

The State of South Carolina



Office of the Attorney General

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May 30, 1991

J. Ira Ruff, Esquire
Leesville Town Attorney
Post Office Box 698
Leesville, South Carolina 29070

Dear Mr. Ruff:

On behalf of the Town Council of the Town of Leesville, you have requested the opinion of this Office as to various issues concerning voting and conflicts of interest of council members. You have advised that certain questions about council members who are also volunteer firemen of the Town have been resolved, with assistance from the Ethics Commission.

Your remaining question is whether the mayor, as chief executive officer and presiding officer of all meetings, may prohibit members from voting for any reason, including Section 2-60 of the Town Ordinances? The Town operates under the mayor-council ("strong mayor") form of government. Section 2-60 of the Town Ordinances states, "No member of the town council nor the mayor shall vote on any question of a private nature in the event of which he is personally or pecuniarily interested."

The mayor, pursuant to S. C. Code Ann. §5-9-30(3), is empowered "to preside at meetings of the council and vote as other councilmen." Section 2-61 of the Town Ordinances also states: "The mayor votes in the same capacity as other councilmembers." In addition, while §5-7-250(b) permits a town council to "determine its own rules and order of business," you have advised that the Leesville Town Council has not adopted a rule governing this issue.

By an opinion dated November 13, 1987 (copy enclosed), this Office advised that a mayor has not been given veto powers under §5-9-30(3), that the mayor and each member of council each have

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one vote. That opinion did not consider your precise issue, however, and it is thus necessary to examine other resources to respond to your question.

Mason's Manual of Legislative Procedure, 1989 Ed., §522 at page 354 provides the following:

1. It is the general rule that no members can vote on a question in which they have a direct personal or pecuniary interest. The right of members to represent their constituencies, however, is of such major importance that members should be barred from voting on matters of direct personal interest only in clear cases and when the matter is particularly personal. This rule is obviously not self-enforcing and unless the vote is challenged members may vote as they choose.

* * * *

5. In Congress the rules provide that no member has a right to vote on any matter in which the member is immediately or particularly interested, but the uniform present practice is to permit all members to be the judge of their own personal interest.

The practice in Congress seems to reflect the practice of declaring one's personal interest under the relevant state laws. For example, §5-7-130 provides:

Any municipal officer or employee who has a substantial financial interest in any business which contracts with the municipality for sale or lease of land, materials, supplies, equipment or services or who personally engages in such matters shall make known that interest and refrain from voting upon or otherwise participating in his capacity as a city officer or employee in matters related thereto....

It is up to the municipal officer or employee to make the

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conflict of interest known and to take (or refrain from taking, if appropriate) action as needed under §5-7-130.

Similarly, a provision of the State Ethics Act, §8-13-460, provides the following guidance as to conflict of interest questions:

Any public official or public employee who, in the discharge of his official duties, would be required to take action or make a decision which would substantially affect directly his personal financial interest or those of a member of his household, or a business with which he is associated, shall instead take the following actions:

- (a) Prepare a written statement describing the matter requiring action or decisions, and the nature of his potential conflict of interest with respect to such action or decision.

* * * *

- (c) ...If the public official is a member of the governing body of any...municipality,...he shall furnish a copy to the presiding officer and to the members of that governing body, who shall cause such 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 therefore to be noted in the minutes.

Again in §8-13-460, the event which triggers further action by the presiding officer (i.e., mayor) is the receipt of the written statement required by §8-13-460(a) from the council member who deems that a potential conflict of interest exists. No provision in either §5-7-130 or §8-13-460 provides for the presiding

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officer to take the initial action to disqualify a member from voting on a particular question; indeed, the member himself is in the best position to judge whether a potential conflict of interest exists, being uniquely possessed of the facts necessary to make such determination. If a member is perceived to have violated the State Ethics Act, consultation with the State Ethics Commission would then be appropriate.

Based on the foregoing, it is our opinion that each member of a municipal governing body, including the mayor, would be entitled to one vote each. Disqualification from voting due to potential conflicts of interest should be handled by following §5-7-130 or §8-13-460, whichever is appropriate.¹ The mayor does not have a "veto" power and likely cannot prohibit a member of council from voting on an issue, as such would effectively deprive the member's constituency of its voice and representation on council. Any perceived violations of the State Ethics Act would be handled by the State Ethics Commission rather than by the mayor, as provided by the State Ethics Act.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/klw
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

¹This Office has suggested previously that §5-7-130 may have been impliedly repealed by the State Ethics Act. See Op. Atty. Gen. dated May 21, 1984.