

SUBJECT: COUNTY COUNCIL MEMBER PARTICIPATING IN RENTAL REHABILITATION PROGRAM

SUMMARY:

A County Council member would not be prohibited from participating in a rental rehabilitation program since he has no official function regarding the program. He is advised to follow the provisions of Section 8-13-700(B) if required to take action or make decisions regarding his participation in the program.

QUESTION:

The Community Development Director of the Upper Savannah Council of Governments is requesting an opinion concerning the participation of a council member in the local housing rehabilitation program. In 1988, the State Ethics Commission issued Advisory Opinion SEC89-001 which provided that a council member could participate in the program provided he took no action or made no decision regarding his participation in the program. Laurens County has received a grant from the Governor's Office under the Small Cities Program to rehabilitate 27 houses. A council member who is a contractor has participated in prior city rehab programs. The 27 houses were selected by lot and none of the houses are within his district. The block grant is administered by the Community Development staff of the Council of Governments. The Council contracts with the County to carry out the services but is an independent body to oversee the construction and program administration.

DISCUSSION:

This opinion is rendered in response to a letter dated January 31, 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 SEC89-001, the State Ethics Commission advised that the Council member could participate in the program provided he took no action or made no decisions regarding his participation in the program. The passage of the Ethics Reform Act enacted Section 8-13-775 which also would apply to participation in contracts. 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 is prohibited from participating in the program 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. It appears from the facts as submitted that the Council of Government's Community Development Office makes the decisions regarding the program, therefore, the Councilman's participation in the program would not be prohibited.

The State Ethics Commission does, however, note 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;

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(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;

Thus, the Councilman would be required to follow the provisions of Section 8-13-700(B) on issues affecting his participation in the program.