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South Carolina House of Representatives

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Legal Counsel*

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May 31, 2016

The Honorable Kenneth A. Bingham
Chairman, House Ethics Committee
Post Office Box 11867
Columbia, South Carolina 29211

HAND-DELIVERED

Dear Chairman Bingham:

An opinion is respectfully requested on a matter of interest to me in my service as Chairman of the House Legislative Oversight Committee. The Executive Subcommittee has initiated a study of the South Carolina Retirement System Investment Commission, and there are allegations that both I and Charles Appleby, a committee staffer, would have a conflict of interest in continuing to be involved with this particular study.

The House Legislative Oversight Committee recently conducted an online public survey during the month of May. Comments were solicited about a group of agencies under study, including the South Carolina Retirement System Investment Commission. Over 1,000 comments were received, and two of the anonymous comments give rise to this request for an ethics opinion. Listed below are the two comments; also, they will be posted online like all others as a part of the survey results.

May 19, 2016 Charles Appleby was a lawyer working for Collins and Lacy. Reynolds Williams (a commissioner on the SC Retirement Investment Commission), hired Collins and Lacy. Charles Appleby is a Legislative Oversight committee staffer on the subcommittee for the Investment Commission. This is a direct conflict of interest.

May 19, 2016 Representative Newton's wife has an immediate family member who is a law partner with Reynolds Williams (a commissioner of the SC Retirement Investment Commission). Representative Newton is on the subcommittee reviewing the Investment Commission. This is a direct conflict of interest.

Chairman Bingham

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Notably, neither I nor my wife have an immediate family member, as defined by state law, which practice law with Mr. Reynold Williams. However, my wife's uncle and cousin as well as Mr. Williams are members of Willcox, Buyck, & Williams, P.A., a law firm in Florence, South Carolina.

The Executive Subcommittee is in the early stages of its study of the South Carolina Retirement System Investment Commission. An introductory meeting was held with the agency about the process on March 7, 2016, and we are now in the process of obtaining standard information pertaining to the agency, such as soliciting public input in an online survey.

Out of an abundance of caution, I respectfully request an ethics advisory opinion on any potential issues raised by these two comments received in the public survey. Until doubt is removed as to the existence of any potential conflict of interest, I intend to recuse myself from the study of the agency and ask a different committee staffer to liaise with the South Carolina Retirement System Investment Commission. Time is of the essence as the study of this particular agency is anticipated to being in earnest in August, and a clarification of these matters before such time would be appreciated, if possible. Thank you for your consideration of this request.

Sincerely,

Signature Redacted

Wm. Weston J. Newton

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Carmen J. McCutcheon
Auditor/Research Analyst

Room 228 Blatt Building

June 8, 2016

The Honorable Kenneth A. Bingham
Chairman, House Ethics Committee
Post Office Box 11867
Columbia, South Carolina 29211

HAND-DELIVERED

Dear Chairman Bingham:

On May 31, 2016, I requested an ethics opinion on a matter of interest to me in my service as Chairman of the House Legislative Oversight Committee. Specifically, the opinion related to the Executive Subcommittee's study of the South Carolina Retirement System Investment Commission and two anonymous comments that were received on May 19, 2016, as a part of an online survey about a set of agencies in the early stages of study, including the Retirement System Investment Commission, conducted during the month of May.

It has now come to my attention that two, almost verbatim, anonymous comments were received on the same date by the Committee in a different manner. These comments were received by the Committee as a part of an ongoing opportunity, on the Committee's website, for the public to share comments about any of the sixty-five agencies the Committee has identified it will study. These comments reference a potential conflict of interest with the Executive Subcommittee's study of the Treasurer's Office. Listed below are the comments received relating to the study of the Treasurer's Office; these comments will be posted online in accordance with the Committee's standard practices. Additionally, I have included the almost verbatim comments received relating to the study of the Retirement System Investment Commission in italics for ease of comparison.

<p>May 19, 2016 (Study of Treasurer's Office - Comment)</p>	<p>Representative Newton's wife has an immediate family member who is a law partner with Reynolds Williams (a commissioner on the SC Retirement Investment Commission). Representative Newton is on the subcommittee for the State Treasurer's Office. This is a direct conflict of interest.</p>
<p>May 19, 2016 (Study of South Carolina Retirement System Investment Commission - Comment)</p>	<p><i>Representative Newton's wife has an immediate family member who is a law partner with Reynolds Williams (a commissioner on the SC Retirement Investment Commission). Representative Newton is on the subcommittee reviewing the Investment Commission. This is a direct conflict of interest.</i></p>

Chairman Bingham
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May 19, 2016 (Study of Treasurer's Office - Comment)	Charles Appleby was a lawyer working for Collins and Lacy. Reynolds Williams (a commissioner for the SC Retirement Investment Commission), hired Collins and Lacy. Charles Appleby is now a Legislative Oversight staffer on the subcommittee for the State Treasurer's Office. This is a direct conflict of interest.
May 19, 2016 (Study of South Carolina Retirement System Investment Commission - Comment)	Charles Appleby was a lawyer working for Collins and Lacy. Reynolds Williams (a commissioner on the SC Retirement Investment Commission), hired Collins and Lacy. Charles Appleby is a Legislative Oversight Committee staffer on the subcommittee for the Investment Commission. This is a direct conflict of interest.

Out of an abundance of caution, I again respectfully request an ethics opinion on any potential issues raised by these comments. Until doubt is removed as to the existence of any potential conflict of interest, I intend to recuse myself from the study of these two agencies and have asked a different committee staffer to liaise with the agencies. Time is of the essence as the study of the Treasurer's Office is currently in progress, and the study of the South Carolina Retirement System Investment Commission is anticipated to begin in earnest in August. Thank you for your consideration of this request.

Sincerely,

Signature Redacted

Wm. Weston J. Newton

J. David Weeks
Vice-Chairman

Kenneth A. "Kenny" Bingham
Chairman

Michael A. Pitts
Secretary

Beth E. Bernstein
Chandra E. Dillard
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ADVISORY OPINION 2016-1

The House Legislative Ethics Committee (HEC) received a request for an advisory opinion from a Member on a matter of interest to him regarding his service on the House Legislative Oversight Committee (HLOC). The Member explained that the Executive Subcommittee has initiated a study of the SC Retirement System Investment Commission (Commission) which will begin in earnest in August, and there were allegations that both a committee staffer, and he would have a conflict of interest in continuing to be involved with this particular study. Specifically, the Member stated that HLOC "recently conducted an online public survey during the month of May. Comments were solicited about a group of agencies under study, including the Commission. Over 1,000 comments were received, and two of the anonymous comments give rise to this request for an ethics opinion." Member's May 31, 2016 letter. The Member reported that HLOC will post all comments online including the anonymous comments. The two comments are as follows:

May 19, 2016 [HLOC staffer] was a lawyer working for Collins and Lacy. Reynolds Williams (a commissioner on the Commission, hired Collins and Lacy). [HLOC staffer] is a Legislative Oversight committee staffer on the subcommittee for the Investment Commission. This is a direct conflict of interest.

May 19, 2016 [Member's] wife has an immediate family member who is a law partner with Reynolds Williams (a commissioner of the Commission). [Member] is on the subcommittee reviewing the Investment Commission. This is a direct conflict of interest.

See Member's May 31, 2016 letter.

The Member submitted an amended letter requesting an advisory opinion on June 8, 2016, explaining that two additional, almost verbatim, anonymous comments were received on May 19th, which referenced the potential conflicts of interest of the HLOC staffer and him with the HLOC Executive Subcommittee's study of the Treasurer's Office. He noted that these two additional

comments will be posted online and that the study of the Treasurer's Office is currently in progress. The two comments are as follows:

May 19, 2016 [HLOC staffer] was a lawyer working for Collins and Lacy. Reynolds Williams (a commissioner on the Commission, hired Collins and Lacy. [HLOC staffer] is a Legislative Oversight committee staffer on the subcommittee for the State Treasurer's Office. This is a direct conflict of interest.

May 19, 2016 [Member's] wife has an immediate family member who is a law partner with Reynolds Williams (a commissioner of the Commission). [Member] is on the subcommittee reviewing the Investment Commission. This is a direct conflict of interest.

See Member's June 8, 2016 letter.

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

EXECUTIVE SUMMARY

Pursuant to S.C. Code Ann. § 8-13-700, the Committee finds that it is not a conflict of interest for the HLOC staffer (staffer) to serve as a staffer for the HLOC subcommittee's study of the Commission as he has no economic interest in the law firm of Collins & Lacy, P.A. where he was previously employed. This firm represented Commissioner Williams who serves on the Commission. Further, the staffer did not work on any legal matters for Commissioner Williams while employed by the law firm. While the State Treasurer also serves as a Commissioner with Mr. Williams on the Commission, that fact does not create a conflict of interest preventing the staffer's work on the HLOC subcommittee studying the State Treasurer's office. The Committee further finds there is no conflict of interest for the Member to serve on the HLOC's subcommittee studying the Commission as his wife's relatives (an uncle and cousin) are not encompassed within the S.C. Code Ann. § 8-13-100(18) definition of "immediate family," with regard to a conflict of interest. The Committee also finds that it is not a conflict of interest for the Member to work on the HLOC's subcommittee studying the State Treasurer's office even though the State Treasurer serves as a Commissioner with Mr. Williams on the Commission.

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 LHOC's study, the Committee solicits written comments from the public regarding the Agency under review. Those comments are also posted online.

As for the Commission, it has the fiduciary responsibility for all investments in the Retirement Systems. See <http://www.rsic.sc.gov/About/default.htm>. Mr. Reynolds Williams serves as a Commissioner and was appointed by the Chairman of the Senate Finance Committee. See <http://www.rsic.sc.gov/Commission/default.htm>.

The SC State Treasurer, Curtis Loftis, Jr., also serves *ex officio* as a Commissioner on the Commission. See <http://www.rsic.sc.gov/Commission/CommissionerBIOS/default.htm>.

The first allegation of a conflict of interest relates to a staffer on the subcommittee assigned to study the Commission. The anonymous comment appears to contend that because the staffer, in his current position, could take some action regarding the study of the Commission that would affect the economic interest of a business with which he was formerly associated, that it is therefore a conflict for him to serve as a staffer for this matter. As support, it is alleged that prior to joining the HLOC, the staffer was a lawyer working for the law firm of Collins & Lacy, P.C. The allegation further states that Reynolds Williams, a commissioner on the Commission, hired Collins & Lacy, P.C. for legal matters.

The second allegation of a conflict of interest relating to the staffer concerns the same facts as set forth above but alleges a conflict with a different agency. Specifically, it is contended that because of his employment with the law firm who represented Commissioner Reynolds Williams, it is now a conflict for the staffer to serve as a staffer on the HLOC subcommittee for the State Treasurer's office. While no specific conflict of interest is alleged with the State Treasurer's

office, it appears the conflict must be the fact that both Mr. Williams and Mr. Loftis, who also serves as the State Treasurer, serve together as Commissioners on the Commission.

Pursuant to the Rules of Conduct regarding conflicts of interest, 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;

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission.

(Emphasis added). S.C. Code Ann. § 8-13-700. See also, 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."

The staffer provided documentation to the HEC that he was employed with Collins & Lacy, P.C. as a law clerk from May 2006-September 2006 and as an attorney from August 2007-January 2015. At his request, the law firm ran a recent conflicts check and found that while Mr. Williams was a firm client, the staffer never billed any time to his file. Also, the staffer reported he was never a partner at Collins & Lacy, P.C., so there was no profit sharing or economic interest in Collins & Lacy, P.C.; he just received his salary. Moreover, HLOC is an investigative committee which merely issues a report on an agency. The Committee finds that the staffer is not engaged in "making, or in any way attempt[ing] to use his employment to influence a governmental decision in which he . . . or a [former] business with which he [wa]s associated" nor did he have an economic

interest in the former law firm in which he was associated. Thus, it does not appear that the staffer has a conflict of interest which prohibits him from serving as a staffer on the HLOC's subcommittee studying the Commission.

Moreover, if the Committee found that there was no conflict for the staffer as it related to Mr. Williams, then there is no conflict for the staffer to serve as a staffer for the HLOC subcommittee studying the State Treasurer's office. The Committee is unclear how the State Treasurer's service as a Commissioner with Mr. Williams on the Commission created a conflict of interest for the staffer's work as a staffer for the HLOC's subcommittee review of the State Treasurer's office.

While the HEC does not have jurisdiction over the South Carolina Rules of Professional Conduct governing lawyers, we have reviewed the rules regarding conflicts of interest, that is, Rule 1.10 (general imputation rule)¹ and Rule 1.9 (duties to former clients),² Rules of Professional

¹ Rule 1.10 provides, "(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless
(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or
(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and
(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;
(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and
(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.
(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11."

² Rule 1.9 provides, "(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
(1) whose interests are materially adverse to that person; and
(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.
(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

Conduct, Rule 407, SCACR. In this instance, it does not appear that the staffer worked with Mr. Williams or gained any information through his employment at Collins & Lacy, P.C. that would prohibit him from serving as a staffer on the HLOC's subcommittee studying the Commission.

The third allegation regarding a conflict of interest relates to a Member of the HLOC, who is on the Executive subcommittee reviewing the Commission. It is contended that the Member's wife has an immediate family member who is a law partner with Mr. Williams, a commissioner of the Commission.

S.C. Code Ann. § 8-13-100(18) defines "immediate family" with regards to a conflict of interest pursuant to § 8-13-700, as follows:

- (a) a child residing in a candidate's, public official's, public member's, or public employee's household;
- (b) a spouse of a candidate, public official, public member, or public employee; or
- (c) an individual claimed by the candidate, public official, public member, or public employee or the candidate's, public official's, public member's, or public employee's spouse as a dependent for income tax purposes.

S.C. Code Ann. § 8-13-100(18). See also, SEC AO93-030, where the State Ethics Commission found that the Chairman of a Commission, whose brother was a partner in a law firm, could participate in contested matters before the Commission even though one of the parties was represented by the law firm where his brother was a partner as a "brother" was not included within the definition of "immediate family" pursuant to § 8-13-100(18).

The Member explained that neither he nor his wife have an immediate family member as defined under § 8-13-100(18), who practices law with Mr. Williams. He noted that his wife's uncle and cousin are partners with Mr. Williams in the firm of Wilcox, Buyck & Williams in Florence, SC. The Member's wife's uncle and cousin are not considered "immediate family" as contemplated pursuant to the Ethics, Government Accountability, and Campaign Reform Act of 1991, regarding conflicts of interest.

The fourth allegation regarding a conflict of interest for the Member concerns the same facts as set forth above but alleges a conflict with a different agency. Specifically, it is contended that because his wife has an immediate family member who is a law partner with Mr. Williams, a commissioner of the Commission, it is a conflict for the Member to serve on the HLOC subcommittee for the State Treasurer's office. While no specific conflict of interest is alleged with the State Treasurer's office, it appears the conflict must be the fact that both Mr. Williams and Mr. Loftis, who also serves as the State Treasurer, serve together as Commissioners on the Commission. The Committee finds that this is not a conflict which bars the Member's work on the HLOC's subcommittee reviewing the State Treasurer's office.

CONCLUSION

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client."

In summary, it is not a conflict of interest for the staffer to serve as a HLOC staffer on the Executive Subcommittee studying the Commission. When he was employed first as a law clerk and then as an attorney with Collins & Lacy, P.C., he did not work on legal matters for Mr. Williams, a Commissioner on the Commission nor did he have any economic interest in the law firm.

With regard to the Member, his service on the HLOC Executive Subcommittees studying the Commission is not a conflict of interest as his wife's uncle and cousin do not fall within the definition of "immediate family" as defined in § 8-13-100(18) and used in the rules of professional conduct regarding conflicts of interest.

Finally, the fact that both Mr. Williams and Mr. Loftis, who is the State Treasurer, work together as Commissioners on the Commission, does not create a conflict of interest preventing the Member and staffer's work on the HLOC's Executive Subcommittee studying the State Treasurer's office.

Adopted June 15, 2016.