

ETHICS ADVISORY OPINIONS (2016-1992)

16-1	Is there a conflict of interest: (A) when a staffer for the House Legislative Oversight Committee (HLOC) worked for a law firm that was hired by a commissioner on the SC Retirement System Investment Commission, which is the Commission being studied by the HLOC; (B) when a Member's wife has an uncle and cousin that practice law with a commissioner from the Commission; (C) when the staffer on the HLOC serves as a staffer for the HLOC subcommittee for the State Treasurer's office when the State Treasurer also serves as a commissioner on the Commission; (D) when a Member's wife has an uncle and cousin that work with a commissioner, should the Member be able to serve on the HLOC subcommittee for the State Treasurer's office when the State Treasurer also serves as a commissioner on the Commission?
16-2	Is it acceptable to use campaign funds for the following expenditures: (A) Dues for membership in a service-type organization or as a renewing member; (B) Membership at a private club; (C) Dry Cleaning; (D) Member's meal with a constituent; (E) Maintenance for a Member's personal vehicle used for campaigning or office business; (F) Fines and penalties received as a result of office; (G) Gifts for Individual Members; (H) Personal or constituent's living expenses; (I) An Election in a different body; (J) Contributions to charitable organizations, churches, or schools; (K) Sponsorships which include an advertisement and dues; (L) Member's cell phone bill when the cell phone is used for campaigning and House official business as well as for personal use; (M) Expenses for Promotional items, Merchandise, or Advertising that contain the Candidate or Member's Name and Office; (N) Office Equipment Expenses; (O) Dues for membership in an organization or as a new member; (P) Clothing; (Q) Gifts or Flowers for Office Staff, House Staff, or Constituents including Gifts, Resolutions, and Cards for Deaths, Births, or other Special Events sent by the Speaker or Members to other Members; (R) Travel expenses and meals for a person, district group, or team being recognized by the House of Representatives; (S) Resolutions and Flags; (T) Signs that benefit the Community; (U) Food or meals for functions that are directly related to the office; (V) Meals and/or beverages for campaign workers; (W) Meals for Members and Staff by a Committee Chairman, Speaker, and Speaker Pro Tempore; (X) Tickets to a political event; (Y) Legal expenses associated with a candidate or Member's campaign; and (Z) Newspapers and News Services?
16-3	Does the receipt of Medicaid payments by the Member's business result in a conflict of interest that requires the Member to abstain from voting on Medicaid issues at any point in the legislative process?
16-4	Can a lawyer/legislator be associated with a law firm that represents clients pursuant to S.C. Code Ann. §§ 8-13-740 and 8-13-745 provided that the lawyer/legislator properly abstains from voting on matters relating to the clients whom the law firm represents?
15-1	Pursuant to 8-13-700, may a member of the House of Representatives, who is also a salaried employee of a technical college, introduce local business people to the continuing education sales department of the technical college?
15-2	Is there a violation of S.C. Code Ann. § 8-13-700 when an officer or member of a House Legislative Caucus refers Caucus business to himself or to a business with

	which he is associated and from which he makes a profit?
15-3	Is it acceptable to use campaign funds for the following items: (A) donating to the custodial staff for the Blatt Building; (B) purchasing flowers for staff members due to certain events, such as hospitalization, or a death in the staff member's family; and (C) purchasing hearing aid batteries?
14-1	When a member of the House of Representatives uses a personal vehicle for travel related to the campaign or office, what is the appropriate method of reimbursement?
14-2	Whether it would be appropriate for a representative to use campaign funds to reimburse myself for the legal expenses paid with my personal funds associated with the abovementioned legal action?
13-1	Whether candidates who found themselves without primary opposition, as a result of the Supreme Court's rulings, were entitled to both a primary and a general election cycle for purposes of applying the campaign contribution limits established by S.C. Code 8-13-1314 and 1316?
13-2	Whether campaign funds may be used to pay for legal expenses associated with a candidate's campaign?
13-3	Whether a person with an open campaign account must file an updated Statement of Economic Interest form by April 15 th and whether a person filing a Statement of Economic Interests form must include state retirement?
13-4	(1) Is it appropriate for a member of the South Carolina General Assembly to request and use the state airplane to transport an out of state witness to testify before a legislative subcommittee? (2) Is it appropriate for a person to receive compensation for testimony before a legislative subcommittee without complying with procedures to register as a lobbyist?
06-1	The "45-Day Rule" or the interpretation of S.C. Code Section 8-13-1300(7) and (31)
03-1	Acquiring debt during campaign cycle and after-election relief
02-1	(1) Use of campaign funds for ticket purchase if invitation came only because a Representative. (2) Use of campaign funds to non-political organizations in which invitation to join only because a Representative.
00-1	Use of campaign funds for late penalties regarding campaign disclosure forms and economic interest forms
99-1	Use of campaign funds for donations to charity if donation will result in publication of member's name.
99-2	Member's employment at consulting firm that manages election campaigns and provides public relations services to lobbyist.
99-3	Purchase of computer or other permanent office equipment with campaign funds if used for campaign purposes
98-1	Member works for a law firm that has lobbyist's principal client, does member have to report the relationship if interest is less than 5%?
98-2	Regarding late penalties for Ethics reports, is the report received when mail sent or physical receipt?
98-3	Use of campaign funds to contribute to the Strom Thurmond Monument Committee
97-1	Can member lease land to son if son obtains loans to develop the land from State Housing Finance and Development Authority
97-2	Purchase of tickets to athletic events from lobbyist principal.

97-3	(1) Legislative caucus acceptance of copy machine from lobbyist; (2) if gift to public official has no market value, can it still be a "thing of value"?
97-4	Use of campaign funds to purchase fruit baskets for constituents
96-1	Soliciting campaign funds with promise of return if member runs unopposed
96-2	Application of Ethics Act to newsletters Members send
96-3	House member's spouse to lobbyist sponsored event
96-4	Maximum amount of loans to campaign fund from family member
96-5	same issue as 97-1
95-1	Invitations from non-lobbyist principal foundation where legislation will be discussed
95-2	Use of campaign funds for Christmas gifts for Blatt custodial staff
95-3	Use of campaign funds for the purchase of handi-cap parking signs at fire department
95-4	
95-5	
95-6	
95-7	Use of campaign funds for dinner thanking constituents for support during membership tenure
94-1	
94-2	Use of campaign funds for event for volunteer firemen where there will be discussion of pending legislation
94-3	Member's playing in charity basketball game against lobbyist, House staff team, and news media team with lobbyist paying for related expenses
94-4	Member's serving on a state board agency that oversees agency where they work
94-5	Contribution caps at reception given by SC Optometric Association
94-6	Members (also Congressional candidates) receive contributions from lobbyist
94-7	Proper way for two members to have joint Fundraiser with equal split of money
94-8	Ticketed fundraiser where tickets are \$10 and used to defray costs
94-9	Presenting award at Miss SC during election year
94-10	Use of campaign funds for donations to a church or to pay constituents utility bills
92-51	Purchase of a fax machine with campaign funds to be used at Member's house which is used as constituent office to accommodate constituent situations that require immediate attention
93-1	Receipt of sculpture from person not directly involved in lobbying
93-2	Use of campaign funds for tickets to Business and Arts Partnership Awards sponsored by Joint Committee on Cultural Affairs
93-3	Purchase of tickets to College and Universities athletic events
93-4	Creation of a appreciation fund to defray debts incurred while in office
93-5	Voting on Appropriations Bill if member has (1) spouse that is Area Director of State agency; or (2) business which deals with state and local agencies
93-6	Use of campaign funds for framing of Resolution presented
93-7	SCAMPS hold a dinner for only those members representing electric cities in SC

93-8	Appraiser introduce and vote on bill that affects appraisal industry if there is no gain or advantage
93-9	Supplies used for office equipment (under 92-51) being purchased using campaign funds to offset the cost
93-10	Acceptance from lobbyist principal (1) \$24.95 book; (2) check for \$100
93-11	Member in real estate business (1) sell real estate to judges and lobbyist, (2) provide financing for the sales
93-12	Member who holds ABC license and poker machines vote on bill related to those subjects
93-13	Lobbyist principal give contributions to ALEC when portion of that will be used to pay expenses for Legislators who attend
93-14	Insurance Agent/Broker Member participate in decisions with LCI (and property and casualty subcommittee)
93-15	#20 of Statement of Economic Interest Form refer to agencies that contract with HOR or with any agency
93-16	Problems of a Member applying for funds from state agencies
93-17	When do new filing requirements go into effect
93-18	Member serving on BEST Policy Committee
93-19	Federal Retiree Member take actions to help resolve the federal tax reimbursement issue
93-20	Reimbursement for accommodations and meals when speaking before the SC Association of Premium Companies Conference
93-21	Members attending ALEC conference have expenses off-set by the ALEC scholarship fund
93-22	Licensed Insurance Member consulting on insurance matters for state trade association which employs lobbyist in SC
93-23	Lawyer member represent client before (1) legal department of DOT (2) suit against DOT
93-24	Acceptance of ticket to National Black Caucus banquet from Congressman
93-25	Reimbursement for a trip that was in some way connected with office activities
93-26	Possible Conflicts when (1) Member is employed by State University (2) Candidate is employed by State University (3) Member/Candidate and independent consultant to state agencies
93-27	Member either (1) be employed by a State supported university (2) serve as economic development consultant for entity such as an electric co-op or subdivision of govt
93-28	Use of Campaign Funds for ticket for Caucus Fundraiser or be given away
93-29	(1) Going on a trip with lobbyist (2) socializing with lobbyist with no value given (3) meaning of 2-17-80(c) in general.
93-30	Members of House Freshman Caucus breakfast sponsored by college affiliated group
93-31	Member writing a letter of recommendation for student trying to get into University
92-1	Member raising funds for County Health Department (as officer as National Association of Real Estate Brokers)

92-2	Acceptance of gift from organization not involved in lobbying, no matter the cost
92-3	Permissive use of campaign funds under New Ethics Act (purchase of flag for school/local govt/non-profit, membership dues/contributions to various clubs/service organization, expenditure of office items.
92-4	Member seeking employment with state agency
92-5	Use of campaign funds if Member decides to run for Senate
92-6	Democratic Presidential Candidate accept invitation for lunch in Blatt Building
92-7	Acceptance of jacket from Washington Redskins as being honored by community
92-8	Lobbyist principals contribute to upcoming campaign
92-9	Member attending an out of state ALEC meeting
92-10	Standing committee acceptance of invitation from lobbyist as only authorized agent of lobbyist principal in SC
92-11	Potential Conflicts of Interest and Voting and Appropriations Bills
92-12	Members acceptance of plane ticket from lobbyist principal for winning golf tournament sponsored by lobbyist principal national organization
92-13	Educational Seminars for Members
92-14	(1) Conflicts in General Appropriations Bill funding schools where Member's firm represents the school district (2) Members firm represents the Procurement Review Board
92-15	
92-16	
92-17	Voting on House portion of Appropriations Bill
92-18	Member insurance agent voting on insurance act
92-19	(1) Pharmacist Member voting on Appropriations bill regarding pharmacist license fees (2) Medicaid Recipient Member voting on Appropriations bill regarding raising Medicaid funds (3) Provisions that specifically affect the Medicaid funding of pharmacist.
92-20	Lobbyist Principal donate gifts of less than \$25 as prizes for charity
92-21	Reimbursement of Member by ALEC for out of pocket expenses incurred while attending ALEC meeting
92-22	Clarification of 92-21
92-23	Endorsement letters for candidates to a position elected by General Assembly
92-24	Fundraising by SC Black Caucus and lobbyist principal
92-25	(1) Reporting on disclosure forms invitations approved by House Invitations Committee (2) Reporting those on W-2
92-26	Legislators serving on Medical University's Board of Visitors
92-27	(1) Corporation which member is stockholder selling goods to state and local govt entities and voting in Appropriations Bill (2) Correct procedure for abstention noted in House Journal
92-28	Conflict of Interest for lawyers, especially tort lawyers, for voting on no-fault insurance bill
92-29	Payment for accommodations and food provided by group whose function Member is a speaker

92-30	Member serving on Policy Board for the SC Center for the Advancement of Teaching and School Leadership
92-31	Potential Ethics violations for events sponsored by Redevelopment Authority
92-32	Invitation to legislators for dinner on Campus
92-33	Member law firm represents state agencies in state tort claims actions recusal during Appropriations Bill
92-34	Member employed by school district voting on County School Board Legislation
92-35	Member lawyer representing clients before the Board of Probation, Parole and Pardon Services and the Tax Commission
92-36	Acceptance of honorarium for speaking engagement form organization which Member had been active in for many years
92-37	Insurance Agent Member voting on insurance legislation
92-38	Bank Employee Member listing lobbyist or lobbyist principals who do business with bank on Economic Interest sheet
92-39	Attorney OR Insurance Agent Member voting on No Fault Insurance Bill
92-40	Use of campaign funds to (1) pay dues to ALEC (2) politically oriented group like College Republicans
92-41	Merchant Member contributing to Richland County Troopers Asc for their Xmas Party
92-42	Where Member reports travel expenses reimbursed by lobbyist principal who hosted a meeting Member participated in
92-43	Use of campaign funds to reimburse for mileage incurred while campaigning
92-44	Use of campaign funds to high school students raising money for school trip
92-45	Invitation to SC Asc of Counties Conference where food, lodging and registration is paid for by the county
92-46	Use of campaign funds for contributions to political party caucuses or high school fund raising project
92-47	State Loan (Jobs-Economic Development Authority) received by Company which Member has a small interest
92-48	Member receipt of gift from organization that does not retain a lobbyist
92-49	Member attendance of a function put on by a group that is not a lobbyist or lobbyist principal
92-50	Use of campaign funds for advertisements in publications printed by non-profit organizations

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ADVISORY OPINION 2016-1

The House Legislative Ethics Committee (HEC) received a request for an advisory opinion from a Member on a matter of interest to him regarding his service on the House Legislative Oversight Committee (HLOC). The Member explained that the Executive Subcommittee has initiated a study of the SC Retirement System Investment Commission (Commission) which will begin in earnest in August, and there were allegations that both a committee staffer, and he would have a conflict of interest in continuing to be involved with this particular study. Specifically, the Member stated that HLOC "recently conducted an online public survey during the month of May. Comments were solicited about a group of agencies under study, including the Commission. Over 1,000 comments were received, and two of the anonymous comments give rise to this request for an ethics opinion." Member's May 31, 2016 letter. The Member reported that HLOC will post all comments online including the anonymous comments. The two comments are as follows:

May 19, 2016 [HLOC staffer] was a lawyer working for Collins and Lacy. Reynolds Williams (a commissioner on the Commission, hired Collins and Lacy). [HLOC staffer] is a Legislative Oversight committee staffer on the subcommittee for the Investment Commission. This is a direct conflict of interest.

May 19, 2016 [Member's] wife has an immediate family member who is a law partner with Reynolds Williams (a commissioner of the Commission). [Member] is on the subcommittee reviewing the Investment Commission. This is a direct conflict of interest.

See Member's May 31, 2016 letter.

The Member submitted an amended letter requesting an advisory opinion on June 8, 2016, explaining that two additional, almost verbatim, anonymous comments were received on May 19th, which referenced the potential conflicts of interest of the HLOC staffer and him with the HLOC Executive Subcommittee's study of the Treasurer's Office. He noted that these two additional

comments will be posted online and that the study of the Treasurer's Office is currently in progress. The two comments are as follows:

May 19, 2016 [HLOC staffer] was a lawyer working for Collins and Lacy. Reynolds Williams (a commissioner on the Commission, hired Collins and Lacy. [HLOC staffer] is a Legislative Oversight committee staffer on the subcommittee for the State Treasurer's Office. This is a direct conflict of interest.

May 19, 2016 [Member's] wife has an immediate family member who is a law partner with Reynolds Williams (a commissioner of the Commission). [Member] is on the subcommittee reviewing the Investment Commission. This is a direct conflict of interest.

See Member's June 8, 2016 letter.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

EXECUTIVE SUMMARY

Pursuant to S.C. Code Ann. § 8-13-700, the Committee finds that it is not a conflict of interest for the HLOC staffer (staffer) to serve as a staffer for the HLOC subcommittee's study of the Commission as he has no economic interest in the law firm of Collins & Lacy, P.A. where he was previously employed. This firm represented Commissioner Williams who serves on the Commission. Further, the staffer did not work on any legal matters for Commissioner Williams while employed by the law firm. While the State Treasurer also serves as a Commissioner with Mr. Williams on the Commission, that fact does not create a conflict of interest preventing the staffer's work on the HLOC subcommittee studying the State Treasurer's office. The Committee further finds there is no conflict of interest for the Member to serve on the HLOC's subcommittee studying the Commission as his wife's relatives (an uncle and cousin) are not encompassed within the S.C. Code Ann. § 8-13-100(18) definition of "immediate family," with regard to a conflict of interest. The Committee also finds that it is not a conflict of interest for the Member to work on the HLOC's subcommittee studying the State Treasurer's office even though the State Treasurer serves as a Commissioner with Mr. Williams on the Commission.

DISCUSSION

As background, S.C. Code Ann. § 2-2-20 provides for the establishment of HLOC as follows:

(A) Beginning January 1, 2015, each standing committee shall conduct oversight studies and investigations on all agencies within the standing committee's subject matter jurisdiction at least once every seven years in accordance with a schedule adopted as provided in this chapter.

(B) The purpose of these oversight studies and investigations is to determine if agency laws and programs within the subject matter jurisdiction of a standing committee:

(1) are being implemented and carried out in accordance with the intent of the General Assembly; and

(2) should be continued, curtailed, or eliminated.

(C) The oversight studies and investigations must consider:

(1) the application, administration, execution, and effectiveness of laws and programs addressing subjects within the standing committee's subject matter jurisdiction;

(2) the organization and operation of state agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within the standing committee's subject matter jurisdiction; and

(3) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within the standing committee's subject matter jurisdiction.

S.C. Code Ann. § 2-2-20. Thus, HLOC serves as an investigative committee which issues a report on the agency studied rather than as a policy-making committee which votes on proposed legislation. Any House member may file legislation to implement HLOC's recommendations.

See <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/HouseLegislativeOversightCommitteeBrochure.pdf>.

As part of LHOC's study, the Committee solicits written comments from the public regarding the Agency under review. Those comments are also posted online.

As for the Commission, it has the fiduciary responsibility for all investments in the Retirement Systems. See <http://www.rsic.sc.gov/About/default.htm>. Mr. Reynolds Williams serves as a Commissioner and was appointed by the Chairman of the Senate Finance Committee. See <http://www.rsic.sc.gov/Commission/default.htm>.

The SC State Treasurer, Curtis Loftis, Jr., also serves *ex officio* as a Commissioner on the Commission. See <http://www.rsic.sc.gov/Commission/CommissionerBIOS/default.htm>.

The first allegation of a conflict of interest relates to a staffer on the subcommittee assigned to study the Commission. The anonymous comment appears to contend that because the staffer, in his current position, could take some action regarding the study of the Commission that would affect the economic interest of a business with which he was formerly associated, that it is therefore a conflict for him to serve as a staffer for this matter. As support, it is alleged that prior to joining the HLOC, the staffer was a lawyer working for the law firm of Collins & Lacy, P.C. The allegation further states that Reynolds Williams, a commissioner on the Commission, hired Collins & Lacy, P.C. for legal matters.

The second allegation of a conflict of interest relating to the staffer concerns the same facts as set forth above but alleges a conflict with a different agency. Specifically, it is contended that because of his employment with the law firm who represented Commissioner Reynolds Williams, it is now a conflict for the staffer to serve as a staffer on the HLOC subcommittee for the State Treasurer's office. While no specific conflict of interest is alleged with the State Treasurer's

office, it appears the conflict must be the fact that both Mr. Williams and Mr. Loftis, who also serves as the State Treasurer, serve together as Commissioners on the Commission.

Pursuant to the Rules of Conduct regarding conflicts of interest, S.C. Code Ann. § 8-13-700 provides:

(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 family member, 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 that 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 family member, 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 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;

(2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;

(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 superior, he shall take the action prescribed by the State Ethics Commission.

(Emphasis added). S.C. Code Ann. § 8-13-700. See also, SEC AO2004-001 which provides regarding a conflict of interest, "Section 8-13-700(B) requires that, in the event of a conflict of interest, a public official must recuse himself from participating in certain governmental actions or decisions. The public official is prohibited from voting, deliberating, or taking any action related to the conflict."

The staffer provided documentation to the HEC that he was employed with Collins & Lacy, P.C. as a law clerk from May 2006-September 2006 and as an attorney from August 2007-January 2015. At his request, the law firm ran a recent conflicts check and found that while Mr. Williams was a firm client, the staffer never billed any time to his file. Also, the staffer reported he was never a partner at Collins & Lacy, P.C., so there was no profit sharing or economic interest in Collins & Lacy, P.C.; he just received his salary. Moreover, HLOC is an investigative committee which merely issues a report on an agency. The Committee finds that the staffer is not engaged in "making, or in any way attempt[ing] to use his employment to influence a governmental decision in which he . . . or a [former] business with which he [wa]s associated" nor did he have an economic

interest in the former law firm in which he was associated. Thus, it does not appear that the staffer has a conflict of interest which prohibits him from serving as a staffer on the HLOC's subcommittee studying the Commission.

Moreover, if the Committee found that there was no conflict for the staffer as it related to Mr. Williams, then there is no conflict for the staffer to serve as a staffer for the HLOC subcommittee studying the State Treasurer's office. The Committee is unclear how the State Treasurer's service as a Commissioner with Mr. Williams on the Commission created a conflict of interest for the staffer's work as a staffer for the HLOC's subcommittee review of the State Treasurer's office.

While the HEC does not have jurisdiction over the South Carolina Rules of Professional Conduct governing lawyers, we have reviewed the rules regarding conflicts of interest, that is, Rule 1.10 (general imputation rule)¹ and Rule 1.9 (duties to former clients),² Rules of Professional

¹ Rule 1.10 provides, "(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless
(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or
(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and
(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;
(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and
(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.
(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11."

² Rule 1.9 provides, "(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
(1) whose interests are materially adverse to that person; and
(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.
(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

Conduct, Rule 407, SCACR. In this instance, it does not appear that the staffer worked with Mr. Williams or gained any information through his employment at Collins & Lacy, P.C. that would prohibit him from serving as a staffer on the HLOC's subcommittee studying the Commission.

The third allegation regarding a conflict of interest relates to a Member of the HLOC, who is on the Executive subcommittee reviewing the Commission. It is contended that the Member's wife has an immediate family member who is a law partner with Mr. Williams, a commissioner of the Commission.

S.C. Code Ann. § 8-13-100(18) defines "immediate family" with regards to a conflict of interest pursuant to § 8-13-700, as follows:

- (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.

S.C. Code Ann. § 8-13-100(18). See also, SEC AO93-030, where the State Ethics Commission found that the Chairman of a Commission, whose brother was a partner in a law firm, could participate in contested matters before the Commission even though one of the parties was represented by the law firm where his brother was a partner as a "brother" was not included within the definition of "immediate family" pursuant to § 8-13-100(18).

The Member explained that neither he nor his wife have an immediate family member as defined under § 8-13-100(18), who practices law with Mr. Williams. He noted that his wife's uncle and cousin are partners with Mr. Williams in the firm of Wilcox, Buyck & Williams in Florence, SC. The Member's wife's uncle and cousin are not considered "immediate family" as contemplated pursuant to the Ethics, Government Accountability, and Campaign Reform Act of 1991, regarding conflicts of interest.

The fourth allegation regarding a conflict of interest for the Member concerns the same facts as set forth above but alleges a conflict with a different agency. Specifically, it is contended that because his wife has an immediate family member who is a law partner with Mr. Williams, a commissioner of the Commission, it is a conflict for the Member to serve on the HLOC subcommittee for the State Treasurer's office. While no specific conflict of interest is alleged with the State Treasurer's office, it appears the conflict must be the fact that both Mr. Williams and Mr. Loftis, who also serves as the State Treasurer, serve together as Commissioners on the Commission. The Committee finds that this is not a conflict which bars the Member's work on the HLOC's subcommittee reviewing the State Treasurer's office.

CONCLUSION

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client."

In summary, it is not a conflict of interest for the staffer to serve as a HLOC staffer on the Executive Subcommittee studying the Commission. When he was employed first as a law clerk and then as an attorney with Collins & Lacy, P.C., he did not work on legal matters for Mr. Williams, a Commissioner on the Commission nor did he have any economic interest in the law firm.

With regard to the Member, his service on the HLOC Executive Subcommittees studying the Commission is not a conflict of interest as his wife's uncle and cousin do not fall within the definition of "immediate family" as defined in § 8-13-100(18) and used in the rules of professional conduct regarding conflicts of interest.

Finally, the fact that both Mr. Williams and Mr. Loftis, who is the State Treasurer, work together as Commissioners on the Commission, does not create a conflict of interest preventing the Member and staffer's work on the HLOC's Executive Subcommittee studying the State Treasurer's office.

Adopted June 15, 2016.

J. David Weeks
Vice-Chairman

Kenneth A. "Kenny" Bingham
Chairman

Michael A. Pitts
Secretary

Beth E. Bernstein
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PROPOSED ADVISORY OPINION 2016-2

TO: Members of the House of Representatives

FROM: House of Representatives Legislative Ethics Committee

RE: Laundry List Opinion

DATE: September 1, 2016

Due to apparent confusion over application of S.C. Code Ann. § 8-13-1348, which relates to the use of campaign funds by a candidate or Member of the General Assembly, the House of Representatives Legislative Ethics Committee Chairman appointed a subcommittee to respond to Members who requested advisory opinions from the Committee. The Subcommittee met to discuss questions received from Members regarding the permissible and impermissible use of campaign funds. This opinion is not meant to serve as an exhaustive list of what are permissible and impermissible expenditures from the campaign account. The Committee will continue to review Members' specific requests regarding permissible and impermissible expenditures from campaign funds. For the current requests received, the Subcommittee compiled these inquiries into the following list:

Whether it is acceptable to use campaign funds for the following expenditures:

- A. Dues for membership in a service-type organization or as a renewing member;
- B. Membership at a private club;
- C. Dry cleaning;
- D. Member's meal with a constituent;

- E. Maintenance for a Member's personal vehicle used for campaigning or official business;
- F. Fines and penalties received as a result of office;
- G. Gifts for Individual Members;
- H. Personal or constituent's living expenses;
- I. An. Election in a different body;
- J. Contributions to charitable organizations, churches, or schools;
- K. Sponsorships which include an advertisement and dues;
- L. Member's cell phone bill when the cell phone is used for campaigning and House official business as well as for personal use;
- M. Expenses for Promotional items, Merchandise, or Advertising that contain the Candidate or Member's Name and Office;
- N. Office Equipment Expenses;
- O. Dues for membership in an organization or as a new member;
- P. Clothing;
- Q. Gifts or Flowers for Office Staff, House Staff, or Constituents including Gifts, Resolutions, and Cards for Deaths, Births, or other Special Events sent by the Speaker or Members to other Members;
- R. Travel expenses and meals for a person, district group, or team being recognized by the House of Representatives;
- S. Resolutions and Flags;
- T. Signs that benefit the Community;
- U. Food or meals for functions that are directly related to the office;
- V. Meals and/or beverages for campaign workers;
- W. Meals for Members and Staff by a Committee Chairman, Speaker, and Speaker Pro Tempore;
- X. Tickets to a political event;
- Y. Legal expenses associated with a candidate or Member's campaign; and
- Z. Newspapers and News Services.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion as a response for guidance.¹ The Committee notes that this opinion will apply to any campaign expenditures made prospectively from the date of the Committee's approval. Any change in the Committee's prior positions on permissible or impermissible use of campaign funds will not apply retrospectively.

DISCUSSION

S.C. Code Ann. § 8-13-1348(A) provides:

(A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this

¹ The Committee found that Committee Advisory Opinions 95-3 is not accessible in full nor are Committee Advisory Opinions 95-4 through 95-6 accessible. Therefore, the Committee has only considered the relevant portion of Committee Advisory Opinion 95-3 available in drafting this Opinion.

subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

S.C. Code Ann. § 8-13-1348(A)(1991 as amended) (emphasis added).

The State Ethics Commission (SEC) recently reiterated that “the terms ‘personal’ and ‘unrelated to the campaign’” with regard to expenditures, are “not defined in the Ethics Act and the Act itself provides no clear guidance on what is and what is not an acceptable expenditure from the campaign funds.” See SEC AO2016-004, p. 2 (January 20, 2016).

The Committee also provided instruction as to the permissible and impermissible use of campaign expenditures in Committee Advisory Opinion 2015-3. The Committee found that donating to the Blatt Building's custodial staff and House staff as well as purchasing flowers for staff members and constituents due to certain events were not expenses that would exist irrespective of the Member's duties as an officeholder. Thus, the Committee held that these were permissible expenditures from a Member's campaign funds.

The Committee Advisory Opinion 2015-3 utilized Committee Advisory Opinion 92-3, for guidance. Specifically, Opinion 92-3 gave the following test to evaluate the permissibility of a campaign expenditure:

Funds collected by a candidate for public office is money received by contributors who are attempting to help the candidate get elected. Those funds should, thus, be utilized only for the purposes of facilitating the candidate's campaign and assisting the candidate carry out his or her duties of office if elected. §8-13-1348 of the Ethics Act, which took effect January 1, 1992, specifies that campaign funds may not be used “to defray personal expenses which are unrelated to the campaign or the office.” Those funds may, however, be used “to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.” Using that language as a guide, each expenditure should be judged upon whether it is an ordinary office or campaign related expenses or instead a personal expense not connected to the ordinary duties of office.

Committee Advisory Opinion 92-3 (emphasis added). Using the test set forth in Advisory Opinion 92-3, the Subcommittee considered the specific expenditures noted above.

I. IMPERMISSIBLE USE OF CAMPAIGN FUNDS

1. Dues for Membership in a Service-Type Organization or as a Renewing Member

Committee Advisory Opinion 92-3 explained that “dues paid to other organizations whose primary purpose [wa]s community service oriented rather than politically oriented cannot be considered ordinary expenditures of the office or closely related to a campaign,” and, thus, dues and contributions could not come from campaign funds.

Membership at a Private Club

The Committee finds that membership at a private club is not an appropriate use of campaign funds. Oftentimes, this membership is associated with meals--such as the Palmetto Club in Columbia--and not distinguishable from meal expenses incurred at a restaurant, and, therefore, it is an inappropriate use of campaign funds. Campaign funds only may be used to pay an expense at a private club if it is related to a campaign event. This position is in accordance with the position taken by the State Ethics Commission in Commission Advisory Opinion 2016-004.

2. Dry Cleaning

The issue has been raised about paying for dry cleaning of suits or clothing used for “official use” as a Member from campaign funds. The Committee finds dry cleaning these articles of clothing is a personal expense and campaign funds may not be used for this expenditure.

3. Member’s Meal with a Constituent

In SEC AO2016-004, the State Ethics Commission addressed the issue of a public official’s meals with constituents paid with the public official’s campaign funds as follows:

[I]t is important to note that the Commission has prosecuted enforcement matters under Section 8-13-1348 for the purchase of meals with campaign funds. A notable example of this is the case of former Lieutenant Governor Ken Ard. That complaint matter involved, among other things, questionable reimbursement from a campaign account for food at various restaurants. These expenditures were explained by Mr. Ard because these meals were occasions to meet with past and prospective contributors to raise money for his campaign account. This justification was rejected by the Commission. In a Consent Order reached by the parties in the Ard matter, the Commission stated “[i]t is now and always has been the Commission’s position that . . . [p]urchasing normal daily meals with campaign funds while traveling on campaign related business either before or after an election is prohibited. Such expenditures are personal.

SEC AO2016-004, p. 3 (January 20, 2016).

Therefore, the House Ethics Committee, in accordance with the State Ethics Commission, finds that if a Member has a meal with a constituent or lobbyist and the Member would have purchased the meal as a normal daily meal, then this meal is considered a personal expenditure. This meal should not be paid with campaign funds. The Committee also recognizes the exception discussed in Committee Advisory Opinion 94-22, concerning the permissibility of using campaign funds to sponsor an event with food where pending legislation is discussed.

4. Maintenance for a Member's Personal Vehicle Used for Campaigning or Official Business

Maintenance, fuel, and other expenses incurred by the Member in the operation of his or her vehicle during the campaign or the office he or she holds is not a permissible use of his or her campaign funds. See Committee Advisory Opinion 2014-1.

5. Fines and Penalties Received as a Result of Office

Payments of the fines or penalties received as a result of office (for example, a fine for failing to timely file a required report) and particularly those levied by the Committee are not allowed to be made with campaign funds because they are not related to the campaign or office as required by S.C. Code Ann. § 8-13-1348. See Committee Advisory Opinion 2000-1.

6. Gifts for Individual Members

The Committee finds that Members buying individual gifts for other Members are personal expenditures and, therefore, not allowed under S.C. Code Ann. § 8-13-1348.

7. Personal or Constituent's Living Expenses

The Committee finds that a Member may not pay personal or a constituent's living expenses with campaign funds because it is either personal in nature or not an expense traditionally incurred in House campaigns across the State nor clearly traditionally incurred in relation to the office held. See Committee Advisory Opinion 94-10. These expenditures are "personal expenses which are unrelated to the campaign or the office" as set forth in Section 8-13-1348(A).

8. An Election for a Different Office

As previously stated in Committee Advisory Opinion 92-5, the Committee finds a Member cannot use campaign funds received for one elective office toward achieving a different elective office, unless the Member obtains the contributors' written authorizations to do so.

II. PERMISSIBLE USE OF CAMPAIGN FUNDS

1. Contributions to Charitable Organizations, Churches, or Schools

In Senate Ethics Opinion 1997-2, the Senate Ethics Committee found that "participating in fundraising activities for organizations, churches, schools, colleges, universities, communities, . . . political parties, . . . , and a whole range of charitable giving and charitable good works is a longstanding function of elected officials, especially Members of The Senate of South Carolina." Thus, the Committee finds that contributions to charitable organizations, including churches or schools, is the type of expense incurred in relation to the office held. Therefore, contributions from a candidate or Member's campaign funds made to churches and other charitable organizations are permissible but the candidate or Member may not contribute campaign funds to any charitable

organization or church which the candidate, the Member, their immediate family, or business with which they are associated, derive a personal and financial benefit. Members are no longer required to follow Committee Advisory Opinions: 92-44; 92-46, as it relates to a school fundraising project; and 94-10, as it relates to contributions to churches. The Committee notes that contributions are also permitted to a charitable organization upon final disbursement of the candidate or Member's campaign funds. See SC Ann. § 8-13-1370(A)(2).

2. Sponsorships which include an Advertisement and Dues

With respect to sponsorships, such as for a booster club which included an advertisement and dues, the Committee previously stated in Committee Advisory Opinion 1999-1, "a contribution to a non-profit organization is allowed as an office or campaign related advertising expenditure under Section 8-13-1348(A) if it results in publication of the member's name and public title or the candidates' name and public office sought." Thus, the Committee finds that dues made by a Member to a booster club which includes the Member's advertisement is a permissible expenditure from the Member's campaign funds as the Member would not make this expenditure except for the official position the Member holds.

3. Member's Cell Phone Bill When the Cell Phone is Used for Campaigning and House Official Business as well as for Personal Use

In the past, it has been the practice of Members to pay for part of their cell phone bills from their campaign funds. The rationale was the Members did not want to own two cell phones--one for personal use and one for official use as a Member and for campaigning. It is not clear how the Member divided the cell phone bill to determine the amounts paid for personal and official use.

The Committee finds that dividing the cell phone bill between personal and official use would be permissible only if the Member purchased the phone with personal funds and could produce supporting documentation for the portion that was used for legislative business and campaigning prior to expending campaign funds for the relevant portion. However, the Committee finds the better practice is to dedicate a cell phone for official use as a Member and for campaigning, so that the entire cell phone bill would be a permissible expenditure from campaign funds. If the cell phone is purchased with campaign funds and dedicated for official use, then it must be listed as an asset on the campaign disclosure report, and the Member is subject to proper accounting and disbursement of this asset as set forth in Sections 8-13-1368 and 8-13-1370 of the Ethics Act.

4. Expenses for Promotional, Merchandise, or Advertising Items that contain the Candidate or Member's Name and Office

The Committee finds that campaign funds used to purchase promotional items to give away to the public with the candidate or Member's name and the office sought or held are related to the campaign and may be paid for with campaign funds.

5. Office Equipment Expenses

As previously stated in Committee Advisory Opinion 99-3, Members may purchase a computer, fax machine, or other permanent-type office equipment with campaign funds if such equipment is used solely for campaign or office-related purposes. These purchases must be listed as an asset on the campaign disclosure report. These expenditures must be reported on the Member's campaign disclosure form.

Upon final disbursement of a Member's campaign funds and assets, the Member is still subject to proper accounting and disbursement of all the campaign funds and assets, including any permanent-type office equipment, as set forth in SC Code Ann. § 8-13-1368 and § 8-13-1370.

6. Dues for Membership in an Organization or as a New Member

In Committee Advisory Opinion 98-3, the Committee found that contributions "to political or partisan groups are ordinary office related expenses" which are to be decided on a case-by-case basis. The Committee further stated that "an organization is deemed political or partisan only if its primary purpose is political or partisan, rather than community service oriented." Committee Advisory Opinion 98-3. In the past, expenditures of political dues made from campaign funds to a party caucus have been considered a permissible expenditure and it continues to be a permissible expenditure.

More recently, in Committee Advisory Opinion 2002-1, a Member was permitted to use his or her campaign funds to pay dues to a non-political organization if invited to join because of his or her status as a Representative.

The Committee is mindful of the Senate Ethics Committee Advisory Opinion 93-4, Example B, which provided the example of a member joining a civic organization as a way to keep in touch with the civic leaders in her district. The opinion noted, "The member would not otherwise be a member of the organization except for her office and receives no personal gain from being a member. The member may pay the dues of the organization from her campaign funds." Senate Ethics Committee Advisory Opinion 93-4, Example B.

Thus, the Committee adopts the reasoning provided in Senate Ethics Committee Advisory Opinion 93-4 that if the Member joined the civic organization as a way to assist him or her to stay in touch with civic leaders in his or her district, the dues would be a permissible expenditure from the campaign account. The Committee cautions that the Member must join the organization in his or her official capacity as a legislator.

7. Clothing

The issue has been raised about paying for suits or clothing from campaign funds. In the past, Members have been advised that purchasing clothing, that is, a suit or dress, for legislative session was a permissible expenditure from campaign funds if the Member limited his or her use of the clothing to strictly "official use" as a Member. The Committee finds that a Member may use his or her campaign funds for clothing purchases solely to wear as a Member during the legislative session or to an event in his or her district where he or she is attending as a House Member.

However, the Member must list the clothing as an asset on his or her campaign disclosure form and account for it when his or her campaign account is closed pursuant to the requirements in SC Code Ann. § 8-13-1368 and § 8-13-1370.

8. Gifts or Flowers for Office Staff, House Staff, or Constituents including Gifts, Resolutions, and Cards for Deaths, Births, or other Special Events sent by the Speaker or Members to other Members

In Committee Advisory Opinion 2015-3, the Committee found donating gifts of appreciation--such as fruit baskets--to custodial staff for the Blatt Building (Blatt Christmas Custodial Fund) and House staff and purchasing flowers for staff members and constituents due to certain events are not expenses that would exist irrespective of the Member's duties as an officeholder. Therefore, the Committee stated it was permissible to use campaign funds for these expenses. The Committee also finds that gifts (such as flowers), resolutions, and cards sent by the Speaker or Members to other Members for a death, birth, or other special event, are permissible expenditures from the Speaker or Members' campaign account.

9. Travel Expenses and Meals for a Person, District Group, or Team Being Recognized by the House of Representatives

The Committee finds it is proper for a Member to use campaign funds to pay for a person, group from his or her district, or team's travel expenses incurred and a meal also held for this person, group, or team as a direct result of the person, group, or team being recognized by the House of Representatives, as these expenses are an integral part of a Member's official service.

10. Resolutions and Flags

In Committee Advisory Opinion 93-6, the Committee found it was permissible for a Member to use campaign funds to frame and present Resolutions and interpreted Committee Advisory Opinion 92-3 to allow a Member to purchase a Statehouse flag for constituents or nonprofit organizations, such as schools or firehouses, because it could be seen as a service generally expected of a Member as well as an opportunity incidental and unique to membership in the House.

11. Signs that Benefit the Community, such as, Handicap Parking Signs and Community Oriented Signs

As previously mentioned in Committee Advisory Opinion 95-3, a Member may use campaign funds to purchase handicap parking signs for a fire department because it could be seen as a service generally expected of a Member as well as an opportunity incidental and unique to membership in the House. This analysis also applies to other signs that benefit the community, such as neighborhood watch signs, and thus, the payment of these signs would be a permissible campaign expenditure.

12. Food or Meals for Functions that are Directly Related to the Office

The Committee finds that Members may use campaign funds to sponsor an event such as one for a group of constituents and pay for food at such an event where the main purpose of the event was to discuss legislation. See Committee Advisory Opinion 94-2. The Member, however, should use discretion regarding the cost of the meals paid for from his or her campaign account for this purpose. In addition, as stated in Committee Advisory Opinion 95-7, a Member is allowed to use campaign funds to pay for a dinner held to thank constituents for support during one's membership.

13. Meals and/or Beverages for Campaign Workers

The Committee notes that it is permissible to pay for meals and alcoholic beverages incident to a meal for campaign workers out of campaign funds. However, the Committee cautions that Members should be cognizant of the liability that may arise, such as social host liability. Pursuant to S.C. Const. Art. XVII Section 14, under no circumstances should individuals, including campaign workers, under the age of twenty-one be served alcohol.

14. Meals for Members and Staff by a Committee Chairman, Speaker, and Speaker Pro Tempore

A Chairman of a House Legislative Committee requested the ability to use his campaign funds to pay for a Committee thank you dinner for all of the Members who serve on the Committee and all of the staffers who staff the Committee. The Committee finds that paying for a dinner for all of the Committee Members and staff as a thank you is a permissible expenditure from campaign funds as the Chairman would not have this expenditure but for the office he holds. The Committee also finds it is permissible for the Speaker and Speaker Pro Tempore to pay for meals for the Chairmen of Committees and Caucuses.

15. Tickets to a Political Event

In Committee Advisory Opinion 93-2, the Committee found that a Member may use campaign funds to purchase tickets to a political event. In addition, a Member may use campaign funds to purchase food for the Member or the Member's immediate family who also attend the political event. See Committee Advisory Opinion 93-28.

16. Legal Expenses Associated with a Candidate or Member's Campaign

As noted in Committee Advisory Opinion 2013-2, the Committee narrowly determined that legal expenses flowing directly from one's campaign may be an appropriate use of campaign funds, but the analysis must be fact specific. In addition, a candidate or Member may use campaign funds to reimburse personal funds spent for legal expenses flowing directly from one's campaign. See Committee Advisory Opinion 2013-2. However, this determination does not apply to legal expenses resulting from a candidate or Member's personal misconduct. A candidate or Member's misconduct becomes personal, for example, when a criminal charge or indictment is brought against that candidate or Member. At that time, the candidate or Member should not use his or her campaign funds to pay for the legal expenses incurred. If the criminal charges do not result in

conviction of the candidate or Member, the candidate or Member can reimburse his or her legal fees from campaign funds with guidance from the Committee. The Committee cautions that this may be done only on a case-by-case basis.

17. Newspapers or News Services

Many Members have subscribed to one or more SC newspapers or news services in order to keep abreast of matters in their districts and this state. The Committee finds that a Member may pay for SC newspaper subscriptions and news services from campaign funds pursuant to Section 8-13-1348(A) since keeping informed of local and state news and events is related to the office the Member holds.

Adopted September 1, 2016.

J. David Weeks
Vice-Chairman

Kenneth A. "Kenny" Bingham
Chairman

Michael A. Pitts
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Beth E. Bernstein
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ADVISORY OPINION 2016-3

The House Legislative Ethics Committee (HEC) received two requests from Members for an advisory opinion regarding whether a Member is permitted to vote at any point in the legislative process regarding a Medicaid issue if the Member's business, which the Member has an ownership interest in receives payment from Medicaid. Specifically, one Member is a member of a LLC which owns a durable medical equipment provider who accepts Medicaid money for the medical equipment purchased or rented. The other Member is an owner of a pharmacy which accepts Medicaid money as payment for the prescriptions filled.

The question is whether the receipt of Medicaid payments by the Member's business results in a conflict of interest requiring the Member's abstention from voting on Medicaid issues at any point in the legislative process.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

Medicaid is a joint state and federal program that assists with the medical costs for people that have limited incomes and resources.¹ It provides coverage for families, children, pregnant women, the elderly and people with disabilities. It is administered by the state in accordance with federal requirements. To receive Medicaid, individuals apply to their state Medicaid agency and if eligible, receive an enrollment card. Medicaid covers home health services, physician services, laboratory and x-ray services, inpatient hospital services, and many other services, including medical prescriptions.²

¹ Medicare.gov: The Official U.S. Government Site for Medicare, June 9, 2016, <https://www.medicare.gov/your-medicare-costs/help-paying-costs/medicaid/medicaid.html>.

² Medicaid.gov, June 9, 2016, <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/benefits/medicaid-benefits.html>.

When a client obtains services from a company that deals in durable medical equipment or through a pharmacy which fills prescriptions, the client may provide Medicaid as his or her insurance for payment of the item provided. The company providing these services does not have a special contract with Medicaid. The company is treated the same as any other similar provider. They are merely receiving a reimbursement for the item plus cost.

Pursuant to the Rules of Conduct regarding conflicts of interest in the Ethics, Government, Accountability, and Campaign Reform Act of 1991, S.C. Code Ann. § 8-13-700 provides,

(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 family member, 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 that 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 family member, 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 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;

(2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;

(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 superior, he shall take the action prescribed by the State Ethics Commission;

(emphasis added). S.C. Code Ann. § 8-13-700.

In the instant situation, the Committee must first review the term “a business with which he is associated,” which is defined 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 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.” S.C. Code Ann. § 8-13-100(4). It is the Committee’s understanding that the Member who is a member of a durable medical company and the Member who is a pharmacist at the company he owns, may meet the definition of “business with which he is associated.”

The next step is to ascertain the meaning of “economic interest” pursuant to S.C. Code Ann. § 8-13-100(11) as used in the Rules of Conduct. 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. 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.

(emphasis added). S.C. Code Ann. § 8-13-100(11).

Even if it appears that the Member may have a conflict of interest, the large class exception permitted in S.C. Code Ann. § 8-13-100(11)(b) allows Members of a profession, occupation, or large class to participate in and vote on decisions that would have an economic interest to them because of the profession, occupation, or large class to which they belong. The economic interest or benefit must be such as could have been reasonably foreseen to accrue to anyone in that profession, occupation, or large class.

House Ethics Advisory Opinion 92-19 provides guidance regarding the large class exemption in a conflict of interest situation. The questions in the opinion included “as a recipient of Medicaid funds, through my pharmacy, may I vote on provisions of the Appropriations Act designed to raise Medicaid benefits and can I vote on provisions designed to specifically affect Medicaid funding of pharmacies.” The opinion explained that “the exception in the economic interest definition for the general benefits to the whole profession should allow you to vote on the items you addressed.” House Ethics Advisory Opinion 92-19.

Additional opinions related to the large class exemption include: 1) House Ethics Advisory Opinion 92-37, where a licensed insurance agent was not prohibited from voting on insurance legislation because, under the guidance of the large class exception, the insurance agent would not accrue any benefit that would be foreseeably different than the benefit accruing to insurance agents as a whole; and 2) House Ethics Advisory Opinion 93-14, which allowed a Member, who was an insurance agent and broker, to participate in insurance issues before the Labor, Commerce, and Industry Committee as well as the Property and Casualty Subcommittee.

Thus, a Member who is a member of a LLC which owns a durable medical equipment provider that accepts Medicaid money for the medical equipment purchased or rented as well as a Member who owns a pharmacy and accepts Medicaid money for prescriptions filled both fall within the large class exception. They are able to vote and make decisions relevant to Medicaid

including budgetary issues because they receive an economic benefit from Medicaid reasonably foreseen to accrue to anyone in that profession.

CONCLUSION

In summary, the large class exception allows the Members to participate in voting on decisions relevant to Medicaid.

Adopted September 1, 2016.

J. David Weeks
Vice-Chairman

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ADVISORY OPINION 2016-4

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion regarding whether a lawyer/legislator can be associated with a law firm that represents clients pursuant to S.C. Code Ann §§ 8-13-740 and 8-13-745 provided that the lawyer/legislator properly abstains from voting on matters relating to the clients whom the law firm represents. See also S.C. Code Ann §§ 8-13-700(B). Specifically, the law firm has clients that it currently represents in lobbying activities.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

SC Code Ann. § 8-13-740, part of the Rules of Conduct, provides:

(A) . . . (2) A member of the General Assembly, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before a governmental entity, 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 Department of Insurance, or in an agency's consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing. . . .

(7) The restrictions set forth in items (1) through (6) of this subsection do not apply to:
(a) purely ministerial matters which do not require discretion on the part of the governmental entity before which the public official, public member, or public employee is appearing;

(b) representation by a public official, public member, or public employee in the course of the public official's, public member's, or public employee's official duties;

(c) representation by the public official, public member, or public employee in matters relating to the public official's, public member's or public employee's personal affairs or the personal affairs of the public official's, public member's, or public employee's immediate family. . . .

(B) A member of the General Assembly, when he, an individual with whom he is associated, or a business with which he is associated represents a client for compensation as permitted by subsection (A)(2)(c), must file within his annual statement of economic interests a listing of fees earned, services rendered, names of persons represented, and the nature of contacts made with the governmental entities.

(C) A member of the General Assembly may not vote on the section of that year's general appropriation bill relating to a particular agency or commission if the member, an individual with whom he is associated, or a business with which he is associated has represented any client before that agency or commission as permitted by subsection (A)(2)(c) within one year prior to such vote. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole.

(emphasis added). SC Code Ann. § 8-13-740; see also House Ethics Committee Advisory Opinion 93-23. Thus, the Member may not represent another person before a governmental entity unless certain exceptions are complied with. Furthermore, if those exceptions are met, then the Member cannot vote on the section of the budget related to a particular agency if the Member or the business with which he is associated, that is, the law firm, has represented that client before that agency within one year prior to the vote. Further, the Member must report any legal fees earned, names of the persons represented, and the nature of contact with the governmental entities on his or her Statement of Economic Interests.

The Member also references another Rule of Conduct, SC Code Ann. § 8-13-745 which states:

(A) No member of the General Assembly or an individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case, as defined in Section 1-23-310, before an agency, a commission, board, department, or other entity if the member of the General Assembly has voted in the election, appointment, recommendation, or confirmation of a member of the governing body of the agency, board, department, or other entity within the twelve preceding months.

(B) Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or any individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case, as defined in Section 1-23-310, before an agency, a commission, board, department, or other entity elected, appointed, recommended, or confirmed by the House, the Senate, or the General Assembly if that member has voted on the section of that year's general appropriation bill or supplemental appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole.

(C) Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or an individual with whom he is associated in partnership or a business, company, corporation, or partnership where his interest is greater than five percent may enter into any contract for goods or services with an agency, a commission, board, department, or other entity funded with general funds or other funds if the member has voted on the section of that year's appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the appropriation bill or from voting on the general appropriation bill as a whole.

(D) The provisions of this section do not apply to any court in the unified judicial system.

(E) When a member of the General Assembly is required by law to appear because of his business interest as an owner or officer of the business or in his official capacity as a member of the General Assembly, this section does not apply. . . .

(emphasis added). SC Code Ann. § 8-13-745; see also House Ethics Committee Advisory Opinion 92-35. Therefore, the lawyer/legislator is prohibited from representing clients for a fee in a contested case before state agencies, boards, and commissions in certain circumstances. First, the representation is prohibited by the lawyer/legislator or his firm if the Member voted in the election, appointment, confirmation, etc. of a member to the board's governing body within the twelve preceding months. Second, the representation is prohibited by the lawyer/legislator or his firm if the Member voted on the section of that year's appropriation's bill relating to that agency, board, etc. within one year of the vote. If the lawyer/legislator meets these exceptions, then the lawyer/legislator or his firm may represent clients for a fee in a contested case before agencies, boards, and commissions.

Lastly, there is another Rule of Conduct that must be considered. SC Code Ann. § 8-13-700(B), which requires a Member to abstain from voting on legislative issues that may be a conflict of interest and this conflict of interest must be noted on the record. In this situation, the Member will not represent or have any contact with the clients the law firm represents for lobbying activity. Moreover, the Member plans to abstain from voting on legislative issues pursuant to Section 8-13-700(B) which pertain to the clients the law firm represents in lobbying matters.

In an analogous opinion, SEC AO93-007, the State Ethics Commission considered whether a councilwoman who was employed with a law firm was disqualified from any votes, deliberations, or other actions regarding the firm client's rate request before the Public Service Commission (PSC) pursuant to SC Code Ann. § 8-13-700(B). The firm represented the client before the PSC and also engaged in lobbying activities. The Commission explained that the Council member would be required to follow the procedures of Section 8-13-700(B) if the issue would affect the economic interests of the law firm with which she was associated. The Commission noted that "the procedures of Section 8-13-700(B) are required if the matter requiring official action entails an economic benefit." SEC AO93-007, p.3.

In the instant case, the lawyer/legislator plans to work for a law firm which represents clients, which includes engaging in lobbying activity for those clients. It is the Committee's understanding that the lawyer/legislator will not directly engage in representation of these clients. If there is a vote on a bill in which the law firm is currently representing a client on lobbying

matters and it would affect the economic interest of the law firm with which the lawyer/legislator was associated, then the lawyer/legislator would follow the abstention procedure in Section 8-13-700(B).

Finally, while the HEC does not have jurisdiction over the South Carolina Rules of Professional Conduct governing lawyers, we have reviewed the rules regarding conflicts of interest, that is, Rule 1.10 (general imputation rule) and Rule 1.9 (duties to former clients). Rules of Professional Conduct, Rule 4017, SCACR. In the lawyer/legislator matter, the lawyer/legislator will not engage in any representation or contact with the clients that the law firm represents in lobbying activities.

CONCLUSION

In summary, a Member who is a lawyer/legislator can be associated with a law firm that represents lobbyist clients as long as the lawyer/legislator complies with the requirements of S.C. Code Ann §§ 8-13-700(B), 8-13-740, and 8-13-745. Specifically, the lawyer/legislator must abstain from voting on matters for the clients who are currently represented by the law firm at the time of the vote.

Adopted September 1, 2016.

Advisory Opinion 2015-1

The House Ethics Committee received the following question with a request for an advisory opinion on this issue:

Is it appropriate for a member of the House of Representatives, who is also a salaried employee for [a state technical college], to make contact and introduce local business people to the continuing education sales department of [the Technical College]? While the Representative would not use his title as Representative in his introduction, he is known in the community as a public official. After the introduction, the Representative would not participate further in the sale process. The Representative wants to ensure his actions would not be considered a violation of the Ethics Act; more specifically, it would not be a violation of Section 8-13-700?

In response, the Committee renders the following opinion:

The Ethics Act prohibits a member from using his official position to obtain an economic benefit. Specifically, Section 8-13-700(A) provides, “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 family member, 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 that does not result in additional public expense.” S.C. Code Ann. § 8-13-700(A) (emphasis added).

As a member of the House of Representatives, it is clear that the member is a public official. See S.C. Code Ann. § 8-13-100(27). Pursuant to Section 8-13-700(A), a public official may not knowingly use his official office to obtain an economic interest. SEC Adv. Op. No. 2000-004 gives general guidance regarding Section 8-13-700 (A)-(B) as follows:

Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

Research revealed there is not much decisional authority regarding Section 8-13-700(A). In SEC Adv. Op. No. 93-063, a DHEC Board Member entered into a contract for the provision of medical services with a local medical clinic only after the clinic could not find any other physicians to perform these services. The State Ethics Commission noted that the member did not knowingly use his official office to obtain an economic interest in violation of Section 8-13-700(A) and must comply with the requirements of Section 8-13-700(B). In the instant situation, it does not appear that the member is knowingly using his official position to obtain an economic interest for himself with the business with which he is associated.

Further, it appears from the member's scenario that the Technical College could receive an economic interest from any sales made due to the member's introductions. An economic interest is defined 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, public member, or public employee may gain an economic benefit of fifty dollars or more." S.C. Code Ann. § 8-13-100(11)(a) (emphasis added).

The next issue to address is whether the Technical College is a "business" with which the member is associated." A business is defined as "a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual." S.C. Code Ann. § 8-13-100(3). A "[c]orporation" means an entity organized in the corporate form under federal law or the laws of any state." S.C. Code Ann. § 8-13-100(10). "Business with which [you] are associated" means "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 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." S.C. Code Ann. § 8-13-100(4).

While the Technical College's Foundation, Inc., is listed as an incorporated entity according to the South Carolina Secretary of State's records, the Technical College is not listed as an incorporated entity and does not appear to fit the definition of "business" provided in the statute. We note that The State Ethics Commission previously found that a public institution of higher learning is not a "business" as defined in the statute. SEC Adv. Op. No. 2009-002. Therefore, we conclude that the Technical College, as a public institution of higher learning, is not a "business" as defined pursuant to Section 8-13-100(3). The member indicated he is only a salaried employee and we further conclude he does not meet the parameters of "a business with which you are associated" pursuant to Section 8-13-100(4).

Thus, based upon the question presented, it appears the member's action is not in direct violation of the Ethics, Government Accountability, and Campaign Reform Act of 1991 because the Technical College is not a business with which you are associated as defined by the statute. However, we caution that the member's constituents may question whether the member's introduction, made while known as a public official, could be construed as implicitly promoting an economic benefit for the Technical College.

Adopted June 3, 2015.

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Advisory Opinion 2015-2

A member of the House of Representatives has requested an advisory opinion from the South Carolina House Ethics Committee regarding the following question:

Is there a violation of S.C. Code Ann. § 8-13-700 when an officer or member of a House Legislative Caucus refers Caucus business to himself or to a business with which he is associated and from which he makes a profit?

Pursuant to House Rule 4.16C.(5), the Committee renders the following advisory opinion.

EXECUTIVE SUMMARY

It is not a violation of Section 8-13-700 (or any other portion of the Ethics, Government Accountability, and Campaign Reform Act of 1991 ("the Act")) when an officer or member of a House Legislative Caucus (the "Caucus") refers Caucus business to himself, herself or a business with which the officer or member of the Caucus is associated and from which he or she makes a profit.

DISCUSSION

Section 8-13-700, provides:

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 family member, 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 that does not result in additional public expense.

S.C. Code Ann. § 8-13-700(A) (2011). This is the operative provision under which the subject query falls.

To understand the statute, it is helpful to dissect this section into its component parts. This portion of the statute requires several things:

1. The person must be a **public official**, public member or public employee. A member of the general assembly meets the definition of "public official." S.C. Code Ann. § 8-13-100(27) (2011) ("public official" includes a State elected official). However, the person is not a "public member," S.C. Code Ann. § 8-13-100(26) (2011), or a "public employee." S.C. Code Ann. § 8-13-100(25) (2011).
2. The "public official" must **use** his or her **official office**, membership, or employment. This is a reference to the elected office. "Membership" here refers to a public member of a state board, commission or council. S.C. Code Ann. § 8-13-100(26) (2011). "Employment" here refers to an individual who is employed by the State or any of its political subdivisions, **not** an elected official. S.C. Code Ann. § 8-13-100(25) (2011). Thus, the only portion applicable to a member of the Caucus is "official office," which refers to the Caucus member's status as a "public official."

While the Act does not define "official office," it does define "official capacity," which is informative. "Official capacity" means "activities which:

- (a) arise because of the position held by the public official...;
- (b) involve matters which fall within the official responsibility of ... the public official...; **and**
- (c) are services the agency would normally provide and for which the public official...would be subject to expense reimbursement by the agency with which the public official...is associated."

S.C. Code Ann. § 8-13-100(30) (2011). To meet the definition of "official office," the activity or use must be related to the Caucus member's **official capacity**, not something that is collateral to those activities. Being in a House Legislative Caucus does not meet this requirement.

3. The use of the official office must be to obtain an **economic interest** for the public official, a family member, an associated individual, or an associated business. Again, because the Caucus does not meet the definition of "official office," this section would not apply to a use of membership in the Caucus to do anything, including providing services from which a Caucus member's personal business earns income.
4. The Act defines an "**economic interest**" 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, public member, or public employee may gain an economic benefit of fifty dollars or more.” S.C. Code Ann. § 8-13-100(11)(a) (2011) (emphasis added). Under the question presented the interest here would be one “distinct from that of the general public” only insofar as someone in the general public would not have membership in the Caucus.

5. Even if the previous portions of Section 8-13-700(A) were met, any such use of the official office to obtain an economic interest for the Caucus member, a family member, an associated individual, or an associated business must be “**knowingly**.” That term is not defined in the Act. The general definition of the term “knowingly” means: (A) to act intentionally, *State v. Green*, 397 S.C. 268, 724 S.E.2d 624 (2012), (B) to act with actual knowledge, *State v. Thompkins*, 263 S.C. 472, 211 S.E.2d 549 (1975), or (C) to act with deliberate blindness to obvious facts. *State v. Thompkins*. Thus, the statute is not a strict liability statute, but must involve a deliberate intent to use the “official office” for gain, or use the “official office” despite obvious fact that such activity would improperly benefit the official, his family, his associates, or his business. Again, this is a scienter requirement that precludes strict liability under this statute.
6. To be prohibited, the use of the official office must also **not be “incidental”** with regard to public materials, personnel, or equipment. “Incidental” is not defined in the Act. The term “incidental” generally means “depending upon or appertaining to something else as primary or depending upon another which is termed the principal; something incidental to the main purpose.” *Archambault v. Sprouse*, 218 S.C. 500, 63 S.E.2d 459 (1951)(citing Black’s Law Dictionary); *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 289 S.E.2d 416 (1982) (citing *Archambault*); *Gurley v. USAA*, 279 S.C. 449, 309 S.E.2d 11 (Ct. App. 1983) (same). See also *Re Hon. Jimmy C. Bales*, Op. S.C. A.G. (11/7/07) (2007 WL 4284622) (discussing definition of “incidental” in context of licensing vehicle for roadway use). Of course, the primary use of the “official office” is to carry out the business of the State through official legislative activities – things like proposing legislation, conducting legislative hearings, participating in votes on various legislative matters. Activities associated with a House Legislative Caucus do not meet that test.
7. The use of the official office, even if “incidental,” must not result in **additional public expense**. There are no facts set forth in the query or of which the Committee is otherwise aware that the incidental use by a House Legislative Caucus of any State resources resulted in additional public expense.

The next part of Section 8-13-700 governs using the “official office” to influence a governmental decision that would benefit a public official, a family member, an associated individual, or an associated business. S.C. Code Ann. § 8-13-700(B). The statute sets forth a procedure the public official must follow to recuse himself or herself from a vote on any issue that would benefit those groups. The remaining portions also address recusal: § 8-13-700(C) (no conflict of interest exists where public official’s interest is in a blind trust); § 8-13-700(D) (section does not apply to any court in the unified judicial system); § 8-13-700(E) (section does not apply when member of the General Assembly required by law to appear because of his

business interest as an owner or officer of the business or in his official capacity as a member of the General Assembly). These provisions are not relevant to the inquiry before the Committee.

Another portion of the Act that informs the inquiry is Section 8-13-775, which provides:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of the contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State nor does it prohibit the award of contracts awarded through a process of public notice and competitive bids if the public official, public member, or public employee has not performed an official function regarding the contract.

S.C. Code Ann. § 8-13-775 (1995). The Committee understands that Caucus member's contract is not with the State or its political subdivisions but with the Caucus itself. Furthermore, there's nothing the Committee is aware of that would meet the test of this Section, which requires that the Caucus member be "authorized to perform an official function relating to the contract." The Caucus member's "official function" as a legislator does not contain any authorization related to the agreement with the Caucus.

Section 8-13-1120 may also be relevant. That section governs what must be included in a **statement of economic interest**, including "the source, type, and amount or value of income, not to include tax refunds, of substantial monetary value received *from a governmental entity* by the filer or a member of the filer's immediate family during the reporting period...." S.C. Code Ann. § 8-13-1120(A)(2)(1995) (emphasis added). The Caucus is not a "governmental entity" as defined in the Act:

"*Governmental entity*" means the State, a county, municipality, or political subdivision thereof with which a public official, public member, or public employee is associated or employed. "*Governmental entity*" also means any charitable organization or foundation, but not an athletic organization or athletic foundation which is associated with a state educational institution and which is organized to raise funds for the academic, educational, research, or building programs of a college or university.

S.C. Code Ann. § 8-13-100 (17) (2011). A House Legislative Caucus would not fall within this definition of "governmental entity" such that Section 8-13-1120 requires a public official to disclose payments received from the Caucus on the statement of economic interest, therefore, the Act does not mandate disclosure.

Note that article 7 of Chapter 13 of Title 8 governs "Rules of Conduct" and it is under this article that 8-13-700 appears. Article 7 does *not* define "caucus." Article 13, however, which

governs “Campaign Practices,” provides the following definition of “Legislative caucus committee.” As used in article 13 of Chapter 13 of Title 8:

“Legislative caucus committee” means:

(a) a committee of either house of the General Assembly controlled by the caucus of a political party or a caucus based upon racial or ethnic affinity, or gender; however, each house may establish only one committee for each political, racial, ethnic, or gender-based affinity;

(b) a party or group of either house of the General Assembly based upon racial or ethnic affinity, or gender;

(c) “legislative caucus committee” does not include a “legislative special interest caucus” as defined in Section 2-17-10(21).

S.C. Code Ann. § 8-13-1300(21) (2008). This definition provides no guidance into how a “caucus” may be organized, what authority (if any) a “caucus” may have, and what duties (if any) a “caucus” may owe. The Chapter instead describes (A) filing requirements (S.C. Code Ann. § 8-13-1308 (G) (2008); and (B) restrictions on campaign contributions by a legislative caucus (S.C. Code Ann. § 8-13-1316 (2004); S.C. Code Ann. § 8-13-1340(2003)).

Also, of note is House Rule 3.13, which provides that legislative caucuses who use space in the Blatt Building or who use state-owned office or equipment (including internet and telephone service) may make payment as determined by the House Clerk. Legislative Caucuses are also not subject to FOIA pursuant to House Rule 4.5. Note further that members of legislative caucus committees as defined by Section 8-13-1300(21) are eligible for State health and dental insurance plans – however, there are 29 other non-legislative entities listed in the statute, none of which would fall within the “official office” of the House of Representatives. S.C. Code Ann. § 1-11-720 (2012).

Committee counsel reviewed a number of informal opinions from the State Ethics Commission and found nothing helpful to this specific inquiry. For instance, in SEC Adv. Op. No. 93-063, a SCDHEC Board Member entered into a contract for the provision of medical services with a local medical clinic only after the clinic could not find any other physicians to perform these services. The State Ethics Commission noted that the member did not knowingly use his official office to obtain an economic interest in violation of Section 8-13-700(A) and must comply with the requirements of Section 8-13-700(B). In the question presented, the member is not using his or her “official position” as defined by statute to obtain an economic interest for himself or herself for the business with which he or she is associated. Further, the use described does not appear to be a knowing use as proscribed by law.

CONCLUSION

Section 8-13-700(A) would not apply to the activity of a member of the House who is also a member of a legislative caucus and who earns income from doing business with that caucus. A House Legislative Caucus does not constitute an “official office” for purposes of the Act. Furthermore, a Caucus member would not be using his or her official office (i.e., as a member of the SC House of Representatives) to gain an economic benefit from a contract with the State or its subdivisions. Also, the Caucus does not qualify as a “governmental entity” for purposes of the Act’s disclosure requirements. Therefore, a Caucus member would not violate Section 8-13-700(A) (or any other portion of the Act) by engaging in a transaction with the Caucus.

Adopted October 12, 2015.

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ADVISORY OPINION 2015-3

Two members of the House of Representatives have requested an advisory opinion from the South Carolina House Ethics Committee regarding the following question:

Is it acceptable to use campaign funds for the following items:

- (A) donating gifts of appreciation to the custodial staff for the Blatt Building, or donating gifts of appreciation for House staff;
- (B) purchasing flowers for staff members and constituents due to certain events, such as hospitalization, or a death in the staff member or constituent's family; or
- (C) purchasing hearing aid batteries?

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

EXECUTIVE SUMMARY

It is appropriate to use campaign funds for items considered to be "ordinary expenses incurred in connection with an individual's duties as a holder of elective office." S.C. Code Ann. § 8-13-1348(A). The Committee finds donating gifts of appreciation to custodial staff for the Blatt Building and House staff and purchasing flowers for staff members and constituents due to certain events are not expenses that would exist irrespective of the member's duties as an officeholder. *See* HEC Advisory Opinion 92-3. Therefore, it is permissible to use campaign funds for these expenses. As a result of this opinion, members and candidates no longer have to comply with the restrictions set forth in Advisory Opinion 95-2 or follow sections 1 and 2 of the "Not Permissible" campaign fund uses in the "Laundry List" opinion of 1996 prohibiting the use of campaigns funds for these purposes. However, the Committee finds purchasing hearing aid batteries to be personal in nature so a member may not use campaign funds for this expense. *See* S.C. Code Ann. § 8-13-1348(A).

DISCUSSION

The House Ethics Committee received requests for an updated advisory opinion on Opinions 92-3 and 92-4¹ from 1996, in regards to using campaign funds to donate to the Blatt Building's custodial staff and the House staff in appreciation of their services, to purchase flowers for staff members and constituents, and to purchase hearing aid batteries.

Specifically, one member stated that he would like to use his campaign funds for a donation to the custodial staff, such as, towards a Christmas gift or to assist when the custodial staff are unable to work due to an emergency disaster. It was also requested that payment from campaign funds for gifts of appreciation be extended to the House staff.

Another member requested using his campaign funds to purchase flowers for House staff as "it has been common practice to purchase flowers for certain events for staff members, such as hospitalization or death in their family." It was also requested that a gift of flowers for constituents in the same limited circumstances be permitted from a member's campaign funds. These members requested an updated opinion as to whether, in these limited set of circumstances, a gift expenditure would be legitimate when made from the member's campaign account.

In addition, a member requested the purchase of hearing aid batteries from the member's campaign account be approved as an ordinary, office related expense. The member noted:

Many members of the General Assembly wear hearing aid batteries and must do so in order to complete or proficiently perform their duties as a legislator. The life of these batteries is extremely limited. The average life of a set of batteries is approximately three days of normal wear. The usage of those batteries doubles during session because of the amount of hours they are in use. The hearing aid issue is recognized by S.C. Vocational Rehabilitation as necessary in order to perform one's duties as a legislator. The request is whether or not it would be permissible to purchase those batteries or, in any event, the extra batteries necessary during the weeks of session.

Initially, a review of S.C. Code Ann. § 8-13-1348(A) provides:

(A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

(emphasis added).

The State Ethics Commission (SEC) has previously recognized, "the term 'ordinary and necessary,' with regard to expenses, is not defined in the Ethics Reform Act." SEC AO 93-061. The SEC has stated it is "mindful that, unlike the federal guidelines, the Ethics Reform Act does

¹ The Committee was unable to locate Opinion 92-4. This opinion is discussed in the S.C. House Legislative Ethics Committee Memorandum, dated April 4, 1996, commonly referred to as the "Laundry List" opinion. This Laundry List opinion was not officially adopted by the Committee.

not provide a laundry list of acceptable expenditures to be made from campaign funds and prohibited expenditures.” SEC AO 2003-006. In this more recent opinion, the SEC admitted that it “relied on a House Legislative Ethics Committee Memorandum to provide guidance to candidates and public officials after the fact.” *Id.* This referenced memorandum is known as the “Laundry List” opinion. The SEC also stated, “Section 8-13-1348 gives the public official and candidate broad discretion in determining what is an ordinary expense or related campaign expense.” SEC AO 2003-006. In its discussion of campaign funds, the SEC stated that contributions made to charitable organizations were made at final disbursement because “they are not expenses related to the campaign nor are they expenses normally incurred in connection with an elective official’s duties.” *Id.*

With little guidance provided in this area, a search of the approach taken by other states revealed an attorney general’s opinion in Nevada (Nevada Opinion) addressing the same issue. The Nevada Opinion evaluated South Carolina’s approach, albeit the approach was prior to the Ethics Reform Act, it provides some guidance. The Nevada Opinion stated:

One state, South Carolina, has even suggested that the term “personal use” can only be defined by looking at the nexus between the use of the funds and the intent of the donor. On August 17, 1988, the South Carolina Attorney General’s Office opined that while “[o]nly a court could categorically conclude whether particular facts or circumstances constitute a violation of such provisions” there is a “possibility that campaign funds are impressed with a trust which controls the manner of expending such funds for purposes other than campaign expenses.” Op. S.C. Att’y Gen. No. 88-150 (August, 1988).

2002 Nev. Op. Att’y Gen. No. 23 (May 21, 2002).

After evaluating the federal law on campaign fund expenditures, the Nevada Opinion concluded as follows:

The term “personal use,” as used in NRS 294A.160(1), has not been specifically defined by the Nevada Legislature or the Nevada courts. An analysis of the personal use laws of the federal government and other states reveals a broad definition for the term “personal use.” Nevada’s legislative history reveals that the Legislature generally intended to disallow expenditures of campaign monies for typical personal and household expenses such as food, clothing, rent, utilities and the like. Based on that legislative history, we conclude that in enacting NRS 294A.160(1), the Nevada Legislature intended to enact a standard similar to that adopted by the federal government and articulated in 11 C.F.R. 113.1(1), and to thereby prohibit use of campaign funds if the particular use would fulfill a commitment, obligation, or expense that would exist irrespective of the candidate’s campaign or duties as an officeholder.

2002 Nev. Op. Att’y Gen. No. 23 (May 21, 2002)

Further, the House Ethics Committee gave guidance to the permissible and impermissible use of campaign expenditures in House Legislative Ethics Advisory Opinion 92-3. The question asked in the opinion was as follows:

Questions: What are the permissible uses of campaign funds under the new Ethics Act? Specifically, whether the following expenses would be considered personal or campaign/office related: purchase of flags for schools, local governments, and other non-profit organizations; membership dues or contributions to various clubs and service organizations; and, expenditures for office items such as lamps, photos, etc.

Funds collected by a candidate for public office is money received by contributors who are attempting to help the candidate get elected. Those funds should, thus, be utilized only for the purposes of facilitating the candidate's campaign and assisting the candidate carry out his or her duties of office if elected. §8-13-1348 of the Ethics Act, which took effect January 1, 1992, specifies that campaign funds may not be used "to defray personal expenses which are unrelated to the campaign or the office." Those funds may, however, be used "to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office." Using that language as a guide, each expenditure should be judged upon whether it is an ordinary office or campaign related expenses or instead a personal expense not connected to the ordinary duties of office.

The purchase of flags for schools, scouts, etc. in your district is a service generally expected of a House member and can be seen as a constituent service and an informal responsibility of the office. Therefore, campaign funds could be used for that purpose. . . .

HEC AO92-3 (emphasis added).

"The Laundry List" opinion, which was not officially adopted by the Committee, provides guidance on the use of campaign money to purchase flowers for constituents' weddings, as well as, high school and college graduations. This opinion explained,

These expenditures are not "ordinary expenses incurred in connection with an individual's duties as holder of an elective office." citing House Leg. Ethics Com. Adv. Op. No. 92-3. Furthermore, in Advisory Opinion 92-3, the Committee decided that campaign funds "should ... be utilized only for the purposes of facilitating the candidate's campaign and [campaign funds should be used only to assist] the candidate [in] carry[ing] out his or her duties of office if elected." (emphasis added) Although it could be argued that gifts and flowers given to constituents help a candidate get elected, and these contributions also assist the member in carrying out the duties of office, the Committee takes the position that gifts such as these are personal in nature and must be paid out of personal funds.

(emphasis added).

The "Laundry List" opinion also noted under "non permissible expenditures, item 2," that gifts or bonuses for office staff were not "ordinary expenses incurred in connection with an individual's duties as a holder of elective office" citing House Legislative Ethics Opinion No. 92-3. It provided that pursuant to Opinion No. 95-2, "it cannot be reasonably asserted that this expenditure [donation of campaign funds to buy Christmas gifts for the Blatt Building custodial staff], is traditionally expected of and made by members, and it would be improper to make the same from our campaign account."

However, this current Committee views this position to be incorrect. The member would not be donating to the Blatt Building's custodial staff or House staff gifts of appreciation for services provided or purchasing flowers for staff members and constituents in times of tragedy if he or she did not hold elective office and work in his or her legislative office in the Blatt Building. *See* HEC Advisory Opinion 2002-1 ("When a member is invited to a non-political function or is asked to join a non-political group only because of the member's status as a Representative, the invitation could be considered sufficiently tied to the member's campaign or office such that campaign funds may be used.") Thus, this Committee finds that for the limited purposes of donating to the Blatt Building's custodial staff, as well as, providing gifts of appreciation for House staff or purchasing House staff and constituents flowers during hospitalization or a death in their family, these expenditures appear to be expenditures traditionally expected of and made by members. Therefore, it would be proper to make these expenditures from the member's campaign account.

The second request concerns the purchase of hearing aid batteries from the member's campaign account. This Committee is cognizant of **The Rehabilitation Act of 1973**, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended in scattered sections of the U.S. Code), which protects qualified individuals from discrimination based on their disability. This law applies to employers and organizations that receive financial assistance from any Federal department or agency. A disability includes deafness or hearing impairment. In fact, the member stated that he was furnished with a hearing aid by S.C. Vocational Rehabilitation to assist him in his job as a member of the General Assembly. Thus, his request is whether or not it would be permissible to purchase those batteries or, in any event, the extra batteries necessary during the weeks of session.

At the outset, it would appear that using campaign funds to generally purchase hearing aid batteries is more in the nature of a personal expenditure. The more difficult question is whether the extra batteries necessary during the weeks of session could be purchased with campaign funds. It is clear that these hearing aid batteries could only be used during the legislative session and not when the member was not conducting his official business as a member.

This issue is similar to the analogy of purchasing clothing for legislative session and requiring the member to limit his or her use of the clothing to strictly official use as a member. It does not appear practical with hearing aid batteries to limit their use to only when the member has official business. We are also mindful of what is to prevent a member from asking for the purchase of glasses, dentures, etc. from campaign funds to be worn only during official business. Thus, the Committee concludes that the costs for hearing aid batteries are a personal expense and should not be paid for with campaign funds.

CONCLUSION

The Committee finds donating to the Blatt Building's custodial staff and House staff and purchasing flowers for staff members and constituents due to certain events are not expenses that would exist irrespective of the member's duties as an officeholder. *See* HEC Advisory Opinion 92-3. Therefore, it is permissible to use campaign funds for these expenses. However, the

Committee finds purchasing hearing aid batteries to be personal in nature so a member may not use campaign funds for this expense. *See* S.C. Code Ann. § 8-13-1348(A).

Adopted November 2, 2015.

Advisory Opinion 2014-2

The House Ethics Committee received the following question with a request for an advisory opinion on the issue:

"Following the 2012 primary election, my opponent was declared the primary winner. However, the party's decision to declare my opponent the winner and placed on the ballot was reached improperly because my opponent had not filed his candidacy paperwork properly. Therefore, I decided to engage the services of an attorney to challenge the party's decision. I considered the legal expenses to be proper campaign expenditures; however, I was not certain whether the Ethics Act would permit the use of campaign funds for legal expenses. Further, I understood the question to be one of first impression that would need to be resolved by the House Ethics Committee. Accordingly, out of an abundance of caution, I decided to use my personal funds to pay for the legal expenses until such time that the Committee could reach a resolution as to whether such legal expenses may properly be paid with campaign funds. Subsequently, the House Ethics Committee decided in Advisory Opinion 2013-2 that legal expenses flowing directly from someone's campaign may be an appropriate use of campaign funds. Therefore, I would like to know whether it would be appropriate for me to use campaign funds to reimburse myself for the legal expenses paid with my personal funds associated with the abovementioned legal action."

In response, the Committee renders the following opinion.

In House Ethics Advisory Opinion 2013-2, the Committee determined that "legal expenses flowing directly from someone's campaign may be an appropriate use of campaign funds." The Committee determines that the lawsuit referenced above directly flows from the candidate's campaign such that the payment of legal expenses would be an appropriate use of campaign funds in compliance with S.C. Code Section 8-13-1348, which provides that campaign funds may be used only for expenses which are related to the campaign or office. Because it would be an appropriate use of campaign funds to pay for the legal expenses in this instance, the Committee finds that it would also be appropriate to use campaign funds to reimburse oneself for the legal expenses paid with personal funds. Like all expenditures of campaign funds, the reimbursement must be disclosed and identified as such on the candidate's campaign disclosure report in accordance with the provisions of the Ethics Act.

Adopted June 5, 2014.

Advisory Opinion 2014-1

When a member of the House of Representatives uses a personal vehicle for travel related to the campaign or office, what is the appropriate method of reimbursement?

The following opinion assumes that the travel in question is related to the campaign or office as required by S.C. Code Section 8-13-1348 and does not attempt to discern when travel is appropriately reimbursable pursuant to 8-13-1348. The Committee finds that members must use the standard mileage rates as established by the Internal Revenue Service. Mileage may not exceed the actual distance traveled and must be computed using the shortest practical route. Further, the Committee advises keeping a record of such mileage, including the date, starting point, and destination. Lastly, the Committee determines that this opinion applies prospectively. Going forward, reimbursement at the IRS rate is the only appropriate method of reimbursement for use of a personal vehicle for travel related to the campaign or office.

Adopted June 5, 2014.

Advisory Opinion 2013-4

The following questions were posed to the House Legislative Ethics Committee:

- 1) Is it appropriate for a member of the South Carolina General Assembly to request and use the state airplane to transport an out of state witness to testify before a legislative subcommittee?
- 2) Is it appropriate for a person to receive compensation for testimony before a legislative subcommittee without complying with procedures to register as a lobbyist?

Dealing with question number one first, the Committee believes there are two provisions that control the answer to this question. First, current budget proviso 89.24, second, section 8-13-700(A).

Proviso 89.24 lays out a very specific process by which any public official may gain access to the state plane. Additionally, the proviso suggests that a violation of this process may be **EVIDENCE** of a violation of section 8-13-700(A). In the absence of specific facts the Committee cannot render an opinion on the applicability of this proviso.

As for section 8-13-700(A) which provides:

(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 family member, 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 that does not result in additional public expense.

The Committee does not believe that the use of a state plane directly violates this section as the use of the plane by someone other than the member of the General Assembly, in this instance, does not cause a personal benefit to accrue to the member.

That said, however, the Committee does find and opine that the use of the state airplane to transport witnesses for testimony before legislative subcommittees may violate section 8-13-765 of the State Ethics Act, which prohibits the use of government resources for political purposes.

The Committee does not believe it is an appropriate use of taxpayer dollars and resources to transport advocates for or against legislation, and therefore for and against political positions of individual legislators, to Columbia, or any other location, to advocate for their positions. The use of state resources is to be exclusively for the business of the state, not the expression or private opinions before the legislature.

As the business of the state may be wide and varied this opinion will not discuss precisely what facts would give rise to a violation of 8-13-765. Those facts would have to be considered on a case by case basis by the Committee.

However, the Committee will, going forward, examine any allegations of use of the state plane for the travel of advocates with a presumption that such use violates 8-13-765.

Advisory Opinion 2013-4

This opinion should be considered a prospective rule for all members of the South Carolina House of Representatives, that the use of the state plane to transport advocates or witnesses for the purposes of appearing before the subcommittees of the House will likely constitute a violation of the Ethics Act and require repayment of all state funds expended to provide that transportation.

As to question number two, the House Legislative Ethics Committee has no jurisdiction over the registration, operation or regulation of lobbyist. The State Ethics Commission is the only body that can determine whether a person has met the definition of "lobbyist" and was therefore required to register.

As such, the Committee declines to offer an opinion on question number two. However, the Committee would suggest that any person desiring an answer to this question should contact Ms. Cathy Hazelwood of the state Ethics Commission at the following address:

South Carolina State Ethics Commission
Columbia, South Carolina 29201

(803) 253-4192 (office)

(803) 253-7539 (fax)

Advisory Opinion 2013-3

Questions:

- I. Whether a person with an open campaign account must file an updated Statement of Economic Interest form by April 15th.
- II. Whether a person filing a Statement of Economic Interest form must include state retirement.

Answers:

I. Yes. A person with an open campaign account must file an updated Statement of Economic Interest form by April 15th. Section 8-13-1110 states that a "public official" must file a Statement of Economic Interest form. Section 8-13-100(27)'s definition for "public official" includes a "candidate." "Candidate" is defined in part as, "a person who seeks appointment, nomination for election, or election to a state or local office, or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election." S.C. Code Ann. § 8-13-100(5). This Committee concludes that a person with an open campaign account has authorized the collection or disbursement of money for his candidacy. Therefore, for the limited purpose of whether a Statement of Economic Interest form should be filed, a person with an open campaign account should file such a form. This determination in no way impacts whether a person will be found to be a candidate for purposes of appearing on a ballot.

A person required to file a Statement of Economic Interest form under section 8-13-1140 is required to file an updated form by April 15. No fines will be imposed until after the lapsing of the five-day grace period under section 8-13-1510. Further, it should be noted that the Committee issues this opinion in order to bring clarification to persons with open House campaign accounts. Therefore, this opinion is prospective in nature.

II. No. Section 8-13-1120(A)(2) discusses the disclosure requirements for money received by a member from a governmental entity:

(A) A statement of economic interests filed pursuant to Section 8-13-1110 must be on forms prescribed by the State Ethics Commission and must contain full and complete information concerning:

...

(2) the source, type, and amount or value of income, not to include tax refunds, of substantial monetary value received from a governmental entity by the filer or a member of the filer's immediate family during the reporting period;

...

It is the finding of this Committee that retirement accounts are funds previously invested by the person into a retirement system. Any money received by the person does not need to be disclosed as these funds are merely being returned to the person with the growth of the funds. Further, it is notable that the online instructions seen by candidates and members when completing their Statement of Economic Interest forms specifically states that retirement should not be included.

Advisory Opinion 2013-2

Issue: Whether campaign funds may be used to pay for legal expenses associated with a candidate's campaign?

Answer: Section 8-13-1348 provides guidance on when campaign funds may be used. Specifically, section 8-13-1348(A) states:

(A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

The 2012 election caused multiple lawsuits regarding who should appear on the ballot and lawsuits to insure the integrity of the election. Such lawsuits cause legal expenses that likely directly stem from one's election, one's campaign. Thus, this Committee narrowly determines that legal expenses flowing directly from someone's campaign may be an appropriate use of campaign funds. This Committee cautions that this holding does not reach lawsuits resulting from a candidate's personal misconduct. Like all determinations on whether campaign funds are properly used, this analysis must be fact specific.

Advisory Opinion No. 2013-1

Issue: A question arose whether candidates who found themselves without primary opposition as a result of the Supreme Court's rulings in Anderson v. South Carolina Election Commission, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012) or Florence County Democratic Party v. Florence County Republican Party, Op. No. 27128 (S.C. Sup. Ct. filed June 5, 2012) were entitled to both a primary and a general election cycle for purposes of applying the campaign contribution limits established by S.C. Code Ann. Sections 8-13-1314 and 8-13-1316.

Answer: Section 8-13-1300(10) (Supp. 2011) states, in pertinent part, within the definition of "election cycle," that "the contribution limits under Sections 8-13-1314 and 8-13-1316 . . . are for each primary, runoff, or special election in which a candidate has opposition and for each general election." This statute further states that "[i]f the candidate remains unopposed during an election cycle, one contribution limit shall apply." (emphasis added).

This Committee finds that competition between candidates existed and cannot be subsequently erased by the Supreme Court's rulings. This Committee recognizes certification at the end of filing constitutes candidacy for the purpose of determining if opposition exists. Therefore, if a candidate had primary opposition that was originally certified and later decertified, then that candidate had opposition. This opposition under our statutes allows the candidate to receive an election cycle for his or her primary.

OPINION 2006-1

TO: The Honorable Robert William Harrell, Jr.
Speaker of the House of Representatives

FROM: J. Roland Smith
Chairman, House Legislative Ethics Committee

DATE: JUNE 16, 2006

RE: OPINION 2006-1

ISSUE

It has been brought to the attention of the House Legislative Ethics Committee that there may be some confusion surrounding the interpretation of South Carolina Code Section 8-13-1300(7) and (31), which has been referred to as the "45-Day Rule". The "45-Day Rule" provides that certain communications made within the final 45 days before an election must be reported as "expenditures" but are not "contributions" and, therefore, are not subject to the contribution limitations of the Ethics Act. Those communications are defined in South Carolina Code Section 8-13-1300(31)(c) and are referred to as "(31)(c) communications" throughout this Opinion.

The Committee held a public meeting on June 1, 2006 and issued the following Formal Advisory Opinion. In this meeting the Committee considered the following questions:

1. What are (31)(c) communications as defined by 8-13-1300(31)(c)?
2. Are there any restrictions on how much a legislative caucus committee can spend on (31)(c) communications?
3. Where should a legislative caucus committee deposit funds to be used on (31)(c) communications? Must those funds be reported?
4. Must a legislative caucus committee report expenditures on (31)(c) communications?

SUMMARY

Essentially, if a House legislative caucus committee makes a communication within 45 days of an election that promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate, the committee must deposit the funds used to pay for that communication in a separate account and must report those funds as expenditures. A House legislative caucus committee does not have to report as contributions the funds it receives that are used to pay for such communications and there is no limit on how much a House legislative caucus committee can spend on such communications.

DISCUSSION

(31)(c) communications are defined by South Carolina Code Section 8-13-1300(31)(c). That Section provides:

(31) "Influence the outcome of an elective office" means:
(c) any communication made, **not more than forty-five days before an election**, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate. For purposes of

this paragraph, "communication" means (i) any paid advertisement or purchased program time broadcast over television or radio; (ii) any paid message conveyed through telephone banks, direct mail, or electronic mail; or (iii) any paid advertisement that costs more than five thousand dollars that is conveyed through a communication medium other than those set forth in subsections (i) or (ii) of this paragraph. "Communication" does not include news, commentary, or editorial programming or article, or communication to an organization's own members.

The statute addresses only those communications made within 45 days of an election. During those critical days before an election, the statute expands the definition of communications that are characterized as influencing the outcome of an elective office to include those (31)(c) communications. **(31)(c) communications, by definition, are only made within the 45 days before an election.**

South Carolina Code Section 8-13-1300(7) defines the term "contribution". That Section provides in part:

"Contribution" does not include . . . (b) a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit of money, or anything of value made to a committee, other than a candidate committee, and is used to pay for communications made not more than forty-five days before the election to influence the outcome of an elective office as defined in Section 8-13-1300(31)(c). These funds must be deposited in an account separate from a campaign account as required in Section 8-13-1312.

8-13-1300(7) exempts from the definition of "contribution" anything of value made to a committee used to pay for communications defined in 8-13-1300(31)(c) made within 45 days of an election. This language makes it clear that even though a communication made within 45 days of an election falls within the definition of (31)(c) as influencing the outcome of an elective office, that communication is not a contribution.

Because (31)(c) communications are specifically exempted from the definition of contribution, legislative caucus committees are not restricted by the \$5,000 contribution limit found in South Carolina Code Section 8-13-1316. **Therefore, a legislative caucus committee may spend any amount on (31)(c) communications within 45 days of an election.**

Legislative caucus committees must deposit funds used for (31)(c) communications in a separate account pursuant to the last sentence of 8-13-1300(7). However, they do NOT have to report the receipt of funds to be used for (31)(c) communications within 45 days of an election. 8-13-1308(G) provides in part:

Notwithstanding any other reporting requirements in this chapter, a political party, legislative caucus committee, and a party committee must file a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more. For purposes of this section, "anything of value" includes *contributions* received which may be used for the payment of operation expenses of a political party, legislative caucus committee, or a party committee.

This section requires legislative caucus committees to report all contributions over \$500, whether used for operating expenses or campaign purposes. **Because funds to be used for (31)(c) communications within 45 days of an election are not "contributions", they do not have to be reported like operating funds and campaign funds.**

Funds used to pay for (31)(c) communications within 45 days of an election are "expenditures" as defined by the Ethics Act. South Carolina Code Section 8-13-1300(12) defines "expenditure" as a purchase, payment, loan, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit, transfer of funds, gift of money, or anything of value for any purpose. Therefore, a **legislative caucus committee must report money spent on (31)(c) communications.**

Legislative caucus committees making expenditures on (31)(c) communications within 45 days of an election must maintain an account of their expenditures; the name and address of each person to whom an expenditure is made including the date, amount, purpose, and beneficiary of the expenditure; and any proof of payment for each expenditure. See 8-13-1302. Pursuant to Section 8-13-1308(D)¹, legislative caucus committees making (31)(c) communications within 45 days of an election **must file a preelection report showing expenditures to or by the committee for the period ending twenty days before the election.**²

Legislative caucus committees making (31)(c) communications within 45 days of an election are required to **immediately file a campaign report upon incurring expenditures in excess of \$10,000 in the case of a candidate for statewide office and \$2,000 in the case of a candidate for any other office** within the calendar quarter in which the election is conducted or twenty days before the election (whichever period is greater). The expenditure does not have to be made, only incurred, to trigger this section's reporting requirements. See 8-13-1308(D)(2). Certified campaign reports must contain the total expenditures made by or on behalf of the committee and the name and address of each person to whom an expenditure (from campaign funds) is made including the date, amount, purpose, and beneficiary of the expenditure.

Legislative caucus committees making (31)(c) communications within 45 days of an election must **identify the caucus in the communication.** 8-13-1354 requires committees or persons making expenditures on communications "supporting or opposing a public official, a candidate, or a ballot measure" to identify their name and address. By definition, a (31)(c) communication is a communication made within 45 days of an election "which promotes or supports a candidate or attacks or opposes a candidate."

¹ Section 8-13-1308(d)(2) provides:

(2) A committee immediately shall file a campaign report listing expenditures if it makes an independent expenditure or an incurred expenditure within the calendar quarter in which the election is conducted or twenty days before the election, whichever period of time is greater, in excess of:

- (a) ten thousand dollars in the case of a candidate for statewide office; or
- (b) two thousand dollars in the case of a candidate for any other office.

² Legislative caucus committees do not have to file an initial certified campaign report upon spending over \$500 on (31)(c) communications within 45 days before an election. 8-13-1308(A) states: "Upon the receipt or expenditure of campaign contributions or the making of independent expenditures totaling an accumulated aggregate of five hundred dollars or more, a candidate or committee required to file a statement of organization pursuant to Section 8-13-1304(A) must file an initial certified campaign report within ten days of these initial receipts or expenditures." Because (31)(c) communications are not considered contributions, and because legislative caucus committees making expenditures based upon party affiliation do not qualify as independent expenditures, this requirement is not applicable.

Shirley R. Hinson
Vice-Chairman

J. Roland Smith
Chairman
Ruth D. Muldrow
Executive Secretary

William E. Sandifer
Secretary
John L. Scott, Jr.
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House Legislative Ethics Committee

Becky D. Richardson



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MEMORANDUM

TO: MEMBERS OF THE HOUSE OF REPRESENTATIVES
FROM: HOUSE LEGISLATIVE ETHICS COMMITTEE
RE: ADVISORY OPINION RELATED TO THE USE OF CAMPAIGN FUNDS
DATE: MARCH 19, 2003

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee is issuing the following Advisory Opinion for your information. This Opinion is binding as to House members and candidates effective immediately.

Advisory Opinion 2003-1

Issues:

1. If a member records campaign debt during an election cycle, can the member receive contributions to retire the debt after the General Election?
2. What limits apply to contributions received to retire debt?
3. Is there a time limit on when contributions to retire debt may be received?
4. What types of debt may be satisfied in this manner?
5. Can contributions received after a cycle has closed be credited to the closed cycle?

Answer:

1. If a member records campaign debt during an election cycle, can the member receive contributions to retire the debt after the General Election?

Section 8-13-1318 states:

If a candidate has a debt from a campaign for an elective office, the candidate may accept contributions to retire the debt, even if the candidate accepts contributions for another elective

office or the same elective office during a subsequent election cycle, as long as those contributions accepted to retire the debt are:

- (1) within the contribution limits applicable to the last election in which the candidate sought the elective office for which the debt was incurred; and
- (2) reported as provided in this article.

If the member accrues debt during an election, he can receive contributions to retire the debt after the General Election. The contributions are subject to the limits for the last election in which the candidate sought the office for which the debt was incurred.

2. What limits apply to contributions received to retire debt?

Section 8-13-1318 states the contributions to retire debt must be "within the contribution limits applicable to the last election in which the candidate sought the elective office for which the debt was incurred." For example, if a candidate ran for the House of Representatives in 2002, and was involved in a primary, a runoff, and the general election, the candidate would have three election cycles. If he accrued debt during this time, he could retire this debt subject to Section 8-13-1318. However, the limits that would apply would be those during the third election cycle, the cycle for the general election. This would be the "limits applicable to the last election" since the general election would be the last election the candidate was in. Therefore, any contributions received would be subject to this \$1000 contribution limit.

It should be noted, however, that if the campaign is indebted to the candidate for personal loans, after the campaign, the candidate may only be repaid \$10,000 of the personal debt. Section 8-13-1328 states:

- (A) A candidate for statewide office or the candidate's family member must not be repaid, for a loan made to the candidate, more than twenty-five thousand dollars in the aggregate after the election.
- (B) A candidate for an elective office other than those specified in subsection (A) or a family member of a candidate for an elective office other than those specified in subsection (A) must not be repaid, for a loan made to the candidate, more than ten thousand dollars in the aggregate after the election.

3. Is there a time limit on when contributions to retire debt may be received?

The Ethics Act is silent in regards to the time limit for debt retirement. As long as any contributions received to retire the debt are subject to the contribution limits described above, the debt may be retired at any time.

4. What types of debt may be satisfied in this manner?

The Ethics Act does not specify any limitations on types of debt that may be satisfied in this manner. Therefore, contributions may be accepted to retire debts accrued as personal loans, banking loans, advancements, payments due, etc.

5. Can contributions received after a cycle has closed be credited to the closed cycle?

Contributions may be received after a cycle has closed and credited to that closed cycle pursuant to 8-13-1318 as stated above. However, the contributions may only be accepted subject to the contribution limits of the last election cycle of the election for the office which the candidate sought, as explained in Question #1.

Shirley R. Hinson
Vice-Chairman

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MEMORANDUM

TO: MEMBERS OF THE HOUSE OF REPRESENTATIVES
FROM: HOUSE LEGISLATIVE ETHICS COMMITTEE
RE: ADVISORY OPINION RELATED TO THE USE OF
CAMPAIGN FUNDS
DATE: MARCH 7, 2002

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee is issuing the following Advisory opinion for your information. This Opinion is binding as to House members and candidates effective immediately.

Advisory Opinion 2002-1

Issues:

May a member use campaign funds to purchase a ticket to an event held by a non-political organization if the member is invited only because of his or her status as a Representative? If so, what types of events could a member use campaign funds to purchase tickets for?

May a member use campaign funds to pay dues to a non-political organization if the member is invited to join the organization only because of his or her status as a Representative? If so, what types of organizations could a member use campaign funds to pay for membership dues?

Answer:

Members may purchase tickets and pay dues to non-political organizations with campaign funds even if the group is non-political in nature as long as the expenditure is sufficiently campaign related. Campaign funds may not be used to defray personal expenses which are unrelated to the campaign or the office. However, this prohibition does not extend to ordinary expenses incurred in connection with an individual's duties as a holder of an elective office (§8-13-1348). When a member is invited to a non-political function or is asked to join a non-political organization only because of the member's status as a Representative, the invitation could be considered sufficiently tied to the member's campaign or office such that campaign funds may be used. The candidate or member should use his or her discretion in determining whether or not an expenditure is sufficiently tied to the campaign or the office. However, the decision of the candidate or member is ultimately subject to review by the House Ethics Committee.

As a result of this opinion, members and candidates no longer have to comply with the restrictions set forth in Advisory Opinion 92-46 and in sections 5 and 6 of the permitted uses of campaign funds section of the "Laundry List Opinion" of 1995 requiring the events or organizations to be political in order for campaign funds to be properly used.

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Vice-Chairman

Becky Meacham-Richardson
Chairman

Ruth D. Muldrow
Executive Secretary

Michael E. Easterday
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MEMORANDUM

DATE: May 11, 2000
TO: HOUSE MEMBERS AND CANDIDATES
FROM: HOUSE LEGISLATIVE ETHICS COMMITTEE
RE: ADVISORY OPINION RELATING TO USE OF CAMPAIGN FUNDS

Pursuant to House Rule 4.16 (a)(2), the House Legislative Ethics Committee is issuing the following Advisory Opinion for your information. This Opinion is binding as to House members and candidates and effective immediately.

Advisory Opinion 2000-1

Issue:

May members and candidates use campaign funds to pay late penalty fines incurred as a result of failing to file campaign disclosure forms and statements of economic interest before the established deadline pursuant to Section 8-13-1510 of the State Ethics Act?

Answer:

Members and candidates may not use campaign funds to pay late penalty fines incurred as a result of failing to file campaign disclosure forms and statements of economic interest before the established deadline. The Committee has determined that "these types of expenditures are not allowed because they are not related to the campaign or office as required by Section 8-13-1348 of the S.C. Code. These expenses are related more to a member's conduct. Furthermore,

to allow a member to pay his personal fines with campaign funds would be in violation of the spirit of the Ethics Act." (Informal Advisory Opinion, 1996.)

If the Committee receives a check for payment of a late fine that is drawn from the member or candidate's campaign account, the check will be returned immediately. If a check must be returned for this reason, the assessment of the \$10 per day fine, which is assessed upon notification to the delinquent filer of his delinquency, will not be tolled and will continue to be assessed each day until payment is rendered from the member or candidate's personal funds or until a total fine of \$500 has been assessed pursuant to Section 8-13-1510(2).

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MEMORANDUM

TO: MEMBERS OF THE HOUSE OF REPRESENTATIVES
FROM: HOUSE LEGISLATIVE ETHICS COMMITTEE
RE: 1999 ADVISORY OPINIONS
DATE: APRIL 12, 2000

Pursuant to House Rule 4.16 (a)(2), the House Legislative Ethics Committee has provided for your information a brief synopsis of the advisory opinions issued by the Ethics Committee in 1999.

Advisory Opinion 99-1

Issue:

May members and candidates use campaign funds to make contributions to non-profit organizations if the contribution results in publication of the member's name in the organization's program?

Answer:

Except as provided for in Section 8-13-1370 [relating to final disbursement of campaign funds], members and candidates may use campaign funds to make contributions to non-profit organizations if the contribution results in publication of the member or candidate's name and public title or public office sought in the organization's

program, magazine, report or other type of published material. Such contributions qualify as campaign or office related advertising expenses under Section 8-13-1348(A) of the State Ethics Act.

As a result of this recent opinion, members and candidates no longer have to comply with additional advertising requirements found in Advisory Opinion 92-50. Advisory Opinion 92-50 required advertisements in publications by non-profit organizations to "facially reflect either a campaign message or inform constituents of an office related service or function." This opinion further states as follows:

It is not enough to say that, since the publication reaches the constituency, it is office or campaign related. It must be apparent that the ad is either campaign or office related on its face. That is, members cannot contribute to a civic organization from their campaign account just because their names will appear in the published list of supporters which some of their constituents will see or just because the membership of that organization includes constituents of their district.

Now, however, a contribution to a non-profit organization is allowed as an office or campaign related advertising expenditure under Section 8-13-1348(A) if it results in publication of the member's name and public title or the candidate's name and public office sought.

Advisory Opinion 99-2

Issue:

May a member be employed by a consulting and public relations firm that manages election campaigns for federal, state and local offices and provides corporate communications/public relations services to lobbyist's principals?

Answer:

Nothing in the Ethics Act prevents a member from working for a consulting and public relations firm that manages campaigns for federal, state and local offices and provides consulting services to lobbyist's principals. Section 2-17-80 prevents a member from receiving "anything of value" from a lobbyist or anyone acting on behalf of a lobbyist. However the Ethics Act does not prohibit a member from providing services to and receiving payment for services from a lobbyist's principal or a consulting firm hired by lobbyist's principals.

While the Ethics Act does not prevent a member from providing services to lobbyist's principals, the Act does require certain disclosures if a conflict of interest should arise and may require other restrictions in a member's capacity as both a legislator and a consultant to lobbyist's principals. Section 8-13-700(A) prevents a legislator from knowingly using his office to obtain an economic interest for himself or a business with which he is associated. Section 8-13-700(B) requires the member to submit a written statement to the Speaker of the House of Representatives if the member was required to make a decision which affects an economic interest of himself or the business with which

he is associated and the nature of any potential conflict of interest. Section 8-13-710(A) requires a legislator who accepts anything of value from a lobbyist's principal to report the value of anything received on his statement of economic interests form. Section 2-17-100(G) prevents a lobbyist's principal from employing on retainer a public official. Other sections of the Ethics Act may be applicable to other similar positions depending on the responsibilities and duties of the position. This determination will be made on a case-by-case basis.

Advisory Opinion 99-3

Issue:

May a member purchase a computer or other permanent-type office equipment with campaign funds if such equipment is used for campaign or office related purposes?

Answer:

Members may purchase a computer, fax machine or other permanent-type office equipment with campaign funds if such equipment is used for campaign or office related purposes. This type of expenditure is proper under Section 8-13-1348(A) of the State Ethics Act. Furthermore, members are no longer required to keep permanent-type office equipment in their Blatt Building office or district office; they may keep such equipment in an office used for private or business use. However, if a member is using the equipment for both personal and campaign/office related purposes, then he should purchase the equipment with personal funds and offset his costs with campaign funds proportionate to the amount of campaign or office uses. These expenditures must be reported on the member's campaign disclosure form. Upon final disbursement of a member's campaign funds and assets, he is still subject to proper accounting and disbursement of all his campaign funds and assets, including any permanent-type office equipment, as set forth in Sections 8-13-1368 and 8-13-1370 of the Ethics Act.

As a result of this recent opinion, members and candidates no longer have to comply with the restrictions on the purchase of permanent-type office equipment found in Advisory Opinions 92-3 and 92-51. Advisory Opinion 92-3 prohibited expenditures of campaign funds for furnishings or equipment which are located in an office which is also used for private or business use. Advisory Opinion 92-51 provides that "[p]ermanent type office equipment which will be of personal use after a member is no longer involved in campaigning and/or in office, should not be purchased with campaign funds, even if that equipment will be used purely for campaign or office related purposes"

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MEMORANDUM

TO: MEMBERS OF THE HOUSE OF REPRESENTATIVES
FROM: HOUSE LEGISLATIVE ETHICS COMMITTEE
RE: 1998 ADVISORY OPINIONS
DATE: APRIL 21, 1999

Pursuant to House Rule 4.16 (a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of the advisory opinions issued by the Ethics Committee in 1998.

ADVISORY OPINION 98-1

Issues:

- (1) If a House member works for a law firm that has a lobbyist's principal client, does the member have to report the relationship if his interest in the firm is less than five percent?
- (2) If yes, what information must the member report?

Answers:

- (1) Yes. Under Section 8-13-1130 of the Ethics Act, a member who works for a law firm must report the relationship between his firm and any lobbyist's principal that he knows has purchased goods or services in excess of two hundred dollars from his firm. Whether

the member has a five percent interest in the firm is irrelevant with regard to the reporting requirements under § 8-13-1130.

However, a member's duty to report is only triggered when he has actual knowledge of a relationship between his firm and a lobbyist's principal. If he is unaware of the relationship, no duty to report arises.

- (2) In compliance with instruction eighteen of the statement of economic interests form, a member should report the type of goods and services purchased, the amount, from whom the material was purchased, and his relationship to that person or business.

ADVISORY OPINION 98-2

Issue:

For purposes of penalty assessment under Section 8-13-1510 of the Ethics Act, is notice of a delinquent report or statement "received" by a candidate when certified mail is sent, or upon physical receipt of the notification?

Answer:

Notice is given to the candidate when the certified mail is sent, not when a candidate actually receives it. Thus, the ten dollar a day penalty prescribed by § 8-13-1510(2) of the Ethics Act begins on the postmarked date of the notification letter.

ADVISORY OPINION 98-3

Issue:

May members of the House use campaign funds to contribute to the Strom Thurmond Monument Committee?

Answer:

Members may contribute campaign funds to the Strom Thurmond Monument Committee because this Committee may be characterized as a "political or partisan organization". Contributions to political or partisan groups are ordinary office related expenses permitted by § 8-13-1348 of the Ethics Act. See Advisory Opinion 92-3. The Ethics Committee determines whether an organization is political or partisan on a case by case basis. An organization is deemed political or partisan only if its *primary purpose* is political or partisan, rather than community service-oriented. See Advisory Opinion 92-3.

MEMORANDUM

TO: Members of the House of Representatives
FROM: Representative Becky Meacham
Chairman, House Legislative Ethics Committee
RE: 1997 Advisory Opinions
DATE: February 10, 1998

Enclosed for your information is a synopsis of the advisory opinions issued by the Ethics Committee in 1997.

ADVISORY OPINION 97-1

Issue: Does the Ethics Act prohibit a member of the House from leasing land to his son if the son obtains loans to develop the land from the State Housing Finance and Development Authority?

Answer: The Ethics Act allows a member to lease land to his son even if the son obtains loans from the State Housing Finance and Development Authority. However, this type of lease agreement is subject to the following restrictions: (1) pursuant to § 8-13-700(B) of the S.C. Code, the legislator has not voted on or discussed a particular piece of legislation that will benefit his son to a greater degree than it will benefit others who obtain loans from the Authority and (2) the member is not associated with his son in a partnership, business, company, or a corporation where his interest is greater than five percent. § 8-13-745(C). In addition, the member is subject to the strict reporting requirements of the Ethics Act. Section 1120(A) requires the member to disclose the amount of any income or loan received from the government by a member of the filer's immediate family.

The Committee strongly suggests that a member refrain from voting on a budget line, in this case the budget line pertaining to the Authority, that might create any appearance of impropriety.

ADVISORY OPINION 97-2

Issue: May a House member purchase tickets to athletic events from a lobbyist principal?

Answer:

Yes. A member may purchase tickets to athletic events from a lobbyist principal. Section 2-17-90(A)(1) prohibits a lobbyist principal from providing members with lodging, transportation, entertainment, food, meals, beverages, or invitations to functions paid for by the lobbyist principal unless the entire membership of the House, the Senate, or the General assembly is invited, or one of the committees, subcommittees, joint committees, legislative caucuses, or county legislative delegations of the General Assembly of which the legislator is a member is invited. Subsection (B) of this section states that the value of such a function cannot exceed \$25 a day and \$200 in a calendar year per public official. However, subsection (F) allows an exception where the member "pays the face value of a ticket to attend a ticketed event sponsored by a lobbyist's principal when the ticketed event is open to the general public." In this case, the member paid more than the face value of the ticket and the event was open to the general public. Therefore, the purchase of tickets was appropriate.

ADVISORY OPINION 97-3

- Issues: 1. May a legislative caucus accept a copy machine from a lobbyist's principal?
2. If a gift to a public official has no market value, can it nevertheless be a "thing of value" subject to House Ethics rules?

Answers:

1. Yes. A legislative caucus may accept a copy machine from a lobbyist's principal but not from a lobbyist. Section 2-17-90(A) of the South Carolina Code prohibits a public official from accepting or soliciting lodging, transportation, entertainment, food, meals, beverages and invitations to functions from lobbyist's principals. However, it does not prohibit the receipt of a "thing of value," such as a copy machine, from lobbyist's principals to public officials. See House Ethics Opinion 92-90. Because the Ethics Act does not expressly prohibit gifts to individual public officials, the suggested inference is that the act does not prohibit gifts to a caucus, or collection of General Assembly members. By contrast, all gifts to members of the General Assembly from lobbyists are prohibited under § 2-17-80(B) of the S.C. Code.
2. Even if a gift to a public official has no market value, it may still be a "thing of value" subject to House Ethics rules. Any "gift" is a thing of value under § 2-17-10(1)(a)(iii) of the S.C. Code. Consequently, a copy machine determined to have no trade-in value by Columbia Business Equipment is nonetheless subject to House Ethics rules as a thing of value. As a result, the caucus should disclose receipt of the copy machine.

Finally, the Committee warns members to use discretion concerning whether the solicitation of a thing of value would be proper as a political or practical matter.

ADVISORY OPINION 97-4

Issue: May a House member use campaign funds to purchase fruit baskets for constituents?

Answer:

A House member may provide fruit baskets to constituents (1) as refreshments at a meeting with constituents where legislation affecting their interests is discussed, or (2) as long as the fruit baskets advertise the member's name. Pursuant to § 8-13-1348 of the South Carolina Code, no candidate may use campaign funds to "defray personal expenses which are unrelated to the campaign or the office . . ." The "Laundry List" Opinion holds that personal gifts or flowers for constituents are not related to the campaign or office and are thus prohibited. In the instant case, the member could not use campaign funds to provide fruit baskets to a senior citizens' group for a Christmas party without advertising his name on the basket.

1996 ADVISORY OPINIONS

ADVISORY OPINION 96-1

Issue: May a House member solicit campaign contributions with the condition that the member would return the campaign contributions if the member was unopposed in the election.

Answer:

The Ethics Act does not specifically prohibit or allow a House member to raise funds conditioned upon remaining unopposed in an election. However, if a member conditions acceptance of a contribution upon not facing opposition in an upcoming election, the Ethics Act may consider such a contribution a "loan". For the Ethics Act to consider the contribution a "loan", the following elements must be present: (1) a transfer occurs; (2) the transfer involves money, property, guarantee or anything of value; (3) in exchange for an obligation, conditional or not, to repay in whole or in part. See § 8-13-1300(22) of the S.C. Code.

The necessary elements are present in this situation. First, contributing money to the candidate constitutes a transfer. The second element is present because money is involved. The third element is present because the situation involves an obligation to repay based upon a condition. If another candidate does not run against the legislator, then he has an obligation to return the contributions. The condition is that the legislator will not face opposition. Since the Ethics Act considers those contributions "loans", then the rigid reporting requirements apply.

Moreover, a House member may return contributions after an election if receipt of those contributions is not conditioned upon remaining unopposed in a future election. See § 8-13-1370(A)(5) of the S.C. Code.

ADVISORY OPINION 96-2

Issue: How does the Ethics Act apply to newsletters House members issue?

Answer:

The Ethics Act allows for House members to send a newsletter to constituents. Section 8-13-1346(B) allows for members to prepare on state paper and on state time a newsletter "reporting [the] activities of the body of which a public official is a member." An issues and opinion survey on an issue currently before the House is a "newsletter".

However, a House member shall not use government materials in an election campaign. Thus, the member should print a disclaimer on a campaign-related newsletter that appears to be printed on state paper. For example, if the member uses House of Representatives letterhead on a campaign-related newsletter, the member should print a disclaimer on that newsletter

indicating that (1) the paper is not "state paper" and (2) that the member paid for the newsletter with either personal funds or campaign funds.

ADVISORY OPINION 96-3

Issue: May a House member's spouse accompany a house member to a lobbyist's principal-sponsored function at the expense of the lobbyist principal?

Answer:

Yes. The Ethics Act does not specifically prohibit the practice. Section 2-17-90(B) of the S.C. Code does not specifically prohibit a lobbyist's principal from providing, within the applicable limits, the spouse of a legislator with lodging, transportation, entertainment, food, meals, or beverages. The restrictive language of the statute applies only to members and not to spouses.

ADVISORY OPINION 96-4

Issue: What is the maximum amount a House member may accept in loans to the campaign from a family member?

Answer:

Loans to campaigns are subject to the contribution limitations of the Ethics Act. Thus, a House member may accept a loan no greater than \$1000 unless: (1) the loan "comes from a commercial lending institution"; (2) the loan is made "in the regular course of business"; (3) the loan is made "on the same terms ordinarily available to members of the public" or (4) if the loan is "secured or guaranteed upon which collection is not made." S.C. Code Ann. § 8-13-1326 (Law. Co-op. 1976, as amended). Moreover, § 8-13-1326 (B) precludes a candidate or candidate's family member from being repaid more than \$10,000 in the aggregate after an election.

ADVISORY OPINION 96-5

Issue: Does the Ethics Act prohibit a member of the House from leasing land to his son if the son obtains loans to develop the land from the State Housing, Finance, and Development Authority.

Answer:

Section 8-13-700(B) and 8-13-745(C) of the Ethics Act will prohibit a member from leasing land to his son for a 99-year term if the legislator voted on or discussed a particular piece of legislation that benefitted the son to a greater degree than it benefitted others who

obtain loans from the Authority. A member may enter into the lease if the member is not associated with his son in partnership, or a business, company, or a corporation where his interest is greater than five percent. Section 8-13-1120 of the Ethics Act also requires a member to report the existence of the lease.

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M E M O R A N D U M

January 9, 1996

TO: Members of the House of Representatives
FROM: House Legislative Ethics Committee
RE: 1995 Advisory Opinions

Pursuant to House Rule 4.16 (a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of the advisory opinions issued by the Ethics Committee in 1995.

OPINION 95-1

Question(s):

1. Does the Ethics Act allow a legislator to accept an invitation from a foundation that is not a lobbyist's principal, to a

conference sponsored by the foundation where legislative issues will be discussed. To what extent does a legislator have to report the expenses incurred while attending the conference and what expenses may the sponsoring foundation provide for?

2. May the sponsoring foundation, which is not a lobbyist's principal, pay for the legislator's wife to attend the conference?

Answer:

1. According to Advisory Opinion 92-9, if a forum is for a legitimate legislative purpose, there is no prohibition against the legislator accepting the invitation. Advisory Opinion 92-45, pursuant to § 8-13-715 of the S.C. Code, outlines the reporting requirements applicable to the present situation. If the legislator receives anything of value worth \$25.00 or more in a day or \$200.00 or more in a year, then the legislator must file a statement of economic interest pursuant to § 8-13-1110. Section 8-13-715 allows for the payment and reimbursement of actual and reasonable expenses incurred while attending an out of state speaking engagement, subject to the Speaker's approval. Thus, in the present situation, the legislator may attend a conference paid for by a foundation that is not a lobbyist's principal as long as the conference is for a legitimate legislative purpose; however, the legislator must file a statement of economic interest if the value received will exceed \$25.00 in a day or \$200.00 in a year.

2. The Ethics Act does not specifically address whether it is

permissible for a legislator's spouse to attend a conference with the legislator where legislative issues will be discussed. Section 8-13-1348 allows for a legislator to use campaign funds to pay the reasonable and necessary travel and food expenses for immediate family when in connection with a political event. Because the Ethics Act allows a legislator to use campaign funds to pay for a spouse, it seems reasonable that the Act will further allow a foundation that is not a lobbyist's principal to pay for the spouse's expenses.

OPINION 95-2

Question:

1. May a legislator use campaign funds to contribute to a fund to purchase Christmas gifts for custodians in the Blatt Building?

Answer:

1. No. Custodial workers are paid by the state and members are not individually required or expected to compensate them. Furthermore, members have not traditionally been expected to make such donations. Thus, it would be improper to make such an expenditure from your campaign account.

OPINION 95-3

Question:

1. May a legislator use campaign funds to purchase handicap parking signs for a fire department?

Denny W. Neilson
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MEMORANDUM

TO: MEMBERS OF THE HOUSE OF REPRESENTATIVES
FROM: HOUSE LEGISLATIVE ETHICS COMMITTEE
DATE: JANUARY 9, 1996
SUBJECT: 1995 ADVISORY OPINIONS

Pursuant to House Rule 4.16 (a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of the advisory opinions issued by the Ethics Committee in 1995.

OPINION 95-1

Question(s):

1. Does the Ethics Act allow a legislator to accept an invitation from a foundation that is not a lobbyist's principal, to a conference sponsored by the foundation where legislative issues will be discussed. To what extent does a legislator have to report

event. Because the Ethics Act allows a legislator to use campaign funds to pay for a spouse, it seems reasonable that the Act will further allow a foundation that is not a lobbyist's principal to pay for the spouse's expenses.

OPINION 95-2

Question:

1. May a legislator use campaign funds to contribute to a fund to purchase Christmas gifts for custodians in the Blatt Building?

Answer:

1. No. Custodial workers are paid by the state and members are not individually required or expected to compensate them. Furthermore, members have not traditionally been expected to make such donations. Thus, it would be improper to make such an expenditure from your campaign account.

OPINION 95-3

Question:

1. May a legislator use campaign funds to purchase handicap parking signs for a fire department?

Answer:

1. Yes. The Ethics Committee in Advisory Opinion 92-3 permitted legislators to purchase flags for schools because it was a traditional practice that was expected of House members. Additionally, section 8-13-1348 of the S. C. Code, as amended, requires

OPINION 95-7

Question:

1. Can a legislator use campaign funds to pay for a reception to thank constituents for their support throughout his tenure as a member of the South Carolina House of Representatives?

Answer:

1. The dinner which the legislator will be hosting is for the benefit of his constituents and will bestow no personal benefit to the legislator. Advisory Opinion '94-2 allows members to use their campaign funds to pay for dinners and receptions for constituents that serve a legitimate legislative purpose or serve an ordinary function of office. Hosting a reception for constituents, who made the donations to the campaign in the first place, appears to be an ordinary function of the legislator's office and does not violate the spirit of language of the Ethics Act.

Opinion No. 94-2

Question: Can a member use a campaign account to sponsor an event for volunteer firemen and pay for food at such an event where the purpose of the event is to discuss pending legislation concerning firemen?

Section 8-13-1348(A) requires that expenditures from campaign funds be related to the member's campaign or office (Advisory Opinion 92-44 applies to this section). "Each expenditure should be judged upon whether it is an ordinary office or campaign related expense or instead a personal expense not connected to the ordinary duties of office." Advisory Opinion #92-44. Contributions to a civic function are not related to the ordinary function of an office holder. The event described in the request letter is one where the member discussed pending legislation and some interests of the persons which will be affected by it. This is clearly related to a member's office and is a permissible office related expenditure under Section 8-13-1348.

Opinion No. 94-3

Question: Can House members play a charity basketball game against a lobbyist's team, House staff team, or news media team and have the lobbyist pay for any related expenses?

The Ethics Act does not prevent the media or House staff from participating in such an event. Under Section 8-13-710(B), however, the members must report anything of value received from these groups.

Concerning lobbyists, the Ethics Act does not prohibit members from socializing with lobbyists, but S.C. Code Ann. 2-17-80 does prohibit lobbyists from giving or facilitating the transfer of "anything of value" to members. Items of pecuniary or compensatory worth to a person are considered within the meaning of "anything of value," and lobbyists are specifically prohibited from transferring transportation, beverages, or any other thing of value. See S.C. Code Ann. 8-13-100(1). The lobbyists can play, but they could neither drive the members to the game nor provide beverages for the members. In addition, the lobbyists would be prohibited from funding the endeavor or renting the facility since they would be doing so, in part, on behalf of the members. There is an exception in Section 2-17-80(D) which would allow transfers of items of value if given in the "rendering of emergency assistance given gratuitously and in good faith."

Opinion No. 94-4

Question: Can a House member serve on the state board or agency that oversees the county agency for which he/she works?

Section 8-13-735 states that "no person who serves at the same time on; the governing body of a state, county, municipal, or political subdivision board or commission, and ... serves in a position which is subject to the control of that board or commission may make or participate in making a decision which affects his economic interests." If the action would confer an economic interest on the person, therefore, he/she would be required to refrain from taking any action regarding the matter. Section 8-13-100(11) defines "economic interest" as one "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."

Section 8-13-730 states that "no person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated." "Business" is defined in Code Section 8-13-100(3) as "a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual." A county agency does not, however, qualify as a business under Section 8-13-730 because the definition specifically relates to private, non-governmental entities.

There are also other sections that a member in such a position should also be aware of. Section 8-13-700 also prohibits members from using their office to gain 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." Section 8-13-705 prohibits a member from receiving or soliciting "anything of value" to influence the discharge of his official responsibility.

Opinion No. 94-5

Question: What are the contribution caps for items given to House members at a reception hosted by the South Carolina Optometric Association?

The first step is to determine the lobbying status of the group hosting the event. According to the State Ethics Commission, the South Carolina Optometric Association is a registered lobbyist's principal and is, therefore, governed by Section 2-17-90. There are two requirements under this section. First, the entire House membership or other recognized group must be invited. Secondly, "no lobbyist's principal may offer, solicit, facilitate, or provide to a public official lodging, transportation, entertainment, food, meals, or beverages, or an invitation to a function paid for by a lobbyist principal unless one of the exceptions in 2-17-90 is met. When an entity sponsors an event such as a reception, the host can total the costs of having the event and divide that total by the number of guests invited. In your request letter, you stated that the association plans to spend \$10,000 on the function and invite approximately 400 people. You could divide the cost of the event by the number of guests invited. This is a fair measure of computing the value of the items offered equally to each guest. In this scenario, the cost per person would be \$25. Since this cost does not exceed the \$25 mark found in the statute, it would be permissible.

Opinion No. 94-6

Question: May House members, who are also congressional candidates, receive contributions from lobbyists?

Section 2-17-80 prohibits members from accepting contributions from lobbyists. The term "contribution," as applied in Section 2-17-80, is defined in Section 8-13-1300(7) as being "a gift, subscription, loan, guarantee upon which collection is made to a candidate ... or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate..." The term candidate is defined as not including "a candidate within the meaning of Section 431(b) of the Federal Campaign Act of 1976." A congressional candidate fits this exemption, and a contribution to a congressional candidate is not a contribution that is prohibited under Section 2-17-80. Therefore, a congressional candidate who is also a member of the House can accept contributions only for his congressional campaign from lobbyists.

Opinion No. 94-7

Question: What is the proper way in which to have a joint fundraiser for two Representatives where tickets will be sold and the money raised is to be combined and divided between the two?

Although joint fundraisers are not prohibited by the Ethics Act, there are no guiding provisions to govern how one is to be carried out. The proceeds may not be placed into one person's account for that person to write a check to the other for his share because Section 8-13-1340(A) prohibits a candidate from making a contribution to another candidate. It is also impermissible for two candidates to establish a joint account because Section 8-13-1322 prohibits a candidate from having "more than one campaign checking account and one campaign savings account for each office sought."

Section 8-13-1312 does allow an agent to collect money on behalf of a candidate and hold them for a short period. The establishment of an escrow account under the control of an agent who would collect and account for the monies from the fundraiser avoids the potential ethical pitfalls relating to a joint fundraiser. The escrow account would not require a contribution from one candidate's campaign account to another candidate's, and the escrow account would not be considered a regular campaign savings or checking account. Neither candidate would have control over the funds, as in a regular campaign account, until they are divided by the agent and transferred to the individual campaign accounts.

Section 8-13-1312 provides deadlines to consider and observe in dealing with receiving contributions through an agent:

"all contributions received by the candidate ... directly or indirectly, must be deposited in the campaign account by the candidate ... within ten days after receipt. All contributions received by an agent of a candidate ... must be forwarded to the candidate ... not later than five days after receipt. A contribution must not be deposited until the candidate ... receives information regarding the name and address of the contributor. If

the name and address cannot be determined within ten days after receipt, the contribution must be remitted to the Children's Trust Fund."

The reason that the names and addresses are called for is to facilitate and comply with reporting and record keeping requirements of Section 8-13-1302 and 8-13-1360. The names and addresses of the ticket purchasers, as well as the amount of their purchase, must be kept since each purchaser is making a contribution to each candidate (one-half of the purchase price to one candidate and one-half to the other).

Since the contributions are to come from the selling of tickets, Section 8-13-1324 allows for anonymous contributions to be accepted if the contribution is in the form of a ticket to an event "where food or beverages are served or where political merchandise is distributed." The ticket cost may not exceed \$25, and the proceeds from the tickets must be used to defray at least some of the costs of the function. If the tickets are solely political contributions and are not used to defray the costs of the fundraiser, then anonymous contributions would not be allowed, and each candidate must keep the name and address of each ticket purchaser since half of the price of each ticket is a contribution to each candidate.

Aside from the escrow account, another way to have the ticketed joint fundraiser would be for the candidates to only accept cash in return for the tickets and then divide the proceeds up between themselves after the event. As discussed above in reference to anonymous contributions, the tickets for the event could not exceed \$25 dollars and must be used to defray the costs of the fundraiser.

Therefore, a joint fundraiser can be held without violating the Ethics Act if conducted in accordance with this opinion.

Opinion No. 94-8

Question: This is an inquiry into the proper handling of the proceeds of a ticketed fundraiser where the cost of a ticket is \$10, and the price of each ticket is used to defray the costs of the fundraiser.

Section 8-13-1312 allows a candidate to have only one campaign checking and one campaign savings account.

Since some of the money raised will go into the campaign account, the expenses of the dinner are patently campaign related and should be paid from the campaign account to comply with Section 8-13-1312 (except as provided under Section 8-13-1348(c), which provides "Expenses paid on behalf of a candidate or committee must be drawn from the campaign account)." See also Advisory Opinion 92-46.

Normally the name and address of anyone contributing to a campaign needs to be maintained for record keeping purposes. This type of event, however, presents an exception to that general rule. The cost of the tickets will be \$10, and the proceeds from sales will be used to defray the

costs of the meals. Therefore, one does not have to report the name and address of the purchasers of those tickets, Section 8-13-1324. If the cost of the tickets were not used to defray the costs of the dinner, then the name and address of every ticket purchaser would have to be maintained since it would not fall into the exception in Section 8-13-1324. If, however, someone at the dinner wishes to make a contribution to your campaign, then, unlike the ticket exception noted above, the normal practice of taking the name and address of each contributor would apply.

All money from the ticket sales should be placed into the campaign account and referenced as receipts on the Campaign Disclosure Form. All expenses should be paid from the campaign account, and the names and addresses of the recipients of these expenditures must be placed on the Form on Schedule "B."

Opinion No. 94-9

Question: Would a member's appearance at the Miss South Carolina Pageant to present an award be proper during an election year?

Section 8-13-100(1) governs the transfer or gift of "anything of value" and Section 8-13-710 requires a member to report anything of value over \$25 if the donor is only giving the item of value because of the member's position. As long as the television appearance is solely for the purpose of the pageant and is not being used as a campaign message, then no item of value is being given. The appearance would not normally be an item of "pecuniary or compensatory worth" as stated in Section 8-13-100(1)(xiv). However, if the televised air time were used for a campaign message or if the pageant sponsors or WSPA were using the pageant to make a gift of air time, then it would be an in-kind contribution and considered an item of value.

Opinion No. 94-10

Question: Is it proper for a member to use campaign funds to make contributions to churches or to pay the utility bills of constituents?

Section 8-13-1348 of the South Carolina Code of Laws governs use of campaign funds. The ambiguity of this provision has led to numerous advisory opinion requests and, in the past, this Committee has undertaken a "case-by-case" approach, determining whether an expense is personal and unrelated to the campaign or office. This Committee has taken a very strict approach, finding that any expenses not related to the campaign or office held are "personal", and thus prohibited. This Committee has uniformly viewed any expenditures made that do not enhance a candidate's campaign efforts and that are not made in carrying out the duties of House member as expenditures that would have been made out of personal funds had that person not been a candidate or member. See, e.g., House Legis. Ethics Comm. Adv. Ops. 92-3; 92-40; and 92-44.

This case-by-case approach is consistent with the design of the Ethics Act--a design allowing the respective Ethics Committees of each body of the General Assembly to interpret statutory provisions, provide guidance and/or directives to its members and candidates, and then allow those members and candidates time to comply without being subject to sanctions based on violations of the Act. Although members and candidates are protected from being automatically sanctioned as the Ethics Committee makes these determinations on a case-by-case basis, members and candidates are still being attacked by political opponents and/or the press for violating the Ethics Act based on campaign expenditures that may or may not be permissible.

In light of this situation, the Committee has determined that it is necessary to establish a new standard to be used by candidates and members in evaluating the propriety of campaign expenditures. The Committee advises you to take remedial measures by reimbursing your campaign account for any of the expenditures at issue here. You should also refrain from making any expenditures from campaign funds in the future which, in your view, are not clearly expenses traditionally incurred in House campaigns across the State nor clearly traditionally incurred in relation to the office held.¹ If there is any question in your mind about whether the expenditure fits into one of these categories, the expenditure should not be made until after this committee approves it in an advisory opinion finding that it is indeed campaign- or office-related.

¹ This standard does not require consultation with candidates from every House district, but a candidate would be wise to consult a diverse group of fellow candidates--e.g., in both rural and urban areas and from every region of the State.

MEMORANDUM

TO: MEMBERS, SOUTH CAROLINA HOUSE OF REPRESENTATIVES
FROM: DENNY W. NEILSON, CHAIRPERSON
DATE: JANUARY 05, 1994
SUBJECT: ADVISORY OPINIONS

Enclosed, for your information, is a brief synopsis of opinions issued by the House Ethics Committee in 1993.

OPINION #92-51

Question: Can campaign funds be used to purchase a FAX machine for a member to place in his home, which is used as a constituent office, in order to accommodate constituent or office related situations which require immediate attention?

In a similar question, Advisory Opinion 92-3 stated that campaign funds could not be used to purchase furniture for an office "which is also used for your private or business use" since the furniture could be used in a manner unrelated to the member's public office as is the case here. The opinion did state, however, that the funds could be used to purchase furniture for a member's Blatt Building office and for an office facility in the member's home district "which is used solely for public purposes." Also, a member is permitted to rent, using campaign funds, office equipment for his campaign headquarters as long as they are used solely for the campaign.

Permanent type office equipment which will be of personal use after a member is no longer involved in campaigning and/or in office, should not be purchased with campaign funds, even if that equipment will be used purely for campaign or office related purposes while the member is in running for and/or holding public office. In order for a member to still have use of a fax machine or other such office equipment for legitimate campaign or office related purposes and use campaign funds to offset the cost of that use, the campaign account could be used to pay for the equipment use on a lease or a charge-per-use basis. The member must decide whether it is more practical to lease the office equipment from a retailer or to purchase the machine using his own personal funds and have his campaign account pay a lease or use fee back to himself. In the latter scenario, the equipment would be the property of the individual even after leaving public office. Regardless of the method chosen, a written record should be kept clearly delineating the situation and setting forth any and all money transfers.

OPINION #93-1

Question: Is it permissible for a member to receive a sculpture and other gifts from an entity not directly involved in lobbying?

There are no restrictions to a public official accepting a gift from a non-lobbying entity, no matter the value of the gift. Therefore, there are no conflicts with the act as far as the validity of such a gift, but the gifts must be reported on the Statement of Economic Interest form. According to Section 8-13-710(B), a gift must be reported if it given is because of the member's elected position and over \$25 per day or \$200 per year in the aggregate.

OPINION #93-2

Question: Can members, using campaign funds, purchase tickets to the annual Business and the Arts Partnership Awards dinner which is sponsored by the Joint Committee on Cultural Affairs?

Section 8-13-1348(B) provides for the payment of some reasonable and necessary expenses for immediate family members in connection with a political event. The annual Business and the Arts Partnership Awards dinner is sponsored by the Joint Legislative Committee on Cultural Affairs and is, therefore, a political function. The same result could be accomplished upon final disbursement of the campaign account as permitted in Section 8-13-1370(A). If an account has already undergone final disbursement, however, then the account will be re-activated if such a purchase is made. The purchase must be reported on the next Campaign Disclosure Form.

OPINION #93-3

Question: Is it permissible for House members to purchase from State Colleges and Universities tickets to athletic events involving those institutions.

The general rule of thumb in analyzing ethics questions under the 1991 Ethics Act is to determine if a transfer of an item of economic value is involved in which one party realizes an unfair economic benefit. It is clear that House members, as public officials, must not use their office to obtain an economic interest, nor shall they accept gifts given with the intent to influence the discharge of the public official's duties. *S.C. Code §§ 8-13-700 and 8-13-705*. It is equally clear that educational institutions which employ a registered lobbyist must abide by the restrictions on lobbyist's principals extending invitations or things of value to public officials under Section 2-17-90, which establishes caps and reporting requirements for gifts.

This question, however, does not deal with the *gratis* offering of tickets or anything else of value to public officials, but rather the sale of those tickets at face value. There is no economic gain realized by a public official when he or she purchases something at the fair market value of the item. The price printed by the university on the face of the ticket is the obvious value of the ticket. Under Section 16-17-710 of the S.C. Code, the sale of the tickets for more than one dollar over the face value is prohibited. Regardless of the lack of availability of tickets because of the size of the arena, public demand, prestige of the event, etc., the value of the ticket is constant. As long as the House member pays from his own funds the purchase price for that ticket, the transaction is legitimate and the public official receives no added economic benefit.

Therefore, the practice of an educational institution of this State offering at face value tickets to sporting events violates no provision of State law or House rule, no matter whether the entity is a lobbyist's principal or not. The entities are under no obligation to offer for sale the tickets directly to public officials, but neither are they forbidden from that practice.

OPINION #93-4

Question: Could a person create an appreciation fund, outside of any campaign account, in order to defray debts incurred while a candidate for office?

Section 8-13-1318 of the Ethics Act states that, if a candidate incurs a debt in a campaign, the candidate may accept contributions to retire the debt as long as they are within the contribution limits applicable to the last election in which the candidate sought the elective office for which the debt was incurred, and such debts must be reported.

By reference to this established provision for the repayment of debts, the Ethics Act would preclude establishing an appreciation fund account to repay personal loans to your former campaign. These monies were spent on the campaign and were listed as such on Campaign Disclosure forms. Any repayment of the monies spent through the campaign account should be channeled back through the account. Therefore, the correct method for obtaining repayment of personal loans for campaign purposes is by utilizing the campaign account, and these funds must be reported every quarter on the Campaign Disclosure form.

OPINION #93-5

Question: Is a member prohibited from voting on any section of the Appropriations Bill if the member has (1) a spouse who holds a position as an Area Director of a State agency and/or (2) a business which deals with state and local agencies.

Concerning the first question, a spouse's employment at a state agency, Section 8-13-700(B) controls. It states that:

"[n]o public official ... may make, participate in making, or in any way attempt to influence a governmental decision in which he, a member of his immediate family ... has an economic interest. A public official ... who, in the discharge of his official responsibilities, is required to take action or make a decision which affects an economic interest of himself, a member of his immediate family ... 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 (2) if . . . a member of the General Assembly, he shall deliver a copy of the statement to the [Speaker]."

The Speaker will then have the statement printed in the Journal and require the member to be excused from votes, deliberations, and other actions concerning the conflict. Therefore, the member would not be able to vote on the section of the appropriations covering the State agency and must follow the abstention procedure outlined in Section 8-13-700(B)(2).

In reference to the second inquiry, the dealings between the member's business and governmental agencies and entities, Section 8-13-745(C) controls. This section states that:

"no member of the General Assembly ... or a business, company, corporation, or partnership where his interest is greater than five percent may enter into any contract for goods or services with an agency, a commission, board, department, or other entity funded with general funds or other funds if the member has voted on the section of that

years's appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote."

Although this section does not preclude the member from voting on sections of the appropriations bill covering the entities buying from the member's business, it would preclude the member from contracting with them in the coming year if he or she voted on sections of the appropriations bill concerning the businesses which contract with the governmental entity. Members are allowed to abstain from voting on such sections if they wish to contract with the entities covered in Section 8-13-745(C). In order to do so, they must follow the procedure set forth in Section 8-13-700(B)(1).

OPINION #93-6

Question: Is it permissible for a member to use campaign funds to frame and present a Resolution to a constituent?

The applicable provision relating to expenditures from active campaign is Section 8-13-1348. The two requirements placed on such expenditures are that the expenditures must be either office or campaign related. The Committee in the past has held that it was permissible for a member to purchase a Statehouse flag for constituents since it could be seen as a "service generally expected of a House member" and an opportunity incidental and unique to membership in the House. (Ethics Opinion #92-3)

In the same context, the passage of a Resolution is a unique function of a legislator in his official capacity, and the framing and presentation of such an item could be seen as a service generally expected of a member and an opportunity unique to a member in his official capacity. Therefore, the framing and presentation of a Resolution for a constituent by the use of campaign funds is permissible. It is an office related expense similar to the member buying a Statehouse flag for a constituent in his official capacity.

OPINION #93-7

Question: Does Section 2-17-90 permit the South Carolina Association of Municipal Power Systems (SCAMPS) to hold a dinner only for the members representing the twenty-one electric cities in South Carolina?

Section 2-17-90 is the applicable section covering this type of contact between lobbyist's principals and House members. The section, in relevant part, reads as follows:

(A) "no lobbyist's principal may offer, solicit, facilitate, or provide to a public official ... transportation, entertainment, food, meals, beverages,

or an invitation to a function paid for by a lobbyist's principal, except for: (1) as to members of the General Assembly, ... if the Entire membership of the House ... or General Assembly is invited, or one of the committees, subcommittees, joint committees, legislative caucuses, or county legislative delegations ... is invited."

This section would clearly prohibit an invitation or function extended to specific members without including the membership of one of the above mentioned groups to which the specific members belong. An invitation extended to or a function provided for one of these specific city's representatives would have to include an invitation for the members of the whole county delegation or other Section 2-17-90(A)(1) group.

Section 2-17-90(F) does provide for an alternative situation. This section would allow the invitation to such a function to be extended only to those representatives from the specific cities without inviting one of the above mentioned groups, however, the individual members would have to pay for their own transportation, meals, entertainment, and beverages.

OPINION #93-8

Question: Does the Ethics Act prohibit a member, who is a licensed appraiser, from introducing and voting on a bill that affects the appraisal industry if the member gains no advantage over other appraisers?

Section 8-13-700(B) prohibits a House member from making, participating in making, or in any way attempting to use his office to influence a governmental decision in which he has an economic interest. "Economic interest," as defined in Section 8-13-100(11), does not prohibit a House member from participating in, voting on, or influencing an official decision if the only economic interest that may accrue to the member accrues to him as a member of a profession, occupation, or larger class to no greater extent than the benefit would accrue to other members of these groups. Therefore, if the only economic interest that would affect the member affects him to no greater extent than all other appraisers, then the member may be involved in the legislation.

There may be specific provisions or amendments which create a conflict because of a specialized appraisal authorization or other aspect not typical of all appraisers, but more information would be necessary to render an advisory opinion on those specific issues.

OPINION #93-9

Question: How can supplies for office equipment, bought or rented under compliance with Advisory Opinion #92-51, be purchased using campaign funds to offset the cost?

The procedure set forth in Opinion 92-51 states that a member could either lease office equipment using campaign funds or purchase it using personal funds and reimburse himself with campaign funds on a charge-per-use basis. These are only allowed as long as the equipment is used solely for campaign or office related services.

Since most supplies can not be leased and will be expended in the use of the equipment, they are best treated under the charge-per-use procedure. The member should keep a record of each office or campaign related use. Then, when it is time to purchase supplies, the member should purchase the supplies (for example = toner for a copier) with personal funds and off-set his cost with campaign funds proportionate to the amount of campaign or office uses. In addition, the costs for the supplies can not exceed their fair market value as required in Section 8-13-1348(D), and these expenditures must be reported on the member's Campaign Disclosure Form.

OPINION #93-10

Question: Is it permissible for a member to accept, from lobbyist's principals, (1) a book valued at \$24.95 and (2) a check for \$100.00 ?

Section 2-17-90 regulates the offering of lodging, transportation, entertainment, food, meals, beverages, or invitations between lobbyist's principals and members. There is also a cap of \$25 per day and 200 per year on these items. This section, however, contains no language prohibiting the offering of "other things of value" as does the provision governing lobbyists. Therefore, if the book were classified as a "thing of value" it would be permissible to accept, and if it were "entertainment," it would then be permissible to accept it since its value is under the \$25.00 per day requirement.

In regards to the check, it is unclear as to whether the money was intended to be a gift or a campaign contribution. The cover letter that accompanied the check does not clearly express the intent of the donor. There are two possible ways to treat the check, either as gift or a campaign contribution.

The first option, accepting the check as a gift and using it for personal expenses, is the most problematic in application. Money is considered "a thing of value" and is not prohibited as a gift under Section 2-17-90. There are other provisions, however, that could be relevant to accepting the check for personal use. Section 8-13-705(B) prohibits a member from accepting money in return for being:

"(1) influenced in the discharge of his official responsibilities; (2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or (3) induced to perform or fail to perform an act in violation of his official responsibilities."

A member could also accept the check as a campaign contribution and place it in his campaign account to be used solely for campaign purposes and not to be used for personal use. Members are allowed to accept campaign contributions from lobbyist's principals unless the contribution is conditioned upon the performance of specific actions. In that case the same prohibitions for influencing an official decision discussed above would apply. [Section 8-13-705(G)]

Since the intent of the donor is unclear, at least to the Committee, the more prudent approach would be to treat the check as a campaign contribution. Money accepted as a campaign contribution is subject to more stringent use constraints and therefore could not be used in violation of the donor's intent, even if intended to be a gift. If, however, the intent of the donor was to provide a member with a campaign contribution and the member mistakenly used the money for personal purposes, the member may be subjected to accusations of and investigations for an ethics violation.

The member may, however, in his own discretion, either write the donor a letter stating that he is going to use the money a certain way, as a campaign contribution for example, or write a letter asking the donor what his intentions were in giving the check. In any event, the receipt of the cash gift would have to be reported as a gift from the donor.

OPINION #93-11

Question: Can a member, who is engaged in the real estate business, (1) sell real estate to judges and lobbyists and (2) provide financing for these sales?

Concerning lobbyists, the applicable section of the Ethics Act is Section 2-17-80(C). This provision allows the "furnishing of ... any other thing of value ... which also is furnished on the same terms or at the same expense to a member of the general public without regard to status as a public official or public employee." Section 2-17-10(1)(a)(xi) states that a "thing of value" includes "real property or an interest in real property." Therefore, Section 2-17-80(C) would allow an arm's length transaction involving real estate. As the agent, the commission and related compensation should be in keeping with the norms and standards of the profession in this area. In addition, this transaction must be reported pursuant to Section 8-13-1130.

Unlike the provision governing lobbyists, there are no similar provisions directly prohibiting such dealings with judges or House appointed officials. Therefore, neither transaction is in violation of the Ethics Act, and the sale to the lobbyist must be reported on the member's Statement of Economic Interest Form.

OPINION #93-12

Question: Could a member vote on any alcoholic beverage bill/amendment or any bill relating to poker machines while the member holds ABC licenses and operates coin operated poker machines?

The Ethics Act, in Section 8-13-700(B), states that "[n]o public official ... may make, participate in making, or in any way attempt to use his office ... to influence a governmental decision in which he ... has an economic interest." "Economic interest" is defined in Section 8-13-100(11) as not prohibiting:

"a public official ... 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 ... accrues to the public official ... 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 members of the profession, occupation, or large class."

According to the State Tax Commission and the Alcoholic Beverage Control Commission respectively, there are 1,599 licensed video poker machine operators and 9,697 "on premise" beer and wine licensed operators in the State. The Ethics Committee is of the opinion that the operators of video poker machines and ABC license holders constitute a large enough class to fall within the exception set forth in Section 8-13-100(11). Therefore, it would be permissible for the member to vote on bills/amendments relating to alcoholic beverages and video poker machines as long as the only economic interest that would affect the member would not be greater than the affect on all of the ABC license holders and video poker machine operators.

OPINION #93-13

Question: Can a lobbyist's principal give contributions to ALEC (American Legislative Exchange Council) when a portion of those funds given will be used to pay the expenses of South Carolina legislators who attend ALEC sponsored functions?

Under the Ethics Act, a person can not do something indirectly if it would be impermissible to do it directly. Therefore, if a lobbyist's principal's funds were to be used for the reimbursement of a member's expenses (a scholarship fund, for

example), then the function would have to be treated as if it were sponsored by the lobbyist's principal and would be subject to the provisions of the act relating to lobbyist's principals. If the member is merely an attendee, Section 2-17-90(A), provides that:

"(A) No lobbyist's principal may offer, solicit, facilitate, or provide to a public official ... and no public official or employee may accept lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal, except for:
(1) as to member of the General Assembly, a function to which a member of the General Assembly is invited if the entire membership of the House ... is invited, or one of the committees, subcommittees, joint committees, legislative caucuses, or county legislative delegations of the General Assembly ..."

As a result, any monies set aside to pay for the expenses of a member of the House could only be used when one of the above groups were invited, and the reimbursement would have to be offered to all of the members of that group attending the function.

A separate provision of the Ethics Act, however, draws a distinction between attending a function and being an active participant in a speaking engagement. Section 2-17-100 states that:

"Notwithstanding the limitations of Section 2-17-90, a public official may receive payment or reimbursement for actual expenses incurred for a speaking engagement. The expenses must be reasonable and must be incurred in a reasonable time and manner in which to accomplish the purpose of the engagement.

The House Ethics Committee is of the opinion that a function at which a member is serving as either an actual "speaker" or as a "panelist" would be considered a "speaking engagement" for purposes of the coverage of Section 2-17-100. This is in contrast to a member simply being an attendee at such a function, in which case the restrictions in Section 2-17-90 discussed above would apply. In either event, the expenditure must be reported by both the lobbyist's principal and the members receiving the reimbursements.

OPINION #93-14

Question: Could a member, who is an insurance agent and broker, participate in insurance decisions and issues before both the Labor, Commerce, and Industry Committee and the Property and Casualty Sub-Committee?

The controlling section of the Ethics Act in dealing with such matters is Sections 8-13-700(A) and (B) which state that "[n]o public official ... may knowingly use his office, membership, or employment to obtain an economic interest for himself ..." and that "[n]o public official ... 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 ... has an economic interest."

Section 8-13-100(11)(b) defines an economic interest as not prohibiting a public official

"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 ... is incidental to the public official's ... position or which accrues to the public official ... 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."

Therefore, a member is not prohibited from making decisions in an area in which he has an economic interest if the benefit that he receives is no greater than the benefit that all members of the same profession, occupation, or large class receives. There may, however, be specific provisions or amendments which create a conflict because of a specialized line of insurance policies carried or because of other aspects of business not typical of all insurance agents, but more information would be necessary to render an advisory opinion on those specific issues.

OPINION #93-15

QUESTION: Does Item #20 on the Statement of Economic Interest Form refer only to agencies that contract with the House of Representatives or to a contract with any agency?

The code section that gave rise to Item #20, is Section 8-13-1120(A)(8). This section provides that:

"if a public official ... receives compensation from an individual or business which contracts with the governmental entity with which the public official ... serves or is employed, the public official ... must report the name and address of that individual or business and the amount of compensation paid to the public official ... by that individual or business."

Therefore, the information requested in Item #20 concerns those businesses who contract with the House. Also, if a member is also employed by another governmental agency, then any compensations from entities who contract with it would be reported in Item #20.

OPINION #93-16

QUESTION: What would be some of the problems of a member's business applying for funds from state agencies (either through the Governor's office with funds from the U.S. Department of Energy or through DHEC)?

Since a member is involved, certain regulations are applicable. Section 8-13-700 prohibits a member from using his or her office or position to gain 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 section would not prohibit actions in which the member is not using his or her office or position as a House member. The conduct prohibited under this Section can only be evaluated on a case by case basis as it arises.

Section 8-13-745(C) prohibits a member, or a member's business, from contracting with a governmental agency which is funded with general funds if the member voted on the section of the appropriations bill relating to that governmental agency in the past year. The funds that the member is applying for from these State agencies are not covered in the appropriations bill. They are funds sent to South Carolina from the federal government. The Ethics Committee is of the opinion that, since these funds are not State funds and the member has no control over these funds, the prohibition concerning a member voting on the appropriations bill section relating to the agency being contracted with does not apply in this case.

OPINION #93-17

ISSUE: When do the filing requirements of S.C. Code Ann. 58-13-920, relating to positions voted on by the House members, go into effect?

In relevant part, Section 8-13-920 states as follows:

"A person running for an office elected by the General Assembly must file a report with the Chairman of the Senate Ethics Committee and the Chairman of the House of Representatives Ethics Committee of money in excess of one hundred dollars spent by him or in his behalf in seeking the office. The report must include the period beginning with the time he first announces his intent to seek the office. The report must not include travel expenses or room and board while campaigning. Contributions made to members of the General Assembly during the period from announcement of intent to election date must be included.

Persons soliciting votes on behalf of candidates must submit expenses in excess of one hundred dollars to the candidate which must be included on the candidate's report."

It is the interpretation of the Committee that, according to the above Section, the initial campaign report is due after an aggregate of one hundred dollars has been spent, either by the candidate or by someone acting on his behalf, in the effort to get elected by the General Assembly. The starting point for the totaling of the campaign expenditures is the time that the candidate "first announces his intent to seek the office." (See above.) This money is an aggregated amount and includes all expenditures made by the candidate and anyone making an expenditure on behalf of the candidate. Contributions to members of the General Assembly must be reported, but travel expenses or room and board while campaigning do not have to be included.

In addition to the initial report, other updates and reports are required to be filed. After the initial campaign report, the candidate must file quarterly updates in order to keep the information current and precise. Another report is due five (5) days prior to the election, and upon completion of the election, each candidate who is filing the campaign reports must file a final campaign report thirty (30) days after the election.

OPINION #93-18

ISSUE: Would it be proper for a member of the House of Representatives to serve on the Trident Region's B.E.S.T. (Building Economic Solutions Together) Policy Committee. Specifically, is such an appointment to the Committee a violation of Section 8-13-770 of the 1992 Ethics Act?

Section 8-13-770 places a limitation on the State boards and commissions on which a member of the General Assembly may serve. It states:

"A member of the General Assembly may not serve in any capacity as a member of a state board or commission, except for the State Budget and Control Board, the Advisory Commission on Intergovernmental Relations, the Legislative Audit Council, the Legislative Council, the Legislative Information Systems, the Reorganization Commission, the Judicial Council, the Sentencing Guidelines Commission, the Commission on prosecution Coordination, and the joint legislative committees."

The status of the BEST Committee has gone through a transformation since it was first created by Governor Carroll Campbell, Jr. under executive order number 93-17. According to the Committee office, the BEST Committee has since been incorporated as a non-profit organization. The tax application has been sent to the I.R.S. As a non-profit organization, the BEST Committee would not be classified as a State board or commission although it was originally created by an executive order. It would not, therefore, in the opinion of the House Ethics Committee, fall under the application of Section 8-13-770 of the 1992 Ethics Act.

OPINION #93-19

ISSUE: Can a member, who is a federal retiree, take actions to help and resolve the federal retiree tax reimbursement issue?

As a federal retiree, the member may be receiving an economic benefit if the State is ordered to reimburse federal retirees a percentage of their past taxes. In dealing with a situation in which a member stands to gain economic benefits, Sections 8-13-700(A) and (B) state that a member may not use his office to obtain an "economic interest" for himself or use his office to influence a governmental decision in which he has an "economic interest."

In both of the two sections above, the main criteria under consideration is the realization of an economic interest. The term "economic interest" is defined in Section 8-13-100(11)(b). It states that the definition:

"does not prohibit a public official . . . 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 . . . is incidental to the public official's . . . position or which accrues to the public official . . . 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."

The Ethics Committee has applied this Section to various other questions dealing with the "profession, occupation, or large class" exception. In Advisory Opinions #92-28 and #92-39, House members who are also lawyers were permitted to vote on the No-Fault insurance proposition since it would not affect any of the attorneys to a greater extent than it would affect the occupation as a whole. Likewise, in Advisory Opinions #92-37 and #92-39, House members who were also insurance agents were permitted to vote on insurance issues which would affect the insurance profession as a whole. These opinions also state that "[t]here may be specific provisions or amendments which create a conflict because of a specialized aspects of [the member/agent's] business that are not typical of the occupation or large class. In that case, the member would not be affected to the same extent as the other members of the occupation or large class and would be precluded from taking official action on the issue.

It is the opinion of the Committee that the number of persons affected by the pending federal retiree lawsuit is sufficient enough to constitute a "large class" under the exception found in Section 8-13-100(11)(B). A member who has the chance for gain could, therefore, take action on the federal retiree issue. This is conditioned; however, and the member may not take any action unless he or she would be reimbursed to the same extent as all federal retirees in the State.

OPINION #93-20

ISSUE: Can a member, who is scheduled to speak at the S.C. Association of Premium Service Companies conference in North Myrtle Beach, be reimbursed for accommodations and meals incurred in connection with the speaking engagement by the Association?

The Association is a lobbyist's principal. Although Section 2-17-90 would limit and restrict any reimbursement from a lobbyist's principal, Section 2-17-100 creates an exception if the member will be participating in the conference. That Section states that:

"[n]otwithstanding the limitations of Section 2-17-90, a public official may receive payment or reimbursement for actual expenses incurred for a speaking engagement. The expenses must be reasonable and must be incurred in a reasonable time and manner in which to accomplish the purpose of the engagement. The payment or reimbursement must be disclosed by the lobbyist's principal as required by Section 2-17-35 and by any public official who is required to file a statement of economic interest under Section 8-13-1100." (If the expenses were incurred out of state, the member would have to obtain the prior written approval of the Speaker.)

The Committee rendered a decision on this Section in Advisory Opinion 93-13. In that Opinion, the Committee ruled that a member who is either a speaker or panelist in a program, as opposed to an attendee, may be reimbursed for actual expenses incurred in connection with the speaking engagement under Section 2-17-100.

Therefore, the Association can reimburse the member for actual expenses incurred, including meals and lodging, in connection with the speaking engagement as long as the amounts are reasonable and incurred in a reasonable time and manner. The member must also report the reimbursement on his or her next Statement of Economic Interest Form.

OPINION #93-21

ISSUE: Can members attending an ALEC convention have their expenses off-set by the ALEC scholarship fund? The scholarship fund is composed of monies donated by South Carolina industries, including lobbyist's principals.

It is the opinion of the Committee that the fund can be used to reimburse the House members who attend the upcoming convention if the entire membership of the House, or other recognized group of members, is invited to attend the function in accordance with Section 2-17-90. The reimbursements must not exceed twenty five dollars per day, and all members attending must be reimbursed equally.

OPINION #93-22

ISSUE: Can a member, who holds an insurance license, act as a consultant on insurance matters for a state trade association which employs a lobbyist in South Carolina?

The relevant issue posed by this question is the legality of a member of the House of Representatives being employed by a lobbyist's principal. The Ethics Act prohibits two forms of employment of a member by a lobbyist's principal. Section 2-17-15 prohibits a member or someone of the member's immediate family from serving as a lobbyist during the time the member holds office and for one year after such public service ends. Section 2-17-110(G) prohibits a lobbyist's principal from employing a member on a retainer. For the purposes of this prohibition, retainer is defined as the payment for the availability to perform services rather than for actual services rendered.

The member could, therefore, be employed by the state trade association as long as the member is not retained nor serves as a lobbyist or employed on retainer. Other Sections concern limitations on current members in voting on and working with matters in which they have interests such as employment.

OPINION #93-23

ISSUE: Can a member who is also an attorney represent a client before (1) the legal department of the Department of Transportation and possibly (2) in a law suit against the Department of Transportation?

There are several provisions of the Ethics Act which are pertinent regarding these inquiries. Section 8-13-740(A)(2) states that:

"A member of the General Assembly, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before a governmental entity, 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"

Concerning the representation of a client before the Department of Transportation, subsection (c) above is controlling. "Contested case" is defined in Section 1-23-310(2) as "a preceding ... in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing." Therefore, the propriety of representing a person before the Department of Transportation depends on whether the representation falls within the definition of "contested case" above.

If the representation does fall within the meaning of a "contested case" and the member represents a person before the Department, then the member must report his or her fees earned, services rendered, names of persons represented, and the nature of the contacts made with the governmental entity on the next Statement of Economic Interest. In addition, a member who does represent a client before a governmental entity as allowed in Section 8-13-740(A)(2)(c) above must refrain from voting on the section of the appropriations bill relating to that entity for one year after such representation.

Sections 8-13-745(A)&(B) also impose limitations on a member representing a person before a governmental entity. Sub-section (A) states that a member, or the member's business, may not represent a client for a fee in a contested case before a governmental entity if the member "has voted in the election, appointment, recommendation, or confirmation of a member of the governing body" of the entity." Sub-section (B) states that a member, or a member's business, may not represent a client for a fee in a contested case before a governmental entity elected, appointed, recommended, or confirmed by the House if "that member has voted on the section of that year's general appropriations bill or supplemental appropriation bill" relating to that entity within one year from the date of the vote.

Concerning the representation of a person or client before a court under the unified judicial system, the Ethics Act places no limitation on such representation.

OPINION #93-24

ISSUE: Can a member accept a ticket to the National Black Caucus banquet from a Congressman, or does he have to pay for the value of the ticket?

A Congressman was given a ticket to the National Black Caucus Foundation banquet, and the Congressman then gave the ticket to the member. The member inquired as to the propriety of accepting the ticket or whether he needed to reimburse the Foundation or the Congressman for the ticket.

The National Black Caucus Foundation is not registered as a lobbyist's principal in South Carolina, and any items of value given by them are not, therefore, subject to the reimbursement limitations governing lobbying entities. Any such tickets or reimbursements must be reported on the Statement of Economic Interest, however, in accordance with Section 8-13-710(B) if it is given by "a person, if there is reason to believe the donor would not give the thing of value but for the public official's ... office or position; . . ." Therefore, if the ticket was given because of your office, then it would have to be reported.

OPINION #93-25

ISSUE: Could a member be reimbursed for a trip that was in some way connected to his activities in office?

A member visited a manufacturer of items sold by an eleemosynary organization in South Carolina. The member had introduced pending legislation relating to eleemosynary organizations, and it was such an organization which requested the member to visit the manufacturer. The purpose of the trip was to learn about the nature of the business and how sales were conducted by the manufacturer on behalf of the Association.

The manufacturer providing the reimbursement for the trip is not engaged in lobbying in South Carolina, and, therefore, any items of value given by them are not, therefore, subject to the reimbursement limitations governing lobbying entities. Any such tickets or reimbursements must be reported on the Statement of Economic Interest, however, in accordance with Section 8-13-710(B) if it is given by "a person, if there is reason to believe the donor would not give the thing of value but for the public official's ... office or position; . . ." It is the opinion of the Committee that there is some correlation between the legislation that was introduced in the member's official capacity and the trip. The reimbursement, therefore, needs to be reported on the next Statement of Economic Interest.

OPINION #93-26

- ISSUE: What are some of the possible conflicts involved in:
- (1) being a member of the House of Representatives and being employed by a State supported University;
 - (2) being a candidate for the House of Representatives and being employed by a State supported University; and
 - (3) being either a candidate or member of the House of Representatives and an independent consultant to state agencies such as school districts?

Regarding the first two inquiries, a member/candidate of the House is allowed to be employed by a State supported University. The relevant issue posed by these questions is the legality of a member of the House of Representatives being employed by a lobbyist's principal, since most state supported universities retain lobbyists. The Ethics Act prohibits two forms of employment of a member by a lobbyist's principal. Section 2-17-15 prohibits a member or someone of the member's immediate family from serving as a lobbyist during the time the member holds office and for one year after such public service ends. Section 2-17-110(G) prohibits a lobbyist's principal from employing a member on a retainer. For the purposes of this prohibition, retainer is defined as the payment for the availability to perform services rather than for actual services rendered.

Concerning the third inquiry, the Ethics Act does address certain issues which members need to be conscious of. Section 8-13-1120(A)(2) requires disclosure of the employment arrangement and the amount of income received. This section would also require the same disclosures if the agency is regulated by the House. The lobbying status of the employer may also be relevant. If the state agency retains a lobbyist, then the same restrictions that applied to the university discussed above may be applicable. Other Sections deal with the actions of current members in voting on and working with matters in which they have interests such as employment or contracts. Such regulations include abstention from voting on certain matters.

OPINION #93-27

ISSUE: Can a member either (1) be employed by a State supported university or (2) serve as an economic development consultant for an entity such as an electric co-op. or subdivision of government?

Concerning the first question, a member being employed by a State supported university, several sections of the Ethics Act are applicable, but none prohibit such employment. First, Section 8-13-745(C) states that "no member of the General Assembly ... may enter into any contract for goods or services with an ... entity funded with general funds if the member has voted on the section of that year's appropriation bill relating to that ... entity." If a State supported university is financed partly with general funds, an employment contract would constitute a contract for services within the meaning of the above section. A member would be prohibited, therefore, from entering into an employment contract with such a university if he or she voted on the section of the appropriations bill concerning the university for the year which employment is sought.

Sections 8-13-700(A) & (B) are concerned with a member using his office to effect his economic interest. Sub-Section (A) requires that a member not "use official office, membership, or employment to obtain an economic interest for himself." Sub-Section (B) states that "[n]o public official ... 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 ... has an economic interest." These sections would prohibit a member from voting or working on an issue or matter which would effect him economically. If the member is in a position in which he is called upon to make such a decision, then he must abstain from voting on the matter pursuant to Section 8-13-700(B).

In regard to the second inquiry, the Ethics Act does address certain issues which members need to be conscious of. For the governmental sub-division, Section 8-13-1120(A)(2) requires disclosure of the employment arrangement and the amount of income received. This section would also require the same disclosures in regard to the electric co-op. if it is regulated by the House. Other Sections which would have implications on such employment include Sections 8-13-700(A) & (B) as discussed above. These sections would prohibit a member from voting or working on an issue or matter which would effect him economically.

The lobbying status of the employer may also be relevant. If the Co-op. or governmental sub-division retains a lobbyist, then the "no cup of coffee" rule, Section 2-17-90, and other provisions could effect the member's relationship with a lobbyist's principal employer. Another issue concerns the sub-division or co-op. being funded with general funds. Section 8-13-745(C) prohibits a public official from contracting with a governmental entity if the member voted on the section of the appropriations bill relating to that entity in the past year. Such a vote needs to be on the section of the Appropriations bill directly related to the entity.

OPINION #93-28

ISSUE: Is it permissible to use campaign funds in purchasing tickets to a caucus fundraiser, and whether or not those tickets can be given away to others?

The answer to these questions depends on the status of the campaign account. If the account is active, one which has not undergone final disbursement, then Section 8-13-1348 would govern. Subsection (B) provides that the uses of campaign funds for "[t]he payment of reasonable and necessary" food and beverage expenses consumed by the candidate or members of his immediate family while at, and in connection with, a political event are permitted. Therefore, using an active campaign account, tickets may be purchased but only for immediate family members.

If the account is undergoing final disbursement, Section 8-13-1370 would govern. Subsection (A)(2) states that the excess campaign funds can be contributed to committee or party. Since it is a contribution to the committee, the tickets purchased from such an account could be given to friends, supporters, and constituents.

OPINION #93-29

- ISSUES:
- 1: Is it a violation of the Ethics Act for a House member to go on a trip with lobbyist, in the context of the above stated facts?
 - 2: Is there any provision in the Ethics Act which precludes a House member from socializing with a lobbyist, so long as the lobbyist does not provide anything of value to the member?
 - 3: What is the meaning and import of §2-17-80(c) in the context of the Ethics Act as a whole?

Issue 1: Is it a violation of the Ethics Act for a House member to go on a trip with lobbyists?

The question deals not only with the conduct of public officials, but also the conduct of lobbyists. Section 2-17-80(B) relates to what a member of the General Assembly must not receive from a lobbyist. It states: "a member ... shall not solicit or receive from a lobbyist ... (1) lodging; (2) transportation; (3) entertainment; (4) food, meals, beverages, money, or any other thing of value." The items restricted from transfer are types of economic benefits. The transfer of any such items from a lobbyist to a member, the picking up of a check for a meal, for example, is prohibited by the above-cited section. Nothing in the Act, however, prohibits lobbyists and members from sharing hotel accommodations, travelling together, playing golf or partaking in any other entertainment, or dining together, as long as the member does not allow the lobbyist to pay or incur any of the expenses of such activities on behalf of the member.

Section 2-17-80(A) relates to the conduct of lobbyists. It states that "[a] lobbyist or a person acting on behalf of a lobbyist shall not offer, solicit, facilitate, or provide to or on behalf of any member of the General Assembly . . . or any of their employees any of the following: (1) lodging; (2) transportation; (3) entertainment; (4) food, meals, beverages, money, or any other thing of value; (5) contributions." It would be impermissible, therefore, for the lobbyist to not only provide the member with any of the above items of value but also to offer or solicit to provide such items. According to the facts provided, each person on the trip paid his own expenses.

It should be noted that Section 2-17-80(A) prohibits lobbyist from not only providing, offering, or soliciting items of value to members, but also from "facilitating" the transfer of items of value to members. The term "facilitate" is not a defined term in the Ethics Act and has been the subject of various interpretations. In the context of Section 2-17-80, and the Ethics Act in its entirety, the word "facilitate" as interpreted by this Committee refers to activity on the part of a lobbyist to indirectly provide, solicit, or offer items of value to a public official that the lobbyist could not permissibly provide, solicit, or offer directly.

For example, a lobbyist's principal is generally permitted to make campaign contributions to members. A lobbyist, on the other hand, is prohibited from making such contributions. A lobbyist could not then be able to aid or assist in the transfer of the contribution. Even though the contribution would be from the funds of the

lobbyist's principal and not the lobbyist, the lobbyist is prohibited from facilitating the transaction. The media and others have raised questions of the propriety of a lobbyist making travel arrangements on behalf of members, implying that to do so would be to facilitate the transfer of items of value. Whether the plans and reservations were booked by a member, lobbyist, or private citizen is inconsequential if the members realized no economic benefit in the process.

Issue 2: Is there any provision in the Ethics Act which precludes a House member from socializing with a lobbyist, so long as the lobbyist does not provide anything of value to the member?

Beyond the restrictions outlined in response to Question 1, the Ethics Act has few prohibitions on the contact between lobbyists and members, but socializing between lobbyists and House members is subject to some obvious limitations. Generally, the Act is concerned with transfers of economic benefits and items of value and does not attempt to regulate or restrain a public official's freedom of association. Likewise, a lobbyist's access to a member should not be and is not limited because of his vocation. The Ethics Act merely prohibits a lobbyist from having an unfair advantage over private citizens in that he can not use money or other things of value as a means of creating access to or influence over the member. It is an accepted reality that friendships exist between many lobbyists and members. Those relationships may even have been in existence prior to a member's service in the General Assembly and/or the lobbyist's employment as a lobbyist. The fact that a lobbyist and legislator share a personal friendship does not imply any wrongdoing by either party. The parties should, however, be aware of public perception and strive to avoid the appearance of any impropriety.

Issue 3: What is the meaning and import of §2-17-80(c) in the context of the Ethics Act as a whole?

Section 2-17-80(C) is an exception to the general rules regulating the activities between lobbyists and House members. Section 2-17-80(C) states that the prohibitions against the transfer of items of value between lobbyists and members does not apply,

... to the furnishing of lodging, transportation, entertainment, food, meals, beverages, or any other thing of value which also is furnished on the same terms or at the same expense to a member of the general public without regard to status as a public official or public employee.

This subsection creates an exemption for business transactions in which members and lobbyists interact. A lobbyist would not be prohibited, for example, from patronizing a bank merely because a member works there. (See Advisory Opinion #92-38) Also, a member who is a real estate agent would not be prohibited from selling real estate to a lobbyist. (See Advisory Opinion #93-11) Those goods and services must also be offered by the member/lobbyist to the general public without regard to status, and any such transactions must be in keeping with the same exact terms offered to members of the general public and done "at arm's length".

OPINION #93-30

ISSUE: Can the members of the House Freshman Caucus accept an invitation to a breakfast sponsored by a college affiliated group?

If the group is not a lobbyist or lobbyist's principal, then legislators may be invited to attend. If the members are invited because of their elective office, then Section 8-13-710 states that the members must report any items received on their Statement of Economic Interest if the value is over \$25 per day or \$200 per year in the aggregate.

If the group is a lobbyist's principal, then only recognized groups of members, pursuant to Section 2-17-90, may be invited. For purposes of the 1991 Ethics Act, the "Freshman Caucus" is not a recognized legislative caucus. That does not mean that the freshmen House members cannot organize and meet; it only means that the group is not included in the list of identifiable groups which may be invited to functions sponsored by lobbyist's principals. Section 2-17-90 of the S.C. Code allows for lobbyists to entertain legislative members when invited as part of the entire membership of either or both houses, a committee, subcommittee, county legislative delegation, or legislative caucus. Section 2-17-10(11) recognizes as a "legislative caucus" only those caucuses based on racial or ethnic affinity, gender, or political party. Therefore, if the group is a lobbyist's principal, the freshman caucus members would not be allowed to accept the invitation under Section 2-17-90.

OPINION #93-31

ISSUE: Can a member write a letter of recommendation for a person trying to get into a university?

The Ethics Act does not preclude members from writing such letters. It would not result in any economic benefit, and a letter of recommendation does not qualify as a "representation" under the act unless the member actually appears in the person's behalf.

1992 ADVISORY OPINIONS
ISSUED BY THE
HOUSE LEGISLATIVE ETHICS COMMITTEE

Opinion No. 92-1

Questions: Can a House member participate in raising private funds for a County Health Department and as an officer in the National Association of Real Estate Brokers? Specifically, does the new Ethics Act, which took effect January 1, 1992, prohibit the member's involvement with either endeavor?

From your letter and the accompanying documents, it appears that you receive nothing from your work other than food during an occasional working breakfast. Basically you have been engaged in soliciting contributions on behalf of Richland County and also for the Real Estate Brokers group. There is no prohibition to a House member helping an organization or governmental entity in raising funds in a situation in which the House member receives nothing of value for his time or efforts.

You may not receive anything of value from a lobbyist and there are caps of \$25 per day and \$200 per year on gifts from lobbyists principals, but gifts or other items of value received by a public official are not banned. If gifts are received and they are reasonably believed to be because of your elective office, then there is a reporting requirement if those items received are valued at more than \$25 per day and/or \$200 per year, under §§8-13-710 and 8-13-1120.

Opinion No. 92-2

Question: Under current House Rules and Ethics laws can a House member accept a gift from an organization not involved in lobbying, no matter the cost of the gift?

Under the new Ethics Act, which took effect January 1, 1992, there are no restrictions to a public official accepting a gift from an organization not involved in lobbying, no matter the value of the gift. You would, however, have to report the gift under §8-13-710(A), if you received the gift because of your elective office and it is valued at more than \$25.

As you know the House Rules governing ethics and receipt of gifts were rescinded on January 16, 1992. House Rules 12.2(A)(1) and 11.1(10), which dealt with House members accepting gifts, were in effect at the time of the function in which the framed print was presented to you. Under those former House Rules, \$25 was the maximum value allowed of a gift to a House member from a non-lobbyist if the gift was given because of the member's office.

Since the restrictions applied at the time of the gift, but are no longer applicable, you would seem to have two courses of action to avoid any appearance of impropriety. You could either have the donor of the gift take back the gift and give the gift to you again so that there would be no question as to which gift giving rules apply; or, you could merely reimburse the organization the difference so that the gift would not exceed \$25 and would not be in violation of the House Rules in effect at the time of the presentation.

While both solutions may seem rather extreme for such a trivial gift, I am sure you will agree that it is better to err on the side of caution and adherence than on the side of expedience and convenience.

Opinion No. 92-3

Questions: What are the permissive uses of campaign funds under the new Ethics Act? Specifically, whether the following expenses would be considered personal or campaign/office related: purchase of flags for schools, local governments, and other non-profit organizations; membership dues or contributions to various clubs and service organizations; and, expenditures for office items such as lamps, photos, etc.

Funds collected by a candidate for public office is money received by contributors who are attempting to help the candidate get elected. Those funds should, thus, be utilized only for the purposes of facilitating the candidate's campaign and assisting the candidate carry out his or her duties of office if elected. §8-13-1348 of the Ethics Act, which took effect January 1, 1992, specifies that campaign funds may not be used "...to defray personal expenses which are unrelated to the campaign or the office." Those funds may, however, be used "...to defray any *ordinary* expenses incurred in connection with an individual's duties as a holder of elective office." Using that language as a guide, each expenditure should be judged upon whether it is an ordinary office or campaign related expenses or instead a personal expense not connected to the ordinary duties of office.

The purchase of flags for schools, scouts, etc. in your district is a service generally expected of a House member and can be seen as a constituent service and an informal responsibility of the office. Therefore, campaign funds could be used for that purpose.

Your questions on office furnishings and membership dues/contributions require more specific answers. Dues or contributions to some organizations, but not all, could be paid from a campaign account, depending upon the nature of the group. Money paid to political or partisan organizations such as the Greenville County Republican Party are obviously campaign related and can justifiably be paid from campaign funds. However, dues paid to other organizations whose primary purpose is community service oriented rather than politically oriented can not be considered ordinary expenses of office or closely related to a campaign. Such dues or contributions must not come from campaign funds.

Expenditures for office furnishings and accessories in your Blatt Building office would be considered ordinary expenses related to your office. Similarly, such expenditures for an office facility in your district which is used solely for public purposes would be permissible. Expenditures for furnishings or equipment which are located in an office which is also used for your private or business use, however, would be prohibited since the items could be used in a manner unrelated to your public office.

Opinion No. 92-4

Question: Is a member of the House of Representatives prohibited from seeking and obtaining employment with a state agency?

There are several sections of the new Ethics Act which are pertinent to the issue, but none prohibit such employment. Most notably, Section 8-13-1120(A)(2) requires disclosure of the employment arrangement and the amount of income received. Section 8-13-745(C) is also applicable. That provision prohibits a public official from voting on that part of the appropriations bill which relates to the agency, department, etc. with which the official has a contractual arrangement for goods or services. Any conflicts of interest which may arise because of the public employment must be handled as outlined in §8-13-700(B), which may include abstention from certain votes.

Opinion No. 92-5

Question: What are the uses of campaign funds if a House member decides to run for the Senate? How would any monies donated be used in a Senate campaign?

Section 8-13-1350 deals with the rollover of campaign funds from one campaign to another campaign for a different office by the same candidate. Although the Ethics Act went into effect January 1, 1992, §8-13-1350, which prohibits such a rollover, does not take effect until January 1, 1993. Thus, until the end of 1992, there is no

prohibition from transferring campaign funds collected for a House race into an account for use in a Senate campaign. The only way to rollover those funds after 1992, however, is to have the contributors give written authorization. See §8-13-1352.

If a public official is defeated or chooses not to run again for public office, the remaining campaign funds must be accounted for in a final disbursement, under §8-13-1370. There are several ways those funds may be disbursed, including donation to a charitable organization, return of funds on a pro rata basis to the original contributors, contribution to the State general fund, or a combination thereof.

Opinion No. 92-6

Question: Can a Democratic presidential candidate who has been invited by the House Democratic Caucus accept an invitation for lunch in the Blatt Building?

§8-13-765 of the new Ethics Act addresses the use of public facilities for campaign purposes. The section disallows the use of government office buildings, equipment, personnel, and materials in election campaigns. That provision was intended to prevent elected officials from utilizing for personal use public services or property, since candidates not currently in office could not have access to such resources and the use of those resources would be at public expense. Public facilities may be used if those facilities are available to other candidates on similar terms.

As a legislative caucus, the House Democratic Caucus is entitled to the use of the Blatt Building for meetings. Any guest invited to speak before the caucus, whether a political candidate or not, is allowed to do so in the Blatt Building at the invitation of the caucus holding the meeting. The same guidelines would apply, for example, if the House Republican Caucus chose to invite U. S. Senate candidate Tommy Hartnett or President Bush to talk to the caucus. Furthermore, there is ample evidence to suggest that the Ethics Act does not even apply to campaigning for federal office. In the definitional section of the act, "elective office" and "candidate" specifically exclude offices above the state and local level, as federal campaign law controls.

In conclusion, there exists no conflict between Senator Kerrey's appearance at the caucus meeting and the Ethics Act.

Opinion No. 92-7

Question: What is the propriety of accepting a jacket as a gift from a member of the Washington Redskins who was honored in a legislator's community?

Under the new Ethics Act there are no restrictions to a public official accepting a gift from someone not involved in lobbying, no matter the value of the gift. You would, however, have to report the gift under §8-13-710(A), if you received the gift because of your elective office and it is valued at more than \$25.

Opinion No. 92-8

Question: Can lobbyist's principals contribute to a member's upcoming campaign? Are there any restrictions or methods by which this should be done?

There is nothing in the Ethics Act which prohibits a House member from asking a lobbyist's principal to contribute to a campaign. It should be treated like any other

contributor to the campaign. Section 8-13-1314 states that within an election cycle, no candidate or anyone acting on his behalf may solicit or accept a contribution which exceeds one thousand dollars in the case of a candidate for the House of Representatives. The only restrictions are those which apply to any other contributors as listed in the Ethics Act.

Opinion No. 92-9

Question: Does the Ethics Act prohibit a House member from attending an out of state meeting paid for by the American Legislative Exchange Council (ALEC)?

Section 8-13-715 allows for the payment or reimbursement of actual, reasonable expenses incurred while attending an out of state speaking engagement, subject to the speaker's approval. It is the Committee's opinion that as long as this is a working conference serving a legitimate legislative purpose it is permissible for the member to have his actual expenses paid for by ALEC.

Opinion No. 92-10

Question: Can a Standing Committee of the House accept an invitation from a lobbyist when he is the only authorized agent of the lobbyist principal in South Carolina?

The Ethics Committee, being charged with overseeing compliance of the Ethics Act within the House, must require all invitations to comply with the strict prescriptives of the Act. The Act clearly states in §2-17-80 that any invitations by a lobbyist are prohibited as is their receipt by members of the House, if they include an offer of anything of value.

Opinion No. 92-11

RE: Potential Conflicts of Interest and Voting on Appropriations Bill

This memorandum serves as a reminder to all House members of the sections of the Ethics Act pertaining to conflicts of interest and voting on the Appropriations Bill. Section 8-13-700(B) is a general conflict of interest provision. This section provides that where a member has a potential economic interest in a piece of legislation, he must send a written statement describing the potential conflict to the Speaker. The Speaker will print the statement in the House journal and excuse the member from voting, deliberating, or taking other action on the legislation which poses a potential conflict.

Section 8-13-740 governs House member's representing clients before governmental entities. Subsection (c) provides that where a member is permitted such representation, he should refrain from voting on that section of the Appropriations Bill pertaining to the governmental entity before which he appeared, if his appearance occurred within one year prior to the vote. This section does not preclude members from voting on other sections of the bill or the bill as a whole.

Sections 8-13-725(B) and (C) prohibits members from representing clients before or contracting with boards, commissions, or other entities if the member voted on that entities' section of the Appropriations Bill in the prior year.

Opinion No. 92-12

Question: Can a House member or public employee accept a plane ticket from a lobbyist principal for winning a golf tournament sponsored by the lobbyist principal's national organization?

Because the plane tickets are given by a registered lobbyist's principal, §2-17-90(A) applies. This section clearly states that no lobbyist's principal may provide to a public official or public employee, and no public official or public employee may accept transportation. None of the six exceptions listed in §2-17-90(A) appear to apply to that situation, to exempt it from prohibition.

Opinion No. 92-13

This letter is in response to your inquiry concerning whether your group may conduct seminars for legislators and staff under the new Ethics Act. Whether the Act applies is determined by your status as a lobbying group. Section 2-17-10 defines "lobbying" as promoting or opposing through direct communication with public officials or public employees the introduction or enactment of legislation before the General Assembly or the committees or members of the General Assembly. You represent in your letter that the proposed workshops are for educational purposes only and will not involve lobbying as defined above. Therefore, your ability to conduct the workshops should not be constrained by the Ethics Act.

Opinion No. 92-14

- Questions:**
- 1) Is there a conflict regarding voting on and participation in deliberations on the sections of the General Appropriations Bill funding pre-elementary, elementary, and secondary education programs when my law firm represents a local school district?**
 - 2) Is there a conflict regarding voting on and participating in deliberations on any funding items in the General Appropriations Bill and my law firms' representation of clients before the Procurement Review Board?**

In answer to your first question, no conflict exists as long as the funding measure is on a statewide basis and does not uniquely impact the employer/district. Section 8-13-745(c) prohibits contracting for services with an agency, board, commission, or department by a legislator if the legislator voted on the appropriation bill section relating to that agency, board, etc. Where there is no direct appropriation to the specific school district represented, no conflict exists.

In answer to your second question, §8-13-740(A)(2)(c) states that House members and their businesses may not knowingly represent another person before a governmental entity except, *inter alia*, in a "contested case" as defined in the Administrative Procedures Act. §8-13-740(c) prohibits a member from voting on a section of the Appropriations Bill funding an agency or commission if that member or

benefit of fifty dollars or more "does prohibit a public official... from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonable foreseeable benefit that may accrue to the public official...is incidental to the public official's position..." This definition of economic interest appears to take your vote outside the proscriptions in §8-13-700 in two ways. First, your vote to appropriate money to DSS and DHEC for specific programs that you help implement would likely not be a personal interest, but rather an interest of the general public. Second, any economic benefit you might realize would likely be incidental to your position, rather than the main target of the appropriation. Naturally, you should not vote on any appropriation that directly affects your salary grade because it would not be of general public interest.

Opinion 92-17

Question: Under the Ethics Act, can I vote on the House portion of the General Appropriation Bill?

Section 8-13-700(B) prohibits a House member from making, participation in making, or in any way attempt to use his office to influence a governmental decision in which he has an economic interest. "Economic interest" is defined in the Ethics Act.

§8-13-100(11). A public official is not prohibited from participating in, voting on, or influencing an official decision, however if the only economic interest that may accrue to the public official accrues to him as a member of a profession, occupation, or large class to no greater extent than the benefit would accrue to other members of these groups. As a member of the South Carolina House of Representatives, you would not be affected any differently than all other House members.

Concerning voting on legislator's salaries, no benefit would accrue to you because any pay increase cannot go into effect until the next legislative term.

Opinion No. 92-18

Questions: 1) Under the Ethics Act, can I vote on the House portion of the General Appropriation Bill?

2) As an insurance agent, does my voting on the insurance bill create a conflict of interest?

1) See Opinion No. 92-17. above.

- 2) Your vote on the Insurance bill in general is not prohibited because, like any economic benefit that may accrue to you as an insurance agent, it will not be different from the benefits accruing to the class of insurance agents as a whole. There may be specific provisions or amendments which create a conflict, but more information would be necessary to render an advisory opinion on those issues.

Opinion No. 92-19

- Questions:
- 1) As a pharmacist, may I vote on the section of the Appropriations Bill pertaining to pharmacist license fees?
 - 2) As a recipient of Medicaid funds, through my pharmacy, may I vote on provisions of the Appropriations Act designed to raise Medicaid funds?
 - 3) Can I vote on provisions designed to specifically affect Medicaid funding of pharmacies?

In answer to your first question, §8-13-700(B) provides that no member may make, participate in making, or in any way attempt to use his office to influence a governmental decision in which he or his business has an economic interest. Economic interest is defined in §7-13-100(1)(A) as an "interest distinct from 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." The license fees at issue do not appear to fall within the definition above. Furthermore, subsection (B) expressly states that economic interest does not include interests which accrue to other House member as a member of a profession to no greater extent than the potential benefit could reasonably be foreseen to accrue to all other members of the profession. Because your voting for or against a license fee increase affects you no differently than other pharmacists, you would not be prohibited from voting on that section of the Appropriations Bill .

In answer to your second and third questions, the exception in the economic interest definition for general benefits to the whole profession should allow you to vote on the items you addressed.

Opinion No. 92-20

- Question: Can a member request that lobbyists or lobbyists' principals donate gifts of less than \$25.00 value as prizes for a charitable event?

Section 2-27-80(B) of the Ethics Act is quite clear in prohibiting a member from soliciting from a lobbyist anything of value. "Anything of value" includes gifts according to §2-27-10(1)(a)(vii). Even though you would not personally receive such donations, the language of the Act separately and distinctly prohibits both the solicitation and the receipt of things of value. None of the exceptions in subsections (c), (d), or (E) appear to apply.

Section 2-17-90 of the Ethics Act is the provision which relates to lobbyists' principals' contacts with public officials. Unlike the provision concerning lobbyists referred to above, this section is silent concerning a member's solicitation and receipt of "other things of value." A possible impediment in the act is contained in §8-13-710(B) which provides that a member "who receives, accepts, or takes, directly or indirectly, from a person, anything of value worth twenty-five dollars or more in a day" must report the thing of value on his statement of economic interests. This section likely would not apply because the charity would receive the gifts, not you, and the value of the gifts would be less than \$25.00.

In conclusion, soliciting gifts from lobbyists is prohibited in the Ethics Act. In contrast, nothing in the Act expressly prohibits a member from soliciting gifts from a lobbyist's principal. A member should use his discretion concerning whether such solicitation would be proper as a political or practical matter, however.

Opinion No. 92-21

Question: Is it proper for a House member to be reimbursed for out-of-pocket expenses by ALEC for costs incurred while attending meetings of ALEC?

It is assumed that ALEC, an Intergovernmental organization; does not employ a registered lobbyist in South Carolina. As such, provisions placing limits on the amount of things of value received by a House member are not applicable. Your receipt of expense reimbursement money for attending ALEC meetings is not in violation of the letter nor the spirit of the law. Reimbursement or payment for an out-of-state speaking engagement does require prior written approval from the Speaker. A similar question was addressed in Opinion No. 92-9.

Opinion No. 92-22

Re: Opinion No. 21, above.

You asked for clarification of the statement concerning prior approval by the Speaker. The above line was added to your previous letter merely for informational purposes to make you aware of that requirement should you attend a similar event at which you would be speaking.

Opinion No. 92-23

Question: Are endorsement letters for candidates to a position elected by the General Assembly a violation of the Ethics Act?

Letters of endorsement written by members are not a violation of the Ethics Act as written. Section 8-13-930 prohibits candidates from directly seeking pledges from members prior to screening. This section also prohibits members from pledging their vote to a candidate prior to screening. The Act is silent concerning endorsement letters written on behalf of candidates by members prior to screening. Because the letters in question are written by members to other members, neither prohibition in the Act applies.

Opinion No. 92-24

You posed several questions concerning fundraising activities by the South Carolina Legislative Black Caucus. Concerning solicitation of contributions from lobbyists, §2-17-80(5) prohibits a House member from soliciting or receiving contributions from a lobbyist or a person acting on behalf of a lobbyist.

"Contributions," as defined by 8-13-1300(7), include monetary gifts to candidates or committees, legislative caucus committees included. Nothing in the Ethics Act prohibits a House member or committee from soliciting funds from a lobbyist's principal, however. The Ethics Act, §8-13-1322(A), limits contributions from a person to a committee and acceptance of contributions by a committee aggregating more than three thousand five hundred dollars in a calendar year. Any contributions collected from lobbyists' principals does not count against their \$25/day, \$200/year limit for members of the General Assembly, as those caps relate to the "no cup of coffee" rule exceptions rather than to political contributions.

Opinion No. 92-25

- Questions:**
- 1) Do House members need to report on disclosure forms, meals, etc. from functions approved by the House Invitations Committee?
 - 2) Should House members report on W-2 forms the value of any reception/meals valued at \$25.00 or more?

The answer to your first question is found in §8-13-1120(A)(9). This section requires that members list in their economic interest forms the source and a brief description of any lodging, food, or entertainment received during the preceding calendar year from a person who likely would not have provided the hospitality, but for the

member's office. Additionally, §2-17-90(c) requires members to report on their economic interest forms the value of anything received from lobbyists' principals in accordance with §2-17-90(A) & (B), which includes food and entertainment.

Your second inquiry is not a matter within the purview of the Ethics Committee. It is suggested that you contact House bookkeeping or the State Tax Commission for such individual tax advice.

Opinion No. 92-26

This letter is in response to your inquiry concerning legislators serving on the Medical University's Board of Visitors and Health Sciences Foundation in light of §8-13-770. This code section prohibits state legislators from serving on state boards and commissions. State boards and commissions are those which have been created by an act of the General Assembly or those in which a majority of the membership of the board or commission consists of legislators. The Board of Visitors of MUSC does not meet either of these criteria. The Board of Visitors and the Health Sciences Foundation are internally organized bodies which were created by the Board of Trustees of MUSC.

Likewise, the Health Sciences Foundation is not a statutorily created state board or commission. Therefore, legislators are not precluded from serving on such a foundation under the Ethics Act.

Opinion No. 92-27

- Questions:
- 1) Is it permissible for a corporation, of which a House member is the majority stockholder, to sell goods to various state and local governmental entities, and if so, must the member abstain from voting on any sections of the Appropriations Bill?
 - 2) What is the correct procedure for having one's abstention noted in the House Journal?

Section 8-13-745(c) prohibits a member's business from contracting for goods or services with an agency, commission, board, department, or other entity funded by the appropriations bill if that member has voted on the section of that year's budget

funding the particular entity. It was not contemplated to include simple "over the counter" type retail transactions in the definition of "contracting for goods", however. No recusal from voting on sections of the appropriations bill are necessary in that situation.

Section 8-13-700(B) sets forth the procedure for having one's abstention from voting on legislative issues which pose a potential conflict of interest noted in the record. A written statement describing the matter requiring action and potential conflict must be submitted to the Speaker for printing in the House Journal. The Clerk of the House has printed forms at the desk that may be used to expedite the process.

Opinion No. 92-28

Question: Does a conflict of interest exist for lawyers in general and tort lawyers specifically in voting on the no-fault insurance bill?

In neither case would a House member who is an attorney have a conflict of interest regarding a vote on the no-fault insurance bill. Section 8-13-700(B) provides that no member, may make, participate in making, or in anyway attempt to use his office to influence a governmental decision in which he has an economic interest. Economic interest is defined in §8-13-199(11)(A) as an "interest distinct from 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." Subsection (B) of the definition, however, expressly states that voting on a bill is not prohibited when the economic benefit that may accrue to a member by virtue of his profession does so to no greater extent than the benefits that may accrue to all other members of the profession. Because any foreseeable benefit gained or detriment incurred caused by passage of or defeat of the no-fault insurance bill would affect you no differently, generally, than any other attorney, you would have no conflict as a lawyer in voting on the bill.

Opinion No. 92-29

Question: May I receive payment for hotel accommodations and food by the group at whose function I will be speaking?

Section 8-13-715 prohibits a House member acting in an official capacity from receiving anything of value for speaking before a public or private group. However, this section does allow for the payment or reimbursement for actual reasonable expenses incurred for a speaking engagement.

Meals and accommodation costs incurred at an out of town convention at which you will be speaking on legislative matters certainly are reasonably connected with accomplishing the purpose of the speaking engagement. No prior approval for in-state speaking engagements is required. Reimbursement or payment for out-of-state speaking engagement expenses does require prior written approval from the House Speaker.

Opinion No. 92-30

Question: May I continue to serve on the internally created Policy Board of the statutorily created South Carolina Center for the Advancement of Teaching and School Leadership?

Section 8-13-770 prohibits state legislators from serving on state boards and commissions. State boards and commissions are those which have been created by an act of the General Assembly or those in which a majority of the membership of the board or commission consists of legislators. The Commission on Higher Education was directed to establish the South Carolina Center for the Advancement of Teaching and School Leadership in §59-18-25. The Policy Board of the Center, of which you are a member, was internally created by the bylaws of the center, not in any legislation. The Policy Board is not made up primarily of legislators. Therefore, your service on the Policy Board does not fall within the prohibitions outlined in §8-13-770.

Opinion No. 92-31

This letter is in response to your inquiry concerning any potential Ethics Act violations resulting from the proposed events sponsored by the Redevelopment Authority which include legislators. Whether the Ethics Act applies is determined by your status as a lobbying group. Section 2-17-10 defines lobbying as promoting or opposing through direct communication with public officials or public employees the introduction or enactment of legislation before the General Assembly or the committees or members of the General Assembly. Your letter and agenda are not clear on whether any lobbying activity will take place. Regardless of any lobbying activity, §2-17-90(A)(1) allows a lobbyist's principal to provide transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal if the entire county delegation is invited if expenditures do not exceed \$25 per day and \$200 per year, per legislator. If the Authority does not have a registered lobbyist, then the monetary caps do not apply. Your letter states that the entire Greenville County delegation will be invited, therefore, whether lobbying activity occurs or not the Ethics Act will not prohibit your function.

Opinion No. 92-32

This letter is in response to your inquiry concerning whether it is permissible under the Ethics Act for you to invite area legislators to a meeting; including a luncheon or dinner at your campus. Whether the Act applies is determined by your status as a lobbying group. Section 2-17-10 defines lobbying as promoting or opposing through direct communication with public officials the introduction or enactment of legislation before the General Assembly or the committees or members of the General Assembly.

You represent in your letter that the proposed meeting is for informational purposes and will not involve lobbying as defined above. Therefore, your ability to invite area legislators to such a meeting is not constrained by the Ethics Act.

The only requirement concerning the meals would be in 58-13-710(B). This section requires public officials to report on their statements of economic interest anything of value worth twenty-five dollars or more in a day received from a person if there is reason to believe the donor would not give the thing of value but for the public official's office. Because the legislators are being invited due to their status as officeholders, if the value of the meal is twenty five dollars or more, the individual legislator must report it on his statement. Therefore, it would be of great assistance to the legislator invitees to include a dollar value of the meal for their records.

Opinion No. 92-33

Question: Because of my law firm's representation of state agencies in state tort claims actions via the Insurance Reserve Fund and Attorney General's Office, am I required to recuse myself from voting on the sections of the General Appropriations Bill which fund the agency/clients?

The short answer to your inquiry is no recusal is necessary. S. C. Code 58-13-745(c) prohibits a legislator or his firm from entering into a contract for services with a state agency if the legislator has voted on that agency's budget in the preceding year. Since the contracting party is the Insurance Reserve Fund, you have rightfully abstained from voting on that entity's budget. Representation of a client which did not directly contract with or compensate you or your firm would not create a situation in which recusal from considering budgetary matters for those agencies would be required. Therefore, you are free to vote on appropriations for state agencies you represent in court via the Insurance Reserve Fund.

Opinion No. 92-34

Question: Is there a conflict in voting on legislation relating to a member's local County School Board legislation if that member is employed by the district?

Your position with the local school district is far removed from the local school board. You are hired by the superintendent of schools and are directly supervised by an employee ranked below the superintendent. The question has arisen whether it is a conflict for you to vote on local legislation proposing to reduce the school board from 12 members to 8 members.

Section 8-13-700(B) provides that no member may make, participate in making, or in any way attempt to use his office to influence a governmental decision in which he has an economic interest. Economic interest is defined in §8-13-100(11)(A) 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." Clearly, your vote on the proposed legislation will not convey an economic benefit to you. Therefore, §8-13-700(B) does not apply and will not act to restrain your vote on this matter.

The purposes section of the Act's preamble does state that even the appearance of conflicts of interest should be avoided. This language merely states the intentions of the Legislature in passing the Act but it not part of the codified law.

Opinion No. 92-35

Question: As a practicing attorney, can I represent clients before the South Carolina Board of Probation, Parole and Pardon Services and the Tax Commission?

The Ethics Act does prohibit the representation of clients for a fee in a contested case before state agencies, boards, and commissions, etc. in certain circumstances. Section 8-13-745(A) prohibits such representation by a member or his firm if the member has voted in the election, appointment, recommendation, or confirmation of a member of a governing body of the board within the twelve preceding months. Section 8-13-745(B) prohibits such representation by a member or his firm if the member has voted on the section of that year's general appropriation bill or supplemental appropriation bill relating to that board within one year from the date of the vote.

"Contested case" is defined in §1-23-310(2), the Administrative Procedures Act (APA), as "a proceeding...in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing." The South Carolina Tax Commission is governed by the Administrative Procedures Act. Therefore, your representation of clients before the Tax Commission is subject to the above limitations.

S. C. Code §1-23-10(4) specifically exempts the Probation, Parole and Pardon Board from coverage under the APA. Due to the lack of procedural controls, prohibition against representing another person before a governmental entity in §8-13-740(B) applies and you should not represent clients before the Parole Board.

Opinion No. 92-36

Question: May I accept an honorarium for speaking at an engagement for an organization in which I have been an active participant for many years?

Section 8-13-715 of the Ethics Act prohibits a House member acting in an official capacity from receiving anything of value for speaking before a private group. Nothing in the Ethics Act prohibits receipt of honoraria when a House member is hired as a speaker for reasons other than their status as a House member. You state in your letter that you have been a leader at all levels in your sorority prior to becoming a House member. Unfortunately, a definitive answer to whether you can accept the honorarium in this instance cannot be given because it is not known the capacity in which you were asked to speak. That decision must be made by you yourself or with guidance from the inviting chapter.

Opinion No. 92-37

Question: As a licensed insurance agent, is discussion of and voting on insurance legislation a conflict of interest?

Section 8-13-700(B) prohibits a House member from making, participating in making, or in any way attempting to use his office to influence a governmental decision in which he has an economic interest. "Economic Interest", as defined in §8-13-100(11), does not prohibit a House member from participating in, voting on, or influencing an official decision if the only economic interest that may accrue to the member accrues to him as a member of a profession, occupation, or larger class to no greater extent than the benefit would accrue to other members of these groups. Therefore, your vote on an insurance bill in general is not prohibited if any reasonably foreseeable benefit that may accrue to you likely will not be different than the benefit accruing to insurance agents as a whole. There may be specific provisions or amendments which create a conflict because of a specialized line of insurance policies that you may carry or because of other aspects of your business that are not typical of all insurance agents, but more information would be necessary to render an advisory opinion on those specific issues. (See also Opinion No. 92-18 and 92-39)

Opinion No. 92-38

Question: As a bank employee, am I required to list on my economic interest statement any lobbyists or lobbyist principals who do business with my employer bank?

As a House member, §8-13-1130 requires you to report on your economic interest statement anyone you know to be a lobbyist or lobbyist principal whom you know has purchased services from your bank worth over two hundred dollars. Accordingly, any known customers whom you know to be a lobbyist or lobbyist principal and also know has purchased services worth over two hundred dollars must be reported. You represent that in your job at the bank you have little customer contact and know personally fewer than one percent of your bank's customers. Therefore, if you do not know of any customers meeting the requirements, no such reporting is necessary. However, to be safe you may want to insert a disclaimer on the report to the effect of: "I work in a bank which may service the accounts of lobbyists or lobbyist principals. I have little customer contact and am not aware of any lobbyists or lobbyist principals who bank with us."

Opinion No. 92-39

Question: Can House members, who are attorneys' or insurance agents cast their vote for or against the no fault insurance bill without violating section 8-13-700(A) or (B) or the spirit of these sections?

Section 8-13-700(B) prohibits a House member from making, participating in making, or in any way attempting to use his office to influence a governmental decision in which he has an economic interest. As this Committee has pointed out on previous advisory opinions, however, "Economic Interest", as defined in §8-13-100(11), does not prohibit a House member from participating in, voting on, or influencing an official decision if the only economic interest that may accrue to the member accrues to him as a member of a profession, occupation, or larger class to no greater extent than the benefit would accrue to other members of these groups. Therefore, a vote on an insurance bill in general by a lawyer or insurance agent is not prohibited if any reasonably foreseeable benefit that may accrue to him would not likely be different than the benefit accruing to insurance agents or lawyers as a whole. While the area of practice may vary from one attorney to another, with some concentrating on personal injury cases, all attorneys admitted to practice in South Carolina have the legal authority to handle such cases. The intent of the Ethics Act was not to disallow legislators from voting on legislation within their professional expertise, but rather to assure that elected officials would not use their influence to create a direct economic benefit for themselves.

There may be specific provisions or amendments which create a conflict because of a specialized line of insurance policies carried or because of other aspects of business not typical of all insurance agents, but more information would be necessary to render an advisory opinion on those specific issues. Likewise, there may be some unforeseen amendments which specific lawyers may have a conflict with; however, that particular issue would need to be presented to the Ethics Committee if an advisory opinion is desired prior to the vote. (See also Opinions No. 92-18, 92-28 and 92-37.)

Opinion No. 92-40

Question : Can campaign funds be used to (1) pay dues to certain organizations like ALEC and (2) make contributions to a politically oriented group like the College Republicans?

(1) Legislative oriented groups like ALEC serve legitimate legislative purposes, and this expenditure is therefore permitted under Section 8-13-1348 which states that campaign funds may not be used "to defray personal expenses which are unrelated to the campaign or office."

(2) Opinion 92-3 states that "dues or contributions to some organizations . . . could be paid from a campaign account, depending on the nature of the group." Political and Partisan groups are generally regarded as campaign related and dues can thus be paid to them.

Opinion No. 92-41

Question : Is it permissible for area merchants to make contributions to the Richland County Troopers Association for that organization's annual Christmas party?

The Association is neither a lobbyist's principal nor lobbyist. The relevant sections of the act on this type of activity are concerned with intent behind and the materials used in the solicitation. The receipt of or the solicitation for the donations must not have any intent or motivation of influencing governmental decisions or procedures which are stated in Section 8-13-705. Also, any solicitation that involves the use of official materials as outlined in Section 8-13-700 is in violation of the act unless it falls within the exception of incidental use which is stated further in the section.

Disclaimer : This opinion in no way binds the Richland County Troopers Association. This only reflects the opinion of the House Ethics Committee, and the Association falls under the jurisdiction of the State Ethics Commission. Their ruling or interpretation of the matter would apply regardless of the above advisory opinion.

Opinion No. 92-42

Question : Where does a member have to report travel expenses that were reimbursed by the lobbyist's principal who hosted the meeting in which the member was a participant?

Any member who receives any compensation or reimbursement pursuant to Section 2-17-90 must report the items compensated for and their value. The place to report a reimbursement by a lobbyist's principal is under question number 19 on the Statement of Economic Interest form in the same manner it was done in the past.

The limit is \$25 per day or \$200 per year in the aggregate. However, if the member is speaking at the engagement, section 2-17-100 allows that member to be reimbursed for actual expenses incurred, even if they exceed \$25.

Opinion No. 92-43

Question : Can candidates reimburse themselves for mileage incurred while campaigning at the current state rates from the candidate's own campaign funds?

(Section 8-23-1348 - expenses related to the campaign or office)
The expenditure of money for transportation while campaigning is campaign related, and the current state rate for reimbursing mileage is within the "fair market" limitations of Section 8-13-1348(D).

Opinion No. 92-44

Question : Can a House member use his campaign account to make a contribution to a group of high school students who are raising money for a school trip?

(Section 8-13-1348 - expenses related to the campaign or office)
Each expenditure should be judged on whether it is an ordinary campaign or office related expense or a personal expense not connected to the ordinary duties of office. Dues to some political groups are campaign related, but dues to civic organizations are not. Contributions to a school trip, like dues to a civic organization, are not related to the campaign or office and should be made from personal funds.

Opinion No. 92-45

Question : Is it permissible for a member to accept an invitation to the annual South Carolina Association of Counties Conference at which the food, lodging, and registration would be paid for by the county?

The Ethics Act does not prevent a member from attending a meeting to discuss

legislation and its effects on the member's home district, but the reporting requirements for the reimbursement of any expenses would depend on who was reimbursing the member. The Association does retain a lobbyist, but the opinion request letter stated that the county was paying for the expenses. Therefore, the section covering reimbursements by a lobbyist's principal does not apply. The County is not made a lobbyist's principal just for being part of an organization that has a lobbyist.

The relevant reporting requirement is Section 8-13-710(B) which covers expenditures made on behalf of the member because of his elected position.

Opinion No. 92-46

Question : Concerning contributions to political party caucuses or to a high school fund raising project, can those be paid from personal funds or must these be paid from campaign funds?

There are three general categories dealing with the possible expenditures from a campaign account. Expenditures unrelated to the campaign or office (§8-13-1348), like contributions to a school fundraising project, can not be made using campaign funds. On the other hand, expenditures, like a campaign ad on a billboard, "paid on behalf of a candidate or committee must be drawn from the campaign account." These are patently campaign related expenses and must come from the campaign account. Finally, some expenditures can be made from either the campaign account or personal funds. Items which are to be paid using the candidate's discretion are those which are either incurred as a result of the duties of elective office (e.g., dues to the House Democratic Caucus) or which are only generally and indirectly related to a campaign, such as the purchase of tickets to a county political rally or barbecue.

Opinion No. 92-47

Question : Would a company incorporated under the laws of South Carolina be precluded from receiving a state Jobs-Economic Development Authority loan because a legislator owned a minor interest in it if the company met all other criteria set down by the agency to receive a loan?

Section 8-13-745(C) states that a member's business, if he owns more than five percent, may not enter into a contract with a governmental agency if the member voted on the section of the Appropriations Bill dealing with that agency within the past year. Therefore, if the member voted on the Appropriation section dealing with JEDA in the last year, then the member's business cannot contract with JEDA to receive a loan.

Opinion No. 92-48

Question : Can a member accept a gift from an organization that does not retain a lobbyist nor does it belong to an association which employs a lobbyist?

There are no restrictions placed on a public official accepting a gift from an organization not involved in lobbying. If the gift is because of the member's elected position, then Section 8-13-710 (B) requires it to be reported if it is in excess of \$25 per day or \$200 per year.

Opinion No. 92-49

Question : Can a member attend a function put on by a group that is not a lobbyist or lobbyist's principal?

Section 8-13-710(B) requires a report of expenses over \$25 per day or \$200 per year from such a function if:

- (1) it is due to the member's position as an elected official;
- (2) the donor is seeking business with the governmental entity to which the member belongs; or
- (3) the donor's operations are regulated by the governmental entity to which the member belongs.

Opinion No. 92-50

Question : Would it be permissible to use campaign funds to purchase advertisements in publications printed by non-profit organizations?

Advertisements purchased in such publications need to be made upon final disbursement of the campaign account as covered under Section 8-13-1370. If advertisements are made using an active account, the advertisements must be either clearly campaign or office related as provided in Section 8-13-1348(A).