

SUBJECT: COUNTY COUNCIL MEMBER PARTICIPATING IN ENVIRONMENTAL ISSUES

SUMMARY:

A county councilman may participate in governmental decisions involving environmental issues, including the appeal of a DHEC permit, provided that the decision does not affect his economic interests.

QUESTION:

A recently elected member of the York County Council inquires whether he may participate in governmental decisions involving the Department of Health and Environmental Control (DHEC) and the City of York. In May 1992, the York County Council voted to construct an additional sewer line which would pump waste water to the City of York sewage system. The City of York would then pump the additional sewage into Fishing Creek. DHEC issued a permit necessary to effect the plan, but in response to this proposal, several concerned residents formed the Fishing Creek Basin Committee to prevent York County and the City of York from implementing the project. The Fishing Creek Basin Committee is now appealing the DHEC permit. At about the same time, three individuals, including the requestor, announced their intent to sue the City of York based on federal environmental violations; however, the law suit was never filed. Subsequently, the requestor successfully ran for a seat on the York County Council with a platform opposing York County's decision to pump sewage into Fishing Creek. Following the election, the new council member removed himself from the group which contemplated the law suit with the City of York. Although the council member attended some meetings of the Fishing Creek Basin Committee, he is not a member of that body. Based on his previous involvement, the member now questions whether he may vote on issues involving DHEC and the City of York.

DISCUSSION:

This opinion is rendered in response to a letter dated January 27, 1993 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) requires that in the event of a conflict of interest, a public official must recuse himself from participating in governmental actions or decisions. 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;

* * *

(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:

(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 SEC 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 SEC AO92-155, the State Ethics 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.

Based on the facts submitted, the council member does not appear to have an economic interest at stake in any actions pertaining to the Fishing Creek sewage proposal. Accordingly, the council member may participate in governmental decisions involving environmental issues, including the appeal of the DHEC permit, provided the decision does not affect his economic interests.

However, assuming that a council decision concerning the sewage proposal would affect the member's economic interests, the member's participation still would not be prohibited, since it does not appear that any potential benefit would accrue to any greater extent to the council member than it would to other members of a large class, i.e., York County residents within the affected area.