

SEC AO2008-003

November 14, 2007

SUBJECT: CONFLICT OF INTEREST

SUMMARY: Property which is no longer the subject of litigation requires no recusal by the parties to the original litigation when the parties include councilmembers as plaintiffs and the mayor and the city as defendants. The obligation of a public body to hear a matter is outside the jurisdiction of the Ethics Reform Act.

QUESTIONS: 1) Where the property owner has properly initiated a zoning request, is council obligated to hear and vote on this request?
2) Where the City of Georgetown is a defendant in a lawsuit regarding its vote rezoning a property, does city council as a body have a conflict of interest in voting on a non-party property owner's request to rezone a portion of that property?
3) Do the three councilmember-plaintiffs have a conflict of interest in voting?

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.

As to the first question, the obligation of Georgetown City Council to hear a properly initiated zoning matter is outside the jurisdiction of the Ethics Reform Act.

Questions two and three are combined. Property which is no longer the subject of litigation requires no recusal by the Georgetown Councilmembers who are plaintiffs, or the Mayor who is one of the defendants along with the Town of Georgetown. The property at issue in

the zoning request is owned by Stewart Richardson who is not a party to the litigation. The owner entered into a contract of sale of the property; however, that contract was not finalized and he now seeks to re-zone his property.

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) "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.

Although the parties appear to have an economic interest in the litigation, the property at issue in the re-zoning request is not part of the litigation at this point. On matters relating to the litigation that come before Council, the plaintiffs must recuse and leave the room if the discussion occurs in executive session. It is not the litigation before council on the re-zoning matter; therefore, no recusal is required.

CONCLUSION: Property which is no longer the subject of litigation requires no recusal by the parties to the original litigation when the parties include councilmembers as plaintiffs and the mayor and the city as defendants. The obligation of a public body to hear a matter is outside the jurisdiction of the Ethics Reform Act.

KEY WORDS:	economic interest, recusal, litigation
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ANNOTATIONS:	8-13-700(B), 8-13-100(11)
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