

State of South Carolina

State Ethics Commission

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MEGHAN L. WALKER
EXECUTIVE DIRECTOR

July 21, 2021

VIA ELECTRONIC MAIL ONLY

Jim Bradford
York City Council
jbradford@yorksc.gov

Re: Informal Opinion Request

Dear Mr. Bradford:

Thank you for your request for an informal opinion from the State Ethics Commission (Commission). An informal opinion is the opinion of Commission staff, taking into consideration any applicable formal opinions, law, and/or judicial decisions. Please be advised that an informal opinion is not binding on the Commission. Additionally, the Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act). This opinion is based solely on the facts relayed by you and does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. A failure to disclose relevant information may void the opinion.

ISSUE

On July 9, 2021, you presented the following information, in relevant part:

Our seven member City Council voted 4 - 3 on Tuesday, July 6 of first reading in favor of the attached proposed City Ordinance which would postpone our regular City Council elections scheduled November 2, 2021 until reapportionment for all Districts can be done after receipt of the delayed Census Date on September 30, 2021. Second and final reading of the Ordinance will be on Tuesday, July [2]7.

The November elections are for District 1 (Council Member Steve Love), District 5 (Council Member Denise Lowry, and District 6 (myself - Council Member Jim

Bradford. Elections for Mayor and Council Districts 2, 3 and 4 do not occur until November 2023 and they are not postponed by the Ordinance.

Voting for the Ordinance were Members Love, Lowry and Bradford joined by Ed Brown, the Council Member from District 2. Ed Brown is not up for re-election until November 2023. Voting against the Ordinance were the Mayor, Mike Fuesser, who is a member of Council elected at large, Council Member for District 3, Marion Ramsey, and the Council Member for District 4, Stephanie Jarrett.

As you can see the Ordinance provides that during the period of postponement current Members in Districts 1 (Love), Five (Lowry) and 6 (Bradford) will continue to serve until th[eir] successor is named. Once special elections are held new members would be sworn in at the next regular Council meeting and they would serve for the remainder of the term which would have begun on January 1, 2022 and would end on December 31, 2025.

At a City Council workshop on April 20, reapportionment expert Dr. John Ruoff of Columbia told us that the rule of thumb for reapportionment was you do so if the largest district is 10% larger than the smallest. He indicated that Council could make the decision either way to postpone elections and reapportion as quickly as possible after the data was available, or to hold elections and then reapportion as quickly as possible. The decision was Council's to make.

With the Ordinance scheduled for second reading on Tuesday, July 27, those of us in Districts 1, 5, and 6 (indeed all Council members including the Mayor) want to know if State Ethics law would consider it a conflict of interest for those Members in Districts 1, 5, and 6 requiring recusal related to that vote. Each Council Member in the six Districts receives a salary of \$6,800 a year, which would continue for Council Members Love (D1), Lowry (D5) and Bradford (D6) after th[eir] term was suppose[d] to end on December 31, 2021 during the postponement period thereafter until new elections are held.

LAW

Section 8-13-700 states, in part:

- (A) No [public official] may knowingly use his official [office] 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] may make, participate in making, or in any way attempt to use his [office] 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] 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.

Section 8-13-100(11)(a) defines "economic interest," in relevant part, as:

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] may gain an economic benefit of fifty dollars or more.

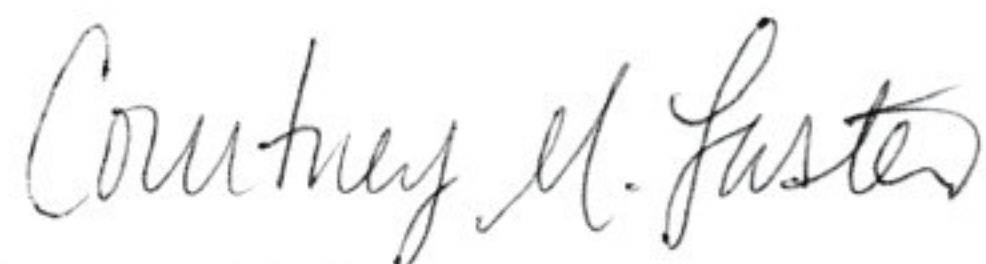
DISCUSSION

Based on the facts presented, voting to delay the election will result in your remaining on Council past your currently scheduled term and, in turn, receiving additional monies for your extended service. Commission staff believes this constitutes an economic interest requiring recusal from the July 27 vote. In order to comply with the Ethics Act, you should recuse yourself by following the instructions contained within Section 8-13-700(B), above.

In the alternative, the remaining unaffected members of Council (those not up for reelection in 2021) could vote to suspend the affected Council members' pay during any extended service period. If this occurred, the affected Council members would be permitted to take a subsequent vote on delaying the election because an economic interest would no longer be present.¹ The procedures for this, and legality under laws other than the Ethics Act, should be discussed with the Council's attorney.

Thank you for contacting the Commission. If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,



Courtney M. Laster
General Counsel

¹ This is assuming you receive no other financial benefits from your service aside from the \$6,800 salary.