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ADVISORY OPINION 2021 - 4

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion. The Member questioned whether he or she would have a possible conflict of interest situation regarding employment with a state university. Specifically, the Member explained that a University would like to hire the Member individually as an attorney, but not the Member's law firm entity, to serve as local counsel handling the following legal matters, including but not limited to, management of various civil legal matters, supervision of attorneys retained through the Insurance Reserve Fund to represent the University, zoning matters, and contract review. The Member noted that he or she would be considered a state employee. The Member reported that he or she recused himself or herself from voting on budget funding for the University in March 2020 as required by Section 8-13-745(B)-(C). The Member also explained that he or she understood that if hired that the Member may need to recuse himself or herself from a vote on any legislation directly benefiting the University, since the Member would have a potential conflict of interest. Moreover, the Member reported that the University is a registered Lobbyist Principal with the SC State Ethics Commission. The Member questioned how he or she would report this arrangement on the Member's annual Statement of Economic Interests.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

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

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). In this situation, the Member will be employed as an attorney with a state university. 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 state university is a governmental entity and it is not considered a business as outlined in the Ethics Act.

Section 8-13-100(11)(a) defines economic interest "as 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." Thus, the Committee finds that the Member would not need to abstain from any vote on the section of the budget related to the University in that section unless the section would directly impact the Member's salary or would involve a vote on funding legal fees to settle a lawsuit that the Member is involved in.

The Committee further notes that Section 8-13-740(A)(2) provides

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(A)(2). (emphasis added). Thus, a Member can represent a person before a governmental entity before a court under the unified judicial system. In this matter, the Member can represent the state university before a court under the unified judicial system.

Further, Section 8-13-745(C) states,

Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or an individual with whom he is associated in partnership or a business, company, corporation, or partnership where his interest is greater than five percent may enter into any contract for goods or services with an agency, a commission, board, department, or other entity funded with general funds or other funds if the member has voted on the section of that year's appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the appropriation bill or from voting on the general appropriation bill as a whole.

Section 8-13--745(C); see also House Ethics Committee Advisory Opinion 93-27 (Member could enter into an employment contract with a State supported University as long as the Member did not vote "on the section of the appropriations bill concerning the university for the year which employment was sought."). The Committee finds that Part One of House Ethics Committee Advisory Opinion 93-27 should be OVERRULED. The Committee finds that a generic vote on a budget section does not create a conflict of interest.

In addition, the Committee notes that a Member, while employed by a state university, does not have a conflict of interest when a budget funding request provides money for a capital improvement located in the Member's district if the Member receives no economic interest from said funding. An example would be the Member voting for a capital improvement, such as, the Performing Arts Center at the University since the Member would not derive an economic interest from this center.

Another consideration of the Member's proposed employment situation, involves additional reporting on the Member's annual statement of economic interests. Pursuant to Section 8-13-1110, a person required to file the statement must report to the name of any lobbyist's principal as defined in Section 2-17-10(14) and knows that the lobbyist's principal has in the previous calendar year purchased from the filer, goods or services in an amount in excess of two hundred dollars. The Committee finds that the Member would also need to list under government income, the income the Member received from the University. See also House Ethics Committee Advisory Opinion 98-1 (A Lawyer/Member must "report the relationship between his firm and any lobbyist 's principal that he knows has purchased goods or services in excess of two hundred dollars from his firm" pursuant to Section 8-13-1130.).

CONCLUSION

In summary, the University may hire a Member, individually as an attorney but the Member is not required to abstain from voting on that Section in the budget for the University unless the Member's salary would be directly funded or it involves a vote on funding legal fees. The Member must comply with Section 8-13-1110 regarding reporting the goods and services purchased from a lobbyist principal, the University, on the Member's annual statement of economic interests. The Member, while employed by the University, does not have a conflict of

interest when the budget funding request provides funding for capital improvements located in that Member's district or political subdivision if the Member receives no economic interest from said funding.

Adopted April 29, 2021.