

SUBJECT: CITY COUNCIL MEMBER VOTING ON ISSUE AFFECTING SON'S COMPANY

SUMMARY: A City Council member is not prohibited from participating in deliberations and votes on matters affecting a contract to a company of which the Council member's son is a principal since the Council member's son is not an immediate family member as defined in Section 8-13-100(18).

QUESTION: The Attorney for the City of West Columbia requests an opinion concerning participation in a matter by a City Council member. The city is in the process of entering into a contract with a company regarding a \$15 million sewer project. The adult emancipated son of one of the council members is one of the principals in the company with which the Council is contracting to do the project. The Attorney questions whether there is any legal or ethical prohibition against the Council member voting on the contract.

DISCUSSION:

This opinion is rendered in response to a letter dated April 30, 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)(1)(4) 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;

Section 8-13-100(4), (11)(a)(b), (18) and (21) provides in part as follows:

"Business with which he is associated" means 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.

- (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.

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- (18) "Immediate family" means:
- (a) a child residing in a candidate's, public official's, public member's, or public employee's household;
- (b) a spouse of a candidate, public official, public member, or public

- employee; or
- (c) an individual claimed by the candidate, public official, public member, or public employee's spouse as a dependent for income tax purposes.

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- (21) "Individual with whom he is associated" means 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.

From the facts as submitted, and by virtue of the definitions contained in the statute, the Council member does not have an economic interest, since his son is not a member of his immediate family. Therefore, he would not be prohibited from participation in deliberations and votes on the sewer project contract.