

State of South Carolina
State Ethics Commission

CHILDS C. THRASHER, CHAIR
DONALD GIST, VICE CHAIR
BRIAN M. BARNWELL
SCOTT E. FRICK



AJ HOLLOWAY
DON JACKSON
BRANDOLYN THOMAS PINKSTON

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

January 4, 2022

VIA ELECTRONIC MAIL ONLY

William B. Harvey, Esq.
Harvey & Battey, P.A.
bharvey@harveyandbattey.com

Re: Informal Opinion Request

Dear Mr. Harvey:

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. Pursuant to State statutes and regulations, opinions may not be given on matters that have already occurred. Any advice given herein applies only to conduct occurring after the date of this opinion. Conduct occurring prior to the date of this opinion may be subject to investigation by the Commission.

ISSUE

In an email dated December 30, 2021, you submitted the following:

I am writing you as Beaufort City Attorney at the request of City Manager Bill Prokop, and with the approval of City Council, seeking an opinion on a question of conflict of interest.¹

David Prichard is the Director of the Department of Community & Economic Development for the City of Beaufort, a position he has held since November 2018. As Director, he is generally responsible for (1) enhancing economic opportunities; (2) long range planning; (3) collaboration with regional planning and (4) ensuring that proposed changes to real property are in accordance with the City's Ordinances. Within his Department are the Sections on (1) Planning; (2) Building Codes; and (3) Codes Enforcement.

Since 2012, and most actively since 2016, 303 Associates, LLC, and its owner Dick Stewart, have been planning and designing several very substantial development projects in downtown Beaufort, which include (1) a downtown Hotel Project located on Scott and Port Republic Streets; (2) a Parking Garage Structure project located on Craven Street; and (3) an Apartment Project located on Charles Street. The Hotel Project and the Parking Garage Project received various approvals by City boards, and structures within the City were demolished and moved with City permits, all before the commencement of David Prichard's employment with the City.

Most recently, in early 2021, the Hotel Project and the Parking Garage Project applied for final approval by the City's Historic Review Board. On April 6, 2021, a lawsuit was filed by 2 corporations (both owned by the same individual) which own nearby downtown properties, against the City and 303 Associates, seeking a declaratory judgment stopping the approval proceedings before the City Boards. On June 9, 2021, the Hotel Project and the Parking Garage Project proceeded before the City Historic Review Board which voted to approve both projects, with certain conditions. Appeal has been taken by plaintiff corporations, and by the Historic Beaufort Foundation, from these approvals, which appeals are pending.

Vanessa Prichard is David Prichard's wife. On January 4, 2021, Vanessa Prichard accepted a job with 303 Associates, performing the functions of receptionist, and dealing with the leasing of office space by 303 Associates (which owns and operates numerous other properties throughout the City of Beaufort). Vanessa Prichard has never had any involvement with the development projects of 303 Associates, or any of the particular projects currently before the City.

On December 28, 2021, the attached article ran in the Island Packet/Beaufort Gazette newspaper. The City would seek the opinion of the Ethic[s] Commission on the question of whether there is a conflict of interest with David Prichard's wife being employed by 303 Associates.

¹ In a separate email dated January 4, 2022, Mr. Prichard also authorized the rendering of this informal opinion.

LAW

Section 8-13-700 states, in part:

- (A) No [public employee] may knowingly use his official [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 . . .
- (B) No [public employee] may make, participate in making, or in any way attempt to use his [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 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;
...
 - (3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate supervisor, he shall take the action prescribed by the State Ethics Commission.

Section 8-13-100(4) defines “business with which he is associated” as:

[a] business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth more than one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

Section 8-13-100(11) provides:

- (a) “Economic interest” means 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, public member, or public employee may gain an economic benefit of fifty dollars or more.
- (b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or

public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Section 8-13-100(15) defines "family member" as an individual who is:

- (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;
- (b) a member of the individual's immediate household.

Section 8-13-100(18) defines "immediate family" as:

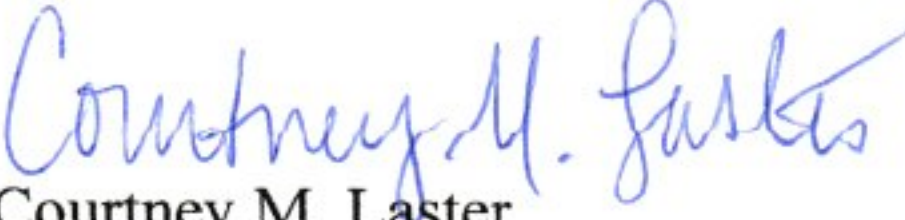
- (a) a child residing in a candidate's, public official's, public member's, or public employee's household;
- (b) a spouse of a candidate, public official, public member, or public employee; or
- (c) an individual claimed by the candidate, public official, public member, or public employee or the candidate's, public official's, public member's, or public employee's spouse as a dependent for income tax purposes.

DISCUSSION

Section 8-13-700 of the Ethics Act requires public employees to recuse themselves from any matter in which they, a family member, an individual with whom they are associated, or a business with which they are associated has an economic interest. Here, Mr. Prichard's spouse is an employee of 303 Associates. Therefore, 303 Associates is a "business with which [Mr. Prichard] is associated" for purposes of recusal. Mrs. Prichard's job duties or title at 303 Associates is immaterial—as long as she is an employee of 303 Associates, then 303 Associates is a business with which Mr. Prichard is associated. Accordingly, when Mr. Prichard is required to take an action in which 303 Associates has an economic interest, he must recuse himself in writing pursuant to Section 8-13-700(B) and his supervisor (presumably the City Manager) must assign the matter to another employee who does not have the same conflict of interest.

Thank you for contacting the Commission.

Sincerely,


Courtney M. Laster
General Counsel