



ALAN WILSON
ATTORNEY GENERAL

October 28, 2022

C. Daniel Atkinson, Esq.
127 Dunbar Street
Suite 200
Spartanburg, South Carolina 29306

Dear Mr. Atkinson:

We understand you represent the Town of Lyman (the "Town") and wish to request an Attorney General's opinion as to whether a company managed by a member of the Town's council may purchase real property from the Town. You provided the following information:

The Town of Lyman has been approached to sell real property. A Member of the Lyman Town Council manages a company, and the company is interested in purchasing the real property. The Council Member has disclosed the financial interest and has voluntarily recused from the Town's consideration the sale of the real property.

Based on this information, you request an opinion

as to whether there is any conflict issue in selling the real property to the company managed by the Council Member provided that (i) the financial interest is disclosed pursuant to S.C. Code Sections 8-13-700(B)(1) and (B)(5), (ii) such statement is published in the Town Council's minutes, and (iii) the Town issues a public request for proposals to allow third-party competitive offers for the real property.

Law/Analysis

In your letter, you refer to section 8-13-700 of the South Carolina Code (2019), which is contained in the Ethics Reform Act. This provision prohibits a public official's use of his or her official position or office for financial gain and requires disclosure of potential conflicts of interest. This provision provides in relevant 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. This prohibition does not extend to the

incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.

(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;

....

S.C. Code Ann. § 8-13-700.¹

Pursuant to section 8-13-100(27) of the South Carolina Code (2019), a "public official" is "an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office." Town council members are elected municipal officials. Therefore, section 8-13-700 is applicable to members of the Lyman Town Council. Furthermore, section 8-13-100(11) defines "economic interest" as "an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement

¹ Your letter references section 8-13-700(B)(5), which is similar to section 8-13-700(B)(4), but applies to public members as opposed to public officials. We find a member of a town council is a public official rather than public member. See S.C. Code Ann. § 8-13-100(26) & (27). Therefore, we omitted reference to section 8-13-700(B)(5).

involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.” As such, a Council Member is prohibited from knowingly using his or her office to facilitate the purchase of property for a company he or she is associated with.

You have not alleged that the member is knowingly using his or her office to obtain an economic interest, but rather are concerned that his or her association with a business that seeks to purchase property from the Town creates a potential conflict of interest. As you mentioned in your letter, section 8-13-700(B) requires public officials to disclose potential conflicts of interest and recuse themselves from taking action on matters in which they may have a conflict of interest. As such, we advise that the Council Member should refrain from making decisions related to the sale of the Town’s property to his company and from influencing such a decision. Furthermore, section 8-13-700(B) requires the Council Member to prepare a written statement disclosing the nature of his or her potential conflict of interest and furnish it to the appropriate presiding officer for the Lyman Town Council. The presiding officer shall then cause the statement to be included in the minutes and require the Council Member to recuse themselves on any votes, deliberations, or other actions regarding the sale of the property. Id. Your letter indicates these steps are being taken with regard to the Council Member in question. Therefore, we believe the town is following the requirements of section 8-7-700. Nonetheless, we note the State Ethics Commission has primary jurisdiction over the State’s ethics laws. S.C. Code Ann. §§ 8-13-100 et seq. (2019 & Supp. 2022). As such, we encourage you to seek guidance from the State Ethics Commission regarding compliance with section 8-13-700 and any other applicable ethics laws. See Op. Att’y Gen., 2014 WL 2120886 n.2 (S.C.A.G. May 5, 2014) (“[T]he question of whether 8-13-700 even applies to the scenario . . . is a factual question to be determined by the Ethics Commission.”).

Conclusion

Section 8-13-700 of the South Carolina Code, found in the South Carolina Ethics Reform Act, prohibits public officials, including members of town councils, from knowingly using their office to obtain an economic interest. This provision also requires public officials to disclose any potential conflicts of interest. S.C. Code Ann. § 8-13-700(B). In your letter, you describe a situation in which a Council Member manages a company that seeks to purchase property from the Town. We believe this situation creates a potential conflict of interest due to the Council Member’s association with the business that has an economic interest in purchasing the property. Therefore, in accordance with section 8-13-700(B), we advise the Council Member to prepare a written statement describing the potential conflict of interest and give it to the officer who presides over the Town Council. Id. The presiding officer should then include the statement in the minutes and require the member to recuse himself or herself from voting, deliberating, or taking any other action with regard to the sale of the property. Id.

According to your letter, the Council Member appears to be complying with these requirements. However, because the Legislature gave the South Carolina Ethics Commission jurisdiction to interpret and issue opinions regarding the Ethics Reform Act, we suggest you seek guidance from

C. Daniel Atkinson, Esq.
Page 4
October 28, 2022

the South Carolina Ethics Commission regarding compliance with section 8-13-700 as well as any other provisions contained in the Ethics Reform Act.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General