

SUBJECT: COUNTY COUNCIL MEMBER/FIRE CHIEF VOTING ON ISSUES AFFECTING FIRE SERVICE

SUMMARY: A County Council Member should abstain from voting on matters in which he has an economic interest. When a County Council issue arises involving the member's economic interest, the member must prepare the required report.

QUESTION:

The Berkeley County Attorney advises that a newly elected County Council Member is the paid fire chief of two volunteer fire departments within the County. On an annual basis, County Council approves budgets which establish uniform service charges for each of the County's fire departments. County Council has historically provided grant funds to all fire departments in varying amounts. The County Attorney has recommended procedures to be followed when this Council Member is faced with certain votes:

1. When the Council Member is required to vote on an action directly affecting either of the two fire departments which employ him as their paid fire chief, it is clearly inappropriate for him to vote. In those instances, he should excuse himself.
2. In instances where the Council Member would be expected to vote on issues affecting other non-affiliated fire departments or matters generally relating to all fire departments, he should not participate to preclude an appearance of favoritism.
3. Within the Council Member's district is a residential special tax district which has as part of its purpose the collection of fees to defray the costs associated with fire protection and prevention services provided by one of the fire departments with which the Council Member/Fire Chief is affiliated. The County Attorney has recommended that the Council Member/Fire Chief not participate in issues affecting this tax district since a portion of the revenues flow to the department with which he serves. The Council Member/Fire Chief also is responsible for recommending appointments to the Commission for Council's action.
4. There may be other occasions where the County Attorney will urge the Council Member's vigilance and consideration prior to any vote.

The County Attorney requests that the State Ethics Commission review these recommendations to ensure that they comply with Section 8-13-700.

DISCUSSION:

This opinion is rendered in response to a letter dated January 11, 1995 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 2-17-5 et seq. and Section 8-12-100 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 Ethics Reform Act does not prohibit a public employee from serving on a county council. However, such employee is advised of the provisions of Section 8-13-700(B) which 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;

Thus, the County Council Member/Fire Chief is advised to follow the procedures set out in Section 8-13-700(B) on matters affecting the economic interests of the fire departments with which he is associated. Such economic interests would include, but not be limited to, budget appropriations, salary increases, or fee increases.

As to the second procedure suggested by the County, the Commission advises that the Council

Member/Fire Chief is not precluded from participating in issues affecting all the fire departments or those affecting non-affiliated fire departments unless such issue would affect the economic interests of his fire departments or him personally.

As to the third procedure suggested and based upon the facts as submitted, the State Ethics Commission believes that certain issues involving the residential special tax district would affect the economic interests of the fire departments with which he is associated. The Commission advises that the member recuse himself from those issues affecting the economic interests of that residential special tax district which affect the fire department by which he is employed to a greater extent than other fire departments in the county.

As to the final procedure suggested by the County, the Commission agrees that the Council Member/Fire Chief must remain vigilant and assure strict compliance with the Ethics Act.