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HERBERT R. HAYDEN, JR.
EXECUTIVE DIRECTOR

November 12, 2009

Mr. Otis B. Rawl, Jr.
SC Chamber of Commerce
1201 Main Street, Suite 1700
Columbia, South Carolina 29201-3294

Re: Request for Informal Opinion

Dear Mr. Rawl:

I am providing an informal opinion at this point. If your letter was a formal opinion request, it cannot be taken up by the Commission until its January 20, 2010 meeting as the letter was not received in time for the November 18th meeting. An informal opinion is the opinion of the Commission staff based on the State Ethics Commission's prior published opinions; however, an informal opinion is not binding on the Commission. S.C. Code Ann. §8-13-320 (Supp. 2007). The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991. This opinion is based on the facts as you submitted. Any material deviation from the submitted facts or failure to disclose relevant information will void this opinion. An opinion does not supersede any other statutory or regulatory restrictions which may apply to this situation.

Issue

In your letter you state the following:

Per our conversation several weeks ago and subsequent conversation with Cathy Hazelwood, I write to formally ask for clarification of the informal opinion your staff issued on July 17, 2009 related to lobbyist and lobbyist principal contact with members of the Tax Realignment Commission (TRAC).

S.12/R.121 in subsection (F) states:

Commission members shall not receive information regarding the business of the commission from a lobbyist except through formal presentation to the commission at a meeting called in compliance with the Freedom of Information Act. Any lobbyist violating the provisions of this subsection is deemed guilty of a misdemeanor and upon conviction, must be punished as provided in Section 2-17-130 of the 1976 Code.

The law clearly states the General Assembly's intent to prohibit lobbyists from interacting with TRAC members outside of public meetings. The General Assembly does not speak to the issue of lobbyist principal interaction with Commission members. The informal opinion of the SC State Ethics Commission states:

Although Subsection F prohibits lobbyists' interaction, I think a lobbyist's principal should not provide to a commission member information regarding the business of the commission outside a public meeting. If this is not a called meeting pursuant to FOIA, then I do not think a commission member, a lobbyist and the lobbyist's principal should meet. If such a meeting occurs, then the lobbyist should say nothing to the commission meeting regarding the business of the commission.

The South Carolina Chamber of Commerce asks the SC State Ethics Commission to issue a revised opinion clarifying the detailing the appropriate levels of interaction between TRAC members and lobbyist principals.

Law

Section 2-17-10(12) states:

'Lobbying' means promoting or opposing through direct communication with public officials or public employees:

- (a) the introduction or enactment of legislation before the General Assembly or the committees or members of the General Assembly;
- (b) covered gubernatorial actions;
- (c) covered agency actions; or
- (d) consideration of the election or appointment of an individual to a public office elected or appointed by the General Assembly.

'Lobbying' does not include the activities of a member of the General Assembly, a member of the staff of a member of the Senate or House of Representatives, the Governor, the Lieutenant Governor, or a member of the executive staff of the Governor or Lieutenant Governor acting in his capacity as a public official or public employee with regard to his public duties.

Section 2-17-10(13) states in part:

'**Lobbyist**' means any person who is employed, appointed, or retained, with or without compensation, by another person to influence by direct communication with public officials or public employees: (i) the action or vote of any member of the General Assembly, the Governor, the Lieutenant Governor, or any other statewide constitutional officer concerning any legislation; (ii) the vote of any public official on any state agency, board, or commission concerning any covered agency actions; or (iii) the action of the Governor or any member of his executive staff concerning any covered gubernatorial actions. 'Lobbyist' also means any person who is employed, appointed, or retained, with or without compensation, by a state agency, college, university, or other institution of higher learning to influence by direct communication with public officials or public employees: (i) the action or vote of any member of the General Assembly, the Governor, the Lieutenant Governor, or any other statewide constitutional officer concerning any legislation; (ii) the vote of any public official of any state agency, board, or commission concerning any covered agency actions; or (iii) the action of the Governor or any member of his executive staff concerning any covered gubernatorial actions. 'Lobbyist' does not include:

- (h) an individual who receives no compensation to engage in lobbying and who does not make expenditures or incur obligations for lobbying in an aggregate amount in excess of five hundred dollars in a calendar year.

Section 2-17-10(14) states:

'Lobbyist's principal' means the person on whose behalf and for whose benefit the lobbyist engages in lobbying and **who directly employs, appoints, or retains a lobbyist to engage in lobbying**. However, a lobbyist's principal does not include a person who belongs to an association or organization that employs a lobbyist, nor an employee, officer, or shareholder of a person who employs a lobbyist. If a membership association or organization is a lobbyist's principal, the association or organization must register and report under the provisions of this chapter. A person is considered a lobbyist's principal only as to the

public office or public body to which he has authorized, pursuant to this chapter, a lobbyist to engage in lobbying." (Emphasis mine.)

Discussion

Lobbying means promoting or opposing through direct communication with public officials or public employees the introduction or enactment of legislation before the General Assembly or the committees or members of the General Assembly for purposes of your opinion request. A lobbyist is a person who is employed, appointed, or retained, by another person, i.e. a lobbyist's principal, to influence through direct communication a legislator's introduction or enactment of legislation. The lobbyist's principal is by definition the person who directly employs, appoints, or retains a lobbyist to engage in lobbying. The lobbyist's principal speaks to the General Assembly and its various commissions through its registered lobbyist.

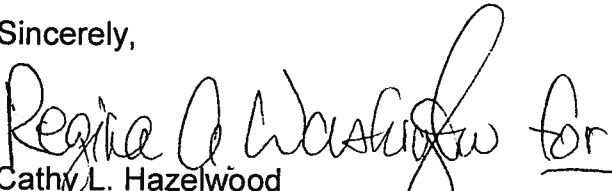
Unless you are the individual who directly employs the Chamber's lobbyists, then you are not the lobbyist's principal, but rather the contact person for the Chamber. Members of the board are not lobbyist's principals. The plant manager exception in the definition of lobbyist normally provides protection, if you will, to board members and contact persons when they are lobbying. See Section 2-17-10(13)(h). If a Chamber board member or Chamber employee is incurring expenses in excess of \$500 to directly communicate with TRAC, then they are lobbyists and the restrictions in the TRAC legislation are applicable.

Conclusion

It is my opinion that the Ethics Reform Act does not prohibit South Carolina Chamber of Commerce board members or employees to provide information to TRAC commissioners or staff, as long as they have not incurred expenses in excess of \$500 to provide that information. Please contact me if you still wish to ask the State Ethics Commission for a formal opinion.

Thank you for contacting the State Ethics Commission. If I can be of further assistance in matters within the Commission's jurisdiction, please contact me.

Sincerely,


Cathy L. Hazelwood
Deputy Director and General Counsel

