

**OPINION OVERTUNED 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 AO92-207

December 16, 1992

SUBJECT: EFFECT OF SECTION 8-13-740

SUMMARY: A member of a city board or individuals or businesses with which that member is associated may not represent, as defined in Section 8-13-100(28), persons before any city agency or unit.

QUESTION: The Assistant City Manager of Myrtle Beach raises a question concerning a member of a city board or commission who is an employee of a local corporation. He questions whether Section 8-13-740(A)(5) prohibits him or any other person employed by the same corporation from appearing before any city board or commission on behalf of that corporation. He advises that such a prohibition would deny the corporation the right to petition its local government and prevent it from obtaining anything other than the simplest of permits from the city. He further questions whether it would make any difference whether the business involved was a partnership or some other form of business enterprise.

DISCUSSION:

This opinion is rendered in response to a letter dated April 17, 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 calls attention to the provisions of Section 8-13-740 which provides in part as follows:

- (5) A public official, public member, or public employee of a municipality, 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 municipality except as required by law.

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, a public member of a city board, or any individual or business with whom he is associated is prohibited from representing clients before any units of city government. Represent is defined in Section 8-13-100(28) as:

(28) 'Represent' or 'representation' means making an appearance, whether gratuitous or for compensation, before a state agency, office, department, division, bureau, board, commission, or council, including the General Assembly, or before a local or regional government office, department, division, bureau, board, or commission.

From the facts as submitted, it appears that the member of the city board or individuals or businesses with which that member is associated may not represent persons before any city agency or unit. The submission of permits, plats, or plans to city departments are ministerial duties and are not representations of clients before any city 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. 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.