

State of South Carolina

State Ethics Commission

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SEC AO2020-002

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SUBJECT: PUBLIC SERVANTS VOTING ON BUDGETS

SUMMARY: A public official, public member, or public employee may vote on entire budgets that contain items affecting the economic interests of himself, his family members, businesses with which he is associated, or individuals with whom he is associated, but is prohibited from voting on specific line-items affecting such economic interests and is prohibited from participating in work shops or budget committees dealing with such interests.

APPLICABLE LAW:

Section 8-13-700 states, in part:

- (A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated . . .
- (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 family member, 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 family member, 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 an agency, commission, board, or of a 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;
- (5) if he is a public member, he shall furnish a copy to the presiding officer of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall 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 such disqualification and the reasons for it to be noted in the minutes.

Section 8-13-100(11) states:

- (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.

DISCUSSION:

The Commission has repeatedly advised public servants to recuse themselves pursuant to Section 8-13-700 from matters in which they, their family members, businesses with which they are associated, or individuals with whom they are associated have an economic interest. However, Commission staff seeks clarification on Section 8-13-700 and its application to public servants voting on budgets in their entirety, such as by ordinance. The Commission has issued a number of formal and informal opinions on this topic, some of which are outlined below.

- In SEC AO92-068, a City Council member was employed by a water company. Every year, the City received a rate increase from the water company and thereafter adopted an ordinance approving the rate increase. The Council member advised that he recused himself from voting on the ordinance approving the rate increase but asked if he was permitted to vote on the final budget, which would contain funding for the rate increase. The Commission advised that the Council member could vote on the budget as a whole.
- In a number of informal opinions from 1992 through 2000, the Commission informally advised public servants to recuse themselves from portions of budget discussions or line-item votes that dealt specifically with their own economic interests or the economic interests of a family member, an individual with whom they were associated, or a business with which they were associated. However, the Commission further advised individuals that they could vote on budgets as a whole.
- In SEC AO2000-011, the Commission stated as follows: “The Commission is aware that many times public officials are voting on total council budgets which include appropriations to businesses with which they are associated. In those situations, the public official should request that the appropriation be a line-item budget matter separate from the total budget. The public official could then vote on the total budget and follow the recusal requirements of Section 8-13-700(B) for the line-item budget matter.”

Thus, it appears that SEC AO2000-011 conflicts with the Commission’s other formal and informal opinions. The Commission therefore clarifies that a public servant is permitted to vote on budgets in their entirety (for instance, where final budget approval is by ordinance), but may not vote on specific line-items or participate in work groups or budget committees that specifically affects his own economic interests or the economic interests of his family members, individuals with whom he is associated, or businesses with which he is associated. SEC AO2000-011 is hereby withdrawn.