

**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 AO93-047

December 16, 1992

SUBJECT: PUBLIC MEMBER ASSOCIATED WITH BUSINESS REPRESENTING
CLIENTS BEFORE TOWN BOARDS

SUMMARY:

A third party, i.e., an attorney, may represent the business with which a public member is associated before town agencies, without violating Section 8-13-740.

QUESTION:

The Director of Legal Services for the Town of Hilton Head Island questions:

In South Carolina Ethics Commission (hereinafter "Commission") AO92-109, the Commission addressed numerous Town of Hilton Head Island-generated questions. The seventh question and answer is unclear and the Town seeks clarification. Specifically, may a person who does part-time work for a business or company and who serves as a public member to a Town board or commission, continue to serve on such board or commission if that person's company "does business" (non-ministerial) with the Town by use of a third party? To hypothetically illustrate, a Town commission member performs part-time secretarial work for a company that "does business" with the Town. The company itself wishes to develop land and will be "doing business" with the Town through a third party, for example, an attorney. The attorney will represent the company before the Town at all times. The public member's boss (company president) will not represent his company at any time before the Town. May the public member continue to serve on a board or commission while the third party (not the public member's boss) represents the company before the Town?

DISCUSSION:

This opinion is rendered in response to a letter dated June 19, 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.

In Advisory Opinion SEC AO92-109, the State Ethics Commission advised that a Town Planning

Commission member who is prohibited from representing or whose business is prohibited from representing clients before Town agencies may hire a third party (i.e., someone who does not have a conflict in representing clients before Town agencies), to represent him before Town agencies.

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.

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 which 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.

Based on the facts submitted, it appears that a third party, i.e., an attorney, will represent the business with which the public member is associated before town agencies, rather than the business itself. Since the third party is neither an individual nor a business with which the public member is associated, he would not be encompassed by Section 8-13-740(5). For that reason, such representation by a third party would not be prohibited by the Ethics Reform Act of 1991.