

SUBJECT: MATTERS AFFECTING PUBLIC HOSPITAL EMPLOYEES AND BOARD MEMBERS

SUMMARY:

A hospital would not be prohibited from providing meals and accommodations to the County Council. Hospital employees or officials would not be prohibited from accepting meals or beverages or lectures from vendors if provided to all participants. The purchase of hospital services by a lobbyist principal must be disclosed if such service is provided personally by the filer or person with whom he is associated. A hospital is not a regulatory agency for purposes of the Ethics Reform Act. Board members or staff members are not precluded from voting on the general budget or on matters affecting their employers since there is no specific economic impact.

QUESTION:

The Attorney for Lexington Medical Center questions:

- (1) Does the Ethics Act prevent a Health Service District (hospital), an incorporated political subdivision, whose directors are appointed by the local County Council, from providing accommodations and meals for the Council members at an annual retreat attended by the Council members and the HSD Board members? The purpose of the retreat is to discuss matters which are of mutual concern to the County Council and to the Health Service District.
- (2) Does the Ethics Act prevent "public employees" and/or "public members" of a Health Service District (hospital), an incorporated political subdivision, from accepting a free meal, beverages or lecture from vendors that contract with the Health Service District?
- (3) Are the president and chief financing officer of a Health Service District (hospital) who are required to file a statement of economic interests under the Ethics Act required to report on their statement of economic interests hospital services rendered to a lobbyist's principal under Section 8-13-710?
- (4) Is a Health Service District board (hospital), an incorporated political subdivision, considered a regulatory agency under Section 8-13-730 because it credentials (grants admitting privileges) its medical staff?
- (5) Are a physician board member (who contracts with the hospital to provide radiology services) or a board member whose husband is employed by the hospital and would be classified as a "public employee" prevented from voting on the general budget for the hospital and/or expenditures that could indirectly affect the income of either the physician or

the board member?

(6) Is a board member of a Health Service District (hospital), an incorporated political subdivision, who is employed as administrator in the Food Stamps Section of the Department of Social Services prevented from voting as a board member on matters that are administered by his private employer in South Carolina (i.e., Medicaid)?

DISCUSSION:

This opinion is rendered in response to a letter dated January 20, 1992 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-705 provides:

(A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

- (1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;
- (2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
- (3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities.

(B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being:

- (1) influenced in the discharge of his official responsibilities;
- (2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or
- (3) induced to perform or fail to perform an act in violation of his official responsibilities.

(C) A person may not, directly or indirectly, give, offer, or promise to give anything of value to another person with intent to influence testimony under oath or affirmation in a trial or other proceeding before:

- (1) a court;
- (2) a committee of either house or both houses of the General Assembly; or
- (3) an agency, commission, or officer authorized to hear evidence or take testimony or with intent to influence a witness to fail to appear.

(D) A person may not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value in return for influencing testimony under oath or affirmation in a trial or other proceeding before:

- (1) a court;
- (2) a committee of either house or both houses of the General Assembly; or
- (3) an agency, commission, or officer authorized to hear evidence or take testimony, or with intent to influence a witness to fail to appear.

Section 8-13-710(B) provides:

(B) A public official, public member, or public employee required to file a statement of economic interests under Section 8-13-1110 who receives, accepts, or takes, directly or indirectly, from a person, anything of value worth twenty-five dollars or more in a day and anything of value worth two hundred dollars or more in the aggregate in a calendar year must report on his statement of economic interests pursuant to Section 8-13-1120 the thing of value from:

- (1) a person, if there is reason to believe the donor would not give the thing of value but for the public official's, public member's, or public employee's office or position;
- (2) a person, or from an officer or director of a person, if the public official, public member, or public employee has reason to believe the person:
 - (a) has or is seeking to obtain contractual or other business or financial relationships with the public official's, public member's, or public employee's governmental entity.
 - (b) conducts operations or activities which are regulated by the public official's, public member's or public employee's governmental entity.

Section 8-13-710(B) does not prohibit the acceptance of anything of value, but instead requires disclosure of anything of value received worth \$25 or more in a day and \$200 in a year on the Statement of Economic Interests. Therefore, the Commission knows of no reason why the Hospital could not provide accommodations and meals for the members of County Council and Hospital Board members; unless given to influence them in the conduct of their official duties as prohibited by Section 8-13-705.

As to the second question, the State Ethics Commission advised in Advisory Opinion SEC AO92-039 and SEC AO92-061 that meals or beverages may be accepted at functions where all such meals and/or beverages are provided on the same basis to all participants in the event.

As to the third question, Section 8-13-710(A) requires disclosure of anything of value received from a lobbyist's principal. Section 8-13-1130 requires disclosure of information concerning the purchase by a lobbyist or lobbyist principal of goods or services from the filer, member of his household or a business with which he is associated. In either case, if a lobbyist principal purchased hospital

services which were rendered personally by the filer, member of his household, or business or individual with whom the filer is associated then such provision of services must be disclosed. It does not require disclosure of hospital services by the hospital to a lobbyist principal.

As to the fourth question, it does not appear that the hospital is a regulatory agency for the purposes of the Ethics Reform Act simply because it credentials its medical staff.

As to the fifth and sixth questions, Section 8-13-700(B) provides in part as follows:

(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 member of his immediate family, 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 member of his immediate family 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;

* * *

- (5) if he is a public member, he shall furnish a copy to the presiding officer of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

Economic Interest is defined in Section 8-13-100(11) as:

(11)(a) "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.

(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.

The State Ethics Commission advises that Board Members who provide services to the hospital or whose spouse is employed by the hospital would not be prohibited from voting on the hospital's general budget since such budget affects the entire class (all practicing physicians or employees of the hospital). Neither would a Board Member who is employed by DSS be prohibited from voting on matters administered by his employer since the financial impact in this case would appear to be remote.