

**OPINION OVERTUNED IN PART BY AMENDMENT TO SECTION 8-13-740(4) AND (5).
EFFECTIVE APRIL 12, 2007. SEE R12, H3226 FROM THE 2007 TERM AT
<http://www.scstatehouse.net/index.html>.**

AMENDED

SEC AO2006-002

January 18, 2006

SUBJECT: CITY COUNCIL MEMBER'S FIRM REPRESENTING CLIENTS BEFORE CITY AGENCIES

SUMMARY: A city council member's firm may not appear before various city approval and permitting boards.

QUESTION:

A city council member is an officer in a consulting engineering firm. The firm is often required to appear before agency boards, commissions and councils during the permitting/approval processes. The firm often is required to appear before the city planning and zoning commission, board of adjustment, technical review board, and, occasionally, city council. What is the applicability of Section 8-13-740(A)(5).

DISCUSSION:

This opinion is rendered in response to a letter dated December 22, 1997 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act, S.C. Code §2-17-10; 8-13-100 (Supp. 1996). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-740(A)(5) provides:

(5) A public official, public member, or public employee of a municipality, an individual with whom the public official, public member, or public employee is

associated, or a business with which the public official, public member, or public employee is associated may not knowingly represent a person before any agency, unit, or subunit of that municipality for which the public official, public member, or public employee has official responsibility except as required by law.

If a city council member does not serve pursuant to a statute specifically providing for the service of a person with their professional or business expertise, then the prohibitions of 8-13-740 apply. Clearly, an elected official does not serve pursuant to a statute specifically providing for a council member to be an engineer or a lawyer. A council member serves because he has been elected to serve, not because his position on council is required by law to be filled by an engineer. Neither a city council member, nor his firm may represent clients before agencies, units or subunits of the municipality.

In as much as this Advisory Opinions conflicts with that portion of SEC Advisory Opinion 98-006 which states “. . . A City Council member's firm may appear before various city approval and permitting boards as required by appropriate statute....” AO98-006 is withdrawn.

In recognition that there has been substantial reliance by the Bar of this State, as well as other affected persons, on AO98-006, the Commission finds it appropriate that there shall be a grace period of one year from today’s date, March 8, 2006, before this opinion becomes effective as to pending matters. The purpose of this grace period is to allow attorneys and other persons affected by this change the opportunity to resolve pending cases; however, nothing herein shall be construed as permission to undertake new representations during this grace period.

CONCLUSION: The Commission concludes that a city council member's firm may not appear before various city approval and permitting boards.

KEY WORDS: represent, as required by law

ANNOTATIONS: 8-13-740(A)(5)
