

Senate Ethics Committee

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ADVISORY OPINION 92-11

M E M O R A N D U M

To: Members, South Carolina Senate
From: Ethics Committee
Re: Economic Interests and Potential Conflict of Interest
Date: August 19, 1992

An inquiry has been submitted to the Committee as to whether a member could vote on legislation which would prohibit monetary payments from being given in exchange for credits earned on coin operated devices if that member either directly holds a license for such a device or derives income from the operation of such a device located in an establishment owned by a member.

Section 8-13-700(B) states that 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 member of his immediate family,¹ an individual with whom he is

¹Section 8-13-100(18) states that 'Immediate family' means: "(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."

associated,² or a business which he is associated³ has an economic interest.

Subitem (2) of Section 8-13-700(B) goes on to state that when a public official⁴, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of that official, he 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;...

Thus, it is clear that the restrictions on the activities of a member are much broader than merely prohibiting a vote on a matter which affects a member's economic interest. In analyzing the facts presented to the Committee, the crucial consideration is the appropriate interpretation of the definition of "economic interest". Section 8-13-100(11) states that:

(a) "Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease,

²Section 8-13-100(21) states that 'Individual with whom he is associated' means "an individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, 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."

³Section 8-13-100(4) states that '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."

⁴For simplicity and readability, unless specifically defined to the contrary, each reference in this opinion to a public official or member includes "immediate family", "individual with whom he is associated", or "business with which he is associated".

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.

(b) 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. (Emphasis added).

The individual making this inquiry acknowledges that the monetary benefit from these coin operated devices exceeds fifty dollars. Having exceeded the threshold dollar amount, the next consideration is whether this economic interest or potential benefit is "distinct from that of the general public . . . involving [this] property or [service]" Any member of the public who pays the requisite licensing fee may obtain a license for the operation of a coin operated device for which a monetary payment may be given to a player in exchange for credits earned. Therefore, a public official does not possess or is not being given any interest in this property (i.e. the license) which is peculiar to that public official. Given these facts, it is difficult to distinguish a member's interest from that of a member of the general public.

With the discussion above in mind, it may be helpful to apply this factual situation to the language presented in subitem (b) of Section 8-13-100(11). The initial consideration in this subitem is a determination of whether a "profession, occupation, or large class" is present. Rather than a profession or occupation, it seems that these facts present a large class which encompasses all those who either hold a license or could obtain a license for the operation of a coin operated device. It is important to note that this class encompasses both those who hold or could obtain a license, as subitem (b) addresses "potential benefit". In turn, this potential benefit is permissible so long as a member of the Senate is not affected to "greater extent than the economic interest or potential benefit [that] could reasonably be foreseen to accrue to all members of the large class." So long as all holders of a license or those seeking to operate one or more of these devices are, as a class, being treated in the same fashion, the Committee concludes that there is no conflict of interest which would compel a member to follow the procedure outlined in Section

8-13-700(B) which was presented earlier.

To conclude otherwise would prevent all members from voting or participating in any deliberations regarding this issue because each member of the Senate has the potential to reap some benefit from obtaining a license irrespective of how this issue may be resolved. It would be an anomalous result indeed if this Committee suggested that a member who held a license could not participate in a debate on this issue and those who do not hold a license could participate and then obtain a license once the legislative activity was finished. Thus, the definition of economic interest is grounded in the sound policy of only prohibiting a member's participation when the benefit is peculiar or individualized to a given public official, rather than a benefit which is available to the public at large.

Therefore, the Committee concludes that a member who derives income from the operation of a coin operated device for which monetary reimbursement is lawfully given in exchange for credits earned while playing the device may participate in any debate or deliberation and vote on matters pertaining to banning such monetary reimbursement. The Committee, however, cautions that during the consideration of this issue, should a particular amendment or bill be brought up which would cause a member's interest to become distinct from the interest of a member of the public, the member should proceed as specified in Section 8-13-700(B).

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