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### ADVISORY OPINION 2021- 2

The House Legislative Ethics Committee (HEC) received a request for an advisory opinion regarding whether it is permissible under the Ethics Act for a public employee (employee) to staff an Ad Hoc Committee tasked with studying a governmental agency (agency) and reporting the Committee's findings regarding the agency if the employee has a family member (as defined in S.C. Code Section 8-13-100(15)(a)) who works at the agency.

Section 8-13-700(B) of the South Carolina Code of Laws states, "(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; . . .

(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.

S.C. Code 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." Further, S.C. Code Section 8-13-100(11)(b) states that there is no prohibition against a 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 employee is incidental to the public employee's position or which accrues to the 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.

Thus, a public employee is prohibited by Section 8-13-700(B) from participating in any action in which he or a member of his family has an economic interest. The public employee is required to follow the procedures of Section 8-13-700(B)(1) and (3) if an issue arises in his employment which would affect the economic interests of himself or his family member. These matters are fact specific and should be reviewed on a case-by-case basis.

Turning to the specific fact pattern before us, it does not appear that this particular Ad Hoc Committee's study would permit the employee an opportunity to affect the economic interest of his family member. As a staff member, the employee, along with others, would assist the Ad Hoc Committee in studying the agency and reporting its findings, and the Ad Hoc Committee, itself, is not tasked with making governmental or policy decisions. Conversely, the employee's family member is not in a position of any policy-making or managerial authority at the agency. As such, there does not appear to be a conflict of interest in this particular scenario.

As always, the Committee notes that situations, such as these, may give rise to the appearance of impropriety. Pursuant to Section 8-13-700(B), a public employee is prohibited from participating in any action in which he or a member of his family has an economic interest. The public employee is required to follow the procedures of Section 8-13-700(B)(1) and (3) if an issue arises in his employment which would affect the economic interests of himself or his family member. These scenarios are fact-specific and should be reviewed on a case-by-case basis. Additionally, it is important to note that Section 8-13-725 prohibits a public employee from using or disclosing confidential information gained in the course of or by reason of his official responsibilities in a way that would affect an economic interest held by him, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

The facts set forth in this particular scenario do not constitute a violation of the Ethics Act, but rather are an issue that should be decided by the individual committee chairman, any supervisors, and the employee. Again, the Committee emphasizes that these scenarios must be reviewed on a case-by-case basis.

**ADOPTED FEBRUARY 25, 2021**