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ADVISORY OPINION 2021 - 1

The House Legislative Ethics Committee received a request from a Member for an advisory opinion regarding a possible conflict of interest. Specifically, the Member explained that often Members on behalf of the district he or she represents might request and/or receive funding in the budget for municipalities' capital improvements in their districts. The Member also noted that the Members do not receive any economic interest from the funding of the municipalities' capital improvements. The Member reported that occasionally a Member might also be employed on a contract basis with the municipality in a specific capacity, which has no correlation to capital improvement matters or funding requests related to such matters.

Pursuant to House Rule 4.16C.(5), the Committee renders the following advisory opinion.

DISCUSSION

Pursuant to the Ethics, Government Accountability, and Campaign Reform Act of 1991, regarding conflicts of interests, S.C. Code Ann. § 8-13-700(A)-(B) 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.

S.C. Code Ann. § 8-13-700 (A)-(B). (emphasis added).

According to Section 8-13-100(4), "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." Business is defined as "a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual. Section 8-13-100(3). In addition, "individual with whom he is associated" is defined as "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." Section 8-13-100(21). In State Ethics Commission AO2009-002, the Commission held that a governmental entity was not a business as defined in Section 8-13-100(3). Thus, the municipalities are a governmental entity and are not considered a business as outlined in the Ethics Act.

Moreover, Section 8-13-100(11)(a) states that "economic interest" 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. See also, House Ethics Committee Advisory Opinion 2019-7 (Member did not have "a conflict of interest if the Member assist[ed] a constituent who [wa]s publishing a book with a publishing company. Specifically, the Member may arrange a meeting with a contact from the SC Department of Education since the Member d[id] not have any economic interest obtained from the publishing company pursuant to SC Code Ann Section 8-13-700."); see also State Ethics Commission AO 94-002, ("A bank employee may continue to serve as School Board Chairman even though the county does business with the Chairman's employer. Pursuant to Section 8-13-755, the Chairman may not have an economic interest in a contract between the County and the bank with which he is employed if he is authorized to perform an official function relating to the contract.").

In considering similar conflict of interest issues, the Senate Ethics Committee opined, "The intent of the General Assembly was not to hinder the authority in voting on issues that affect the people who elect their various representatives unless a specific vote deals with a provision that would, indeed have a direct impact on a Member's business or professional firm as outlined in

Sections 8-13-700 or 8-13-745.” Senate Ethics Opinion 1996-2. The Senate Ethics Committee went on to state that “Unless a direct conflict of interest arises, we urge all Members of The Senate of South Carolina to carry out their constitutional duties of office and to not refrain from the full representation of their constituents.” *Id.*

Finally, the Committee notes that Section 8-13-740 does not require an abstention for a lawyer/legislator who earned an economic interest representing or defending a party before the unified judicial system. Specifically, Section 8-13-740(2) states

A member of the General Assembly, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before a governmental entity, except:

(a) as required by law;

(b) before a court under the unified judicial system; or

(c) in a contested case, as defined in Section 1-23-310, excluding a contested case for a rate or price fixing matter before the South Carolina Public Service Commission or South Carolina Department of Insurance, or in an agency's consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing.

Section 8-13-740(2)(emphasis added).

In this matter, the Committee does not need to determine whether Members, in fact, have a conflict of interest, as the Members received no economic interest in the funding the municipality received for capital improvements. Furthermore, the municipality is not considered a business with which they are associated. The Member's business and individuals with whom they are associated with also received no economic interest. Thus, the Committee finds that a conflict of interest by Members is not created by a request for capital improvements when there is no economic interest for the Members, and the individual and business with whom they are associated. The Committee commented that supporting projects in the Member's district is part of the elected duties of the office Members hold.

CONCLUSION

In summary, Members, while employed by and/or compensated by a municipality, do not have a conflict of interest when the budget funding request provides funding for capital improvements located in the Members' district or political subdivision if the Members and the individual and business with whom they are associated with receive no economic interest from said funding. Finally, the municipality is not considered a business with which they are associated.

Adopted February 25, 2021.