ETHICS ADVISORY OPINIONS
(2019-2017)

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19-2	Are gratuities associated with service provided for campaign event expenses for which campaign funds can be used? Assuming that gratuities are allowed, are there limitations associated with the payment of those gratuities? May they be paid in cash, gift card, check, item purchased, etc? Are there limitations on amounts? May campaign funds be used to rent a venue for campaign purposes? Are there limitations on amount? If the venue is a private home, how should value be determined? Is that value an in-kind contribution? If so, may that value be off-set by the use of campaign funds? Are there limitations on the form that those off-setting payments may take or must they be by check?
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17-4	Is it acceptable for a Member/Lawyer to represent a state agency in a legal matter if the Member/Lawyer's attorney fees and litigation costs are paid for by a governmental insurance operation? May the Member/Lawyer still vote on a budget request related to that state agency since the agency is not paying the legal fees? Is a Member required to abstain from voting during subcommittee and committee meetings and during debate on the House calendar for bills related to the Member's agency client? **(amended October 30, 2017)**
17-5	Is it a conflict of interest for a Member to be employed by the County Treasurer?
17-6	May a Member continue to list under gifts on his or her Statement of Economic Interest "see Delegation office for a list" with the list noting the parking privileges received by the Delegation Members which includes the value, donor, and

	description of those privileges?
17-7	May a Member use his or her campaign funds to pay reasonable and necessary expenses for transportation, lodging and meals for the Member and his or her spouse while at the following international, national, regional, state or local events: political party conferences, political party conventions, legislative, trade or issues conferences, and speaking engagements?
17-8	May a Member serve on the board of a charitable, non-profit organization? Is it dual office holding for a Member to serve on the board of a charitable, non-profit organization?
17-9	May a Member participate in an educational tour to Israel with expenditures paid by a non-lobbyist principal host organization? May a Member use his or her campaign funds to pay for the expenses of this educational tour?
17-10	May a Member continue to serve on the Judicial Merit Selection Commission (JMSC) if his wife plans to file for an open Circuit Court seat that will be screened by the Commission?
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17-14	May a Member use his or her campaign funds to purchase door prizes for a town hall or community event? May a Member accept donations for door prizes? May a Member give away door prizes at campaign fundraisers?
17-15	Must a Member report an event which was co-sponsored by several lobbyist's principals that the Member attended as a gift on his or her Statement of Economic Interests? Must a Member report the value of the gift for each lobbyist's principal if each value is at or above the threshold amount?
17-16	May a Member use his or her campaign funds to make a contribution to a state or local political party or political caucus?

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ADVISORY OPINION 2019 - 1

The House Legislative Ethics Committee received a request from a Member for an advisory opinion. The Member questioned whether the Speaker of the House could pay for the costs of the Chairmen's breakfast from his or her campaign funds. In the past, the Speaker of the House has held a breakfast at a local club either once a week or once per month during the legislative session to discuss the work of each standing Committee with each of the Committee chairmen. The Chairmen's breakfast is not known as a social event but is conducted as a business meeting with the Speaker and the standing Committee Chairmen.

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

DISCUSSION

S.C. Code § 8-13-1348 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.

S.C. Code § 8-13-1348(A). Thus, campaign funds may be used for campaign expenditures or expenditures related to the office the Member holds.

In House Ethics Committee Opinion 2016-2, the Laundry List opinion, which dealt with permissible and impermissible uses of campaign funds, the Committee opined, regarding 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.

House Ethics Committee Opinion 2016-2, II, number 14, p. 9. Therefore, the Committee finds that it is a permissible expenditure from the Member/Speaker's campaign funds to pay for the Chairmen's breakfast pursuant to Section 8-13-1348(A). The Committee further finds that anything done by the Speaker or a Chairman of a Committee in furtherance of the office the Speaker or Chairman holds, such as, providing meals and gifts paid by campaign funds, is related to the office held.

CONCLUSION

In summary, the Speaker of the House may use his campaign bank account to pay for the Chairmen's breakfast as he would not conduct the Chairmen's breakfast but for the official position he holds as Speaker of the House.

Adopted January 10, 2019.

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ADVISORY OPINION 2019 - 2

The House Legislative Ethics Committee (Committee) received a request from a Member for an advisory opinion. The Member requested clarification regarding the use of campaign funds to cover various expenses related to campaign fundraisers. Pursuant to House Rule 4.16C(5), the Committee renders the following advisory opinion.

DISCUSSION

This opinion will be tailored to the Member's specific individual questions which follow:

1. Are gratuities associated with service provided for campaign event expenses for which campaign funds can be used?

There is little guidance either in the Ethics Act itself or Advisory Opinions on whether gratuities would per se be a "personal" campaign expenditure, and, therefore, violate Section 8-13-1348 of the South Carolina Code of Laws[1]. Being mindful of the principle that "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature," (Hodges v Rainey 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000), quoting Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)), the Committee must examine S.C. Code Ann. § 8-13-1348 to determine if such an outright prohibition should be read into the statue.

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

> 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

[1] The "Laundry List" opinion, Advisory Opinion 2016-2, issued by the House Ethics Committee on March 27, 1996 provides a list of expenditures and whether it is permissible to use campaign funds for these items. However, gratuities are not listed in this opinion.

> 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.

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

As noted in previous Advisory Opinions, including the "Laundry List" opinion (Advisory Opinion 2016-2), the State Ethics Commission (SEC) has explained 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 utilizes Committee Advisory Opinion 92-3[2], which provided 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, specified 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 expense or instead a personal expense not connected to the ordinary duties of office.

Advisory Opinion 92-3 (emphasis added). Using the test set forth above, the Committee considered the specific expenditure of gratuities related to a campaign event.

The Committee finds that it is customary to pay gratuity, in addition to the basic price, to a service worker for a service performed. As such, gratuities related to a campaign event are ordinary campaign related expenses. In terms of a campaign event, the Committee finds that gratuities should be limited only to service workers such as bartenders, servers, custodial workers, and valets. The Committee notes that these expenses should also be listed as expenditures on the campaign disclosure reports.

Gratuities do not included gifts for individuals hosting campaign events, such as a gift certificate given as a thank you to the host. These such expenses are gifts. Guidance concerning gifts can be found in Committee Advisory Opinions 2015-3 and 2016-2 which utilized the test set forth above. The Committee finds that thank you gifts to a host of a campaign function is an ordinary office expense that would not exist but for the candidate's position; therefore, it is a permissible campaign expense. As a caveat, the Committee feels that there are common sense limits to such gifts, and the scope of permissible gifts will vary, depending on local customs,

[2] Committee Advisory Opinion 92-3 provides the test to evaluate the permissibility of a campaign expenditure. This test has been utilized by the Committee in Opinions 2015-3 and 2016-2 (the "Laundry List" opinion).

practices, and other circumstances. As a reminder, the Member must list the expenditures for the gift with a detailed description on his or her campaign contribution report.

2. **Assuming that gratuities are allowed, are there limitations associated with the payment of those gratuities? That is may they be paid in cash, gift card, check, item purchased, etc? Are there limitations on amounts?**

The question presented concerns payment of gratuities in the context of service workers on a campaign. The Ethics Act provides clear guidance concerning acceptable form and limitations on amounts of expenditures. First turning to limitations on the form of payment, the Committee notes S.C. Code Ann. §8-13-1348(C):

> (1) An expenditure of more than twenty-five dollars drawn upon a campaign account must be made by:
> (a) a written instrument;
> (b) debit card; or
> (c) online transfers.
> The campaign account must contain the name of the candidate or committee, and the expenditure must contain the name of the recipient. These expenditures must be reported pursuant to the provisions of Section 8-13-1308.
> (2) Expenditures of twenty-five dollars or less that are not made by a written instrument, debit card, or online transfer containing the name of the candidate or committee and the name of the recipient must be accounted for by a written receipt or written record.

S.C. Code Ann. §8-13-1348(C). Thus, expenditures of more than twenty-five dollars must be made by a written instrument, debit card, or online transfer.

Utilizing House Ethics Committee Advisory Opinion 2018-5 and S.C. Code Ann. §8-13-1348(C), the Committee notes that withdrawals of cash from a campaign account to pay for expenditures related to the campaign in excess of twenty-five dollars is clearly prohibited. Further, the Committee notes that a candidate may establish a petty cash fund pursuant to S.C. Code Ann. §8-13-1348(E). This fund is not to exceed one-hundred dollars. Expenditures from the petty cash fund may be made only for office supplies, food, transportation expenses, and other necessities and may not exceed twenty-five dollars for each expenditure.

S.C. Code Ann. §8-13-1308(F) explains the requirements for filing of certified campaign reports by candidates as follows:

> Certified campaign reports detailing campaign contributions and expenditures must contain:
> (1) the total of contributions accepted by the candidate or committee;
> (2) the name and address of each person making a contribution of more than one hundred dollars and the amount and date of receipt of each contribution;
> (3) the total expenditures made by or on behalf of the candidate or committee;
> (4) the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure.

S.C. Code Ann. §8-13-1308(F) (emphasis added). Thus, payments made to service workers, as well as, gratuities for such work must be listed as an expenditure on a member or candidate's campaign disclosure report.

Now turning to the issue of limitations on amounts of campaign expenditures, the Committee notes S.C. Code Ann. §8-13-1348(D), which states "An expenditure may not be made that is clearly in excess of the fair market value of services, materials, facilities, or other things of value received in exchange." S.C. Code Ann. §8-13-1348(D). Further, the State Ethics Commission in SEC AO2017-002 and the House Ethics Committee in Advisory Opinion 2018-9 adopted guidelines for payment of campaign funds for campaign workers. Specially, these opinions were tailored for payment of services performed by a candidate's family member, but the guidelines apply here. The SEC stated:

> The Commission acknowledges that using campaign funds for services rendered by a candidate's business, a family business, or a family member is a practice susceptible to abuse. Accordingly, this general statement of permissibility comes with several caveats, the paramount one being that the expenditures must be *bona fide*. Put another way, the expenditures must be genuine and not an artifice to enrich a candidate's businesses with campaign funds. If campaign funds are being used for a tangible, easily documentable service, then the Commission presumes that this service is presumably bona fide so long as a receipt can be provided. [W]hen wage payments for series such as "sign removal," "phone calls," "canvassing" or "general campaign work" are made to family members, due to the vague nature of this work, the potential for abuse is greater."

SEC AO2017-002, p. 2. (emphasis added).

Accordingly, the Committee extends the three guidelines enumerated in House Ethics Advisory Opinion 2018-9 and SEC AO2017-002 to payments made to any campaign worker, regardless of a family or business relationship. Thus, a Member or Candidate who pays for work performed on the campaign with campaign funds must pay the fair market value for services rendered, the payment must be bona fide, and documentation must be maintained justifying the services performed and payment made.

3. May campaign funds be used to rent a venue for campaign purposes? Are there limitations on amount? If the venue is a private home, how should value be determined? Is that value an in-kind contribution? If so, may that value be off-set by the use of campaign funds? Are there limitations on the form that those off-setting payments may take or must they be by check?

Following the reasoning above stated, the Committee finds that renting a venue for a campaign event is an ordinary campaign expense. The value set must be fair market value, as more fully explained above, pursuant to S.C. Code Ann. §8-13-1348(D). A donated space, excluding a private home, would be valued as an in-kind contribution, subject to campaign contribution limits under Sections 8-13-1314 and 8-13-1316 of the SC Code of Laws. As such, it must also be listed as a corresponding and matching in-kind expenditure. Again, the Committee notes that gifts for individuals hosting campaign events, such as a gift certificate given as a thank you to the host, are

permissible campaign expenses. The Member must list the expenditures for the gift with a detailed description on his or her campaign disclosure report.

CONCLUSION

In summary, the Member may use his campaign funds to pay for gratuities for service workers. Furthermore, the Member must itemize any expenditure on his or her applicable campaign disclosure report. Expenditures of more than twenty-five dollars for payments made to service workers must be made by a written instrument, debit card, or online transfer, while expenditures from the campaign's petty cash fund must adhere to S.C. Code Ann. §8-13-1348(E). The Committee cautions against using cash; the best practice is to pay fully invoiced expenditures with check or debit card. Additionally, a Member or Candidate who pays for work performed on the campaign with campaign funds must pay the fair market value for services rendered, the payment must be bona fide, and documentation must be maintained justifying the services performed and payment made. Finally, a Member or Candidate may use campaign funds to rent a venue for a campaign event at fair market value. A donated space, excluding a private home, would be valued as an in-kind contribution, subject to campaign contribution limits, and also must be reported as a matching in-kind expenditure. The Committee notes that thank you gifts for individuals hosting campaign events are permissible campaign expenses, which must be reported on his or her campaign disclosure report.

The Commission notes that it is better to err on the side of caution and adherence than on the side of expedience and convenience. Be mindful of the appearance of impropriety and the ramifications of such.

Adopted January 10, 2019.

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ADVISORY OPINION 2019 - 3

The House Legislative Ethics Committee received a request from a Member for an advisory opinion. The Member questioned whether it would have been a violation of the Ethics Act for the Member to participate in an allowable ex parte communication[1] briefing before the Public Service Commission (PSC). The briefing concerned whether Dominion Energy, Inc. should be required to honor its initial offer to provide a $1,000 rebate to South Carolina Electric and Gas Company customers.[2] The Member further explained that prior to the scheduled briefing, the Member sent a letter to the PSC informing the Commission that the Member did not wish to be a party to the proceeding and requested that his name be removed from the notice for the hearing which was scheduled for the next day.

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

DISCUSSION

I. Background on the PSC

The PSC "essentially functions as a court for cases involving utilities and other regulated companies. The PSC has broad jurisdiction over matters pertaining to the investor owned electric and gas utility companies, water and wastewater companies, telecommunications companies, motor carriers of household goods, hazardous waste disposal, and taxicabs." https://psc.sc.gov/about-us-0/history. As the

[1] Black's Law Dictionary explains an "ex parte communication" as "[o]n one side only; by or for one party; done for, in behalf of, or on the application of, one party only. A judicial proceeding, order, injunction, etc., is said to be ex parte when it is taken or granted at the instance and for the benefit of one party only, and without notice to. or contestation by, any person adversely interested." https://thelawdictionary.org/ex-parte/.

[2] The action before the PSC is In Re: Joint Application and Petition of the South Carolina Electric & Gas Company and Dominion Energy, Inc. for review and approval of a proposed business combination between SCANA Corporation and Dominion Energy, Inc., as my be required and for a prudency determination regarding the abandonment of the V.C. Summer Units 2&3 Project and Associated merger benefits and cost recovery plan, (Dominion Energy) Docket No. 2017-370-E.

PSC notes on its website, "an Allowable Ex Parte Communication Briefing is a communication that is conducted in accordance with S.C. Code Ann. 58-3-260(C)(6). Communications, directly or indirectly, regarding any law or fact, or other matter that is reasonably expected to become an issue in a proceeding may be conducted before the commission, if properly noticed, consistent with the directives of S.C. Code Ann. 58-3-260." https://psc.sc.gov/allowable-ex-parte-briefings.

Moreover, SC Code Ann. Section 8-3-30.(B), provides that the PSC commissioners and commission employees are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules, except as provided in Section 58-3-260, and the State Ethics Commission must enforce and administer those rules pursuant to Section 8-13-320. In addition, commissioners and commission employees must comply with the applicable requirements of Chapter 13 of Title 8, that is the Ethics Act. Thus, in certain circumstances, as delineated in Section 58-3-260(C)(6), an ex parte communication briefing is permitted by the PSC.

The Committee further notes that the Speaker of the SC House of Representatives, James H. "Jay" Lucas, in his official capacity as the Speaker, intervened in the Dominion Energy matter pending before the PSC in February 2018. In his Petition to Intervene, the Speaker explained that he had "the authority to act on behalf of the House of Representatives." He noted that the House had a substantial interest in the issues to be considered in this proceeding as the House was "currently drafting legislation related to the abandonment by SCE&G of the V.C. Summer Nuclear Units 2 and 3." Petition to Intervene of James H. "Jay" Lucas, in his official capacity as speaker of the SC House of Representatives. See S.C. Code Ann. § 2-3-110 (The Speaker is designated as the department head and chief administrative officer of the House of Representatives). See also, H. 3744, which would authorize the Speaker to initiate or intervene in any action on behalf of the House as an institution or in his official capacity, whether or not the House is in session.

II. Whether it was permissible for the House Member to participate in the allowable Ex parte Communication

The Rules of Conduct for the Ethics, Government Accountability, and Campaign Reform Act of 1991, (the Ethics Act). Specifically, S.C. Code § 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 § 8-13-700(A). (emphasis added). Pursuant to Section 8-13-100(11), 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.

Section 8-13-100(11). In the instant scenario, the Member, a utility ratepayer, would have a large class exemption as a SCE&G ratepayer. Thus, this exemption would permit him to attempt to influence an official decision, that is the payment of a $1,000 refund to SCE&G customers.

The bigger concern is that the Member was using his official position as a Member of the House of Representatives (House)to influence the PSC's official decision without the authorization of the House. In The Senate, by and through Leatherman v. McMaster, 821 S.E.2d 908 (2018), in the original jurisdiction of the S.C. Supreme Court, the President Pro Tempore of the Senate requested the Supreme Court to declare invalid the Governor's recess appointment to the office of Chairman of the Board of Directors for the Public Service Authority (Board). The Court noted that whether the President Pro Tempore had the authority to bring this action regarding the Governor's appointment to the Board was an issue that had not been previously addressed but nor was it raised by the parties. The Court stated:

> However, the limitations on the power of an individual senator to bring an action in furtherance of Senate business are well-established under federal law. In Reed v. County Commissioners of Delaware County, Pennsylvania, 277 U.S. 376 (1928), the Supreme Court of the United States held that Senators of a special committee created by the United States Senate could not sue without express authorization from the Senate to do so. 277 U.S. at 389; see also Alissa M. Dolan & Todd Garvey, Cong. Research Serv., R42454, Congressional Participation in Article III Courts: Standing to Sue 11 (2014) (stating "an institutional plaintiff has only been successful in establishing" the authority to bring suit "when it has been authorized to seek judicial recourse on behalf of a house of Congress"). Lower federal courts have relied on Reed and the proposition for which it stands to dismiss lawsuits brought by individual members of Congress, and even lawsuits brought by committees of the House or Senate, without express authorization by the House or Senate. See, e.g., In re Beef Indus. Antitrust Litig., 589 F.2d 786, 791 (5th Cir. 1979) (requiring dismissal of appeal without any decision on the merits where the House subcommittee chairmen "failed to obtain a House resolution or any other similar authority before they sought to intervene in the . . . case"); see also United States v. Am. Tel. & Tel. Co., 551 F.2d 384, 391 (D.C. Cir. 1976) (finding the House resolution sufficiently authorized the chairman of a subcommittee to represent the House in the lawsuit); Senate Select Comm. on Presidential Campaign Activities v. Nixon, 498 F.2d 725, 727 (D.C. Cir. 1974) (noting the Senate Select Committee had authorization to sue and enforce subpoenas against the President pursuant to a Senate resolution expressly authorizing the committee to do so); Comm. on Oversight & Gov't Reform v. Holder, 979 F. Supp. 2d 1, 21 (D.D.C. 2013) (finding House committee could initiate an action to enforce subpoena where "the House

> of Representatives . . . specifically authorized the initiation of [the] action to enforce the subpoena"); Comm. on Judiciary, U.S. House of Representatives v. Miers, 558 F. Supp. 2d 53, 71 (D.D.C. 2008) (concluding the House Committee on the Judiciary could bring civil action where the Committee "ha[d] been expressly authorized by House Resolution to proceed on behalf of the House of Representatives as an institution") (emphasis removed from original). Despite these concerns, we will address the merits of the Senate's challenge to the Governor's recess appointment of Condon. In future actions, however, the Court must examine the President Pro Tempore's threshold authority to bring the action. In any given case, such authority could derive from a majority vote of the members of the Senate as to the individual case, or it could derive from a rule or statute granting the President Pro Tempore such authority without the need for specific authorization by vote.

Id at 910. (emphasis added). See also, Newman v. Richland County Historic Preservation Com'n. 325 S.C. 79, 480 S.E.2d 72 (1997) (Commissioner serving on the Commission did not have standing to bring a declaratory judgement action against his own Commission).

In the instant matter, Committee finds that the Member, in his official capacity, did not have the express authorization from the House to engage in permissible ex parte communication with the PSC on the Dominion Energy matter. The Committee further finds that the Member's subsequent action by sending a letter to the PSC requesting that his name be removed from the notice for the permissible ex parte hearing was the better course of action for handling this matter.

CONCLUSION

In summary, the Committee finds that a Member, in his official capacity, may not participate in a permissible ex parte communication with the PSC when the Member is not officially authorized by the House to engage in such action.

Adopted February 6, 2019.

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ADVISORY OPINION 2019 - 4

The House Legislative Ethics Committee received a request from a Member for an advisory opinion. The Member questioned whether it was a violation of the Ethics Act for he or she to directly advocate and support funding for a university in the applicable section of the General Appropriations bill when the Member's family member serves on the university's board of trustees (Board). The Member explained that the applicable Board is the final authority and the governing body of university, its colleges, outreach programs, and ancillary functions. The Member noted that the Board establishes the general policies of the university, defines educational programs, and approves annual budgets. Further, the Member reported that the Board members do not earn any compensation; they only receive a per diem and reimbursement of their actual expenses for meals and lodging. The Member stated that some Board trustees also receive access to university functions or sporting events as allowed for by the trustee's position.

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

DISCUSSION

Pursuant to the Ethics, Government Accountability, and Campaign Reform Act of 1991, regarding conflicts of interests, S.C. Code Ann. § 8-13-700(B) provides:

> (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.

S.C. Code Ann. § 8-13-700(B). (emphasis added). See also House Ethics Committee Advisory Opinion 92-11, which concerns potential conflicts of interests and voting on the General Appropriations bill; 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."

Further, Section 8-13-100 (15) defines a "family member" as:

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

Section 8-13-100(15).(emphasis added). The Member advised House Ethics Counsel that his or family member met the definition of a family member pursuant to the Ethics Act.

Also, Section 8-13-100(11)(a) states that "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." In the instant scenario, the Committee finds that the Member's family member, as a Trustee for a university, is only compensated per diem, actual expenses, and access to university functions or sporting events as allowed for by the trustee's position. Thus, the Committee finds that this would not constitute an "economic interest" that would require the Member to abstain from voting on the University's section of the budget in the General Appropriations bill.

CONCLUSION

In summary, a Member, whose family member serves on a university Board, may directly advocate and support funding for the university in the applicable section of the General Appropriations bill since the Member's family member does not have an economic interest from his or her service as a trustee on the Board.

Adopted February 12, 2019.

House Legislative Ethics Committee

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ADVISORY OPINION 2019 - 5

The House Legislative Ethics Committee ("Committee") received a request from a Member/Lawyer for an advisory opinion related to the Rules of Conduct. The Member/Lawyer serves as an ex officio board member of a state agency. As a practicing attorney, he represents state agencies in legal matters wherein the Member/Lawyer's attorney fees and litigation costs are paid for by a third party, a governmental insurance operation, which is a division of the state agency for which he serves as an ex office member. The Member/Lawyer questioned whether he could continue to represent state agencies through the governmental insurance operation while serving as an ex officio board member for the state agency. In the alternative, the Member/Lawyer questioned whether he could abstain at the board meeting of the state agency when matters of the government agency are discussed and voted on.

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

DISCUSSION

The Committee, the Senate Ethics Committee, and the State Ethics Commission have issued numerous Advisory Opinions setting forth the proper procedure to which a public official must adhere when required to take an official action on a matter that would affect the economic interest of a business with which he is associated.[1]

A public official may not knowingly use his office to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he

[1] A non-exhaustive list of such opinions follows: Committee Advisory Opinion 2017-4, 2017-1, 2016-3, 92-37, 92-19, and 92-14; Senate 1997-3 and 1996-2; State Ethics Commission Advisory Opinion AO2015-003, AO2010-003, AO2009-005, AO2000-11, AO92-14, AO92-77, AO92-115, AO92-152, and AO95-10.

is associated. S.C. Code Ann. § 8-13-700(A). Additionally, a public official may not make, participate in making, or in any way attempt to use his office 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. S.C. Code Ann. § 8-13-700(B) Further, 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 Committee now applies this to the scenario before us. The governmental insurance operation is a division of the state agency for which the Member serves as an ex officio board member. The governmental insurance operation performs a number of functions, one of which is to retain law firms to represent individual state agencies in liability actions. The Committee is informed and believes that currently there are sixty-five law firms which are approved to handle these matters. Firms are retained on a rotating basis unless an individual agency expressly chooses a specific firm to handle a certain matter. As such, the Committee finds that the Member and his or her firm can continue to represent state agencies through the governmental insurance operation while serving as an ex officio board member for the state agency. The Committee notes that the Member should list on his or her Statement of Economic Interests under Income and Benefits the income earned from representing an agency when the fees and costs are paid by the governmental insurance operation for representing an agency client. See S.C. Code Ann. §. 8-13-1120(A)(2).

Further, the Committee advises that issues directly affecting a Member's economic interests will necessitate following the recusal protocols of Section 8-13-700(B). Thus, the Member should abstain at the board meeting of the state agency when matters of the government agency are discussed and voted on.

CONCLUSION

Thus, the ethics laws specifically spell out that a Member may not use his office to obtain an economic interest for himself or herself or a business with which he is associated. At no time does the ethics code deter a Member of the House from carrying out the duties of his office or other officers he may hold by virtue of his or her office unless there is a clear, personal conflict that would personally benefit the Member, his family, or a business with which he is associated. The Committee finds that the Member and his or her firm can continue to represent state agencies through the governmental insurance operation while serving as an ex officio board member for the state agency. The Member should list on his or her Statement of Economic Interests under Income and Benefits the income earned from representing an agency when the fees and costs are paid by the governmental insurance operation for representing an agency client. Finally, the Member should abstain at the board meeting of the state agency when matters of the government agency are discussed and voted on following the recusal protocols of Section 8-13-700(B).

Adopted March 27, 2019.

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ADVISORY OPINION 2019 - 6

The House Legislative Ethics Committee (HEC) received a request from a House Legislative Caucus Committee (Committee) for an advisory opinion. The Committee questioned what were the appropriate steps pursuant to the Ethics Act by the Committee when asked by a contributor to be reimbursed for a contribution made due to an administrative accounting error on the contributor's part. Specifically, the Committee received a contribution in February 2019, which the Committee deposited into the operations account. The contributor subsequently contacted the Executive Director and requested a refund of the contribution due to an administrative accounting error on the contributor's part. After this action occurs, the contributor plans to reissue the contribution to the Committee from the correct account. The Committee requests guidance on properly reporting the contributions to the Committee's operating account.

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

DISCUSSION

Pursuant to the Ethics, Government Accountability, and Campaign Reform Act of 1991 (the Ethics Act), "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. Section 8-13-1300(21). Furthermore, "Committee: is defined as

> an association, a club, an organization, or a group of persons which, to influence the outcome of an elective office, receives contributions or makes expenditures in excess of

five hundred dollars in the aggregate during an election cycle. It also means a person who, to influence the outcome of an elective office, makes:
(a) contributions aggregating at least twenty-five thousand dollars during an election cycle to or at the request of a candidate or a committee, or a combination of them; or
(b) independent expenditures aggregating five hundred dollars or more during an election cycle for the election or defeat of a candidate.
"Committee" includes a party committee, a legislative caucus committee, a noncandidate committee, or a committee that is not a campaign committee for a candidate but that is organized for the purpose of influencing an election.

Section 8-13-1300(6).

S.C. Code Ann. Section 8-13-1308, regarding the filing by candidates and committees provides, in part,

> (G) Notwithstanding any other reporting requirements in this chapter, a political party, legislative caucus committee, and a party committee must file a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more. For purposes of this section, "anything of value" includes contributions received which may be used for the payment of operation expenses of a political party, legislative caucus committee, or a party committee. A political party also must comply with the reporting requirements of subsections (B), (C), and (F) of Section 8-13-1308 in the same manner as a candidate or committee.
> (H) A committee that solicits contributions pursuant to Section 8-13-1331 must certify compliance with that section on a form prescribed by the State Ethics Commission.

S.C. Code Ann. Section 8-13-1308. (emphasis added). See also, State Ethics Commission's Opinion AO92-081 ("The SC Legislative Black Caucus would be limited to accepting charitable contributions of no more than $3,500 to its campaign committee account. No restriction would apply if such contributions are accepted through another community education account and are not utilized to contribute to the campaign account or to support candidates."). Thus, a Committee is required to disclose contributions used for administrative purposes by filing a quarterly Operating Disclosure report. However, the reporting of the Committee's expenditures is not required. The HEC further understands that administrative purposes would include the Committee's staff salaries, food, rent, etc.

Previously, the HEC reaffirmed in House Ethics Committee Advisory Opinion 2017-16, a Member may use his or her campaign funds to make a contribution to a state or local political party or political caucus because contributions to political groups are considered office-related expenses. However, the Member may only donate to the political caucus or party's administrative account, not to its campaign account.

In the instant matter, the Committee was requested to reimburse a contribution made in an administrative error by the Contributor. The Committee, however, must report this contribution made in February 2019 on its April 2019 quarterly Operating Disclosure. Since the Committee is not required to report expenditures, the Committee will be unable to report the reimbursement of the February 2019 contribution. When the replacement contribution is received, the Committee will be required to report this contribution on its next quarterly Operating Disclosure report. In order for the Committee's "Contributions on Hand" at period's end to match the applicable Committee's bank account ending balance, the Committee will need to amend its April 2019 quarterly Operating Disclosure report and delete the original contribution. Further, the Committee should send a letter to the Chairman of the Ethics Committee explaining why it was required to take this action. The Committee will also need to report the replacement contribution on the

next quarterly Operating Disclosure report. The HEC notes that the State Ethics Commission's website will reflect both the original and amended April 2019 Operating Disclosure report for the Committee.

CONCLUSION

In summary, the HEC finds the Committee should report the initial contribution in February 2019 on the Committee's April 2019 Operating Disclosure report. When the replacement contribution is received from the contributor, that contribution should be reflected on the Committee's next Operating Disclosure report. While the Committee is not required to report the reimbursement of the original contribution on the Committee's Operating Disclosure report, the Committee should send the Chairman of the Ethics Committee a letter explaining that a reimbursement was made and that was the reason for amendment of the April 2019 Operating Disclosure report deleting the original contribution.

Adopted April 11, 2019.

House Legislative Ethics Committee

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ADVISORY OPINION 2019 - 7

The House Legislative Ethics Committee received a request from a Member for an advisory opinion. Specifically, the Member explained that he or she is assisting a constituent by arranging a meeting with a contact at the SC Department of Education. The Member stated that the constituent is publishing a book with a publisher, and the book may be a helpful resource to children in SC schools. The Member noted that he or she also does some work with a magazine, which is a subsidiary of the publisher. The Member, however, earns no income directly from the publisher. The Member reported the compensation he or she earns is derived from the magazine and is related to the contacts made for a series of articles that are published.

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

DISCUSSION

Pursuant to the Ethics, Government Accountability, and Campaign Reform Act of 1991, regarding conflicts of interests, 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.

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

S.C. Code Ann. § 8-13-100(11)(a) states that "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." (emphasis added).

Helping constituents, that is, the people public officials have been elected to represent, is part of the official position or responsibilities of a House Member. In the instant scenario, the Member is assisting a constituent by arranging a meeting with a contact at the SC Department of Education. The constituent has a contract with a publishing company for a book that may be a resource for children in the SC public schools. Assisting the constituent by arranging a meeting is part of the role that a Member may have in his or her official position. While the Member has advised he or she earns income from a magazine, a subsidiary of the publisher, the Member earns no income from the publishing company. In this situation, the Committee finds that it is not a conflict of interest for the Member to assist the constituent with arranging a meeting with a contact from the SC Department of Education since the Member does not have any economic interest obtained from the publishing company pursuant to SC Code Ann Section 8-13-700.

CONCLUSION

In summary, the Member does not have a conflict of interest if the Member assists a constituent who is publishing a book with a publishing company. Specifically, the Member may arrange a meeting with a contact from the SC Department of Education since the Member does not have any economic interest obtained from the publishing company pursuant to SC Code Ann Section 8-13-700. The Member **only** earns income from a magazine, which is a subsidiary of the publishing company.

Adopted September 12, 2019.

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ADVISORY OPINION 2019 - 8

The House Legislative Ethics Committee (HEC) received a request for an advisory opinion from a Member regarding an anonymous comment the House Legislative Oversight Committee (HLOC) received pertaining to an email the Member sent to potential stakeholders encouraging their public input about an agency under study. The Member explained that the HLOC initiated a study of the South Carolina Housing and Development Authority (Housing Authority) and that public input is a cornerstone of the HLOC's process. Specifically, the Member sent an email on May 28, 2019 to potential stakeholders, which stated as follows:

> The House Legislative Oversight committee has started a study of the SC Housing and Finance Development Authority. Stakeholders are invited to provide comment about the organization's strength's weaknesses, threats and opportunities. I want to strongly encourage you to participate in this process: You can submit anonymous comments online or you can testify in person to the sub-committee. We all know this agency has done some things, but we also know they are "wanting" in several areas. With their new leadership and this process, I believe we can help shape their future…
>
> Email from a HLOC Member (May 28, 2019, 11:21 EST) (on file with author).

On or about June 26, 2019, the HLOC received an anonymous comment pertaining to the Member's efforts to encourage public input about the agency under study. The comment is as follows:

June 26, 2019	Why is [Member], a member of the House Oversight Committee, calling and sending official memos to groups [Group] and individuals, soliciting them to manufacture (positive only) comments and testimony about this agency? How is this ethical?

Letter from Anonymous, to H. Legis. Oversight Comm. (June 26, 2019) (on file with House Legis. Oversight Comm.).

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

DISCUSSION

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

> (A) Beginning January 1, 2015, each standing committee shall conduct oversight studies and investigations on all agencies within the standing committee's subject matter jurisdiction at least once every seven years in accordance with a schedule adopted as provided in this chapter.
> (B) The purpose of these oversight studies and investigations is to determine if agency laws and programs within the subject matter jurisdiction of a standing committee:
> (1) are being implemented and carried out in accordance with the intent of the General Assembly; and
> (2) should be continued, curtailed, or eliminated.
> (C) The oversight studies and investigations must consider:
> (1) the application, administration, execution, and effectiveness of laws and programs addressing subjects within the standing committee's subject matter jurisdiction;
> (2) the organization and operation of state agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within the standing committee's subject matter jurisdiction; and
> (3) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within the standing committee's subject matter jurisdiction.
>
> S.C. Code Ann. § 2-2-20. Thus, HLOC serves as an investigative committee which issues a report on the agency studied rather than as a policy-making committee which votes on proposed legislation. Any House Member may file legislation to implement HLOC's recommendations.

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

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

The anonymous comment herein discussed alleges that the Member solicited individuals to "manufacture (positive only) comments." Letter from Anonymous, to H. Legis. Oversight Comm. (June 26, 2019) (on file with H. Legis. Oversight Comm.). Yet, a plain examination of the email sent by the Member invited individuals to comment about the "strength's weaknesses, threats and opportunities." Email from a HLOC Member (May 28, 2019, 11:21 EST) (on file with author). As such, there exists no violation of the South

Carolina Ethics Act or the Rules of the South Carolina House of Representatives for a Member to encourage public comment about an agency under study by the HLOC.

CONCLUSION

In summary, a Member of the HLOC may encourage or solicit public comment about an agency under study by the HLOC, and such action is not an ethical violation.

Adopted September 12, 2019.

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ADVISORY OPINION 2018 - 1

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member requested clarification as to whether campaign funds can be used to pay a Member or candidate's attorney's fees. For example, the Member explained that if a Member or candidate was under investigation for potential ethics or criminal violations due to the position he held as a Member or candidate, would the Member or candidate be allowed to use his campaign funds to pay for his attorney's fees?

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

DISCUSSION

It is a fundamental principle in common law that there is an absolute presumption of innocence to any accused unless and until guilt is proven beyond any reasonable doubt. See Coffin v. United States, 156 U.S. 432 (1895); Taylor v. Kentucky, 436 U.S. 478 (1978). Both the United States and South Carolina Constitutions also mandate an individual be afforded due process of law prior to the denial of life, liberty, or property. See U.S. Const. art. XIV, § 1; S.C. Const. art. I, § 3. Further, S.C. Code Ann. § 8-13-1348(A) provides:

> 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 section 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.

Thus, the Member may use his or her campaign funds to pay for expenses, including legal expenses, provided the expenses are related to the office held or a campaign.

Two prior HEC Advisory Opinions, 2013-2 and 2014-2, addressed the issue whether a Member could pay his attorney fees from his campaign funds. Specifically, HEC Advisory Opinion 2013-2, concluded that legal expenditures stemming from lawsuits regarding who should appear on the ballot to insure the integrity of the election "cause legal expenses that likely directly stem from one's election, one's campaign," and, therefore, were proper. In HEC Advisory Opinion 2014-2, the Committee found it was appropriate for a Member to use campaign funds to reimburse himself for the legal expenses paid with his personal funds associated with a legal action challenging the party's decision to place his opponent on the ballot when his opponent had not filed his candidacy paperwork properly. However, in HEC Advisory Opinion 2013-2, the HEC cautioned "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." HEC Advisory Opinions, 2013-2.

The Committee finds that campaign funds should not be used for legal expenses that arise from any case in which the allegations are unrelated to the office held or a campaign. In addition, there may be instances in the civil or criminal area in which a Member or candidate is accused of personal misconduct, including but not limited to, harassment, assault, battery, bribery, etc. In such actions of alleged personal misconduct, legal expenses would not be covered even if they were alleged to have occurred during a campaign or at a location involving the exercise of the duties of a Member's office or a campaign location or campaign event.

While the Committee is bound by the constitutional protections and S.C. Code Ann. § 8-13-1348(A) as cited herein, the Committee urges caution and restraint by Members and candidates with regard to the use of campaign account funds in this area. Rulings on these issues would be highly fact specific and decided on a case by case basis depending on the particular facts associated with each case. As such and although not required, the preference of the Committee is that Members use personal funds for legal expenses related to the office held or a campaign and seek subsequent reimbursement upon said claims or charges being dismssed, nolle prossed, or a finding of not guilty. The Committee also reminds Members and candidates that it retains the right to use all remedies available under the law to seek recovery of campaign funds improperly used by a Member or candidate to cover ineligible legal expenses or campaign-funded legal expenses where the Member or candidate is subsequently convicted of unlawful conduct.

CONCLUSION

In summary, a Member or candidate may use campaign funds to pay attorney fees if under investigation related to the office held or a campaign. However, the Committee could seek recovery of said funds from the Member or candidate upon a guilty plea or conviction of wrongdoing. In such actions of alleged personal misconduct, legal expenses would not be covered even if they were alleged to have occurred during a campaign or at a location involving the exercise of the duties of a Member's office or a campaign location or campaign event.

Further, where a Member or candidate is under a subpoena related to the office held or a campaign, the Member or candidate may use campaign funds for legal fees and other expenses incurred and necessary to comply with said subpoena.

Adopted February 6, 2018.

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ADVISORY OPINION 2018 - 2

The House Legislative Ethics Committee (HEC) received a request from several but not all the Members of a local delegation for an advisory opinion. The Members questioned whether they can use their individual campaign funds to make a contribution to the South Carolina Public Interest Foundation (Foundation), a South Carolina Not for Profit Corporation founded in 2005 and in good standing with the state of South Carolina at the time of this inquiry. The inquiry is whether they can make a contribution to this not for profit corporation for legal fees associated with the lawsuit brought against Greenville Health System (GHS). They explained in their "concerns were with GHS's change of delegation of authority based on Act 432 of 1947." Specifically, they stated that "the issue with GHS [wa]s concerning assets including property as well as responsibilities designated by Act 432 that were transferred away by restructuring." They further explained that their actions were based upon their duty and responsibility as elected Representatives of [their] respective areas to act upon [their] constituents behalf."

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

DISCUSSION

Act 432 of 1947

Initially, some background on Act 432 of 1947[1] is necessary in order to address the Members' question as noted above. The Act was passed by the General Assembly after it found that there existed a lack of hospital facilities in Greenville County and determined to remedy the condition. Section 1, Act 432 of 1947. The legislature's investigation found that the existing municipally-owned hospital, constructed and paid for by the taxpayers of the City of Greenville was adequate for residents of the City of Greenville but not the residents of the entire County. *Id.*

[1] It appears that Act 432 has been amended numerous times.

The General Assembly ascertained that the most practical and economical solution would be for the County of Greenville to take over the hospital to expand its facilities and operate it for the benefit of all Greenville County residents. *Id.* In doing so, certain conditions were to be met, including conveyance "to an independent Board, free from the control of the corporate authorities of the City or the County and charged with duty of operating said hospital and its expanded facilities for the benefit of the taxpayers and residents of Greenville County." *Id.* at 1146. Thus, this Act created a special purpose district of this State. The County delegation has authority to appoint members to the Board. *Id.* at 1150.

The Foundation representing plaintiffs, among whom were several legislators from the Greenville County Delegation, filed suit against the GHS and several other defendants stating that "this case addresses the GHS Trustees' abdication of government over a special purpose district, and the unconstitutional conveyance of public assets worth several billion dollars to private entities." See, Supplemental and Amended Complaint, Court of Common Pleas, Greenville County, Civil Action No. 2016-CP-23-05148, p. 1, filed on February 19, 2018. The lawsuit alleged that the Members of the Greenville Delegation had standing to sue as the members of the Delegation as the Delegation had the right to select the trustees to govern, operate, and maintain GHS, known as Old GHS in the complaint. See Paragraph 14, Supplemental and Amended Complaint, Court of Common Pleas, Greenville County, Civil Action No. 2016 -CP-23-05148, p. 3. According to Paragraph 15, the defendants leased and otherwise conveyed "substantially all of old GHS assets, operations, maintenance, governance, and authority to other new, private entities over which the Old GHS Board has no authority." *Id.* at p. 4. Thus, the Supplemental and Amended Complaint alleged that the governance of the old GHS, entrusted to the GHS Board of Trustees by Act 432 of 1947, was a duty that was not delegable under the law of South Carolina and that the Board could not simply convey away that responsibility to a private, self-selected, self-perpetuating board, with no connection to Greenville County, and no accountability to the people of Greenville County and their elected representatives. *Id.* at pp. 4-8.

Use of Campaign Funds

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.

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

Previously issued House Ethics Committee Advisory opinions have addressed the issue of donations of campaign funds to charitable organizations. House Ethics Committee Advisory Opinion 2016-2, known as the Laundry List opinion, found that contributions to charitable organizations, including churches and schools, was a permissible campaign expenditure as it was the type incurred in relation to the office held. However, the Committee noted that "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." House Ethics Committee Advisory Opinion 2016-2, Section II, Subsection 2, pages 5-6.[2]

House Ethics Committee Advisory Opinion 2017-11 reached a similar conclusion allowing the donation of campaign funds to the Korean War Veterans Association, Inc. (KWVA) for construction of the Wall of Remembrance (Wall) at the Korean War Memorial in Washington, D.C. KWVA met the charitable purposes component for the donation to be permissible in conjunction with the admonition that the candidate or Member could not make a donation to a charitable organization in which the candidate or Member, his immediate family, or business with which they are associated, derives a personal and financial benefit.

The Committee notes that the State of California follows a similar rule regarding use of campaign funds for charitable purposes: campaign funds may be donated to a nonprofit corporation if (1) the organization is a bona fide charitable, educational, civic, religions, or similar tax exempt, nonprofit organization; (2) the donation is reasonably related to a political, legislative, or governmental purpose; and (3) the donation will not have a material financial effect on the candidate, the candidate's immediate family or those closely involved in the campaign's finances.[3]

In the instant case, the Foundation is a 501(c)(3) organization as designated under the Internal Revenue Code. The organization is "a public service organization whose goal is defending South Carolina's Constitution from violation by governments, deterring violations of its statutory and common law by governments and promoting the rule of law."[4] Specifically, the Foundation "uses litigation rather than political persuasion to meet its goals." *Id.*

Therefore, the Committee finds that since the Foundation is a 501(C)(3) organization and none of the Delegation Members, their immediate family, or the business with which they are associated, derive a personal and financial benefit, then it is permissible to use their campaign funds to make a contribution to the Foundation.

CONCLUSION

In summary, each Member of the local delegation may use his or her campaign funds to make a contribution to the Foundation, a 501(c)(3) organization, provided that neither the Member, his or her immediate family, nor business with which they are associated, derives a personal and financial benefit. However, the Member should specifically note on his or her campaign disclosure report that it is an expenditure to a charitable organization, that is, the Foundation.

Adopted March 22, 2018.

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[2] Senate Ethics Opinion 1997-2 noted that "charitable giving and charitable good works is a longstanding function of elected officials, especially Members of the Senate of South Carolina."

[3] *Donating Campaign Funds to Non-Profits Under the Political Reform Act*, INST. FOR LOCAL GOV'T, http://www.ca-ilg.org/sites/main/files/file-attachments/resources__surplus_campaign_funds.pdf

[4] South Carolina Public Interest Foundation, http://www.carpenterlawfirm.net/sloansscpif.php.

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ADVISORY OPINION 2018 - 3

The House Legislative Ethics Committee (Committee) received a request from a House Candidate for an advisory opinion questioning whether he or she may receive campaign contributions in the form of Bitcoin. The candidate explained that he or she has a supporter who has asked to contribute in cryptocurrency to the candidate's campaign as the supporter is paid and purchases primarily using Bitcoin. The candidate noted that the potential supporter deals chiefly in Bitcoin whereby most transactions for which he needs U.S. dollars are taxed for capital gains at exchange. The candidate questioned (1) what is legally required to collect donations in Bitcoin, and (2) how candidates are supposed to report such contributions. The candidate further explained that he or she understands the need to collect all necessary donor information required for traditional contributions prior to receiving the Bitcoin.

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

DISCUSSION

This issue is a matter of first impression for the Committee. "Bitcoin" is a privately issued currency that was created in 2009. U.S. Gov't Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013), *available at* http://www.gao.gov/assets/660/654620.pdf ("GAO Report"). According to the Uniform Law Commission's proposed Regulation of Virtual Currency Businesses Act, "virtual currency can be simply defined as a form of electronic value, the value of which depends on the market. It is not backed by government (so that it lacks status as legal tender)." Bitcoins "act as real world currency in that users pay for real goods and services...with bitcoins as opposed to U.S. dollars or other government issued currencies." U.S. Gov't Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013), *available at* http://www.gao.gov/assets/660/654620.pdf ("GAO Report"). Bitcoins can be used to buy merchandise anonymously and are often bought as an investment that people hope will go up in

value based on the market. *What is Bitcoin?*, CNN tech, http://money.cnn.com/infographic/technology/what-is-bitcoin/ (last visited Apr. 4, 2018). Each bitcoin transaction is public in that it is added to a "block chain," which is a public ledger of all bitcoin transactions ever made. Although bitcoin transactions, identified by the addresses to and from which bitcoins are transferred, are public in the block chain, the transactors are not identified. A bitcoin user's real-life identity, IP address, and even country of operation "cannot be reliably traced to a real human by an auditor of ordinary technical skill." U.S. Gov't Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013), *available at* http://www.gao.gov/assets/660/654620.pdf ("GAO Report").

In 2014, the Federal Election Commission (FEC) issued an advisory opinion regarding the issue of political campaigns accepting bitcoin contributions. Make Your Laws PAC, Inc. (MYL) requested an advisory opinion from the FEC concerning the PAC's proposed acceptance, purchase, and disbursement of bitcoins under the Federal Election Campaign Act of 1971. In the FEC Advisory Opinion 2014-02, May 8, 2014, MYL proposed to accept up to a total of $100 in bitcoins as contributions to its contribution and non-contribution accounts and accept the bitcoins only through an online form on which each bitcoin contributor, regardless of the proposed contribution amount, would have to provide his or her name, physical address, occupation, and employer. MYL also requested that each bitcoin contributor affirm that he or she owned the bitcoins that he or she will contribute and to affirm that he or she is not a foreign national. MYL noted that only after the bitcoin contributor had provided identity and ownership information, and associated affirmations, will the committee send that contributor a one-time only "linked address," a bitcoin address that identifies the individual transaction, to use to send the bitcoins. *Id.* at pp. 2-3.

In their response, the FEC concluded that the requestor may accept bitcoin contributions as proposed in its advisory opinion request and supplemental filings subject to valuation and reporting procedures similar to those that the FEC has previously recognized in analogous circumstances. FEC Adv. Op. 2014-02, p. 3. The Commission noted that bitcoins are "money or 'anything of value' within the meaning of the [Federal Election Campaign] Act [of 1971] and that MYL may accept contributions as it proposes pursuant to the identification, deposit, and valuation procedures MYL described in the opinion." *Id.* at 4 (emphasis added). The FEC determined that "MYL's proposal, including the attestations and linked address, adequately addresse[d] MYL's obligations to determine the eligibility of its contributors as required by the Act and Commission regulations." *Id.* at 5. The Commission also made the following findings. The FEC noted that contributions of bitcoins need not be deposited in a campaign account within 10 days of receipt as required under Federal law. *Id.* at 6. "Like securities that a political committee may receive into and hold in a brokerage account, bitcoins may be received into and held in a bitcoin wallet until [MYL] liquidates them." *Id.* The FEC held that "a political committee that receives a contribution in bitcoins should value that contribution based on the market value of bitcoins at the time the contribution is received." *Id.* (emphasis added). The initial receipt of bitcoins as contributions, should be reported like in-kind contributions. *Id.* at 8 (emphasis added). MYL [and other political committees] "must treat the full amount of the donor's contribution as the contributed amount for purposes of limits and reporting provisions of the Act," even though MYL may receive a lesser amount because of any usual and normal processing fees. *Id.* at 9.

Although the FEC permitted acceptance of Bitcoin contributions by political campaigns for Federal public office through its advisory opinion in 2014, few states have allowed this

practice. Tennessee is one of the few states that allows candidates and political campaign committees to accept digital currency as a contribution. In 2015, the state of Tennessee passed Section 2-10-113 which provides:

> (a) A candidate or political campaign committee is allowed to accept digital currency as a contribution. Digital currency shall be considered a monetary contribution with the value of the digital currency being the market value of the digital currency at the time the contribution is received.
> (b) Any increase in the value of digital currency being held by a candidate or political campaign committee shall be reported as interest on any statement filed pursuant to § 2-10-105.
> (c) A candidate or political campaign committee must sell any digital currency and deposit the proceeds from those sales into a campaign account before spending the funds.

Tenn. Code Ann. § 2-10-113 (2015). To allow for this change, the state also amended Section 2-10-102(4) to include "digital currency" in its definition of "contribution."

Other states like New Hampshire and Vermont have passed laws to update their money transmission rules and regulations to include "virtual currency." *New Hampshire Governor Signs Bitcoin MSB Exemption Law*, Coindesk, Jun. 7, 2017, https://www.coindesk.com/new-hampshire-governor-signs-bitcoin-msb-exemption-law/; *Vermont Law Adds Bitcoin as 'Permissible Investmen' for MSBs*, Coindesk, May 8, 2017, https://www.coindesk.com/vermont-law-bitcoin-msbs-investment/. However, in response to a request from a candidate questioning whether it was legal to accept bitcoin campaign contributions, the Kansas Governmental Ethics Commission determined that "the digital currency known as bitcoin is too secretive to be allowed as a form of campaign contributions in state and local elections." *Bitcoin can't be used for campaign contributions: Kansas Regulators*, Fox Business, Oct. 26, 2017, https://www.foxbusiness.com/politics/bitcoin-cant-be-used-for-campaign-contributions-kansas-regulators. *See also Worse than 'the Russians': Kansas Prohibits Bitcoin Campaign Contributions*, CNN, Oct. 27, 2017, https://www.cnn.com/worse-than-the-russians-kansas-panel-prohibits-bitcoin-campaign-contributions/. The Kansas Ethics Commission Executive Director noted that "there is no physical manifestation of this currency in any way. It's just alphanumeric characters that exist only online. It is not backed by any government. The value is subjective and highly volatile." *Id.*

The S.C. Ethics Act Section 8-13-100(9) provides the following definition for "contribution":

> (9) "Contribution" means a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit of money or anything of value made to a candidate or committee, as defined in Section 8-13-1300(6), for the purpose of influencing an election; or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge. "Contribution" does not include volunteer personal services on behalf of a candidate or committee for which the volunteer receives no compensation from any source.

S.C. Code Ann. § 8-13-100(9). Unlike Tennessee, current S.C. law does not include "virtual" or "digital currency" in its definition of contribution. Thus, the Committee determines that it is not permissible for candidates for and Members of the S.C. House of Representatives to receive campaign contributions in the form of Bitcoin or other digital currency. The Committee notes that there are many issues that need to be resolved regarding the acceptance of Bitcoin as a contribution to a political campaign for House office. Therefore, it is the recommendation of the Committee that, should this practice be permitted in South Carolina, it should be done through legislation rather than through an HEC advisory opinion.

CONCLUSION

In summary, the Committee finds that no Bitcoin may be accepted as a campaign contribution at this time.

Adopted April 11, 2018.

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ADVISORY OPINION 2018 - 4

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member requested a determination whether it was a violation of the Ethics law for his legal business' advertisement in a local newspaper to state: "Former prosecutor with over 20 years of trial experience and member of the SC House of Representatives." He noted that he has run this ad in his local newspaper without complaint for the last six years. Specifically, he questioned whether it is considered a violation of the law prohibiting using one's office for financial gain.

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

DISCUSSION

Pursuant to the Rules of Conduct, S.C. Code Ann. Section 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. . . .

Section 8-13-700. At the outset, the Committee notes that it is a fact that the Member was elected and has served in the S.C. House of Representatives (House) for several years. The fact that he holds "official office" does not prohibit him from stating that he is a "Member of the SC House of Representatives" in an advertisement for the profession or business in which he is employed. It is a title that he has earned by his election to the House.

Accordingly, the Committee finds that the Member's legal advertisement which noted that he was a Member of the House does not violate the Rules of Conduct. Furthermore, the Committee notes that any Member of the House could note this title in an ad the Member purchases for dissemination to the public.

CONCLUSION

In summary, a Member's use of his title of "Member of the S.C. House of Representatives" for an advertisement in a newspaper was not a violation of the Rules of Conduct found in Section 8-13-700(A)-(B).

Adopted April 18, 2018.

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ADVISORY OPINION 2018 - 5

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member requested clarification whether he or she could withdraw cash from his or her campaign bank account to pay for an expenditure related to the campaign or office the Member holds.

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

DISCUSSION

S.C. Code Ann. Section 8-13-1348(C)(1), in the Ethics Government Accountability and Campaign Reform Act of 1991 (the Ethics Act), provides:

> An expenditure of more than twenty-five dollars drawn upon a campaign account must be made by: (a) a written instrument; (b) debit card; or (c) online transfers. The campaign account must contain the name of the candidate or committee, and the expenditure must contain the name of the recipient. These expenditures must be reported pursuant to the provisions of Section 8-13-1308.

S.C. Code Ann. Section 8-13-1348(C)(1). Further, Section 8-13-1308(F), explains the requirements for filing of certified campaign reports by candidates as follows:

> . . . Certified campaign reports detailing campaign contributions and expenditures must contain:
> (1) the total of contributions accepted by the candidate or committee;
> (2) the name and address of each person making a contribution of more than one hundred dollars and the amount and date of receipt of each contribution;
> (3) the total expenditures made by or on behalf of the candidate or committee;
> (4) the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure. . . .

Section 8-13-1308(F). (emphasis added). Expenditure means "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." Section 8-13-1300(12).

A written instrument is defined as "a written document[;] [r]educed to writing." https://dictionary.thelaw.com/written-instrument/. A debit means "a sum charged as due or owing." https://legal-dictionary.thefreedictionary.com/debit. Also, "electronic fund transfer" (which is similar to online transfer) means "any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account." https://definitions.uslegal.com/e/electronic-funds-transfer-EFT/ .

Accordingly, the Committee finds that the Ethics Act clearly states that a Member or Candidate may not make cash withdrawals from his or her campaign account to pay for expenditures in excess of twenty-five dollars for the campaign or the office he or she holds. S.C. Code Ann. Section 8-13-1348(C)(1) provides that any expenditure of more than twenty-five dollars from a campaign account must be made using a written instrument (such as a check), a debit card, or by online transfer. The Committee is cognizant that these statutory requirements were created to ensure that campaign fund expenditures are easily tracked and accounted for and to enhance transparency. The Committee also notes that while S.C. Code Ann. Section 8-13-1348(E) provides that candidates and members may maintain a petty cash fund, this fund is not to exceed one-hundred dollars and expenditures from the petty cash fund may be made only for office supplies, food, transportation expenses, and other necessities, and may not exceed twenty-five dollars for each expenditure. Thus, Members and Candidates are on notice that paying cash from their campaign bank account for expenditures of over twenty-five dollars is expressly prohibited by the Ethics Act.

CONCLUSION

In summary, S.C. Code Ann. Section 8-13-1348(C)(1) clearly prohibits a Candidate or Member from withdrawing cash from his or her campaign bank account to pay for expenditures related to the campaign or office held in excess of twenty-five dollars other than those expressly authorized under S.C. Code Ann. Section 8-13-1348(E).

Adopted June 20, 2018.

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ADVISORY OPINION 2018 - 6

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member's request for an advisory opinion had three parts. They are as follows:

1. The Member requested clarification as to whether he or she could use a third party account/provider (such as Paypal) to accept online contributions; and
2. Could the Member pay campaign expenses directly from the online account prior to the transfer of the online contributions to the Member's campaign bank account; and
3. The Member also questioned that if such accounts were permissible, what were the specific rules for reporting contributions made and expenditures related to the third party sites.

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

DISCUSSION

A. Can a Candidate or Member use a Third Party On-Line Account for Acceptance of Campaign Contributions

As background, some examples of third party accounts include Paypal, Piryx, ActBlue[1] (a partner with Paypal), Anedot, and Moon Clerk. These third party accounts are commonly referred to as "merchant accounts" and "payment gateways." A merchant account is an online account that enables electronic transactions; whereas, a payment gateway transmits funds from the merchant account to a linked bank account. See, Chargify, What is a merchant account and payment gateway and how do they work with Chargify (2018), *available* at https://www.chargify.com/blog/what-is-a-merchant-account-and-payment-gateway-and-how-do-they-work-with-ch/ (last accessed June 5, 2018). In recent years, many merchant accounts and financial gateway providers have created platforms specifically for candidates to accept political

[1] ActBlue is the Democratic online fund-raising organization and has led the movement toward small online political donations. See https://www.nytimes.com/2014/10/09/upshot/how-actblue-became-a-powerful-force-in-fund-raising.html.

contributions. Campaigns & Elections, Online Fundraising 101 (March 8, 2016), *available at* https://campaignsandelections.com/campaign-insider/online-fundraising-101.

For example, Paypal allows a candidate to add a button to his or her campaign website or social media page, which enables contributors to submit funds for the candidate's political campaign. See https://www.onlinecandidate.com/articles/political-fundraising-with-paypal.

Specifically, the following steps must be completed to set up a third party account for accepting campaign contributions through Paypal:

1) Create a campaign bank account.
2) Sign up for a PayPal Business Account: a. Select Nonprofit as the business type; b. Select Political as the subcategory.
3) Confirm that your political campaign account is a nonprofit. You will need to submit a tax letter from the IRS and a bank statement or voided check in the name of your organization, along with your PayPal email account and contact details, to compliance@paypal.com.
4) Add a Donate button to your campaign's website. Use the button designer on PayPal.com to create your button, then simply copy and paste the resulting code into your site.

https://www.onlinecandidate.com/articles/political-fundraising-with-paypal.

Once an account has been properly set up, those contribution funds are automatically transferred to a campaign's linked bank account daily, or when manually scheduled transfers are made to move the money whenever it is convenient. https://www.paypal.com/us/webapps/mpp/online-political-fundraising.

Third party accounts may operate in a different way. Staff discussed with Members who use third party accounts for online contributions to ascertain how the third party account he or she uses operates and collects the required ethics information. Each third party account can be set up to obtain the required ethics information of name, address, and occupation of the contributor as well as the amount contributed and the maintenance fee. Due to the differences in the electronic transfer platforms, Members and Candidates are cautioned to carefully review their system of choice to insure that information required under South Carolina's Ethics Government Accountability and Campaign Reform Act of 1991 (the Ethics Act) provisions are captured and available for required reports.

The Committee finds that a candidate or a Member may use a Third-Party On-Line account to receive campaign contributions; provided that the Third Party is able to provide to the candidate or Member the required information for the candidate or Member to meet all of the disclosure requirements set forth in the Ethics Act provisions.

B. Reporting online Campaign Contributions and Maintenance fees as Expenditures on the CD Report; When a Contribution must be transferred to a Campaign Bank Account

The HEC further notes that it is now common practice for candidates and Members to use a third party account to accept campaign contributions.

First, there is the "small donor" contribution. While a candidate or Member does not have to individually report the name, address, and occupation of the contributor for a contribution made for less than $100.00 on the Campaign Disclosure (CD) report, it is incumbent for the candidate or Member to keep records on each such contribution.[2]

Second, pursuant to S.C. Code Ann. Section 8-13-1308(F)(2)-(3), in the Ethics Act, the name and address of each person making a contribution of more than one hundred dollars[3] and the amount and date of receipt of each contribution must be reported on the CD report and the amount of all expenditures. Thus, for any contribution candidates or Members accepted online, the candidate or Member must report under "contributions" the full amount of the contribution, the name, address, and occupation of the contributor on the candidate or Member's CD report. Under the expenditure section of the same CD report, the candidate and Member must report the maintenance fee retained by the third party account for handling and transmitting the contribution to the candidate or Member's campaign bank account. For example, if Jane Smith contributed $100.00 through Paypal to candidate Frank Jones, then Frank Jones would report the $100 contribution by Jane Smith under "contributions" and the $3.20 maintenance fee (2.9% + $0.30 per transaction) under "expenditures" on his CD report.

The Committee notes that the better practice, although not required by the Ethics Act, would be to report each individual contribution received so if contributions over $1,000.00 per election cycle are received, it would be reflagged for the filer prior to filing his or her CD report. Further, when the contributor reaches $100.00 in contributions for that election cycle, then the contributor and the required ethics information must be reported on the next CD report.

The Committee notes an example of a state which has addressed the transfer of campaign funds from a merchant account through the use of a payment gateway is Montana. In 2016, Montana by Administrative Rule 44.11.408 clarified the rules regarding electronic contribution reporting. Specifically, this Administrative Rule provided:

> (1) A candidate or political committee may accept electronic contributions from online payment service providers and payment gateways as contributions.
>
> . . .
>
> (b) A contribution made through an online service provider, such as Paypal or Google Wallet, shall be deposited in the campaign account.
>
> (c) Any electronic contribution shall be deposited in the designated campaign account within five business days of actual receipt or conversion.
>
> (2) All electronic contributions shall be reported according to the requirements for contributions set out in these rules.

[2] Currently, candidates or Members report these contributions on their CD reports as "unitemized contributions."

[3] Once a person contributes in the aggregate more than one hundred dollars, the candidate or Member will need to report the name, address, and occupation of the contributor.

(a) An electronic contribution shall be reported as received on the day the electronic contribution is made to the online service provider or payment gateway, regardless of whether the contribution has actually been received.
(b) The full value of the contribution shall be reported as received from the contributor, not the amount as received from the service.
(c) Each service charge or conversion fee incurred or discounted by the payment service provider shall be reported as a campaign expenditure in accordance with these rules.
. . .
(4) If the electronic contribution amount exceeds the candidate contribution limit, the contributor must be issued a refund for the excess funds via check or through an online payment system from the campaign account. If it is not possible to return only a portion of the funds, the entire contribution must be returned.
(5) All candidates and political committees that receive electronic contributions are subject to the same limits, prohibitions, reporting, and disclosure requirements as monetary contributions, as outlined in these rules.
(5) All candidates and political committees that receive electronic contributions are subject to the same limits, prohibitions, reporting, and disclosure requirements as monetary contributions, as outlined in these rules.

Montana Administrative Rule 44.11.408. (Emphasis added).

The Committee finds that the full value of the contribution received online must be reported on the candidate or Member's CD report. Also, the service charge or maintenance fee incurred must also be reported under "expenditures" on the candidate or Member's CD report. The total amount of the maintenance fees for the quarter can be reported rather than the individual maintenance fee for each contribution.

Candidates and Members also must follow the statute regarding when the online contributions must be transferred to the candidate or Member's campaign bank account, S.C. Code Ann. Section 8-13-1312 states in part:

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

S.C. Code Ann. Section 8-13-1312. [Emphasis added.]

Thus, the Committee finds that the candidate or Member must ensure that the online contribution is transferred to his or her campaign bank account within ten days after the contribution is made online.

C. Payment of Campaign Expenditures from the Third Party Account before Contributions transferred to the campaign bank account

The next issue concerns the payment of campaign expenditures directly from a third party online account before the contribution made online is transmitted to the candidate or Member's campaign bank account. S.C. Code Ann. Section 8-13-1312, regarding campaign bank accounts explains:

> Except as is required for the separation of funds and expenditures under the provisions of Section 8-13-1300(7), a candidate shall not establish more than one campaign checking account and one campaign savings account for each office sought, and a committee shall not establish more than one checking account and one savings account unless federal or state law requires additional accounts. For purposes of this article, certificates of deposit or other interest bearing instruments are not considered separate accounts. A candidate's accounts must be established in a financial institution that conducts business within the State and in an office located within the State that conducts business with the general public. The candidate or a duly authorized officer of a committee must maintain the accounts in the name of the candidate or committee. An acronym must not be used in the case of a candidate's accounts. An acronym or abbreviation may be used in the case of a committee's accounts if the acronym or abbreviation commonly is known or clearly recognized by the general public. Except as otherwise provided under Section 8-13-1348(C), expenses paid on behalf of a candidate or committee must be drawn from the campaign account and issued on a check signed by the candidate or a duly authorized officer of a committee. All contributions received by the candidate or committee, directly or indirectly, must be deposited in the campaign account by the candidate or committee within ten days after receipt. All contributions received by an agent of a candidate or committee must be forwarded to the candidate or committee not later than five days after receipt. A contribution must not be deposited until the candidate or committee receives information regarding the name and address of the contributor. If the name and address cannot be determined within seven days after receipt, the contribution must be remitted to the Children's Trust Fund.

Section 8-13-1312. (Emphasis added).

The Committee finds that third party accounts such as merchant accounts are not a campaign checking and/or savings account as required by Section 8-13-1312, and, thus a campaign expenditure from that account prior to transfer to the campaign bank account is not permissible but must be made through a campaign bank account.

The Committee further notes that Section 8-13-1348(C)(1) - (2) requires:

> (1) An expenditure of more than twenty-five dollars drawn upon a campaign account must be made by: (a) a written instrument; (b) debit card; or (c) online transfers. The campaign account must contain the name of the candidate or committee, and the expenditure must contain the name of the recipient. These expenditures must be reported pursuant to the provisions of Section 8-13-1308.

(2) Expenditures of twenty five dollars or less that are not made by a written instrument, debit card, or online transfer containing the name of the candidate or committee and the name of the recipient must be accounted for by a written receipt or written record.

Section 8-13-1348(C)(1) - (2). "Electronic fund transfer" (which is similar to online transfer) means "any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account." https://definitions.uslegal.com/e/electronic-funds-transfer-EFT/ .

D. Is the Third Party Account required to register with the S.C. Attorney General's Office as a Money Transmitter?

Finally, the Committee notes that a candidate and Member should be cognizant of the South Carolina Anti-Money Laundering Act, S.C. Code Ann. § 35-11-100 *et seq.*[4] The Act requires a money transmitter to obtain a license with the S.C. Attorney General's office, Money Services Division (Division). See http://www.scag.gov/civil/money-services. Section 35-11-200 provides:

(A) A person may not engage in the business of money transmission or advertise, solicit, or hold himself out as providing money transmission unless the person is:
(1) licensed under this chapter or approved to engage in money transmission pursuant to Section 35-11-210;
(2) an authorized delegate of a person licensed pursuant to this article; or
(3) an authorized delegate of a person approved to engage in money transmission pursuant to Section 35-11-210.
(B) A license issued pursuant to this chapter is not transferable or assignable.

S.C. Code Ann. Section 35-11-200. (emphasis added). "Any person conducting money transmission ... services in the State of South Carolina as of May 25, 2018, must file an application with the Division no later than the close of business on June 29, 2018." See http://2hsvz0174ah31vgcm16peuy12tz.wpengine.netdna-cdn.com/wp-content/uploads/2018/05/Licensing-Memo-01623034xD2C78.pdf

Thus, the Committee finds that it is incumbent for the candidate or Member to verify with the Division whether the third party online services he or she is using is registered as a money transmitter or exempt from registration. Staff was informed by Counsel with the Division that any exemptions will be made through interpretative or advisory opinions.

CONCLUSION

The Committee finds that online contributions through a third party provider are permitted provided that the information required of the candidate or Member by the Ethics Act is available to the candidate or Member. The Committee finds that for any contribution candidates or Members

[4] The Editor's note to this Act states: "This act takes effect one year after approval of this act by the Governor [approved June 9, 2016] or upon the publication in the State Register of final regulations implementing the act, whichever occurs later." The final regulations were effective May 25, 2018.

accepted online through a third party provider, the candidate or Member must report under "contributions" the full value of the contribution received online, the name, address, and occupation of the contributor on the candidate or Member's CD report. The Committee also finds that under the "expenditure" section of the same CD report, the candidate and Member must report the maintenance fee retained by the third party provider for handling and transmitting the contribution to the candidate or Member's campaign bank account. The Committee finds that the candidate or Member must ensure that the online contribution is transferred to his or her campaign bank account within ten days after the contribution is made online. Moreover, the Committee finds that a campaign expenditure made from the third party account prior to transfer of the contributions to the campaign bank account is not permissible but must be made through a campaign bank account. Finally, the Committee notes that the candidate or Member should verify with the Division as to whether the third party online services he or she is using is registered as a money transmitter or exempt from registration.

Adopted June 20, 2018.

House Legislative Ethics Committee

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ADVISORY OPINION 2018 - 7

The House Legislative Ethics Committee received a request from a Member for an advisory opinion. The Member questioned whether a S.C. Member, a public official,[1] may use his or her campaign account to contribute to the campaign of a candidate seeking federal office.

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

DISCUSSION

Initially, the Committee begins its examination by acknowledging that the question presented involves both state and federal law. Federal elections law allows contributions to a candidate or the candidate's committee from nonfederal campaign committees on a limited basis. *See Nonfederal Committees' Involvement in Federal Campaigns*, FCC Record: Outreach, Nov. 4, 2015, https://www.fec.gov/updates/nonfederal-committees-involvement-in-federal-campaigns/. However, because S.C. law allows for campaign contributions from sources that are prohibited for federal campaigns, such as corporations, the contributor would be required to demonstrate by a reasonable accounting method that none of the contributed funds are a federally prohibited source. *See id. See also* 11 C.F.R. §300.61 (2018), 52 U.S.C. §30118(a) (2012), Fed. Elections Comm'n Advisory Op. 2007-26, (Dec. 10, 2007), https://www.fec.gov/files/legal/aos/2007-26/2007-26.pdf. Because of this, a Member who receives a significant portion of their campaign account funds from corporate contributors would likely be unable to demonstrate their contribution originated entirely from authorized sources and, thus, would be prohibited from making the contribution.

It is also important to note that under Federal elections law the *recipient* is responsible for ensuring that funds received comply with legal requirements. *See* FCC Record: Outreach article of Nov. 4, 2015, *see also* 11 C.F.R. §300.61. Furthermore, contributions in excess of the Federal registration threshold of $1000.00 would require the contributor to register as a Federal political committee and subject the donor to Federal election law reporting requirements. *See* FCC Record:

[1] Public official means "an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office." S.C. Code Ann. § 8-13-1300(28).

Outreach article of Nov. 4, 2015. For additional information on Federal elections law, the Committee would encourage candidates and Members to contact the Federal Elections Commission.

Next, the Committee is cognizant of S.C. Code Ann. §8-13-1340(A) in the Ethics Act, which provides:

> ...a candidate or public official shall not make a contribution to another candidate or make an independent expenditure on behalf of another candidate or public official from the candidate's or public official's campaign account or through a committee, except legislative caucus committees, directly or indirectly established, financed, maintained, or controlled by the candidate or public official.

S.C. Code Ann. §8-13-1340(A). (Emphasis added). South Carolina law, however, defines "candidate" narrowly for purposes of this statute, stating that:

> "Candidate" means: (a) a person who seeks appointment, nomination for election, or election to a statewide or local office, or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election; (b) a person who is exploring whether or not to seek election at the state or local level; or (c) a person on whose behalf write-in votes are solicited if the person has knowledge of such solicitation. "Candidate" does not include a candidate within the meaning of Section 431(b) of the Federal Election Campaign Act of 1976."

S.C. Code Ann. §8-13-1300(4). (Emphasis added). Under this definition, persons seeking Federal office are not considered a "candidate" and, therefore, are generally not subject to the requirements provided in the Ethics Act. Thus, it appears that making a contribution from the Member's campaign account to a candidate for Federal Office is not addressed by Section 8-13-1340(A).

Then the Committee must address whether the proposed contribution from the Member's campaign account is subject to the limitations set forth in S.C. Code Ann. § 8-13-1348(A) which states:

> 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.

S.C. Code Ann. § 8-13-1348(A). While this statute does not specifically define expenditures that are prohibited, multiple advisory opinions from the State Ethics Commission (Commission) and Legislative Ethics Committees have provided guidance.

When examining allowable campaign expenditures the Commission concluded that "the Ethics Reform Act permits an expenditure from the candidate's campaign account for expenses related to the campaign or the office and permits campaign funds to be used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office." SEC AO 2003-006.

Furthermore, the House Ethics Committee in its Laundry List Opinion, Committee Advisory Opinion 2016-2, reaffirmed the overall rule established in prior Committee advisory opinions to illuminate the overall understanding of S.C. Code Ann. §8-13-1348(A). Specifically, citing Committee Advisory Opinion 92-3, the Committee reaffirmed the following test for evaluating campaign account expenditures:

> 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.

Committee Advisory Op. 2016-02, quoting Committee Advisory Op. 92-3.

Further evidence that expenditures from campaign accounts are understood to be limited to expenses associated with campaigning for and holding a specific office was noted in S.C. Code Ann. § 8-13-1350 and § 8-13-1352. S.C. Code Ann § 8-13-1350 prohibits campaign contributions for one elected office from being used by a candidate or member's campaign for a different elected office. S.C. Code Ann. § 8-13-1352 provides a limited exception to this prohibition, stating that such transfers are permitted where the contributor of the funds has given written permission for the transfer. These statutes were examined by the Commission in Advisory Opinions 2002-001 and 2002-002. In both opinions, the Commission concluded that these statutes do allow an individual to use his or her campaign account to seek a different office, but in order to do so they must have the written permission of the original donor. Of particular note, in SEC AO 2002-001 the Commission examined transferring money from an individual's own federal campaign to his or her state campaign account and stated that even though the funds were donated towards gaining federal office, transferring them to a state campaign account required written permission of the contributor. The Committee notes that while neither of these opinions are directly on point they, further demonstrate the general understanding and application of S.C. Code Ann. § 8-13-1348(A) that expenditures from campaign accounts should be limited to efforts by the candidate to gain the specific office the contributions were donated towards or for expenses related to holding that office.

Thus, the Committee finds that a Candidate or Member may not use his or her campaign account to contribute to a candidate for Federal office as such contribution would not be a permissible campaign expense and it is not related to the office the Member holds as required by Section 8-13-1348.

CONCLUSION

In conclusion, while the Committee is cognizant that S.C. Code Ann. § 8-13-1340(A)'s prohibition on contributions to other candidates does not include candidates seeking Federal office,

the Committee nonetheless finds that such a contribution is not permissible pursuant to § 8-13-1348(A) as it is not an expenditure related to the campaign or the office held.

Adopted June 20, 2018.

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ADVISORY OPINION 2018 - 8

The House Legislative Ethics Committee received a request from a Member for an advisory opinion. The Member explained that he or she has been asked to do a non-partisan radio show once per week. The Member noted that the show would cover issues facing this State and what is happening at the Statehouse. Also, the Member stated that all of the other radio shows on this station, such as, the real estate show, financial show, are all funded by advertising money. The person that leads or hosts the show, like the Member, would be responsible for obtaining advertisers to cover the cost of the airtime. He or she reported that the other subject matter radio shows have the host sell the advertising, collect the money, and then the show host writes one check for the show to the owner of the radio station. The Member questioned whether handling the payment of advertisements in this way would violate the Ethics Act. The Member also questioned as a public official/radio host would it be a better practice for the advertiser to write a check directly to the radio station instead of the radio host? The Member noted that he or she will receive no compensation from the radio station and he or she is not an employee or owner of the station. Finally, the Member stated that he or she wanted to be transparent regarding this transaction.

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

DISCUSSION

Rules of Conduct

S.C. Code Ann. § 8-13-700(A), part of the Rules of Conduct, 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. (emphasis added). Pursuant to Section 8-13-100(11)(a), 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." Section 8-13-100(11)(a). Business with which he is 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." Section 8-13-100(4). Compensation means "money, anything of value, an in-kind contribution or expenditure, or economic benefit conferred on or received by a person." Section 8-13-100(6). (emphasis added). Moreover, "anything of value" is defined as:

> "Anything of value" or "thing of value" means: (i) a pecuniary item, including money, a bank bill, or a bank note; (ii) a promissory note, bill of exchange, an order, a draft, warrant, check, or bond given for the payment of money; (iii) a contract, agreement, promise, or other obligation for an advance, a conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money; (iv) a stock, bond, note, or other investment interest in an entity; (v) a receipt given for the payment of money or other property; (vi) a chose-in-action; (vii) a gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel; (viii) a loan or forgiveness of indebtedness; (ix) a work of art, an antique, or a collectible; (x) an automobile or other means of personal transportation; (xi) real property or an interest in real property, including title to realty, a fee simple or partial interest in realty including present, future, contingent, or vested interests in realty, a leasehold interest, or other beneficial interest in realty; (xii) an honorarium or compensation for services; (xiii) a promise or offer of employment; (xiv) any other item that is of pecuniary or compensatory worth to a person.

Section 8-13-100(1)(a). (emphasis added). Thus, selling radio ads and receiving air time for the radio show the Member will host, could be considered compensation in the form of "a thing of value." Therefore, the Member appears to be knowingly using his or her official office to gain an economic interest for the business with which he is associated.

Moreover, while it appears that the Member is not a director, officer, owner, or employee of the radio station, he or she could be considered a "compensated agent" of the radio station. In SEC AO2002-009, the State Ethics Commission (Commission) explained the term "compensated agent" as follows:

> In AO2000-004 the Commission concluded that the Ethics Act does not define the term "compensated agent", nor has the Commission specifically defined the term in its prior opinions or decisions. Accordingly, the State Ethics Commission hereby defines "compensated agent" as 'any ongoing client relationship in which the public official, public member, or public employee, receives compensation for services rendered'. The Commission continued "[f]urther, it is the opinion of the State Ethics Commission that a

> public official's, public member's, or public employee's participation in a matter involving a business with which the public official, public member or public employee is a 'compensated agent', gives rise to a rebutable presumption that to take an action or make a decision which affects the economic interest of the business with which associated would therefore be a violation of Section 8-13-700(A) and (B), South Carolina Code of Laws, 1976, as amended."

SEC AO2002-009, page 6. In the Commission's opinion, the "City council member was required to recuse himself from all matters in which a business he was associated has an economic interest." The business included those non-profit agencies and boards on which he serves unless he serves in his official capacity as a council member. See SEC AO2002-009, page 1.

In the instant scenario, the Committee finds that while the Member is not entering into a traditional employment arrangement, he or she is entering into an agreement to sell advertisements for the radio show he or she is hosting. Thus, the Committee finds that the Member would have an ongoing relationship with the radio station in which he or she would receive compensation in the form of "a thing of value," that is, radio air time for the program he or she would be hosting. Therefore, selling radio advertisements in order to host a radio show would appear to violate Section 8-13-700 as the Member is knowingly using his or her official position to economically benefit the business with which he or she is associated as a compensated agent.

Purchasing Air Time for Radio Show from Campaign Funds

As an alternative solution to pay for the cost of the radio show the Member wishes to host, the Member could use contributions he or she received to pay for the non-partisan radio show. The Committee notes that the contribution to the Member's campaign account is subject to the limitation set forth in S.C. Code Ann. § 8-13-1314(A)(1)(c) (contributor limited to $1,000 per election cycle) and the expenditures are subject to the limitations in § 8-13-1348(A) (must be related to the campaign or the office held).

In the instant matter, the Committee finds paying an expenditure from the Member's campaign account for the cost of radio air time in order for the Member to host a non-partisan radio show covering issues facing this State and what is happening at the Statehouse is due to the office the Member holds pursuant to Section 8-13-1348(A). Further, the Committee finds that the Member then must report this expenditure on his or her Campaign Disclosure report. In the instant situation, there is no question about transparency as to who is sponsoring the costs of the radio show.

CONCLUSION

In summary, the Committee finds that nothing in the Ethics Act prohibits a Member from serving as the host of a non-partisan radio show. The Committee notes that this scenario could raise additional concerns. However, the Committee finds that the Member, who would be considered a compensated agent, may not sell radio ads on behalf of the radio station in order not to violate Section 8-13-700. In the alternative, the Committee finds that it is permissible for the Member to pay for the cost of the non-partisan radio show from his or her campaign bank account

since this would be a permissible expenditure due to the office the Member holds. Furthermore, the Member must list the radio show advertisement as an expenditure on his or her campaign disclosure report.

Adopted July 25, 2018.

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ADVISORY OPINION 2018 - 9

The House Legislative Ethics Committee (Committee) received a request from a Member for an advisory opinion. The Member questioned whether he or she could pay a family member from campaign funds for work performed on the campaign, and if so, what documentation was required for payment.

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

DISCUSSION

S.C. Code § 8-13-1348 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.

S.C. Code § 8-13-1348(A). Thus, campaign funds may be used for campaign expenditures or expenditures related to the office the Member holds.

Recently, in SEC AO2017-002, the State Ethics Commission (Commission) addressed whether a Candidate may use campaign funds to pay for services performed by a candidate's family member.

> [T]he Commission acknowledges that using campaign funds for services rendered by a candidate's business, a family business, or a family member is a practice susceptible to abuse. Accordingly, this general statement of permissibility comes with several caveats, the paramount one being that the expenditures must be *bona fide*. Put another way, the

> expenditures must be genuine and not an artifice to enrich a candidate's businesses with campaign funds. If campaign funds are being used for a tangible, easily documentable service, then the Commission presumes that this service is presumably *bona fide* so long as a receipt can be provided. ... [W]hen wage payments for services such as "sign removal," "phone calls," "canvassing," or "general campaign work" are made to family members, due to the vague nature of this work, the potential for abuse is greater.

SEC AO2017-002, p. 2. To address the potential abuse of Candidates expending campaign funds to a personal business or family member, the Commission issued a series of guidelines as follows: 1) a Candidate must pay the fair market value for services performed under these circumstances; 2) campaign funds used to pay a family member for services rendered as a result of the campaign are subject to heightened scrutiny to ensure the payment is *bona fide*. Additional documentation for wage work, such as a detailed statement of work performed by the family member, is required to justify the campaign expenditure; and 3) the documentation for services such as "advising, "consulting," or similar services rendered by family member "must actually be in the business for which they are receiving payment." SEC AO 2017-002, pp. 2 -3.

Accordingly, the Committee adopts the three guidelines enumerated in SEC AO2017-002, and finds that a Member or Candidate who pays a family member for worked performed on the campaign with campaign funds must pay the fair market value for services rendered, the payment must be *bona fide*, and documentation must be signed by the family member noting the specific services performed, date of the services, and payment made. The documentation must be maintained in the Member or Candidate's campaign records.

CONCLUSION

In summary, it is permissible for a Member or Candidate to use campaign funds to pay a family member for work performed on the Member or Candidate's campaign. A Candidate must pay the fair market value for *bona fide* services rendered and must maintain signed documentation regarding the work performed by the family member.

Adopted August 14, 2018.

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ADVISORY OPINION 2018 - 10

The House Legislative Ethics Committee (Committee) received a request from a Member for an advisory opinion. The Member questioned whether a Member, who serves as a legislative appointment to a state commission, must report this position on his or her Statement of Economic Interests (SEI). The Member noted that he or she would not be appointed to this position but for the fact that he or she is a legislator.[1] The Member stated that there also may be public members who are appointed to a State commission.

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

DISCUSSION

S.C. Code Ann. § 8-13-1110 addresses the persons required to file a statement of economic interests as follows:

> (A) No public official, regardless of compensation, and no public member or public employee as designated in subsection (B) may take the oath of office or enter upon his official responsibilities unless he has filed a statement of economic interests in accordance with the provisions of this chapter with the appropriate supervisory office. If a public official, public member, or public employee referred to in this section has no economic interests to disclose, he shall nevertheless file a statement of inactivity to that effect with the appropriate supervisory office. All disclosure statements are matters of public record open to inspection upon request.

[1] South Carolina jurisprudence has a narrow, yet firmly established, exception which provides that "double or dual office holding in violation of the constitution is *not applicable to those officers upon whom other duties relating to their respective offices are placed by law." Ashmore v. Greater Greenville Sewer District,* 211 S.C. 77, 92, 44 S.E.2d 88, 95 (1947) (emphasis added). This exception is commonly referred to as the "ex officio" or "incidental duties" exception.

(B) Each of the following public officials, public members, and public employees must file a statement of economic interests with the appropriate supervisory office, unless otherwise provided:
(1) a person appointed to fill the unexpired term of an elective office;
(2) a salaried member of a state board, commission, or agency;
(3) the chief administrative official or employee and the deputy or assistant administrative official or employee or director of a division, institution, or facility of any agency or department of state government;
(4) the city administrator, city manager, or chief municipal administrative official or employee, by whatever title;
(5) the county manager, county administrator, county supervisor, or chief county administrative official or employee, by whatever title;
(6) the chief administrative official or employee of each political subdivision including, but not limited to, school districts, libraries, regional planning councils, airport commissions, hospitals, community action agencies, water and sewer districts, and development commissions;
(7) a school district and county superintendent of education;
(8) a school district board member and a county board of education member;
(9) the chief finance official or employee and the chief purchasing official or employee of each agency, institution, or facility of state government, and of each county, municipality, or other political subdivision including, but not limited to, those named in item (6);
(10) a public official;
(11) a public member who serves on a state board, commission, or council; and
(12) Department of Transportation District Engineering Administrators.

S.C. Code Ann. § 8-13-1110. (emphasis added). Thus, a public official and a public member who serve on a state board, commission, or council, must file a SEI. Public member is defined in Section 8-13-100(26) as "an individual appointed to a non-compensated part-time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services." Section 8-13-1120 provides the information required to be completed on the SEI.

With regard to the position tab on the SEI, the Member must complete it for the House office he or she holds and also if he or she is running as a candidate. The Candidate Statement of Economic Interests User Guide explains the general information required for the position tab:

1. If you are filing for more than one position, you must enter each position separately.
2. If you are a candidate for an office, you must register as a Candidate to file your Statement of Economic Interests.
3. If you are a local Board/Commission member, you only need to file a Statement of Economic Interests.

The Candidate Statement of Economic Interests User Guide, p. 9, at https://ethics.sc.gov/Campaigns/Documents/Candidate%20Statement%20of%20Economic%20Interest%20User%20Guide%20Updated%201216.pdf

The State Ethics Commission (Commission) in SEC 093-66, explained: "Section 8-13-1110(B)(11) requires the filing of Statements of Economic Interests by members of state boards, commissions, or councils. The State Ethics Commission notes that the Ethics Reform Act does not define the term "state board, commission, or council". The Commission then stated that it "must carefully weigh a number of relevant factors in order to determine whether a particular board is a state board, commission, or council for the purpose of filing Statements of Economic Interests." SEC 093-66 at p. 2. The Commission found that "for the limited purpose of filing Statements of Economic Interests, 'state board, commission, or council' shall mean an agency created by legislation which has statewide jurisdiction and which exercises some of the sovereign power of the State." *Id.* In the instant opinion, the Commission found that members of the Heritage Trust Advisory Board were considered public members of a state board, commission, or council; however, the members of the Marine Recreational Fisheries Advisory Board were not. *Id.*

In the current scenario, the legislative appointments may include, but are not limited to, the Judicial Merit Selection Commission (JMSC), the Prosecution Coordination Commission, the Agency Salary Commission, the Commission on Indigent Defense, the S.C. Rural Infrastructure Authority Committee, the Joint Transportation Review, State Fiscal Accountability Authority, and Joint Bond Review. Using the example of the Judicial Merit Selection Commission, S.C. Code Ann. § 2-19-10(B) provides the method of appointment as follows:

> Notwithstanding any other provision of law, the Judicial Merit Selection Commission shall consist of the following individuals:
> (1) five members appointed by the Speaker of the House of Representatives and of these appointments:
> (a) three members must be serving members of the General Assembly; and
> (b) two members must be selected from the general public;
> (2) three members appointed by the Chairman of the Senate Judiciary Committee and two members appointed by the President Pro Tempore of the Senate and of these appointments:
> (a) three members must be serving members of the General Assembly; and
> (b) two members must be selected from the general public.

S.C. Code Ann. § 2-19-10(B). (emphasis added). S.C. Const. art. V, § 27 provides the jurisdiction for the JMSC:

> In addition to the qualifications for circuit court and court of appeals judges and Supreme Court justices contained in this article, the General Assembly by law shall establish a Judicial Merit Selection Commission to consider the qualifications and fitness of candidates for all judicial positions on these courts and on other courts of this State which are filled by election of the General Assembly. The General Assembly must elect the judges and justices from among the nominees of the commission to fill a vacancy on these courts.

S.C. Const. art. V, § 27; see also S.C. Code Ann. § 2-19-10 *et seq.*

In Segars Andrews v. Judicial Merit Selection Com'n, 387 S.C. 109, 691 S.E.2d 453 (S.C. 2010), the S.C. Supreme Court held that the JMSC is a constitutional office, "for it exercises part of the sovereign and it possesses essentially all the additional characteristics, and more, commonly

associated with the office in the constitutional sense." Segars-Andrews, 691 S.E.2d 453, 462. The Court further found that "service on the JMSC by members of the General Assembly is properly characterized as incidental to their legislative duties." *Id.* (emphasis added).

Thus, the Committee finds that a legislative member's service on a board, council, or commission could be considered incidental to the full and effective exercise of members' legislative powers. Thus, the Committee finds that the Member is not required to list his or her position on the board, council, or commission on the SEI.

CONCLUSION

In summary, a Member, serving on a state board, council or commission by appointment relating to his office pursuant to the Constitution or by statute, is not required to report this position on his or her SEI.

Adopted October 4, 2018.

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ADVISORY OPINION 2018 - 11

The House Legislative Ethics Committee received a request from a Member for an advisory opinion. The Member questioned whether a candidate for the House can accept a campaign contribution from the federal campaign account of a South Carolina candidate, who is seeking federal office.

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

DISCUSSION

At the outset, the Committee notes that the question presented involves both state and federal law. Previously, in HEC Advisory Opinion 2018-7 the Committee addressed the issue of whether a S.C. Member, a public official, could use his or her campaign account to contribute to the campaign of a candidate seeking federal office. The Committee found:

> that a Candidate or Member may not use his or her campaign account to contribute to a candidate for Federal office as such contribution would not be a permissible campaign expense and it is not related to the office the Member holds as required by Section 8-13-1348. . . .
>
> In conclusion, while the Committee is cognizant that S.C. Code Ann. § 8-13-1340(A)'s prohibition on contributions to other candidates does not include candidates seeking Federal office, the Committee nonetheless finds that such a contribution is not permissible pursuant to § 8-13-1348(A) as it is not an expenditure related to the campaign or the office held.

HEC Advisory Opinion 2018-7, pp. 3-4.

However, Federal election law permits a federal candidate to contribute to a state candidate if state law permits such a contribution. See 52 U.S.C. 30125(e)(1)(B). Specifically, "a federal candidate committee may contribute up to $2,000 per election to the committee of another federal

candidate. Contributions from federal candidate committees to state or local candidate committees are subject to state law." See https://www.fec.gov/help-candidates-and-committees/making-disbursements/making-contributions-other-candidates/.

Pursuant to 11 CFR § 300.62, dealing with Non-Federal elections, "a person described in 11 CFR 300.60 may solicit, receive, direct, transfer, spend, or disburse funds in connection with any non-Federal election, only in amounts and from sources that are consistent with State law, and that do not exceed the Act's contribution limits or come from prohibited sources under the Act." 11 CFR 300.62 This person includes:

> (a) Federal candidates; (b) Individuals holding Federal office (see 11 CFR 300.2(o)); (c) Agents acting on behalf of a Federal candidate or individual holding Federal office; and (d) Entities that are directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more Federal candidates or individuals holding Federal office.

11 CFR 300.60.

Next the Committee must review the Ethics Government Accountability and Campaign Reform Act of 1991 (the Ethics Act) for guidance regarding the Member's question and whether state law would permit a contribution by the federal candidate from the candidate's federal campaign account to a candidate for the S.C. House. The Ethics Act provides the proper procedure for transferring funds from one campaign account for elective office to a second campaign account for a different elective office.

> Section 8-13-1352 states:
>
> Notwithstanding the provisions of Section 8-13-1350, a candidate may use or permit the use of contributions solicited for or received by the candidate to further the candidacy of the individual for an elective office other than the elective office for which the contributions were received if:
>
> (1) the person originally making the contribution gives written authorization for its use to further the candidacy of the individual for a specific office which is not the office for which the contribution was originally intended; and
> (2) the contribution is otherwise permitted by law.

Section 8-13-1352. "Candidate" means:

> (a) a person who seeks appointment, nomination for election, or election to a statewide or local office, or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election; (b) a person who is exploring whether or not to seek election at the state or local level; or (c) a person on whose behalf write-in votes are solicited if the person has knowledge of such solicitation. "Candidate" does not include a candidate within the meaning of Section 431(b) of the Federal Election Campaign Act of 1976."

S.C. Code Ann. §8-13-1300(4). (Emphasis added). Contribution is defined as:

> a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit of money or anything of value made to a candidate or committee, as defined in Section 8-13-1300(6), for the purpose of influencing an election; or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge. "Contribution" does not include volunteer personal services on behalf of a candidate or committee for which the volunteer receives no compensation from any source.

S.C. Code Ann. §8-13-1300(9). Pursuant to this definition, persons seeking Federal office are not considered a "candidate" and, therefore, are generally not subject to the requirements provided in the Ethics Act.

The State Ethics Commission addressed a similar issue in SEC AO2002-001, where the question was whether a federal candidate's campaign funds could be transferred to the candidate's own state campaign account without first seeking the written authorization of any of the people who originally made contributions to the federal campaign. The former federal candidate was permitted to transfer the candidate's federal campaign funds to the candidate's state campaign after obtaining written authorization from the contributors to his or her federal campaign. SEC AO99-006 provides the procedure that should be followed to identify those contributors whose permission the former federal candidate must obtain for their contributions to be used in the new campaign.

Thus, the Committee notes that a federal candidate is permitted under the Federal Election law to make contributions from his or her federal campaign account to a state candidate if permitted under state law. Based upon the holding in SEC AO2002-001, it appears that this contribution would be permissible pursuant to the Ethics Act, as long as, the federal candidate obtained the written authorization from the federal contributor as required by Section 8-13-1350 and using the procedure outlined in SEC AO99-006. Finally, the Committee notes that any such contribution to a candidate for the S.C. House is limited to $1,000.00 per election cycle. See Section 8-13-1324(A)(1)(c).

CONCLUSION

In summary, the Committee finds that a candidate for the S.C. House can accept a campaign contribution from the federal campaign account of a South Carolina candidate, who is seeking federal office. However, the candidate for the S.C. House must first verify that the candidate for federal office obtained the written authorization of his or her contributors to the federal office campaign, which permitted the contribution to the state candidate. The verification from the federal candidate may consist of any written response (formal letter, email, etc.) that he or she affirms that permission was obtained from the federal contributors.

Adopted October 4, 2018.

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ADVISORY OPINION 2018 - 12

The House Legislative Ethics Committee received a request from a Member for an advisory opinion. The Member questioned whether it was a violation of the Ethics Act for a Member to directly advocate for legislative issues on a third party, non-profit's agenda. The Member stated that the Member in question has a family member who is employed by the third party, non-profit. The Member also noted that the non-profit is a registered 501(c)(4).[1] Specifically, the Member alleged:

> The non-profit formulates scorecards on issues and publicizes a report. The family member, which works for the non-profit, directly benefits from the agenda of the non-profit, receiving continuous representation from the Member during the House legislative session. In return, the House member receives information, factual or not, from the third party who also employs the Member's family member.

The Member requesting the opinion explained that the perception is that as long as the Member actively advocates for the non-profit's published legislative agenda, the family member will continue to have employment with the non-profit. The Committee notes that pursuant to S.C. Code Ann. § 2-17-10(12) "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

[1] "Internal Revenue Code section 501(c)(4) "provides for the exemption of two very different types of organizations with their own distinct qualification requirements. They are: 1) Social welfare organizations: Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, and 2) Local associations of employees, the membership of which is limited to the employees of a designated person(s) in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes." See https://www.irs.gov/charities-non-profits/other-non-profits/types-of-organizations-exempt-under-section-501c4. (emphasis added).

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.

S.C. Code Ann. § 2-17-10(12). (emphasis added). Thus, with regard to this opinion, the Committee considers that by "advocate" the Member requesting the opinion means that the Member in his or her official capacity is speaking for or against legislation as well as sponsoring legislation. The Committee notes that this is a permissible action by the Member as an "advocate."

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

DISCUSSION

The Rules of Conduct for the Ethics, Government Accountability, and Campaign Reform Act of 1991, (the Ethics Act), in S.C. Code § 8-13-700(B), provide:

> (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.

S.C. Code § 8-13-700(B). (emphasis added). Pursuant to Section 8-13-100(11), economic interest means:

> 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.

S.C. Code § 8-13-100(11). Business with which he is 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 8-13-100(4). (emphasis added).

Family member is defined in S.C. Code § 8-13-100(15) as an individual who is:

> (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;

(b) a member of the individual's immediate family.

S.C. Code § 8-13-100(15). From the facts presented in this situation, it is unclear if the family member falls within the definition of "family member" as set forth in section 8-13-100(15); however, it is a broad definition. Assuming the family member meets the test as defined in Section 8-13-100(15), the Committee finds that the Member may not actively advocate for the third party, 501(c)(4)'s legislative agenda as the family member, who is an employee of the third party, 501(c)(4) has an economic interest. Moreover, as a result of the family member's economic interest as an employee of the third party, 501(c)(4), the Member then has a conflict of interest in participating in, voting on, or attempting to influence an official decision related to non-profit's legislative agenda.

In SEC AO2005-003, the State Ethics Commission addressed issues affecting the economic interests of a family member, that is the spouse, which required the public official to follow the recusal provisions in Section 8-13-700(B). The Commission held that a county council member, whose spouse was the clerk of court, was "advised not to vote on matters relating to his spouse's salary or other economic interests." *Id.* at p. 4. The Commission stated that the county council member may vote on the county budget as a whole. He may vote on a specific matter relating only to the clerk's office; however, he may wish to avoid even an appearance of impropriety. *Id.*

In the instant scenario, the public official is then required to abstain from voting on matters in which there are conflicts of interest as discussed above by following the procedures of Section 8-13-700(B)(1) and (2). Specifically, the Member is required to deliver a copy of a statement describing the conflict of interest to the Speaker of the House. Pursuant to Section 8-13-700(B)(2), the Speaker of the House shall have the statement printed in the appropriate journal, and the Member will be required to excuse him or herself from any votes, deliberations, and other action taken on the conflicted matter.

CONCLUSION

In summary, a Member, whose family member, is an employee of a third party, 501(c)(4) may not actively advocate the 501(c)(4)'s published legislative agenda so as not to violate Section 8-13-700. Further, the Member should follow the abstention procedures outlined in Section 8-13-700(B)(1)-(2). The Committee notes that this opinion is limited in application to the specific factual situation outlined above.

Adopted December 5, 2018.

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ADVISORY OPINION 2017-1

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion regarding selling insurance to a quasi-governmental agency. The Member explained that he works for an insurance company which has a parent company. He noted that he has no financial interest in either company. The Member reported that he is currently paid a salary but effective April 2017, the insurance company will compensate him on a commission basis. Specifically, he questioned whether, pursuant to the Ethics Rules of Conduct, he could sell insurance policies to local Department of Disabilities and Special Needs (DDSN) Boards and he noted that he could abstain from any vote on a budgetary request for DDSN. He also questioned whether he could sell insurance policies to county hospitals and he explained that he could abstain from any vote on a budgetary request for the Department of Health and Human Services (DHHS). The Member noted in both instances that he submits a proposal to sell the insurance to either entity during a competitive bidding process. He also questioned whether he can serve as the agent for the insurance company selling insurance policies in the two situations discussed above.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion. The Member may sell insurance policies as an agent of an insurance company to local DDSN Boards and local county hospitals. He is not required to abstain from voting on matters related to DDSN or DHHS as he meets the large class exemption pursuant to the definition of economic interest. S.C. Code Ann. § 8-13-100 (11)(b) (2011). Specifically, the Committee observes that the Member, as a compensated agent uses the competitive bidding process to submit insurance proposals, and, thus, does not have an interest distinct from the general public.

DISCUSSION

DDSN Boards

Initially, some background on DDSN and its interplay with local DDSN Boards is necessary in order to address the Member's question related to selling insurance policies to local

DDSN Boards. DDSN is a SC state agency which "serves persons with intellectual disabilities, autism, head and spinal cord injury, and conditions related to each of those four disabilities." http://www.ddsn.sc.gov/about/Pages/OurMission.aspx; see also S.C. Code Ann. § 44-20-250. "DDSN provides services to the majority of eligible individuals in their home communities through contracts with local service-provider agencies. Many of these agencies are called Disabilities and Special Needs (DDSN) Boards, and they serve every county in South Carolina. There are also other qualified service providers available in many locations around the state." (emphasis added). http://www.ddsn.sc.gov/services/Pages/default.aspx.

Pursuant to S.C. Code Ann. § 44-20-380, DDSN Boards, receive funding as follows:

> (A) County disabilities and special needs boards are encouraged to utilize lawful sources of funding to further the development of appropriate community services to meet the needs of persons with intellectual disability, related disabilities, head injuries, or spinal cord injuries and their families.
> (B) County boards may apply to the department [DDSN] for funds for community services development under the terms and conditions as may be prescribed by the department. The department shall review the applications and, subject to state appropriations to the department or to other funds under the department's control, may fund the programs it considers in the best interest of service delivery to the citizens of the State with intellectual disability, related disabilities, head injuries, or spinal cord injuries.
> (C) Subject to the approval of the department, county boards may seek state or federal funds administered by state agencies other than the department, funds from local governments or from private sources, or funds available from agencies of the federal government. The county boards may not apply directly to the General Assembly for funding or receive funds directly from the General Assembly.

(emphasis added). S.C. Code Ann. § 44-20-380. Thus, DDSN Boards do not receive direct funding from the General Assembly. The Committee notes that DDSN Board may receive some reimbursement for services provided by DDSN.

County Hospitals

It is the Committee's understanding that the county hospitals in question have a local governing board which would authorize the purchase of any insurance policy. Specifically, the Committee learned through the SC Hospital Association the board of the local hospital would discuss the purchase of any insurance policies either during the budget approval process or a separate presentation. Again, the Committee has learned this is not specifically structured for all hospitals and is determined by the hospital itself through hospital policy and procedures. The requirement for approval by county council is rare, but would be hospital specific. Thus, it often appears that the local hospital governing board determines what insurance policy to purchase. See generally, Sections 44-7-1430, -1440.

Further, local county hospitals may receive reimbursement for Medicaid programs. However, the local county hospitals do not acquire budget appropriations. See discussion of a Member's business receiving Medicaid reimbursement as addressed in House Legislative Ethics Committee Advisory Opinion 2016-3.

Applicable Law

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;
> . . .

(emphasis added). S.C. Code Ann. § 8-13-700. A business with which a person is associated 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." (emphasis added). Section 8-13-100(4).

> Further, as used in the Act, "economic interest" means:
> (a) an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
> (b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public

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

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

In the instant scenario, it is clear that the Member does not have any ownership interest in the insurance company, the business with which he is associated, but he is a compensated agent. In SEC AO2000-004, page 4, the State Ethics Commission defined a "compensated agent" as "any ongoing client relationship in which the public official, public member, or public employee, receives compensation for services rendered."

Thus, in each scenario, the Member submits a competitive bid to sell the insurance policy to each entity described above. Therefore, he does not receive an interest distinct from that of the general public, as defined in "economic interest." Moreover, there is no direct funding to either the DDSN Board or local county hospitals during the budgetary process.

Also, the compensated agent, who is a public official and is selling insurance products to a quasi-governmental agency, is not required to abstain from voting on budgetary requests pursuant to Section 8-13-700(B) for DDSN or DHHS. 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. In the instant situation, it appears that the Member who is selling insurance policies meets the large class exemption.

CONCLUSION

In summary, the Member as a compensated agent uses the competitive bidding process to submit insurance proposals, and, thus does not have an interest distinct from the general public. Also, the Member, a compensated agent of an insurance company, is not required to recuse himself from a vote on matters related to DDSN or DHHS. The DDSN Boards and local county hospitals to whom he competitively sells insurance products do not receive direct budgetary funding from the South Carolina General Assembly.

Adopted January 25, 2017

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ADVISORY OPINION 2017 - 2

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion related to the use of his campaign funds. Specifically, the Member explained that he travels to Columbia for meetings which are related to the office he holds when the legislative session is over and he does not receive any compensation by per diem[1] or subsistence. Specifically, the Member requested that the Committee find that he could use his campaign funds to pay for any related expenses for the trip, that is, meals and lodging if the meeting involves an overnight stay, and mileage. The Member noted that he does not request approval from the Speaker for nor seeks reimbursement of these expenses. The Member also requests that he be able to use his campaign funds to pay for travel expenses if he is asked to serve as a speaker at an in-state meeting related to legislative matters. The Member noted that this meeting is not sponsored by a lobbyist principal.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion. The Committee finds that the Member may use his campaign funds to pay for the costs associated with travel for a meeting related to the office he holds, such as, meals, lodging, and mileage when legislative session is over and if he does not receive any authorized per diem or subsistence for the meeting. The Member may also use campaign funds to pay for travel expenses if he is asked to serve as a speaker at an in-state meeting related to legislative matters. However, the Member must itemize these expenditures on his applicable Campaign Disclosure report.

DISCUSSION

[1] Per Diem is defined as "an allowance paid to your employees for lodging, meals, and incidental expenses incurred when traveling. This allowance is in lieu of paying for their actual travel expenses." https://www.irs.gov/pub/irs-pdf/p1542.pdf https://www.irs.gov/pub/irs-regs/perdiemfaq&a.prn.pdf

As background, House Members are permitted to receive the following reimbursements according to Act 284, H 5001 (known as the Budget Bill), Part 1B, 91.4. (LEG: Subsistence/Travel Regulations):

(A) Members of the General Assembly shall receive subsistence for each legislative day that the respective body is in session and in any other instance in which a member is allowed subsistence expense. No member of the General Assembly except those present are eligible for subsistence on that day. Legislative day is defined as those days commencing on the regular annual convening day of the General Assembly and continuing through the day of adjournment sine die, excluding Friday, Saturday, Sunday, and Monday.

(B) Standing Committees of the Senate and House of Representatives are authorized to continue work during the interim; however, House members must receive advanced approval by the Speaker of the House and Senate members must receive advanced approval by the President Pro Tempore of the Senate or Standing Committee Chairman to meet. If such advanced approval is not received, the members of the General Assembly shall not be paid the per diem authorized in this provision. When certified by the Speaker of the House, President Pro Tempore of the Senate, or Standing Committee Chairman, the members serving on such committees shall receive a subsistence and mileage at the rate provided for by law, and the regular per diem established in this act for members of boards, commissions, and committees while attending scheduled meetings. Members may elect to receive actual expenses incurred for lodging and meals in lieu of the allowable subsistence expense. The funds for allowances specified in this proviso shall be paid to the members of the Senate or House of Representatives from the Approved Accounts of the respective body except as otherwise may be provided.

. . .

(D) Members of the Senate and the House of Representatives when traveling on official State business shall be allowed a subsistence and transportation expenses as provided for by law, and the regular per diem established in this act for members of boards, commissions, and committees upon approval of the appropriate chairman. When traveling on official business of the Senate or the House of Representatives not directly associated with a committee of the General Assembly, members shall be paid the same allowance upon approval of the President Pro Tempore of the Senate or the Speaker of the House of Representatives. In either instance, the members may elect to receive actual expenses incurred for lodging and meals in lieu of the allowable subsistence expense. The funds for the allowances specified in this proviso shall be paid from the Approved Accounts of the Senate or the House of Representatives or from the appropriate account of the agency, board, commission, task force or committee upon which the member serves.

(E) Members of the House of Representatives shall not be reimbursed for per diem, subsistence, or travel in connection with any function held outside of the regular session of the General Assembly unless prior approval has been received from the Speaker of the House.

(F) Notwithstanding any other provision of law, subsistence and mileage reimbursement for members of the General Assembly shall be the level authorized by the Internal Revenue Service for the Columbia area. Provided, in calculating the subsistence reimbursement for members of the General Assembly the reimbursement rate for the lodging component shall be the average daily rate for hotels in the Columbia Downtown

area as defined by the Columbia Metro Convention and Visitor's Bureau for the preceding fiscal year.

Act 284, H 5001, Part 1B, 91.4. (emphasis added). Thus, when a Member receives subsistence, it is for lodging and meals. Per diem is received in lieu of a salary. In the instant scenario, the Member is not reimbursed his costs associated with attending the meeting held when the legislature is not in session.

Further, 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.

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

As noted previously, the State Ethics Commission (SEC) explained 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).

Additionally, House Ethics Committee Advisory Opinion 2015-3 utilized Committee Advisory Opinion 92-3, for guidance on a test to evaluate the permissibility of a campaign expenditure. It stated: "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).

In the instant scenario, the Member would not have the additional expense for meals, lodging, and mileage after the legislative session ended for attending legislative-related meetings with but for the office the Member holds. Thus, it is connected to the ordinary duties of the office as a Member. Also, the Member also does not accept any per diem or subsistence, even if permitted, for participating in the meetings. Therefore, he may use his campaign funds to pay for these additional expenses. The Member may use his campaign funds, as well, for travel expenses if he is asked to serve as a speaker at an in-state meeting related to legislative matters since this is part of the ordinary duties of his office.

CONCLUSION

In summary, the Member may use his campaign funds to pay for meals and lodging if the meeting involves an overnight stay, and mileage for legislative related meetings that occur after session has ended. The Member does not request approval from the Speaker for nor seeks reimbursement of these expenses. The Member may use his campaign funds to pay for travel expenses if he is asked to serve as a speaker at an in-state meeting related to legislative matters.

Furthermore, the Member must itemize these expenditures on his applicable Campaign Disclosure report.

Adopted March 1, 2017

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ADVISORY OPINION 2017 - 3

The House Legislative Ethics Committee (HEC) received a request from a Member/Lawyer for an advisory opinion related to representing clients before a state agency and the ramifications of voting on a budget request related to that state agency. The Member explained that his firm may represent clients for workers' compensation claims, condemnation claims with the S.C. Department of Transportation, as well as matters with the Office of Motor Vehicle Hearings.

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

DISCUSSION

S.C. 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). S.C. 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. Additionally, 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.

In this situation, the Member must comply with the general rules found in Section 8-13-740(A)(2) in order to represent a person before a governmental agency. This means that the Member may represents persons in contested cases pursuant to the Administrative Procedures Act except before the S.C. Public Service Commission or the S.C. Department of Insurance. Then, pursuant to Section 8-13-740(B), the Member must report on his or her annual Statement of Economic Interests a listing of fees earned, services rendered, names of persons represented, and the nature of contacts with the governmental agency. Finally, as required by Section 8-13-740(C), the Member is prohibited from voting on the section of that year's General Appropriation Bill relating to a specific agency or commission if the member or individual or business which whom he or she is associated with represented a person before the agency or commission within one year prior to that vote.

CONCLUSION

In summary, the Member/Lawyer may represent clients in a contested case, as defined in Section 1-23-310, excluding a contested case for a rate or price fixing matter before the S.C. Public Service Commission or S.C. Department of Insurance, or in an agency's consideration of the drafting and promulgation of regulations. The Member must make the required disclosure on his or her annual Statement of Economic Interests. Also, the Member could not vote on the applicable section related that agency in the annual General Appropriations bill.

Adopted March 1, 2017

House Legislative Ethics Committee

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ADVISORY OPINION 2017 - 4
(Amended October 30, 2017)

The House Legislative Ethics Committee (HEC) received a request from a Member/Lawyer for an advisory opinion related to representing a state agency in a legal matter but the Member/Lawyer's attorney fees and litigation costs are paid for by a third party, a governmental insurance operation. The Member/Lawyer questioned whether he could still vote on a budget request related to that state agency since the agency is not paying his legal fees. For example, the Member explained that he has often been retained by the Insurance Reserve Fund (IRF)[1] and the Joint Underwriting Association (JUA)[2] to defend an agency who is the insured client on a claim. The Member/Lawyer further questioned in the same scenario whether he could still vote in subcommittee, committee, and during the debate on the House calendar for bills related to that state agency.

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

DISCUSSION

S.C. Code Ann. § 8-13-700, part of the Rules of Conduct, provides:

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[1] "The Insurance Reserve Fund functions as a governmental insurance operation with the mission to provide insurance specifically designed to meet the needs of governmental entities at the lowest possible cost." http://www.irf.sc.gov/

[2] "The mission of the JUA is to provide a stable market for superior, dependable and defense focused medical professional liability insurance to South Carolina's medical professionals." http://www.scjua.com/about/missionvisionvalues/

(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;
. . .

S.C. Code Ann. § 8-13-700(A)-(B). (emphasis added). The Ethics Act defines "economic interest" as follows:

(a) "Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

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

In the instant situation, when the Member is retained by either the IRF or JUA, the Member agrees to an established schedule for payment of his or her legal fees and costs. This set schedule is the same payment schedule as for any other attorney retained by the IRF or JUA to represent a client on a legal matter. Thus, the Member's retention by the IRF or the JUA to defend an agency

on a claim is not distinct from that of the general legal community (i.e., relevant "public") and would meet the large class exemption pursuant to the definition of "economic interest." The Member would not be required to abstain from voting on the section of that year's General Appropriation Bill relating to the IRF or the JUA. Also, the Member is not required to abstain from voting on budgetary funding for the agency the Member represents as the Member is being paid for his representation by the agency's insurer.

It is the Committee's understanding that on a rare occasion the agency may also pay the Member directly for the legal services the Member is providing. On that rare occasion, the Member should then abstain from voting on funding for that agency.

The Committee notes that the Member should list on his or her Statement of Economic Interests under Income and Benefits the income earned from representing an agency for which the fees and costs are paid by the JUA or the IRF for representing an agency client. See S.C. Code Ann. § 8-13-1120(A)(2).

In addition, the Member is not required to abstain from voting during committee and subcommittee meetings as well as during the debate on the House calendar for bills related to a state agency he represents as the Member is being paid for his representation by the agency's insurer. The Committee finds that this practice does not constitute a conflict of interest pursuant to the Rules of Conduct which would require the Member to abstain from voting on legislation directly impacting the agency.

CONCLUSION

In summary, the Member is not required to abstain from voting on budgetary funding for or bills relating to the Member's agency client for whom the Member is retained to represent when such representation is paid for only by the governmental insurance operation. Furthermore, the Member is not required to abstain from voting on budgetary funding for the governmental insurance operation as this would meet the requirements for the large class exemption as defined in "economic interests." The Member is not required to abstain from voting during subcommittee, committee meetings, and during the debate on the House calendar for bills related to the Member's agency client.

Originally Adopted March 1, 2017.
Amended October 30, 2017.

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ADVISORY OPINION 2017 - 5
Member working for County Treasurer

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether it was a conflict of interest for the Member to be employed by the County Treasurer. The Member noted that her husband currently serves as a County Councilman. The Member explained that the Treasurer is elected by the county voters. The Member reported that the County allocates a lump sum for the Treasurer's budget and then the Treasurer decides how much of the budget is allocated to the Treasurer employees' salaries. The Member explained that she currently abstains from voting on the General Appropriations budget on the line item for local governments.

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

DISCUSSION

S.C. Code Ann. § 8-13-700, part of the Rules of Conduct, 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;

. . .

S.C. Code Ann. § 8-13-700. (emphasis added). Pursuant to Section 8-13-100(11), "Economic Interest" is defined as:

> (a) an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
>
> (b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Section 8-13-100(11)(a)-(b).

House Ethics Advisory Opinion 92-4 also provides some guidance although it relates to employment with a state agency rather than with local government. Specifically, it stated:

> Question: Is a member of the House of Representatives prohibited from seeking and obtaining employment with a state agency?
>
> There are several sections of the new Ethics Act which are pertinent to the Issue, but none prohibit such employment. Most notably, Section 8-13-1 120(A)(2) requires disclosure of the employment arrangement and the amount of income received. Section 8-13-745(C) It is also applicable. That provision prohibits a public official from voting on that part of the appropriations bill which relates to the agency, department, etc. with which the official has a contractual arrangement for goods or services. Any conflicts of interest which may arise because of the public employment must be handled as outlined in §8-13-700(8), which may include abstention from certain votes.

House Ethics Advisory Opinion 92-4. Thus, the Member may be required to abstain from voting on a line item in the General Appropriations bill for local government if the Member is unable to ascertain the use of the General Appropriations funding for local government.

Also, the Member would need to disclose the income earned from the County Treasurer's office on the Statement of Economic Interests form.

CONCLUSION

In summary, the Member may accept employment with the County Treasurer's office as long as the Member complies with the Rules of Conduct. It would be good practice but it is not required for the Member to abstain from voting on a line item in the General Appropriations bill for local government. The Member must also report this local governmental income earned from the Treasurer's office on the Member's Statement of Economic Interests.

Adopted April 6, 2017

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ADVISORY OPINION 2017 - 6

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned how the County Legislative Delegation members should report the receipt of parking privileges at a county parking garage and also at the local airport. The Member explained that each delegation member is provided access by the county to parking in a county parking garage. The Member may also request access to a parking card to use in the county garage. As for the parking spaces at the local airport, the county aviation authority gives the delegation member a specific reserved parking location. The Member questions whether he or she can continue to state under "gifts" on the Statement of Economic Interests (SEI), "call [Name of Delegation], [Delegation phone number], for list of benefits, $1.00." In the alternative, the Member questions whether he or she must be more specific and disclose the daily value of the parking spaces under "gifts" on the SEI.

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

DISCUSSION

S.C. Code Ann. § 8-13-1120 provides:

(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:

. . .

(9) the source and a brief description of any gifts, including transportation, lodging, food, or entertainment received during the preceding calendar year from:

(a) a person, if there is reason to believe the donor would not give the gift, gratuity, or favor but for the official's or employee's office or position; or
(b) a person, or from an officer or director of a person, if the public official or public employee has reason to believe the person:

(i) has or is seeking to obtain contractual or other business or financial relationship with the official's or employee's agency; or
(ii) conducts operations or activities which are regulated by the official's or employee's agency if the value of the gift is twenty-five dollars or more in a day or if the value totals, in the aggregate, two hundred dollars or more in a calendar year.

S.C. Code Ann. § 8-13-1120(A)(9) (emphasis added). Thus, a gift of parking privileges at a county garage and county airport would need to be reported by the Member on his or her SEI form as the Member would not receive this gift but for the position he or she holds.

The User Guide for the SEI provides instructions regarding completion of the section on "gifts." Specifically, the filer must provide the nature of the gift, the dollar value, the donor, and the relationship to donor. See page 39 at: http://ethics.sc.gov/Campaigns/Documents/SEI%20Only%20Statement%20of%20Economic%20Interest%20User%20Guide%20%20Updated%201216.pdf.

Thirty days prior to the due date for the SEI on March 30th each year, the House Ethics Committee provides instructions to filers - that is, candidates, former candidates, House Members, and former House Members -- regarding how to complete the SEI. The memo gives examples of how to report legislative events on the SEI under "gifts." For delegation events, the memo states the following: "Donor- For List of Functions; Relationship - Call Delegation office; Nature of Gift - Delegation Phone Number; and Value - $1.00." It is the Committee's understanding that it has been the practice for the delegation staff to maintain a list of events attended by the delegation members, which also included any gifts, such as, parking privileges that the delegation members received.

Thus, the Committee finds that the Delegation Member may continue to list under gifts on his or her SEI: "Donor- For List of Functions; Relationship - Call Delegation office; Nature of Gift - Delegation Phone Number; and Value - $1.00," as long as the Delegation Office maintained a list of the gifts which included the parking privileges, as well as the donor who provided the parking privileges and the dollar value of those privileges. The Member is only required to report each gift that exceeds $25.00 or more.

CONCLUSION

In summary, the Member may continue to list under gifts on his or her SEI "see Delegation office for a list" with the list noting the parking privileges received by the Delegation Members which includes the value, donor, and description of those privileges.

Adopted June 6, 2017.

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ADVISORY OPINION 2017 - 7

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether S.C. Code Ann. § 8-13-1348(B) allows "the use of campaign funds to pay for or reimburse a member for the cost of transportation, lodging and meals expended on the member and the member spouse for attendance at the following international, national, regional, state or local events: legislative conferences, political party conferences, political party conventions, trade conferences, issue conferences or speaking engagements."

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

DISCUSSION

S.C. Code Ann. § 8-13-1348(A)-(B) 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.
> (B) The payment of reasonable and necessary travel expenses or for food or beverages consumed by the candidate or members of his immediate family while at, and in connection with, a political event are permitted.

S.C. Code Ann. § 8-13-1348(A)-(B) (emphasis added).

The only relevant decision interpreting Section 8-13-1348(B) found by the Committee was the Order of Dismissal In the Matter Of: Complaint C2014-033, SC State Ethics Commission vs. The Honorable Richard A. Eckstrom. The Complaint alleged that the Respondent used campaign

funds for personal use in violation of Section 8-13-1348(A). Respondent contended that the "expenses reflected the payment of reasonable and necessary travel expenses, food, and beverages consumed by Respondent while at and in connection with the 2012 Republican National Convention" and that "Section 8-13-1348(B) specifically permits the use of campaign funds to defray these expenses." Order of Dismissal In the Matter Of: Complaint C2014-033, SC State Ethics Commission vs. The Honorable Richard A. Eckstrom, page 1. The State Ethics Commission granted Respondent's Motion to Dismiss finding that Respondent did not convert campaign funds to his own personal use.

Further, the Committee is cognizant that the cardinal rule of statutory construction "is to ascertain and effectuate the intent of the legislature." Fulbright, et al, v. Spinnaker Resorts, Inc., Op. No. 27720 (S.C. Sup. Ct. filed May 17, 2017) (Shearouse Adv. Sh. No. 20 at 30). "If a statute's language is plain, unambiguous, and conveys a clear meaning [,] 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" Fulbright citing Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). (emphasis added).

In the instant scenario, the plain meaning of Section 8-13-1348(B) demonstrates that a Member may pay for the reasonable and necessary travel expenses incurred and food and beverages consumed in connection with the political event attended by the Member and the Member spouse. As there is no definition for "political event" in the Ethics Act, the Committee would need to give the term "political event" its ordinary meaning. The Committee notes that the political events a Member may attend, include but are not limited to, the National Conference of State Legislatures Legislative Summit, a Lobbyist Principal's Annual Meeting (example, S.C. Beer Wholesalers Association), an issue or trade conference (such as, Students First Institute for a Member who serves on the House Education Committee). The Committee finds that for an elected official such events are inherently political in nature and a logical extension of their ability to effectively represent their constituents by virtue of the educational material provided, contacts made, and other information gained. These events therefore fall within the ordinary meaning of the term "political event." Accordingly, the Committee finds that the Member may use his or her campaign funds to pay for or reimburse the Member for the cost of transportation, lodging, and meals expended on the Member and the Member spouse for attendance at the following international, national, regional, state or local events: political party conferences, and political party conventions as well as legislative conferences, trade conferences, issue conferences, or speaking engagements. See also Section 8-13-715 (regarding reimbursements of a Member for a speaking engagement).

CONCLUSION

In summary, the Member may use his or her campaign funds to pay reasonable and necessary expenses for transportation, lodging, and meals for the Member and his or her spouse while at the following international, national, regional, state or local events: political party conferences, political party conventions, legislative, trade, or issues conferences, and speaking engagements. Section 8-13-1348(A) - (B).

Adopted June 6, 2017

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ADVISORY OPINION 2017 - 8

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether the Member could serve on a Section 501(C)(3) board. As background, organizations described in the IRS Code as 501(C)(3) are known as charitable organizations. https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501-c-3-organizations.

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

DISCUSSION

SEC AO92-150 provides guidance on this question. A County Clerk of Court questioned whether there was any conflict with her service on the Board of Directors for the Shelter of Abused Women. The opinion found "there is no outright prohibition against a public official serving on the Boards of Directors of a publicly held company or corporation or a nonprofit organization." SEC AO92-150, page 1.

However, the State Ethics Commission noted that pursuant to S.C. Code Ann. § 8-13-1120(A)(8), the filer must disclose on her Statement of Economic (SEI) "any compensation received from a business which also has a contract with the governmental entity which the public official serves." SEC AO92-150, page 1. Further, the public official was cautioned that if she must "take action as a public official which will affect the public interests of the Shelter," she must follow the abstention procedures in Section 8-13-700(B). SEC AO92-150, page 2. See also, SEC AO2002-009, page 2 ("When public officials sit on boards of non-profit corporations in their official capacity as public official, the non-profit corporations are not businesses with which they are associated and recusal is not required.").

In the instant scenario, the HEC finds that the Member may serve on the board of a charitable, non-profit organization. The Member must comply with the disclosure requirements for the SEI. This also includes the disclosure of the source and type of any compensation received

from the non-profit for service as a board member. Section 8-13-1120(A)(10). Finally, if the non-profit should receive budgetary funding through a proviso or section in the budget bill, the Member would need to follow the abstention procedures set forth in Section 8-13-700(B) and abstain from voting on that specific section or proviso only if the Member received any compensation outside of ordinary expense reimbursement.

An additional issue to consider is whether a public official who also holds a board position on a charitable, non-profit organization would violate dual-office holding. Article XVII, Section 1A of the South Carolina Constitution prohibits a person from holding "two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public." S.C. Const. art. XVII, § 1A. A person not meeting this exception would violate the dual office holding prohibition by concurrently serving in two offices "involving an exercise of some part of the sovereign power [of the State], either small or great, in the performance of which the public is concerned...." Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907).

As Ops. S.C. Atty. Gen., August 19, 2014 explained:

> Our Supreme Court has recognized that the criteria to be considered in determining whether an individual holds an office for the purpose of dual office holding analysis includes "whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others." State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980). (1980). However, it has also been determined that "no single criteria is conclusive" and it is not "necessary that all the characteristics of an officer or officers be present." Id. (citing 67 C.J.S. Officers § 8(a) (1978)).

Ops. S.C. Atty. Gen., August 19, 2014. (emphasis added).

The S.C. Attorney General has addressed whether a public official who also holds a board position on a charitable, non-profit organization would violate dual-office holding in several advisory opinions. Specifically, in Ops. S.C. Atty. Gen., June 25, 2010, the Attorney General's Office explained:

> This Office concluded that membership on the board of directors of a private nonprofit eleemosynary corporation would not constitute an office for purposes of dual office holding. Ops. S.C. Atty. Gen., November 27, 2007 (Mauldin Cultural Center Board); September 14, 2005 (Rubicon Counseling Center Board); July 5, 2005 (South Carolina Museum Foundation); April 12, 1993 (Charleston Citywide Local Development Corporation and Community Young Men's Christian Association of Rock Hill, S.C.); January 11, 1991 (Francis Marion Foundation); October 18, 1988 (Children's Trust Fund of South Carolina); September 8, 1987 (Horry County Council on Aging); October 20, 1983 (York County Council on Aging, Inc.).

Ops. S.C. Atty. Gen., June 25, 2010 (WL 2678694). Thus, it would not be dual office holding for a Member to hold a board position on a charitable, non-profit organization.

CONCLUSION

In summary, the Member may serve on the board of a charitable, non-profit organization. The Member must comply with the disclosure requirements for the SEI and abstain from voting on a budgetary item for the non-profit, if applicable. Further, the HEC finds that it is not dual office holding for a Member to serve on the board of a charitable, non-profit organization.

Adopted June 6, 2017.

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ADVISORY OPINION 2017 - 9

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether Members of the House[1] may participate in an October 2017 educational tour of Israel. The Member noted that this upcoming tour is very similar to a prior educational tour of Israel in 2016 that several Members participated in, which included: "visits to strategic security sites, briefings by experts on Israeli - Arab relations and meetings with local Israeli government leaders, Ministers, and Members of the Knesset. A large portion of the tour focused on the impact of the Boycott, Divestment and Sanctions movement on local populations." The Member also explained that the 2016 tour included an economic development aspect as additional capital investment in S.C. with a CEO of an Israeli company was discussed. The Member further explained that "in relation to this offering, however, certain member's travel and touring costs would be paid or reimbursed by the host organization, which is not affiliated with a South Carolina registered lobbyist or registered lobbyist principal."

Specifically, the Member requested a ruling of the House Ethics Committee as to the ethical propriety of: 1) Members participation in such educational tour where all members are invited to participate; 2) Acceptance of educational tour costs paid or reimbursed to certain member-participants by the hosting organization; and 3) Payment of educational tour costs of member-participants from their Officeholder/Campaign Accounts.

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

DISCUSSION

It is the Committee's understanding that Members often use different approaches on how best to represent their districts and the state. One approach Members use is to participate in

[1] The Member questioned whether Members of the S.C. General Assembly may participate in this tour. However, the House Ethics Committee does not have jurisdiction to issue advisory opinions related to the conduct of S.C. Senators. The Senate Ethics Committee solely has that jurisdiction. See S.C. Code Ann. § 8-13-530(8).

educational tours to identify issues or problems that may need legislative action. These tours could be local, national, or international. While there is not specific statutory guidance on this issue, House Ethics Committee Advisory Opinion 93-25, is instructive. The issue was whether the Member could be reimbursed for a trip to a manufacturer of items sold by a non-profit and the Member had introduced legislation related to non-profits that was connected in some way to his or her activities in office. The Committee found it was a permissible reimbursement as "there was some correlation between the legislation that was introduced in the member's official capacity and the trip." House Ethics Committee Advisory Opinion 93-25. Thus, an offer to all Members for an educational tour by a non-lobbyist principal organization and the Member has a legislative interest in the tour offered, would be permissible.

Regarding the second question, that is, the Member's acceptance of educational tour costs paid or reimbursed by the hosting organization, S.C. Code § 8-13-1120(A)(9) provides for the reporting of gifts received by the Member on the Member's Statement of Economic Interests (SEI). Specifically, if the gift by a host organization which is not a lobbyist or lobbyist principal could include touring, meals, hotel, and possibly some airline travel, and this gift would not be provided to the public official but for the official's office or position, then this gift must be reported on the Member's SEI. Section 8-13-100(27) defines a public official as, "an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office." (Emphasis added).

Therefore, the Member who participates must report this gift on the 2018 Statement of Economic Interests since the Member will receive this gift based upon his or her office. The Member could report the trip for which the hosting organization paid or provided reimbursement as a "business development/legislative fact-finding trip," under the section, "Gifts." The Member will need to ask the host organization the value of the touring, meals, hotel, and some airline travel in order to report the value.

Lastly, the Member questions whether in the alternative the Member could pay the educational tour expense incurred out of his or her campaign funds. Since the Member is participating in this educational tour for legislative and economic development purposes in order to carry out the duties of the office he or she holds as a House Member, the Committee finds that this would be a permissible use of the Member's campaign funds. See S.C. Code Ann. § 8-13-1348(A). However, any expenditures made for this educational tour paid with the Member's campaign funds would need to be reported on the Member's applicable Campaign Disclosure report.

CONCLUSION

In summary, the Member may participate in an educational tour to Israel with expenditures paid by a non-lobbyist principal host organization. However, this gift would need to be reported on the Member's 2018 SEI. The Member, in the alternative, may use his or her campaign funds to pay for the expenses of this educational tour but the Member would need to report those expenditures on his or her applicable quarterly Campaign Disclosure report.

Adopted June 6, 2017.

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ADVISORY OPINION 2017 - 10

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member explained that he is currently a Member of the Judicial Merit Selection Commission (Commission) serving as a legislative member. He stated that his spouse plans to file for an open Circuit Court seat and that seat will be screened by the Commission. He questioned whether he must resign from the Commission or at a bare minimum recuse his vote and participation for this particular Circuit court seat.

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

DISCUSSION

As background, the Commission was created to consider the qualifications and fitness of candidates for all judicial positions for the S.C. Supreme Court, Court of Appeals, Circuit Court, Family Court, Master-in-Equity, and Administrative Law Court. S.C. Const. art. IV, § 26; see also, S.C. Code Ann. § 2-19-10 et seq; Segars-Andrews v. Judicial Merit Selection Com'n, 387 S.C. 109, 691 S.E.2d 453 (2010). Five of the ten members of the Commission are appointed in the House by the Speaker; of whom two are public members and three are legislative members. The Speaker Pro Tempore in the Senate appoints the two public members and the Chairman of the Senate Judiciary Committee appoints the three legislative members to serve on the Commission. See Section 2-19-10.

Moreover, there is specific language concerning a legislator running as a judicial candidate but none addressing a Member of the Commission screening his or her spouse as a judicial candidate. Specifically, S.C. Const. art. IV, § 26 provides: "Before a sitting member of the General Assembly may submit an application with the commission for his nomination to a judicial office, and before the commission may accept or consider such an application, the member of the General Assembly must first resign his office and have been out of office for a period established by law." Section 2-19-70(A) details the time period that is required as follows:

No member of the General Assembly may be elected to a judicial office while he is serving in the General Assembly nor shall that person be elected to a judicial office for a period of one year after he either:
(1) ceases to be a member of the General Assembly; or
(2) fails to file for election to the General Assembly in accordance with Section 7-11-15.

S.C. Code Ann. § 2-19-70(A).

Thus, the HEC must review the Ethics Government Accountability and Campaign Reform Act of 1991 (the Ethics Act) for guidance regarding the Member's question. In particular, S.C. Code Ann. § 8-13-700, part of the Rules of Conduct, 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;
. . .

S.C. Code Ann. § 8-13-700. (emphasis added). See also, SEC AO20014-001, which discusses conflicts 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 of interest." (emphasis added).

Further, Section 8-13-100(11), defines "Economic Interest" as:

(a) an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public

official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Section 8-13-100(11)(a)-(b). Family Member means "an individual who is: (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild; (b) a member of the individual's immediate family." S.C. Code Ann. § 8-1-100(15). (emphasis added). In this case, the Member's spouse is considered a family member pursuant to the Ethics Act.

The HEC has reviewed several S.C. Attorney General Opinions which give some guidance on conflict of interests. For example, Ops. S.C. Atty. Gen., September 23, 2011, summarized conflicts of interests pursuant to the Ethics Act as:

> A conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other.

Ops. S.C. Atty. Gen., September 23, 2011, page 2.[1] (emphasis added). In the instant scenario, the Member would have the power to assist in the appointment of his spouse as one of the three judicial nominees for the Circuit court seat his spouse is seeking.

Accordingly, the HEC finds that since the decision the Member will make will affect the economic interests of his spouse, he should comply with requirements of Section 8-13-700(B) and abstain from screening and voting on judicial candidates for the seat screened which his spouse is a candidate.

CONCLUSION

In summary, the Member may continue to serve on the Commission but must abstain from any participation in screening and voting on the judicial seat his spouse seeks.

Adopted July 26, 2017.

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[1] In this opinion, the conflict of interest concerned a Director of Nursing at a for-profit institution seeking an appointment on a County Commission for Technical and Community Education. It was questioned whether her appointment would give her access to confidential information that could create a conflict of interest because of her employment with a competing college. The Attorney General found that she may have conflict of interest under Section 8-13-700 as she would be in a position to use her office to influence a decision that may provide an economic interest. The opinion noted "S.C. Code Ann. § 8-13-700 simply warns against being in a position to influence, not actually making decisions to promote financial gain." Ops. S.C. Atty. Gen., September 23, 2011, page 3.

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ADVISORY OPINION 2017 - 11

The House Legislative Ethics Committee (HEC) received a request from several Members for an advisory opinion. The Members questioned whether they can use campaign funds to make a contribution to the Korean War Veterans Association, Inc. (KWVA) for construction of the Wall of Remembrance (Wall) at the Korean War Memorial in Washington, D.C. Specifically, each Member's contribution will be used to sponsor a name of a Korean War veteran killed or missing in action from the Member's S.C. county on the Wall at a cost of $750.00 per name. The Members explained that Congress enacted H.R. 1475 in 2016 to permit the Wall but no federal funds could be used to construct the Wall. The Members noted the Wall will feature the names of 37,000 Korean veterans killed or missing in action; 548 of those killed or missing in action were from S.C. The Members stated that they would not make a contribution but for the office each Member holds.

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

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 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) (emphasis added).

Pursuant to House Ethics Committee Advisory Opinion 98-3, Members were able to use campaign funds as a contribution to the Strom Thurmond Monument Committee because the Committee was characterized as a "political or partisan organization." The opinion explained that "contributions to political or partisan groups are ordinary office-related expenses permitted by § 8-13-1348 of the Ethics Act." House Ethics Committee Advisory Opinion 98-3, p. 1. The Opinion defined an organization that is "political or partisan" as one whose "primary purpose is political or partisan, rather than community-service oriented," citing House Ethics Committee Advisory Opinion 92-3.

The Senate Ethics Committee addressed a similar issue in Opinion 1997-2 in which the Committee determined that Senators could use campaign funds for "donations to monument commissions created for the purpose of placing a monument on the Capital Complex." The Opinion questioned whether the expense was "ordinary" for a holder of public office and whether the expense was incurred in connection with the Member's duties as an office holder. The Senate Ethics Committee noted:

> Section 8-13-70 expressly authorizes an expenditure of campaign funds for charitable and other purposes upon final disbursement. One could reason that the presence of such specific language in [that section] and its omission from Section 8-13-1348 means that a contribution to a charitable organization prior to final disbursement is not appropriate. This reasoning, however, ignores the fact that Section 8-13-1370 expressly restricts disbursement to several specified items, while Section 8-13-1348 is devoid of such restrictions. Logic dictates that those acts that are not prohibited should be considered appropriate."

Senate Ethics Committee Opinion 1997-2, page 2. The opinion concluded that the donations sought by a charitable organization from Senators to design and erect monuments that the General Assembly had approved was a clear example of donations being sought because of the position held. It also noted that, participation in "charitable giving and charitable good works is a longstanding function of elected officials." Senate Ethics Committee Opinion 1997-2, page 2.

Recently, the House Ethics Committee adopted House Ethics Committee Advisory Opinion 2016-2, known as the Laundry List opinion. The Committee found that contributions to charitable organizations, including churches and schools, was a permissible campaign expenditure as it was the type of expense incurred in relation to the office held. However, the Committee noted that "the candidate or Member may not contribute campaign funds to any charitable organization or church which the candidate, the Member, their immediate family, or the business with which they are associated, derive a personal and financial benefit." House Ethics Committee Advisory Opinion 2016-2, Section II, Subsection 2, pages 5-6.

In the instant case, the website for KWVA indicated that it was an organization that organizes, promotes and maintains for benevolent and charitable purposes an association of persons who have seen honorable service during the Korean War. http://www.kwva.org/brief_history.htm. (emphasis added). Further, in June 30, 2008, Public Law 110-254 was enacted to provide that KWVA was a nonprofit organization that met "the requirements for a veterans service organization under section 501(c)(19) of the Internal Revenue

Code of 1986." 36 U.S. Code § 120101(a). "The Internal Revenue Code section 501(c) includes two subsections [501(c)(19) and 501(c)(23)] which provide for tax-exemption under section 501(a) for organizations that benefit veterans of the United States Armed Forces." *See* https://www.irs.gov/charities-non-profits/other-non-profits/veterans-organizations. Thus, the Committee finds in order to be in accord with the Senate Ethics Opinion 1997-2 and the House Ethics Committee Advisory Opinion, 2016-2, Section II, Subsection 2, that donations may be made to charitable organizations using campaign funds to support the creation and erection of monuments. Therefore, because the KWVA is a non-profit, charitable organization, Members may use their campaign funds to make a donation to the KWVA to assist with the construction of the Wall as long as the Members, their immediate family, or the business with which they are associated do not derive a personal and financial benefit from making that contribution.

CONCLUSION

In summary, the Member may use his or her campaign funds to make a donation to the KWVA, a charitable organization, for the construction of the Wall. However, the Member may not make a donation to a charitable organization in which the Member, his or her immediate family, or the business with which they are associated, derives a personal and financial benefit.

Adopted July 26, 2017.

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ADVISORY OPINION 2017 - 12

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned the meaning of "material asset" as it pertains to a campaign disclosure report. The Member also questioned what type of expenditures made with campaign funds were considered assets of the campaign. On the recently revised quarterly Campaign Disclosure (CD) report, a Member must report for each expenditure listed whether it is an asset or not. Whether an asset is a "material asset" is also pertinent when the Final CD report is filed.

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

DISCUSSION

S.C. Code Ann. § 8-13-1368(D) provides that:

> A final report may be filed at the time or before a scheduled filing is due. The form must be marked "final" and include a list of the material assets worth one hundred dollars or more and state their disposition.

S.C. Code Ann. § 8-13-1368(D) (emphasis added).

As stated above, candidates and Members must include a list of "material assets" worth one hundred dollars or more and state their disposition when filing their Final CD report. Until recently, Ethics staff was unable to track on a CD report whether an asset was "material" and whether it was accounted for when a Final CD report was filed.

As background, requested changes were recently made by SC Interactive to the CD report template after approval and a lengthy testing process by the counsel and staff for the State Ethics Commission, Senate Ethics Committee, and House Ethics Committee. One of the changes made included requiring a candidate or Member to note for each expenditure reported whether it was an

"asset." The purpose for denoting the assets was to have an accounting of the disposition of "material assets" when the final CD report was filed. An additional tab, "Disposition of Assets," was added to the CD report for this reason.

However, there is no clear definition of the terms "asset" and "material asset" in the Ethics Act. The term "material asset" is further referenced in S.C. Code Ann. § 8-13-1300(30) in the definition for "transfer.[1]" It is also used in § 8-13-1340(B(2))[2] relating to proceeds of surplus funds upon final distribution. In general, an asset is defined as "anything with monetary value attached." See https://definitions.uslegal.com/a/asset/.

A recent State Ethics Commission Opinion, 2016-001 provides guidance on this issue. Specifically, the State Ethics Commission distinguished a gift of football tickets to a public official from "a gift of long-term value provided to an office, such as a painting, a plaque, or a piece of furniture that could remain as an asset of the office long after the officeholder is gone" (emphasis added). The opinion explained that because of the nature of the use of football tickets, they had "no tangible lasting value" to the office once the game was over. Therefore, an asset to the office held would likely have a tangible lasting value.

Additionally, a review of ethics statutes in other jurisdictions is instructive. The Arkansas Ethics Commission also requires that "campaign assets" be disclosed and disposed of according to statute after a campaign has ended. Ark. Code R. § 153.00.2-224 explained that certain campaign items did not need to be disposed of such as "campaign signs, campaign literature, and other printed campaign materials that were purchased by the campaign." *See* Ark. Code R. § 153.00.2-224. These items would not, therefore, be considered "assets" of the campaign or office.

In the instant case, the Committee finds that the following items, if purchased with campaign funds, must be disclosed on the Campaign Disclosure report as "assets," including but not limited to, office furniture for the office held or campaign office, and electronic items such as printers, copiers, cell phones, iPads, laptops, and electronic signs. *See* House Ethics Committee Advisory Opinion, 2016-2, Section II, Subsection 5. Further, in House Ethics Committee Advisory Opinion, 2016-2, Section II, Subsection 7, the Committee found that if the Member purchased clothing using campaign funds to wear during the legislative session and for campaigning, then the clothing purchased would be considered an "asset" of the campaign and must be disclosed as such. If these assets are each valued at $100.00 or more, then the Committee finds that they are

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1 Section 8-13-1300(3) provides: "Transfer" means the movement or exchange of funds or anything of value between committees and candidates except the disposition of surplus funds or material assets by a candidate to a party committee, as provided in this article." (emphasis added).

[2] Section 8-13-1340(A)-(B) provides, "(A) Except as provided in subsections (B) and (E), a candidate or public official shall not make a contribution to another candidate or make an independent expenditure on behalf of another candidate or public official from the candidate's or public official's campaign account or through a committee, except legislative caucus committees, directly or indirectly established, financed, maintained, or controlled by the candidate or public official.

(B) This section does not prohibit a candidate from:

(1) making a contribution from the candidate's own personal funds on behalf of the candidate's candidacy or to another candidate for a different office; or

(2) providing the candidate's surplus funds or material assets upon final disbursement to a legislative caucus committee or party committee in accordance with the procedures for the final disbursement of a candidate under Section 8-13-1370 of this article."

"material assets" to be disposed of when the candidate or Member files his or her Final CD report. The Committee additionally finds that if the expenditure is for an item that has "no tangible lasting value," such as, bumper stickers, shirts with the candidate or Member's name, or office or campaign supplies, then those items do not need to be designated as "assets."

CONCLUSION

In summary, the candidate or Member must disclose expenditures using campaign funds of furniture for the Member's office held or campaign office, electronic items, and clothing worn for the office held or for campaigning, as "assets" on his or her CD report. However, expenditures made with campaign funds that have no "tangible lasting value" are not considered "assets." All "material assets" valued at $100.00 or more when initially designated on the CD report must be accounted for at the existing current fair market value on the Final CD report under the "Disposition of Assets" tab. If the Member chooses to repurchase the material asset, the Member could repurchase the material asset at the existing current fair market value at the time of filing the Final CD report.

Adopted July 26, 2017.

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ADVISORY OPINION 2017 - 13

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether a legislative special interest caucus (LSIC) is considered a "legislative caucus" for purposes of the exemption which allows a lobbyist's principal to provide lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function to groups, such as a LSIC pursuant to S.C. Code Ann. § 2-17-90(A)(1). The Member further questioned whether a church or a 501(c)(3) organization could invite the LSIC for a meal in their Fellowship hall.

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

DISCUSSION

S.C. Code Ann. § 2-17-90(A)(1) provides:

> (A) Except as otherwise provided under Section 2-17-100, no lobbyist's principal may offer, solicit, facilitate, or provide to a public official or public employee, and no public official or public employee may accept lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal, except for:
>
> (1) as to members of the General Assembly, a function to which a member of the General Assembly is invited if the entire membership of the House, the Senate, or the General Assembly is invited, or one of the committees, subcommittees, joint committees, legislative caucuses, or their committees or subcommittees, or county legislative delegations of the General Assembly of which the legislator is a member is invited.

S.C. Code Ann. § 2-17-90(A)(1) (emphasis added). Further, S.C. Code Ann. § 2-17-10(11)(a)-(c), defines a "legislative caucus" as:

(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;
(b) a party or group of either house of the General Assembly based upon racial or ethnic affinity, or gender. However, each house may establish only one committee for racial, ethnic, or gender-based affinity.
(c) "legislative caucus" does not include a legislative special interest caucus as defined in Section 2-17-10(21).

S.C. Code Ann. § 2-17-10(11)(a)-(c). (emphasis added). Thus, a LSIC is not included in the groups denoted pursuant to Section 2-17-90(A)(1) who are permitted to receive invitations from a lobbyist principal. Accordingly, the LSIC must not accept an invitation from a lobbyist principal.

Moreover, the requirements for a LSIC are outlined in S.C. Code Ann. § 2-17-10(21) as follows:

'Legislative special interest caucus' means two or more legislators who seek to be affiliated based upon a special interest. Under no circumstances may a legislative special interest caucus engage in any activity that would influence the outcome of an election or ballot measure. Each legislative special interest caucus must register with the Clerk's Office of the Senate or the House of Representatives in a manner mandated by the Clerk's Office. However, each legislative special interest caucus must provide, and the Clerk's Office must maintain a record of:
(a) the name and purpose of the caucus;
(b) the names of all caucus members; and
(c) the date of creation, and dissolution, if applicable.
The Clerk's Office must maintain these records for at least four years following the dissolution of the caucus. A legislative special interest caucus may include, but is not limited to, a representation of sportsmen and women desiring to enhance and protect hunting, fishing, and shooting sports.

S.C. Code Ann. § 2-17-10(21) (emphasis added). Recently, the HEC verified with the House Clerk's office that there are several registered LSICs, including but not limited to, The S.C. Sportsman's Caucus[1] and The Family Caucus. While the statute provides registration requirements for a LSIC, there is not any language in the statute which provides the House Clerk's office with enforcement authority regarding these requirements for a LSIC.

Additional conditions for a LSIC are provided for in Section 8-13-1333(C)(1)-(2):

(C)(1) A legislative special interest must not solicit contributions as defined in Section 8-13-100(9); however, it may solicit funds from the general public for the limited purpose of defraying mailing expenses, including cost of materials and postage, and for members of the legislative special interest caucus to attend regional and national conferences. Legislative special interest caucus members may attend a regional or national conference

[1] In June 2017, The South Carolina Sportsmen's Caucus held a Shooting Classic event. It is the HEC's understanding that the Congressional Sportsmen's Foundation, a Section 501(c)(3) entity, was responsible for payment of the meals and any costs related to the afternoon shoot. No lobbyist principals sponsored the event.

only if the conference is exclusively comprised of legislative special interest caucus counterparts and convenes for the purpose of interacting and exchanging ideas among caucus members and the conference is sponsored by a national organization with which the legislative special interest caucus is affiliated. Attendance at any conference is prohibited if the conference is sponsored by any lobbying group or extends an invitation to persons other than legislators. Under no circumstances may a legislative special interest caucus accept funds from a lobbyist. Each special interest caucus must submit a financial statement to the appropriate supervisory office by January first and July first of each year showing the total amount of funds received and total amount of funds paid out. It must also maintain the following records, for not less than four years, which must be available to the appropriate advisory office for inspection:
(a) the total amount of funds received by the legislative special interest caucus;
(b) the name and address of each person or entity making a donation and the amount and date of receipt of each donation;
(c) all receipted bills, canceled checks, or other proofs of payment for any expenses paid by the legislative special interest caucus.
(2) A legislative special interest caucus may not accept a gift, loan, or anything of value, except for funds permitted in subsection (C)(1) above.

S.C. Code Ann. § 8-13-1333(C)(1)-(2) (emphasis added). Thus, there are detailed requirements regarding how a contribution can be used by a LSIC but no funds, including invitations, may be accepted from a lobbyist or lobbyist principal.

A recent Senate Ethics Advisory Opinion, 2016-1, provides additional guidance on this issue. Specifically, the Senate Ethics Committee found that "these statutes [S.C. Code Ann. §§ 2-17-10(21) and 8-13-1333(C)(1)] specifically and expressly limit the activities of a legislative special interest caucus and its members." The opinion explained:

members of a legislative special interest caucus are permitted to attend a regional or national conference, but only if the following conditions are met:
(1) the conference is exclusively comprised of legislative special interest caucus counterparts;
(2) the members convene for the purpose of interacting and exchanging ideas among caucus members;
(3) the conference is sponsored by a national organization with which the legislative special interest caucus is affiliated;
(4) the conference is not sponsored by any lobbying group; and
(5) invitations to the conference are extended only to legislators.

Senate Ethics Advisory Opinion, 2016-1, page 2. The Senate Ethics Advisory Opinion 2012-1 concluded: "under no circumstances may a legislative special interest caucus accept funds from a lobbyist." (emphasis added).

Again, it is the Committee's understanding that a LSIC is not considered a "legislative caucus" for purposes of qualifying under the exemption for lobbyist gifts for invitations to groups and caucuses under S.C. Code Ann. § 2-17-90(A)(1). Specifically, the clear language of § 2-17-

10(11)(c) provides that a legislative caucus does not include a legislative special interest caucus as defined in § 2-17-10(21).

Finally, the Member questions whether the LSIC may accept an invitation from a Section 501(C)(3) entity[2]. The Committee finds House Ethics Committee Advisory Opinion 92-48 instructive regarding this question. Specifically, House Ethics Committee Advisory Opinion 92-48 stated:

> Question: Can a member accept a gift from an organization that does not retain a lobbyist nor does it belong to an association which employs a lobbyist?
> Answer: There are no restrictions placed on a public official accepting a gift from an organization not involved in lobbying. If the gift is because of the member's elected position, then Section 8-13-710 (B) requires it to be reported, if it is in excess of $25 per day or $200 per year.

House Ethics Committee Advisory Opinion 92-48; see also House Ethics Committee Advisory Opinion No. 92-2. Thus, the Committee finds that a Member of the LSIC may accept an invitation from a Section 501(C)(3) entity which is not a registered lobbyist principal but the Member must report this gift on his or her Statement of Economic Interests if the fair market value of the event is $25.00 or more and if the donor would not have given the gift but for the Member's position. See Section 8-13-710(B).

CONCLUSION

In summary, a Member of a LSIC may not accept an invitation to a function paid for by a lobbyist's principal because a legislative special interest caucus is not considered a legislative caucus and, therefore, is not entitled to the exemption under § 2-17-90. The LSIC may accept an invitation from a Section 501(C)(3) entity that it is not a registered lobbyist principal. However, the Member who belongs to a LSIC would need to report any gift received reasonably valued at $25.00 or more on his or her Statement of Economics Interests if the donor would not have given the gift but for the Member's position.

Adopted August 14, 2017.

[2] Organizations described in the IRS Code as 501(C) (3) are known as charitable organizations. See https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501-c-3-organizations.

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ADVISORY OPINION 2017 - 14

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether it would be permissible to (a) pay for door prizes out of campaign funds or (b) accept donations for door prizes for political events to increase participation. The Member noted that the door prizes would be accounted for publicly as a campaign expense or an in-kind contribution.

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

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 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) (emphasis added).

The House Ethics Committee recently provided guidance as to the permissible and impermissible use of campaign funds in HEC Opinion 2016-2. Specifically, the Committee referenced the following test, as outlined in HEC Opinion 1992-3, to evaluate the permissibility of an expenditure from a Member's campaign funds:

> 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 [with]

> carry[ing] out his or her duties of office if elected. § 8-13-1348 of the Ethics Act...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, by 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 expense or instead a personal expense not connected to the ordinary duties of office.

Committee Advisory Opinion 92-3 (emphasis added). Thus, the Member may use his or her campaign funds for ordinary office or campaign-related expenses.

Furthermore, in HEC Opinion 2016-2, the Committee found 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." HEC Opinion 2016-2, Section II, Subsection 4, page 6.

The Member requested that he or she be able to pay for door prizes with campaign funds. A door prize is "a prize awarded to the holder of a winning ticket passed out at the entrance to an entertainment or function." https://www.merriam-webster.com/dictionary/door%20prize. The next question to address is whether a door prize is considered a "raffle." Until recently, only the State of S.C. could conduct a lottery. Pursuant to S.C. Const. art. XVII, § 7., "a raffle, if provided for by general law and conducted by a nonprofit organization for charitable, religious, fraternal, educational, or other eleemosynary purposes" is no longer prohibited as of April 5, 2015. *See also* S.C. Code Ann. § 33-57-100. According to the Charitable Raffles in South Carolina, *Frequently Asked Questions*, State of S.C., Office of the Secretary of State, page 3, a door prize is considered a raffle "if there is an entrance fee or required donation in order to be eligible for the door prize drawing." http://www.sos.sc.gov/forms/Charities/FAQRaffles.pdf.

Additionally, a non-profit organization is allowed to conduct raffles as defined in Section 33-57-120(A) if the organization:

> (1) is recognized by the South Carolina Department of Revenue and the United States Internal Revenue Service as exempt from federal and state income taxation...
> (2) is organized and operated for religious, charitable, scientific, literary, or educational purposes...and
> (3) is registered with the Secretary pursuant to requirements of Chapter 56, Title 33, unless it is exempt from or not required to follow registration requirements of Chapter 56, Title 33, or is a governmental unit or educational institution of this State.

S.C. Code Ann. § 33-57-120 (A)(1)-(3) (emphasis added). In the instant case, political campaigns do not appear to qualify as a non-profit organization as defined in that section. Moreover, the Member did not indicate that a person attending the town hall must pay a fee in order to win a door prize, so this does not appear to be a raffle.

Thus, the Committee finds that using campaign funds to purchase door prizes to give away at a town hall event is an ordinary office or campaign-related expense for the Member, and,

therefore, campaign funds may be used for this purpose. However, the Committee finds that a Member may not give away door prizes at a campaign fundraiser. The Committee recognizes that states such as Ohio and Oregon note in their campaign finance handbooks that door prizes may be permitted at a campaign fundraiser as long as the prize is an item of nominal value and the door prizes are not advertised as an inducement to attend the fundraiser. *See* http://sos.oregon.gov/elections/Documents/elec_law_summary.pdf, page 7; https://www.electionsonthe.net/oh/clark/pdfs/Campaign%20Finance%20Handbook%20(Updated%202013).pdf, page 29. The Committee adds, however, that it is impermissible to accept donations for or to give away door prizes at campaign fundraisers so that it does not appear that the Member is engaging in vote-buying or influencing another's vote in any way.

Therefore, since the Committee finds that campaign funds may be used to pay for door prizes to give away at a town hall event, contributions, whether monetary or in-kind, may be accepted for that purpose. Campaign funds used to purchase door prizes for community events must be disclosed under the expenditure section on the Member's quarterly campaign disclosure report. It should be noted, however, that the contributions, including in-kind[1] contributions, accepted for the purpose of purchasing door prizes are subject to the one thousand dollar contribution limit within an election cycle. *See* S.C. Code Ann. § 8-13-1314(a)(1)(b).

CONCLUSION

In summary, the Member may use his or her campaign funds to purchase door prizes for a town hall or community event because a door prize is an ordinary expense incurred in connection with the individual's campaign or duties as a holder of elective office. However, it is impermissible to accept donations for or to give away door prizes at campaign fundraisers. Moreover, the Member is encouraged to provide door prizes that include the Member's name and District number for limited purposes at community events, such as town halls, and to make those prizes available to those in attendance at the event. Use of campaign funds for door prizes must be included under the expenditure section on the Member's quarterly campaign disclosure report.

Adopted August 14, 2017.

[1] Section 8-13-1300(20) provides "In-kind contribution or expenditure means goods or services which are provided to or by a person at no charge or for less than their fair market value."

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ADVISORY OPINION 2017 - 15

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether he or she must report under the section "gifts" on his or her Statement of Economic Interests (SEI) the value of an event the Member attended, which was sponsored by multiple lobbyist's principals. Specifically, the Member attended S.C. Night at the 2017 NCSL Legislative Summit in Boston, MA. The Member received documentation that this event was sponsored by 29 lobbyist's principals with a cost of $4.16 per person per sponsor. Thus, the total value per public official was $120.64. Therefore, the question is whether the Member must report this event as a gift, depending on which value is used, since any gifts received due to the Member's position and valued at $25 or more must be reported on the SEI. Finally, the Member questioned whether he or she could just report this under gifts as "See House Invitations Committee for list."

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

DISCUSSION

S.C. Code Ann. § 2-17-90(B) provides:

(1) No lobbyist's principal or person acting on behalf of a lobbyist's principal may provide to a public official or a public employee the value of lodging, transportation, entertainment, food, meals, or beverages exceeding fifty dollars in a day or four hundred dollars in a calendar year per public official or public employee . . .
(2) The daily dollar limitation in item (1) must be adjusted on January first of each even-numbered year by multiplying the base amount by the cumulative Consumer Price Index and rounding it to the nearest five dollar amount. For purposes of this section, "base amount" is the daily limitation of sixty dollars, and "Consumer Price Index" means the Southeastern Consumer Price Index All Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics. . . .

S.C. Code Ann. § 2-17-90(B) (emphasis added). Currently, the daily dollar limitation cannot exceed sixty dollars in a day or four hundred and eighty dollars in a calendar year per public official or public employee.

With respect to reporting gifts on a Member's SEI, S.C. Code Ann. § 8-13-1120(A)(9) provides:

> (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: . . .(9) the source and a brief description of any gifts, including transportation, lodging, food, or entertainment received during the preceding calendar year from:
> (a) a person, if there is reason to believe the donor would not give the gift, gratuity, or favor but for the official's or employee's office or position; or
> (b) a person, or from an officer or director of a person, if the public official or public employee has reason to believe the person:
> (i) has or is seeking to obtain contractual or other business or financial relationship with the official's or employee's agency; or
> (ii) conducts operations or activities which are regulated by the official's or employee's agency if the value of the gift is twenty-five dollars or more in a day or if the value totals, in the aggregate, two hundred dollars or more in a calendar year.

S.C. Code Ann. § 8-13-1120(A)(9) (emphasis added).

According to the statutory language provided above, each lobbyist's principal may not spend more than sixty dollars per day per public official or more than four hundred and eighty dollars per public official in a calendar year to provide that public official with lodging, transportation, entertainment, food, meals or beverages. *Id.* Moreover, it has been common practice that when two or more lobbyist's principals co-sponsor an event, they evenly distribute the total amount expended on the event among the number of lobbyist's principals who sponsor it.

State Ethics Commission Advisory Opinion 99-005 provides additional guidance on this question. In the opinion, the Commission noted that "the intent of [Section 2-17-90(B)] is that no one lobbyist's principal may give food, drink, lodging, transportation, or entertainment that exceeds the daily limit or yearly aggregate." The Commission acknowledged that several lobbyist's principals often co-host one event on the same evening and that a multi-host event meets the intent of that Section. The Commission, therefore, concluded that "more than one lobbyist's principal may co-host a single function and share the expenses of food, drink, lodging, and transportation, so long as the different hosts are clearly identified and the per lobbyist's principal per recipient spending caps and group invitations rules (including attendance out-of-state) are met, subject to the facts and circumstances of each event." State Ethics Commission Advisory Opinion 99-005, p. 3.

In the instant situation, it is permissible for 29 lobbyist's principals to sponsor an event which is offered to all Members as long as the value of the event per lobbyist's principal does not exceed $60.00 per public official. Additionally, it is the Committee's understanding that the

lobbyist's principal must report the amount expended on the event on its Lobbyist's Principal Disclosure Review report filed with the SEC.

Pursuant to § 8-13-1120(A)(9), a Member must report the value each lobbyist's principal spent on that Member to host the event as a gift on his or her SEI, if the value of the event to each lobbyist's principal donor is $25.00 or more. With respect to the matter in question, the Committee finds that the Member is not required to report this event on his or her SEI as it has a value of $4.16 per lobbyist's principal donor, which does not exceed $25.00.

The Committee notes that the S.C. Night at the 2017 NCSL Legislative Summit in Boston, MA occurred after the legislative session ended. Thus, this event would not be an "official invitation" approved through the House Invitations Committee. Therefore, the Member could not rely on this event being included under "See House Invitations for a list of events."

CONCLUSION

In summary, a Member must report an event which was co-sponsored by several lobbyist's principals that the Member attended as a gift on his or her Statement of Economic Interests because the lobbyist's principal would not have sponsored the event for the Member but for the Member's office or position. The Member must report under the "Gifts" section of the SEI, the value of the gift for each lobbyist's principal if each value is at or above the threshold amount set in Section 8-13-1120(A)(9) (currently $25.00).

Adopted October 30, 2017.

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ADVISORY OPINION 2017 - 16

The House Legislative Ethics Committee (HEC) received a request from a Member/Lawyer for an advisory opinion questioning whether the Member may give a contribution from his or her campaign funds to the county political party.

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

DISCUSSION

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

> 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 section 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.

Thus, the Member may use his or her campaign funds to pay for expenses related to the office held or for campaigning.

Pursuant to Section 8-13-1300(26), "political party" means "an association, a committee, or an organization which nominates a candidate whose name appears on the election ballot as the candidate of that association, committee, or organization." S.C. Code Ann. § 8-13-1300(26). Further, Section 8-13-1300(21) defines a "legislative caucus committee" as

> (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). There are specific dollar limits a Member or any person may contribute to a committee. Specifically, S.C. Code Ann. § 8-13-1322(A) provides that "[a] person may not contribute to a committee and a committee may not accept from a person contributions aggregating more than three thousand five hundred dollars in a calendar year."

In State Ethics Commission Opinion SEC A092-081, the Commission acknowledged that a caucus would be limited in accepting charitable contributions of $3,500 per person per year if channeled to its campaign account as provided in Section 8-13-1304. However, the opinion also indicated that the restriction in S.C. Code Ann. Section 8-13-1322(A) would not apply "if such contributions are channeled through a separate account utilized strictly for the community education program with no funds contributed to the campaign account or utilized to support candidates." SEC A092-081.

The Senate Ethics Committee uses similar reasoning in its Advisory Opinion 93-2, which allowed Members of the Senate to use their campaign funds to make donations to the South Carolina College Democrats. In that opinion, the Committee indicated that contributions to political organizations are permissible as "contributions or dues paid by a member to a political or partisan group are generally office-related expenses; especially, as in this case, the member is being asked to support the group because she is an officeholder." Senate Ethics Op. 93-2. However, the Committee noted that the contribution must be clearly marked, "to be used only for ordinary administrative or operating expenses," in order to prevent the contributions from being recontributed to other campaigns or candidates in violation of the intent of § 8-13-1340.

The House Ethics Committee reached an analogous conclusion in its Advisory Opinion 92-40 which quoted its 92-3 opinion, stating that, "dues or contributions to some organizations...could be paid from a campaign account, depending on the nature of the group." The Committee reasoned that "[p]olitical and [p]artisan groups are generally regarded as campaign related and dues can thus be paid to them."

The Committee notes that it has been a longstanding practice in both the South Carolina Senate and House of Representatives to allow current Members of the General Assembly to use his or her campaign funds to make a contribution to a political party such as a legislative caucus committee if the donation is paid to the caucus's administrative account, not to its campaign account. This allows for flexibility in the amount donated as there are no contribution limitations when given to an administrative account.

Further, the Committee remarks that while Section 8-13-140 specifically authorizes the candidate or Member's expenditure of campaign funds to a party committee when closing his or her campaign account, Section 8-13-1348 does not delineate a specific list of authorized uses for campaign funds, which can be used for campaigning or the office held. Thus, the Committee refers to the Advisory Opinions for guidance on how the campaign funds may be used. For the reasons discussed above, the House Ethics Committee finds that a Member may also use his or her

campaign funds to make a donation to a county political party as long as the donation is made to the party's administrative account and not to its campaign account. The Committee also reminds the Member that he or she must report this expenditure on his or her applicable campaign disclosure report.

CONCLUSION

In summary, the Member may use his or her campaign funds to make a contribution to a state or local political party or political caucus because contributions to political groups are considered office-related expenses. However, the Member may only donate to the political caucus or party's administrative account, not to its campaign account.

Adopted October 30, 2017.