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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.