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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.