

SUBJECT: COUNCIL MEMBERS DELIBERATING AND VOTING ON BUS RATE INCREASE

SUMMARY:

A Mayor and Council member would be required to follow the procedures of Section 8-13-700(B) if a bus rate increase issue would affect the economic interests of the law firms with which they are associated. Those procedures are not required merely as a result of the relationship of the bus company as a client of the firm from which no legal fees would be obtained.

QUESTION:

The Mayor and a Councilwoman from Columbia are employees of law firms in an "of counsel" capacity. Neither has an ownership interest in those firms. The firms represent SCANA and its subsidiaries, including SCE&G. The Mayor's firm represents on litigation and corporate matters not involving the Public Service Commission or the bus rate issue. The Councilwoman's firm represents SCANA and its subsidiaries on matters pending before the Public Service Commission, legislative and lobbying activities and general corporate matters. Neither have been directly involved in representation of SCANA or its subsidiaries. They question whether Section 8-13-700(B) disqualifies them from any votes, deliberations, or other actions on the SCE&G bus rate request now pending before the Public Service Commission.

DISCUSSION:

This opinion is rendered in response to letters dated June 5 and June 10, 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) 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;

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

(a) ...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.

Business with which he is associated is defined in Section 8-13-100(4) as:

"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.

Individual with whom he is associated is defined in Section 8-13-100(21) as:

(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.

The Mayor and Council member would be required to follow the procedures of Section 8-13-700(B) if the issue would affect the economic interests of the law firms which they are associated. It is unclear from the facts as submitted whether such procedure is required. The procedures of Section 8-13-700(B) are required if the matter requiring official action entails an economic benefit. Those procedures would be required if there is legal work related to the bus rate increase issue. Those procedures are not required merely as a result of the relationship of the bus company as a client of the firm from which no legal fees would be obtained.