

SUBJECT: ADVISORY COUNCIL MEMBERS PARTICIPATING IN INDUSTRY ISSUES

SUMMARY:

If allowed by other statutes to serve, advisory board members who work for a solid waste business would not be prohibited from participating in development of a solid waste disposal plan which does not affect their economic interests to any greater extent than other members of their industry.

QUESTION:

The attorney for Waste Management raises a question concerning the SC Solid Waste Policy and Management Act which calls for the establishment of a State Recycling Market Development Council, a State Solid Waste Advisory Council, and a local Solid Waste Advisory Council for each county or region. These councils advise the county, region, or state on the preparation of the respective solid waste management plan and on methods of implementing the plan. Each council is required to consist of several members, specifically to include representatives of the private solid waste management industry. Several employees of Waste Management have been invited to participate in these councils. The attorney questions what restrictions would apply to their participation on such advisory councils and in the preparation of the solid waste management plan. He also questions whether the service by the employees precludes Waste Management from conducting business associated with the particular solid waste management plan.

DISCUSSION:

This opinion is rendered in response to a letter dated May 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.

The State Ethics Act does not address the issue of who may serve on boards and commissions. If allowed by other statutes to serve, Section 8-13-700(B) provides for actions to be taken by the member. 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.

Economic Interest is defined in Section 8-13-100(11) as:

(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.

In Advisory Opinion AO92-064, the Commission advised Hospital board members who were also school district employees that they would not be prohibited from deliberating and voting on the hospital's participation in the State Blue Cross Plan since the economic benefits would accrue to all members of a large class. In Advisory Opinion AO92-155, the Commission advised that members of a redevelopment commission would not be prohibited from deliberating and voting on matters which would not affect their economic interests to any greater extent than other members of the large class, i.e., all owners of properties in the affected area. If a particular matter would affect the economic interests to any greater extent than other members of the large class, the member would be required to abstain from all actions in accordance with Section 8-13-700(B).

Based upon the facts as submitted, it appears that members of the local Advisory Councils would not be prohibited from serving or participating in the preparation of solid waste management plans. They are advised, in accordance with Section 8-13-700(B), to recuse themselves from issues which will affect the economic interests of Waste Management differently than those of other such firms.

As to the second question, the Commission knows of no restriction on Waste Management since it appears that the function of the Advisory Councils is advisory in nature and has no authority to let contracts or regulate the implementation of the plan.