

SUBJECT: ATTORNEY SERVING ON MUNICIPAL LAND BANK COMMISSION

SUMMARY:

Neither an attorney who serves on a town Land Bank Commission nor members of his law firm would be prohibited from representing clients before town agencies since his service is mandated by town ordinance.

QUESTION:

An attorney who serves on the Hilton Head Island Land Bank Commission requests confirmation that his law firm may represent clients before Town agencies. The authorizing ordinance provides that one member of the Commission be a property lawyer, the position to which he has been appointed.

DISCUSSION:

This opinion is rendered in response to a letter dated June 5, 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 8-13-740 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.

Represent is defined in Section 8-13-100(28) as:

"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.

If the members do not serve pursuant to a statute specifically providing for the service of a person with their professional or business expertise on the various agencies, then these provisions apply.

However, a statutory provision should be given reasonable and practical construction consistent with

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the purpose and policy expressed in the statute. Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E. 2d 837, (1979). And, "[t]he real purpose and intent of the law makers will prevail over the literal import of the words." Greenville Baseball, Inc. v. Bearden, Sheriff, et al., 200 S.C. 363, 20 S.E. 2d 813, 815 (1942). Therefore, the Commission finds that since the Town of Hilton Head Island ordinance authorizes the service of a property attorney on the Land Bank Commission, Section 8-13-740 would not prohibit that attorney or his law firm from representing clients before town agencies.

The Commission advises that the provisions of Section 8-13-700(B) would apply to continued service if allowed as mentioned above. Section 8-13-700(B) provides:

(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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(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 State Ethics Commission advises that, if the attorney is allowed to serve in accordance with the above discussion, members of his law firm would not be prohibited from representing clients before town agencies provided the member follows the procedures of Section 8-13-700(B) on all matters affecting the economic interests of the law firm.