

# Senate Ethics Committee

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## ADVISORY OPINION 92-5

To: Members, South Carolina Senate  
From: Ethics Committee  
Re: Representation of Client Before County Council  
Date: May 11, 1992

A member has raised a question as to whether Section 8-13-740(A)(2) prohibits him from representing a client before county council in an effort to compete for a contract to build a prison in the county. The county council is the entity which will determine who is awarded the contract.

Under the provisions of Section 8-13-740(A)(2), a senator and members of his law firm are prohibited from representing another person before a "governmental entity" except in certain specified situations. Section 8-13-100(17), in relevant part, defines "governmental entity" to mean "a State, county, municipality, or political subdivision thereof with which a public official, public member, or public employee is associated or employed." (Emphasis added.) An initial examination of the exceptions in Section 8-13-740(A)(2) is not necessary as the threshold question may be stated as follows:

Is a member of the Senate "associated" with a county so as to determine whether representation of a client before county council is subject to the provisions of Section 8-13-740(A)(2)?

The word "associated" is not expressly defined in Chapter 13 of Title 8 but, by analogy, the definition of "business with which he is associated" may prove helpful. Section 8-13-100(4) defines this term to include "a business of which the person or member of his immediate family is a director, an officer, owner, employee, [or] a compensated agent . . . ." In the instant situation, the member is not an employee or compensated agent of county council

nor does he have an immediate family member who is a member of county council or is employed by county council.

With regard to the relationship between a member of county council and a member of the Senate, members of county council are not reportable to a member of the Senate and in turn, a member of the Senate is not responsible for the actions of county council. Under the provisions of Home Rule, county council is a separate layer of government which is subject to the Constitution and laws of this State, and is reportable only to the voters within the county. Indeed, one key purpose of Home Rule is to authorize county governing bodies to operate and govern without the involvement of, or a connection to, a member of the Senate.

It may also be instructive to note that the interpretations in this opinion are consistent with Items (3), (4), and (5) of Section 8-13-740 which read as follows:

"(3) A public member occupying statewide office, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before the same unit or division of the governmental entity for which the public member has official responsibility, except as otherwise required by law.

(4) A public official, public member, or public employee of a county, 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 county except:

- (a) as required by law; or
- (b) before a court under the unified judicial system.

(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 except as required by law."

(6) A public employee, other than those specified in items (4) and (5) of this subsection, receiving compensation other than reimbursement or per diem payments for his official duties, an individual with whom he is

associated, or a business with which he is associated may not knowingly represent a person before an entity on the same level of government except:

- (a) as required by law;
- (b) before a court under the unified judicial system; or
- (c) in a contested case, as defined in Section 1-23-310, excluding a contested case for a rate or price fixing matter before the South Carolina Public Service Commission or South Carolina Insurance Commission, or in an agency's consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing.

The Committee concludes that a member of the Senate would not, in the course of his normal legislative duties, be "associated" with county council in the normal and ordinary meaning of the word. The Committee therefore concludes that Section 8-13-740 does not prohibit a member of the Senate, a member of his immediate family, an individual or a business with which he is associated, from representing another person before county council.