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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 officio 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.