

OPINION 1997-3

SENATE COMMITTEE ON ETHICS

NOVEMBER 5, 1997

The Senate Committee on Ethics has received the following question which we feel should be answered with this Opinion:

"Can a Member who serves as a Member on the South Carolina Public Safety Coordinating Council participate in the discussion and cast a vote on grants which may affect other boards and commissions on which he serves?"

In answering this question, we must first determine what is the South Carolina Public Safety Coordinating Council? The following Sections of the *Code of Laws of South Carolina* create and determine the answer to this question:

"SECTION 23-6-500. South Carolina Public Safety Coordinating Council created; purpose.

There is created a council to administer certain responsibilities of the Department of Public Safety and coordinate certain activities between the department, the South Carolina Law Enforcement Division and municipal and county law enforcement agencies. The council is to be known as the South Carolina Public Safety Coordinating Council.

SECTION 23-6-510. Composition; filling of vacancies.

The council is composed of the following persons for terms as indicated:

- (1) the Governor or his designee, to serve as chairman, for the term of the Governor;
- (2) the Chief of the South Carolina Law Enforcement Division for the term of office for which he is appointed;
- (3) the Chairman of the Senate Judiciary Committee for his term of office in the Senate or his designee;
- (4) the Chairman of the House of Representatives Judiciary Committee for his term of office in the House of Representatives or his designee;
- (5) the Director of the Department of Public Safety;
- (6) a sheriff appointed by the Governor for the term of

office for which he is elected;

(7) a municipal police chief appointed by the Governor for a term of two years; and

(8) a victim representative appointed by the Governor for a term of four years.

Any vacancy occurring must be filled in the manner of the original appointment for the unexpired portion of the term.

SECTION 23-6-520. Duties.

The council has the following duties to:

(1) recommend a hiring and promotion policy for commissioned personnel or officers to be administered under the sole authority of the director;

(2) establish a process for the solicitation of applications for public safety grants and to review and approve the disbursement of funds available under Section 402 of Chapter 4 of Title 1 of the Federal Highway Safety Program, public law 89-564 in a fair and equitable manner;

(3) coordinate the use of department personnel by other state or local agencies or political subdivisions;

(4) advise and consult on questions of jurisdiction and law enforcement and public safety activities between the Department of Public Safety, the South Carolina Law Enforcement Division and law enforcement agencies of local political subdivisions.

SECTION 23-6-530. Council may elect officers; service is without pay; per diem, mileage and subsistence.

The council may elect such other officers as it deems necessary from its membership and the members of the council shall serve without pay but are authorized, as eligible, to receive the usual per diem, mileage and subsistence provided for by law."

As we can see from Section 23-6-510(3), the Chairman of the Senate Judiciary Committee is a full voting Member of the South Carolina Public Safety Coordinating Council. The Legislature passed Act 181 in 1993 which created the Council and determined

it's members and duties.

We now turn our attention to the appropriate Section of *The Ethics, Government Accountability and Campaign Reform Act of 1991 With Amendments Effective January 12, 1995*. Section 8-13-700(A) (B) says:

"SECTION 8-13-700. Use of official position or office for financial gain; disclosure of potential conflict of interest.

(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 member of his immediate family, 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 which 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 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:"

As we can see, the ethics laws specifically spell out that a Member may not use his office to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. At no time does *The Ethics, Government Accountability and Campaign Reform Act of 1991 With Amendments Effective January 12, 1995*, deter a Member of the Senate from carrying out the duties of his office or other offices that he may hold by virtue of his office unless there is a clear, personal conflict that would personally benefit the Member, his family, business or business associates.

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There is clearly no conflict of interest in this, or any Member, voting on various grants, so long as those grants are not of benefit to the Member, a family member, a business in which he is associated or an individual with which he is associated. Here there is no evidence of such a benefit. While the Member may receive a per diem or subsistence for this attendance at a board or commission meeting, it would not be an economic interest and there would be no conflict prohibiting the Member from voting on grants applied for by these boards or commissions.

In a similar Opinion on a similar subject, 1996-2, The Senate Committee on Ethics summarized it's findings in the following statement:

"We will not hinder the ability of Members of The Senate of South Carolina to carry out their constitutional duties. The people of the various Senate Districts choose from their population one person to represent them on matters coming before this body. The people's right of representation on all matters should not be abated. The Members have a constitutional right to deliberate, make improvements through amendments, and vote on matters before the Senate. Unless a direct conflict of interest arises, we urge all Members of The Senate of South Carolina to carry out their constitutional duties of office and to not refrain from the full representation of their constituents."

According to Rule 44(3) of *The Rules of The Senate of South Carolina*, the Committee is only authorized "to render advisory opinions with regard to legislative ethics..." And cannot address other potential conflicts of interest.