

SEC AO2004-003

March 17, 2004

**SUBJECT:** Conflicts of Interests and Official Capacity

**SUMMARY:** When a city council member sits on a board or commission in his official capacity, he is not precluded from voting on issues before city council which relate to the board or commission.

**QUESTION:** Are members of Columbia City Council who serve as members of the board of directors of Central Midlands Regional Transit Authority precluded from voting on the question of rezoning the proposed site of CMRTA's maintenance facility?

**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.

Are members of Columbia City Council who serve as members of the board of directors of Central Midlands Regional Transit Authority (hereinafter "CMRTA") precluded from voting on the question of rezoning the proposed site of CMRTA's maintenance facility?

Section 8-13-700(B) provides 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;

Section 8-13-100(30) provides as follows:

'Official capacity' means activities which:

- (a) arise because of the position held by the public official, public member, or public employee;
- (b) involve matters which fall within the official responsibility of the agency, the public official, the public member, or the public employee; and
- (c) are services the agency would normally provide and for which the public official, public member, or public employee would be subject to expense reimbursement by the agency with which the public official, public member, or public employee is associated.

As the Commission opined in SEC AO2000-011, "a final exception to the recusal requirement is that situation in which the public official sits on a board in his official capacity as a council member." The opinion goes on to state the board must be an arm of the council, i.e. created by council and existing solely at the discretion of council.

Regional transportation authorities are created by statute; however, a specific authority, such as the CMRTA, is created by the various counties and municipalities in the region. The CMRTA is

an arm of Columbia City Council, as well as the other twelve municipalities and two county governments in the region.

**CONCLUSION:** Members of Columbia City Council who serve as members of the board of directors of CMRTA are not precluded from voting on the question of rezoning the proposed site of CMRTA's maintenance facility.

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| <b>KEY WORDS:</b> official capacity and conflicts of interest |
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| <b>ANNOTATIONS:</b> 8-13-700(B) and 8-13-100(30) |
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