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ADVISORY OPINION 2023 - 3

BACKGROUND

Recently, questions have been raised regarding the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Ethics Act) requirements for former legislative special interest caucuses (former LISCs). Specifically, what are the filing and reporting requirements for legislative caucuses as well as whether there are any statutory limits for contributions to which they must comply? Also, there have been questions regarding the applicability of the "Invitation Rule" regarding lobbyists' principals and legislative caucuses. Ultimately, these questions regarding legislative caucuses have been posed by former LSICs and whether their requirements are now the same as legislative caucuses. The answer is "yes."

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

APPLICABLE FEDERAL COURT CASE

On August 17, 2023, United States District Judge Cameron McGowan Currie clarified these issues in her Order Denying Motion to Alter or Amend and Granting in Part Motion for Clarification in South Carolina Freedom Caucus vs. Wallace H. Jordan, Jr., et al., Civil Action No. 3:23-cv-795-CMC. Judge Currie held, "The court confirms Plaintiff's understanding: that legislative special interest caucuses are subject to the same limitations as legislative caucuses with regard to elections and ballot measures, contributions, funds from lobbyists, things of value given, and records that must be maintained." *Id.* at p. 9. Thus, the questions remaining are (1) what are the applicable filing requirements for legislative caucuses? (2) what are the applicable contributions limitations for legislative caucuses? and (3) how does the "Invitation Rule" apply to the legislative caucuses?

DISCUSSION

I. Filing Requirements for Legislative Caucuses

Currently, the law in South Carolina regarding filing and reporting requirements for legislative caucuses, defined in the statute as legislative caucus committees, is provided in S.C. Code Ann. § 8-13-1308(G) as follows:

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. A political party also must comply with the reporting requirements of subsections (B), (C), and (F) of Section 8-13-1308 in the same manner as a candidate or committee.

S.C. Code Ann. § 8-13-1308(G). (emphasis added). Subsection (B), (C), and (F) deal with filing campaign disclosure reports. Section 8-13-1302 requires a committee to maintain records, which include contributions, contributors’ names, and expenditures.

As an example, on the State Ethics Commission’s (SEC) website, under “Lobbyist, LP, and Committee Electronic Filing,” the legislative caucuses file a quarterly Campaign Disclosure report, which lists each contributor with the maximum contribution allowed of \$3,500 in a calendar year per contributor. See Section 8-13-1322(A).

The online ethics filings of the legislative caucus are located at <https://apps.sc.gov/PublicReporting/IndividualCommittee/LegCaucus/LookupCaucus.aspx> for public review.

II. Contributions to Legislative Caucuses

Contributions are defined in Section 8-13-1300(7) as “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 candidate or committee to influence an election; or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge, whether any of the above are made or offered directly or indirectly.” (emphasis added). As noted above, Section 8-13-1322, regarding dollar limits on contributions to committees, provides:

(A) A person may not contribute to a committee and a committee may not accept from a person contributions aggregating more than three thousand five hundred dollars in a calendar year.

(B) A person may not contribute to a committee and a committee may not accept from a person a cash contribution unless the cash contribution does not exceed twenty-five dollars

for each election and is accompanied by a record of the amount of the contribution and the name and address of the contributor.

Section 8-13-1322. (emphasis added). Thus, the maximum contribution per contributor to the legislative caucuses' campaign disclosure account is \$3,500.

III. Lobbyists and Lobbyists' Principals and the "Invitation Rule"

Section 2-17-110(F) provides "A lobbyist, a lobbyist's principal, or a person acting on behalf of a lobbyist or a lobbyist's principal may not host events to raise funds for public officials. No public official may solicit a lobbyist, a lobbyist's principal, or a person acting on behalf of a lobbyist or a lobbyist's principal to host a fundraising event for the public official." Thus, a lobbyist or lobbyist's principal cannot host fundraising events for public officials, that is, Members of the House. Also, a lobbyist may not give campaign contributions to Members of the House. See Section 2-17-80(A)(5).

Finally, Section 2-17-90(A)(1) permits lobbyists' principals to provide lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal, subject to dollar amount limitations, to the legislative caucuses or their committees or subcommittees. This is known as the "Invitation Rule." The dollar amount limitations are currently sixty dollars per day and four hundred eighty dollars per year and are subject to change based upon the Consumer Price Index. See Section 2-17-90(B).

CONCLUSION

In summary, a former LSIC should follow the provisions of South Carolina laws as they apply to legislative caucuses. See United States District Judge Cameron McGowan Currie's Order Denying Motion to Alter or Amend and Granting in Part Motion for Clarification in South Carolina Freedom Caucus vs. Wallace H. Jordan, Jr., et al., Civil Action No. 3:23-cv-795-CMC. Specifically, the Committee notes that legislative caucuses are limited to receiving campaign contributions of \$3,500 per calendar year per candidate which must be reflected in the Campaign Disclosure report filing. Further, once legislative caucuses raise money, they set up accounts on the SEC's portal, and they file their reports through the electronic portal.

Finally, lobbyists' principals may provide for legislative caucuses' lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal subject to dollar amount limitations of \$60 per day and \$480 per year.

Thus, former LSICs should follow the campaign contribution limits, the ethics filing requirements, and the Invitation Rules applicable to legislative caucuses.

Adopted September 19, 2023.