

OPINION 1995-2

TO: MEMBERS, THE SENATE OF SOUTH CAROLINA

FROM: HUGH K. LEATHERMAN, SR, CHAIRMAN
COMMITTEE ON ETHICS

DATE: MARCH 21, 1995

RE: OPINION 1995-2

The Senate Committee on Ethics has received the following question that we feel should be answered through this Opinion:

Can a document entitled *The Legal Resource Directory* be given to Members of the Senate by the South Carolina Trial Lawyers Association.

In answering this question, the Committee feels that it is necessary to remind Members of the definitions of "Anything of value", and "Lobbyist's principal", as defined in *The Ethics, Government Accountability, and Campaign Reform Act of 1991*:

"SECTION 8-13-100. Definitions.

As used in Articles 1 through 11:(1) (a) "Anything of value" or "thing of value" means:

- (i) a pecuniary item, including money, a bank bill, or a bank note;
- (ii) a promissory note, bill of exchange, an order, a draft, warrant, check, or bond given for the payment of money;
- (iii) a contract, agreement, promise, or other obligation for an advance, a conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;
- (iv) a stock, bond, note, or other investment interest in an entity;
- (v) a receipt given for the payment of money or other property;
- (vi) a chose-in-action;
- (vii) a gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;
- (viii) a loan or forgiveness of indebtedness;
- (ix) a work of art, an antique, or a collectible;
- (x) an automobile or other means of personal transportation;
- (xi) real property or an interest in real property, including title to realty, a fee simple or partial interest in realty including present, future, contingent, or vested interests in realty, a

leasehold interest, or other beneficial interest in realty;

- (xii) an honorarium or compensation for services;
- (xiii) a promise or offer of employment;
- (xiv) any other item that is of pecuniary or compensatory worth to a person.

(b) "Anything of value" or "thing of value" does not mean:

- (i) printed informational or promotional material, not to exceed ten dollars in monetary value;
- (ii) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;
- (iii) a personalized plaque or trophy with a value that does not exceed one hundred fifty dollars;
- (iv) educational material of a nominal value directly related to the public official's, public member's, or public employee's official responsibilities;
- (v) an honorary degree bestowed upon a public official, public member, or public employee by a public or private university or college;
- (vi) promotional or marketing items offered to the general public on the same terms and conditions without regard to status as a public official or public employee; or
- (vii) a campaign contribution properly received and reported under the provisions of this chapter."

Section 2-17-10(14) defines a "Lobbyist's principal" as follows:

"'Lobbyist's principal' means the person on whose behalf and for whose benefit the lobbyist engages in lobbying and who directly employs, appoints, or retains a lobbyist to engage in lobbying. However, a lobbyist's principal does not include a person who belongs to an association or organization that employs a lobbyist, nor an employee, officer, or shareholder of a person who employs a lobbyist. If a membership association or organization is a lobbyist's principal, the association or organization must register and report under the provisions of this chapter. A person is considered a lobbyist's principal only as to the public office or public body to which he is authorized, pursuant to this chapter, a lobbyist to

engage in lobbying."¹

Section 2-17-10(1)(b)(iv) in relation to lobbyists and lobbying, states,

"(b) 'Anything of value' or 'thing of value' does not mean:

"(iv) educational material of a nominal value directly related to the public official's, public member's, or public employee's official responsibilities;"

The Committee, gave the above quoted code sections a thorough reading.¹ We also contacted the South Carolina Trial Lawyers Association and at our request they provided for the Committee a copy of the document entitled *The Legal Resource Directory*. They also provided for us copies of two memorandums dated February 6, 1995, from the association's executive director.

In examining the document entitled *The Legal Resource Directory* (hereinafter referred to as the document), we found that this is a sixteen page booklet listing attorneys from throughout the state who are members of the South Carolina Trial Lawyers Association (hereinafter referred to as the association). These attorneys are separated into twenty-seven various legal categories ranging from adoption to workers' compensation. The document also contains in it a letter from the association's president. The text of the letter is as follows:

"Dear Legislator:

This complimentary publication was compiled, printed and provided to you as a public service by The South Carolina Trial Lawyers Association.

We are aware that each year serving in the Legislature becomes more and more time consuming, and that you are expected to deal with hundreds of bills. Members of our Association have agreed to offer their services, free of charge, to help in objectively answering your questions or assist in drafting legislation.

¹This definition of a "Lobbyist's principal" recently became law; on January 12, 1995.

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We encourage you to use this Legal Resource Directory and avail yourself of their assistance.

Sincerely,
/s/
Samuel L. Svalina
President"

The two memorandums of February 6, 1995 are printed on the association's stationary and are from the association's executive director. The text is as follows:

"MEMORANDUM

TO: Members of the South Carolina General Assembly
FROM: Linda M. Franklin/s/
RE: Legal Resource Directory
DATE: February 6, 1995

Each year serving in the Legislature becomes more time consuming. You are expected to deal with hundreds of bills, some of which are often quite technical and involved. The South Carolina Trial Lawyers Association would like to help you with this process.

Members of our association have agreed to offer volunteer objective legal opinions on issues ranging from contracts to education to family law. They can answer questions on how a bill might impact the Code or offer assistance in drafting legislation.

We hope you will pick up the enclosed Legal Resource Directory and ask one of our attorneys to help. The attorneys listed have volunteered to participate and offer their help to yo free of charge. They have also agreed to offer only legal opinions and not to "lobby" you on any of the issues.

Please let me know if you have any questions. I hope this is helpful to you.

LMF/lS

Enclosure"

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"MEMORANDUM

TO: Participants in the Legal Resource Directory
FROM: Linda M. Franklin/s/
RE: The 1995 Directory
DATE: February 6, 1995

Many thanks for your participation in the Legal Resource Directory. The finished product turned out quite well. Enclosed is your copy.

Please advise your staff that you have volunteered for this important project so they may promptly inform you of calls from legislators. Remember it is important that you do not attempt to lobby or influence a legislator's position when he/she contacts you. Objective opinions will help maintain the integrity of this service.

Once again, thanks for your participation..

LMF/ljs

Enclosure"

From examining these memorandums and the document, we can see that the intent of the association is clearly not just to provide a listing of it's members to Senators, the purpose of this document is more far reaching than that. The Committee must examine the complex issue of an association, that is a lobbyist principal, providing a legal research service free of charge to Members of the Senate of South Carolina.

In researching this question we should first determine if a legal research service is a thing of value as defined in *The Ethics, Government Accountability, and Campaign Reform Act of 1991*.

As quoted above, Section 8-13-100, says in part:

"(b) "Anything of value" or "thing of value" does not mean:

- (i) printed informational or promotional material, not to exceed ten dollars in monetary value;
- (ii) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;

(iv) educational material of a nominal value directly related to the public official's, public member's, or public employee's official responsibilities;"

At the outset we can dismiss any claim that the document and the service provided by it's producer falls in the preview of 8-13-100(b)(i) or (ii).

We can, however, determine that this document and the service provided by it's producer can arguably be sanctioned under 8-13-100(b)(iv), "educational material." We can also determine that those individuals, even though they are members of the association and the association is a lobbyist principal, performing this service can arguably fall under the definition of "Lobbyist does not include," found in Section 2-17-10(13)(d), which reads as follows:

"(d) a person performing professional services in drafting legislation or in advising and rendering opinions to clients as to the construction and effect of proposed or pending legislation"

Coupling the above quoted code sections along with the facts submitted to the Committee by the association, in which they state in their memorandums to their "Participants" and to "Members of the South Carolina General Assembly" the following two quotations:

as to the memorandum to "Participants,"

"Remember that it is important that you do not attempt to lobby or influence a legislator's position when he/she contacts you. Objective opinions will help maintain the integrity of this service."

as to the memorandum to "Members of the South Carolina General Assembly,"

"They have also agreed to offer only legal opinions and not to 'lobby' you on any of the issues."

We therefore can determine that this service is not a thing of value as defined in our ethics laws.

We should also add that in keeping with our thought process from previous Opinions of the Committee on Ethics, namely Opinion 1992-4, PART IV, PART V and PART VI(a copy of which is attached to

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this Opinion for your reference). We must reach the determination that this service is allowable under *The Ethics, Government Accountability, and Campaign Reform Act of 1991*.

In debating and passing *The Ethics, Government Accountability, and Campaign Reform Act of 1991*, we feel that the General Assembly did not have as it's intent the silencing of Members or of the public in any relationship, whether they are lobbyists, lobbyists' principals, members of organizations that may or may not employ a lobbyist, or citizens. We must assume that in all cases similar to this one, Members will always seek guidance, input, thought and opinion from a variety of sectors. This right cannot be tampered with by any law that the General Assembly passes nor can it be tampered with by any Opinion of this Committee. We will not seek to abridge this most basic right.

We conclude that this service, and any similar to it, is allowable and the Members may accept this type of service, so long as it is in conjunction with their legislative duties. We also determine that Members who accept this service do not have to report the acceptance of this service or any dollar amount associated with the acceptance of this service on their annual *Statement of Economic Interest* or on their quarterly *Campaign Disclosure Form*.

We caution Members, however, that the offering or accepting of a free legal or professional service for personal or personal business reasons, because a person is a Member of the Senate of South Carolina, would be viewed differently.