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Leonidas E. "Leon" Stavrinakis

Jane O. Shuler
Chief Legal Counsel

House Legislative Ethics Committee



Julia J. Foster
Assistant Legal Counsel

Lynne Short
Executive Assistant

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2021 - 3

The House Legislative Ethics Committee received a request from a Member for an advisory opinion related to a possible conflict of interest situation regarding sponsorship of a bill. Specifically, the Member stated that he was the sponsor of a bill related to a type of farming ("farming"). The Member explained that he or she sponsored this bill to clarify issues with a farming bill that passed several years ago. The Member reported that his or her business has done business in the past with local farms who are not a lobbyist principal. The Member questioned if sponsoring the bill was a violation of the Rules of Conduct in the Ethics Act. The Member further noted that his or her son, a registered lobbyist, has lobbied on behalf of the farms in the past but he is not currently their lobbyist. The Member reported that his or her son does not reside in the Member's home and the Member does not claim the son as a dependent for income tax purposes.

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 (The SC Ethics Act), regarding the Rules of Conduct, S.C. Code Ann. Section 8-13-700 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.

Section 8-13-700 (A)-(B). (emphasis added). Based on the facts presented, the Member and the Member's business in which he is associated receive no economic interest in sponsoring farm legislation. Thus, the Member is not precluded from sponsoring or voting on farm legislation.

In addition, Section 8-13-100(11) defines "economic interest" as

- (a) 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.
- (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.

Section 8-13-100(11). The Committee notes that there are nearly 25,000 farms in SC. <https://agriculture.sc.gov/about/#:~:text=Agriculture%20in%20South%20Carolina,Carolina%20is%20driven%20by%20agriculture>. Thus, the Committee also finds that sponsoring a bill on farms would meet the large class exemption.

Therefore, the Committee finds, based on the facts presented, sponsoring legislation on farming has no nexus to the Rules of Conduct as the Member and the business with which he is associated receive no economic interest. With regard to the Member's son, who in the past has served as a lobbyist for local farms, the son is not currently employed as a lobbyist for farms in this state. The Committee further finds that the Member's son would not receive any economic interest with the passage of this bill, and, thus, it would not be a conflict of interest for the Member to sponsor the bill due to his son who is a family member.

The Committee further notes that Section 8-13-1130 requires a person who files a Statement of Economic Interest to list "the name of any person he knows to be a lobbyist as defined

in Section 2-17-10(13) or a lobbyist's principal as defined in Section 2-17-10(14) and knows that the lobbyist or lobbyist's principal has in the previous calendar year purchased from the filer, a member of the filer's immediate family, an individual with whom the filer is associated, or a business with which the filer is associated, goods or services in an amount in excess of two hundred dollars.” (emphasis added). The Committee finds that the Member’s son does not meet the definition of “immediate family” as he no longer resides in the Member’s home and he is not claimed by the Member as a dependent for income tax purposes. Therefore, the Member is not required to report the son as a lobbyist on the Member’s Statement of Economic Interests.

CONCLUSION

In summary, the Member may sponsor the bill on farming, based on the facts presented, as there is no nexus that sponsoring a farming bill would violate the Ethics Act. Moreover, due to the large number of farms in this state, even if it was a conflict of interest, the Committee finds that it would meet the large class exemption.

Adopted March 25, 2021.