

State Regulation of Public Utilities Review Committee

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Helen T. Zeigler, Esquire



Heather Anderson
Committee Counsel
Andy Fiffick
Committee Counsel

Post Office Box 142
Columbia, South Carolina 29202
(803) 212-6208

SUBJECTS: 1) ATTENDANCE BY CANDIDATES FOR THE PUBLIC SERVICE COMMISSION AT LEGISLATIVE RECEPTIONS

2) ATTENDANCE BY CANDIDATES FOR THE PUBLIC SERVICE COMMISSION AT LEGISLATIVE CAUCUS MEETINGS

DISCUSSION OF SUBJECT 1: In an Advisory Opinion dated February 27, 2006 (attached as Exhibit A), the State Regulation of Public Utilities Review Committee ("Review Committee") addressed the issue of attendance by candidates for the Public Service Commission at legislative receptions. In that opinion, the Review Committee established the position that in the context of the screening process for Public Service Commission elections, candidates seeking election to the Public Service Commission should not attend legislative receptions sponsored by (1) a lobbyist's principal, (2) an entity regulated by the Public Service Commission, or (3) a party appearing before the Public Service Commission. It has come to the attention of the Review Committee that there are legislative receptions that, while not in one of these three categories, are receptions that should nonetheless be avoided by candidates for the Public Service Commission, including incumbent and non-incumbent candidates, for the same reasons articulated in the Review Committee's February 27, 2006 opinion. As such, the Review Committee hereby establishes an official position that, in the context of the screening process for Public Service Commission elections, all candidates for the Public Service Commission, not just candidates who are incumbent commissioners, should also not attend any reception:

(1) that is extended to the House or Senate Invitations Committee pursuant to House Rule 4.13 or Senate Rule 48; (2) that notice of which is published in the Calendar of the House or Senate; or (3) that notice of which is posted on the webpage of the House or Senate Invitations Committee. Failure to follow these three additional guidelines as set forth in this opinion on or after January 15, 2013 may be considered by the Review Committee as a factor in its screening process.

DISCUSSION OF SUBJECT 2: In an Advisory Opinion dated February 27, 2006 (Exhibit A), the State Regulation of Public Utilities Review Committee ("Review Committee") addressed the issue of attendance by candidates for the Public Service Commission at legislative receptions. While the February 27, 2006 opinion delineates the Review Committee's position that commissioners and commission candidates are prohibited from

political gatherings under Canon 5 of the Code of Judicial Conduct, it has come to the attention of the Review Committee that, inasmuch as the February 27, 2006 opinion does not directly address the attendance by candidates for the Public Service Commission at legislative caucus meetings, clarification is necessary. Therefore, the Review Committee hereby establishes an official position that, in the context of the screening process for Public Service Commission elections, the Review Committee considers legislative caucus meetings to be political gatherings under Canon 5 of the Code of Judicial Conduct. As such, candidates for the Public Service Commission, including incumbent and non-incumbent candidates, should not attend legislative caucus meetings. Legislative caucus meetings would not include meetings based on geographically based groups organized by congressional district or county. Failure to follow the guidelines as set forth in this opinion after January 15, 2013 may be considered by the Review Committee as a factor in its screening process.

THIS OPINION IS ADVISORY IN NATURE ONLY. THE STATE ETHICS COMMISSION IS RESPONSIBLE FOR ENFORCING VIOLATIONS BY INCUMBENT COMMISSIONERS OF THE STATE ETHICS ACT AND THE CODE OF JUDICIAL CONDUCT. THE REVIEW COMMITTEE MAY CONSIDER VIOLATIONS WHEN IT CONSIDERS A CANDIDATE'S QUALIFICATIONS.

Candidates may contact Review Committee counsel, Heather Anderson at (803) 212-6208 or Andy Fiffick (803) 734-3015 for questions or clarification regarding this advisory opinion.

State Regulation of Public Utilities Review Committee

Sen. Thomas L. Moore, Chairman
Rep. Harry F. Cato, Vice Chairman
Sen. Thomas C. Alexander
Elizabeth H. Atwater, Esquire
Erin B. Crawford, Esquire
Rep. Harry L. Ott, Jr.
Sen. Luke A. Rankin, Sr.
Rep. William E. Sandifer, III
John Steven Simmons, Esquire
Helen T. Zeigler, Esquire



Nancy V. Coombs
Chief Counsel
Jennifer L. Parrish
Committee Counsel
Debra D. Hammond
Committee Staff

Post Office Box 142
Columbia, South Carolina 29202
(803) 212-6625

February 27, 2006

SUBJECT: ATTENDANCE BY CANDIDATES FOR THE PUBLIC SERVICE COMMISSION AT LEGISLATIVE RECEPTIONS

SUMMARY: Candidates seeking election to the Public Service Commission should not attend legislative receptions sponsored by (1) a lobbyist's principal, (2) an entity regulated by the Public Service Commission, or (3) a party appearing before the Public Service Commission.

QUESTION: The Review Committee has been asked whether a candidate for the Public Service Commission may attend legislative receptions.

DISCUSSION: Members of the Public Service Commission (the commission) are subject not only to statutory constraints on their conduct and activities but also to constraints arising out of the Code of Judicial Conduct, Rule 501, SCACR. With respect to statutory constraints, a public official of a state agency, board, or commission must not accept lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal, unless the entire board or commission of which the public official is a member is invited. S.C. Code Ann. §2-17-90(A)(2). If a candidate is currently serving as a commissioner, he is prohibited by statute from attending a function unless the entire commission is invited. The Review Committee has been made aware that candidates for offices elected by the General Assembly sometimes attend receptions sponsored by lobbyists' principals even though they are not invited to the functions. If the entire commission is not invited, a commissioner must not attend a legislative reception sponsored by a lobbyist's principal.

Pursuant to §8-13-705, a person must not give, offer, or promise anything of value to a commissioner with the intent to influence the discharge of the commissioner's official responsibilities, and a commissioner must not receive anything of value in return for fulfilling his official responsibilities or duties. A reasonable person could deduce that the impartiality of a commissioner may be influenced by the hospitality shown by the host; therefore, a commissioner should not attend receptions sponsored by an entity regulated by the commission or by a party appearing before the commission.

Additionally, pursuant to §8-13-935, candidates seeking election to the Public Service Commission are prohibited from directly or indirectly contacting a member of the General Assembly regarding screening until the qualifications for all candidates have been determined by the Review Committee and a report on the qualifications has been formally released. Candidates have ample opportunities to contact members of the General Assembly at the appropriate time without attending legislative receptions.

Pursuant to §58-3-30(B), members of the Public Service Commission are bound by the Code of Judicial Conduct. Canon 1 of the Code of Judicial Conduct requires commissioners to participate in establishing, maintaining, and enforcing high standards of conduct, and to personally observe those standards. Canon 2 of the Code of Judicial Conduct requires commissioners to act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission, and avoid impropriety and the appearance of impropriety. “The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the [commissioner’s] ability to carry out [quasi-judicial] responsibilities with integrity, impartiality and competence is impaired.” Canon 2, Commentary. Commissioners are subject to strict statutory prohibitions against ex parte communication. S.C. Code Ann. §58-3-260. Not only must commissioners refrain from improper ex parte communication, they also must avoid the appearance of engaging in improper ex parte communication. The opportunity exists for commissioners to engage in ex parte communications at legislative receptions sponsored by a lobbyist’s principal, an entity regulated by the commission, or a party appearing before the commission; therefore, the attendance of a commissioner at a legislative reception could create the appearance of impropriety.

Canon 4D(5)(h) prohibits judges from accepting gifts from lawyers or their firms if they have come or are likely to come before the judge, or from their clients when the clients' interests have come or are likely to come before the judge. This canon, in addition to §8-13-705, prohibits commissioners from accepting gifts from lawyers who appear before the commission and from utilities regulated by the PSC. This would include legislative receptions. Canon 5 prohibits commissioners and commission candidates from attending political gatherings.

Statutory law does not address whether a candidate who is not currently serving on a state board or commission may attend a legislative reception. To ensure that all candidates are afforded equal treatment, the Review Committee is of the opinion that all candidates for the Public Service Commission, not just candidates who are incumbent commissioners, should not attend receptions sponsored by a lobbyist’s principal, an entity regulated by the commission, or a party appearing before the commission. Attendance by a candidate for the Public Service Commission at a legislative reception sponsored by a lobbyist’s principal, an entity regulated by the commission, or a party appearing before the commission may be considered by the Review Committee as a disqualifying factor.

CONCLUSION: Candidates seeking election to the Public Service Commission should not attend legislative receptions sponsored by (1) a lobbyist’s principal, (2) an entity regulated by the Public Service Commission, or (3) a party or person appearing before the Public Service Commission.

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