

SUBJECT: A PUBLIC OFFICIAL PARTICIPATING IN THE AWARD OF A CONTRACT TO A PUBLICLY HELD COMPANY IN WHICH HE OWNS STOCK.

SUMMARY: The public officials economic interest in an company in which he owns stock is no greater than the economic interest or potential benefit that accrues to all other shareholders. Unless the public official holds stock in the company worth \$100,000 or more at fair market value and which constitutes five percent or more of the total outstanding stock, then his ownership of stock places him in the larger class exception found in the definition of economic interest.

QUESTION: The Richland County Attorney's Office requests an advisory opinion following the receipt of an informal opinion requested by a member of County Council. The council member owned stock in a company that had bid on a contract with the county. The amount of stock did not fall within the definition of business with which associated. Staff opined that the council member did not need to recuse himself. The County Attorney's office disagreed with the informal opinion and asserts that the council member's mere ownership of stock in the company, regardless of amount, creates an economic interest that would require the council member to recuse himself from participating in any decision related to the company.

DISCUSSION:

The State Ethics 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 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

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

(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 Commission advised that members of a city 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. If a particular matter would affect the economic interests to any greater extent than other members of the large class, the member would be required to abstain from all actions in accordance with Section 8-13-700(B).

In order for the council member to have an economic interest greater than other members of the larger class of stockholders, then the council member would have to hold enough stock to fall within the definition of business with which he is associated. 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.

Upon reaching this threshold amount of stock, then the council member would follow the recusal procedures of Section 8-13-700(B), which states in part:

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;

CONCLUSION:

Accordingly, the Commission finds that the council member's ownership of publicly traded stock, when less than the amounts defined in business with which associated, does not create an economic interest greater than the economic interest of all other members of the larger class of stockholders. The council member's economic interest could accrue to a greater extent if he were to hold publicly traded stock in the company worth \$100,000 or more at fair market value and that stock constituted five percent or more of the total outstanding stock. At that point the council member would follow the recusal provisions of Section 8-13-700(B).

KEY WORDS:	business with which associated and economic interest
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ANNOTATIONS:	8-13-100(4), 8-13-100(11) and 8-13-700(B)
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