasing from or selling property to a school district subject to County budget approval so long as the Councilman has no official function, as defined in Section 8-13-775, regarding such transactions and provided the provisions of Section 8-13-700(B) are followed.

As to his second and third questions, the Commission calls attention to the provisions of Section 8-13-740(A)(4) which provides:

- (A)(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 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.

The State Ethics Commission would advise that such representation of a client before the County Council on rezoning would be prohibited by this section. Such client should represent himself or seek other representation to present such rezoning request before the Council. The Council member is advised to follow the provisions of Section 8-13-700(B) on matters affecting the client.