

SEC AO2002-004

November 14, 2001

SUBJECT: LAW FIRM SHAREHOLDER SERVING ON CITY COUNCIL.

SUMMARY: A city council member is required to follow the procedures of Section 8-13-700(B) if a matter would affect the economic interests of the law firm with which she is associated.

QUESTION: Whether a city council member's status as a shareholder in a law firm would affect the member's ability to serve on city council?

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.

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:

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:

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.

A public official is prohibited by Section 8-13-700(B) from participating in any action 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. Clearly, a law firm is a business with which the council member is associated and her fellow attorneys in the firm are individuals with whom she is associated. These associations are in place regardless of the employment status of the council member as either a shareholder or of counsel.

The council member is required to follow the procedures of Section 8-13-700(B)(1) and (4) if an issue before city council would affect the economic interests of her law firm or her fellow attorneys. The definition of "business with which he is associated" no longer includes client as a covered relationship as it did under the former Ethics Act. Voting on a client's matter can certainly create an appearance of impropriety; however, unless the council member's law firm or fellow employees have an economic interest in the client's matter then no recusal is required.

**CONCLUSION:** A city council member is required to follow the procedures of Section 8-13-700(B) if a matter before council would affect the economic interests of the law firm with which she is associated or if a matter would affect the economic interests of co-workers with whom she is associated. A law firm's client's matter is not in and of itself a conflict but would require additional review.

<b>KEY WORDS:</b> economic interest, business with which associated, individual with whom associate.
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<b>ANNOTATIONS:</b> 8-13-100(3), (4), (11), (21) and 8-13-700(B)
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