ETHICS ADVISORY OPINIONS
(2016-1998)

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 private 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 legal expenses paid with my personal funds associated with the above mentioned 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 Interests form by April 15th and whether a person filing a Statement of Economic Interests form must include state retirement? NOTE: Part 1 overruled by 2020-2.
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 the 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 economic interests 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 lobbyists.
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

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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.

Seehttp://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;
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> (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

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[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 subcomittee 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

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(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.

House Legislative Ethics Committee

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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.
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> 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.

House Legislative Ethics Committee

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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]

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[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.

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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.

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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 a 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.

House Legislative Ethics Committee

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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.

House Legislative Ethics Committee

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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 92-4[1] 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:

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.

Opinion 2014-1

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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.

Opinion 2014-2

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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

"Following the 2101 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.

Opinion 2013-1

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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.

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 2013-2

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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

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 2013-3

Questions:

I. Whether a person with an open campaign account must file an updated Statement of Economic Interests form by April 15th.

II. Whether a person filing a Statement of Economic Interests form must include state

retirement. Answers:

I. Yes. A person with an open campaign account must file an updated Statement of Economic Interests form by April 15th. Section 8-13-1110 states that a "public official" must file a Statement of Economic Interests 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 Interests 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 Interests 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 Interests forms specifically states that retirement should not be included.

2013 Act No. 61 changed the date for filing the Statement of Economic Interests from April 15 to March 30 effective June 25, 2013.

HEC Advisory Opinion 2020-2, adopted June 24, 2020, overruled Part 1 of HEC Advisory Opinion 2013-3.

Opinion 2013-4

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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.

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 lobbyists. 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)

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."

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[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.

Opinion 2003-1

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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?

(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 $1,000 contribution limit.

It would 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.

Opinion 2002-1

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issues: (1) 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? (2) May a member use campaign funds to pay dues to 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?

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.

Opinion 2000-1

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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 interests before the established deadline pursuant to Section 8-13-1510 of the State Ethics Act?

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 interests 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 fine 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).

Opinion 99-1

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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

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 nonprofit 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 nonprofit 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 nonprofit 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.

Opinion 99-2

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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?

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 service 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 service 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.

Opinion 99-3

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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?

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 the equipment will be used purely for campaign or office related purposes[.]"

Opinion 98-1

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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?

(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.

Opinion 98-2

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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?

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.

Opinion 98-3

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

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

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.