

SUBJECT:    APPLICABILITY OF ETHICS REFORM ACT TO LOBBYIST'S PRINCIPAL

SUMMARY:

A State University that is a lobbyist's principal generally may not provide to a legislator lodging, transportation, entertainment, food, meals, beverages or an invitation to a function paid for by the University even if it is provided solely because the legislator's spouse is a member of the University's Board of Trustees.

QUESTION:

The General Counsel for Clemson University requests an advisory opinion on two issues as they relate to the lobbying provisions of the Ethics Reform Act (Act). Clemson University is a lobbyist's principal. The first issue involves a newly elected member of the University's Board of Trustees whose spouse is a member of the General Assembly. Traditionally, the university has paid the expenses of board members and their spouses when they participate in various university functions. It has also been the practice of the university to provide tickets for various athletic events to trustees and their spouses or guests.

The second issue concerns two public officials who are former members of the Clemson University Board of Trustees and who are now Trustees Emeriti of the University. Any trustee with a total of ten years service on the Board whose membership terminates will be named Trustee Emeritus upon request. Additionally, any trustee who has been elected to serve for twelve years and has served at least three fourths of that time, shall in the discretion of the Board, be eligible for emeritus status. Trustees Emeriti may participate fully in board and committee meetings; however, they do not have a vote. Also, as Trustees Emeriti, they do not receive any pay from the university. It has been Clemson University's practice to pay the expenses of Trustees Emeriti when they are asked to participate in university events. Also, it has been the university's practice to provide tickets for various athletic events to Trustees Emeriti. All Trustees Emeriti are treated exactly the same.

DISCUSSION:

The State Ethics Commission calls attention to Section 2-17-90 which provides in part as follows:

(A) Except as otherwise provided under Section 2-17-100, no lobbyist's principal may offer, solicit, facilitate, or provide to a public official or public employee, and no public official or public employee may accept lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal, except for:

(1) as to members of the General Assembly, a function to which a member of the

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General Assembly is invited if the entire membership of the House, the Senate, or the General Assembly is invited, or one the committees, subcommittees, joint committees, legislative caucuses, or county legislative delegations of the General Assembly of which the legislator is a member is invited. However, the Speaker of the House and Speaker Pro Tempore of the House may be included in an invitation to one of the above groups;

(2) as to a public official of a state agency, board, or commission, a function to which an official of a state agency, board, or commission is invited if the entire board or commission of which the public official is a member is invited;

(5) as to statewide constitutional officers, a function to which a statewide constitutional officer is invited;

(F) The provisions of this section do not apply to a public official or a public employee who pays for his lodging, transportation, entertainment, meals, food, or beverages at a function to which he has been invited by a lobbyist's principal.

The State Ethics Commission notes that customarily, when the language of a statute is clear and unambiguous, it must be held to mean what it plainly says. Rabon v. South Carolina Highway Department, 258 S.C. 154, 187 S.E. 2d 652 (1972). However, if it is obvious from the act itself that the Legislature intended that the language be used in a different sense than its common meaning, this test will be abandoned. Vol. 2A Sutherland Statutory Construction, Section 45.09. A reading of Section 2-17-90 plainly shows that the legislative purpose of this statute was to restrict lobbyist's principals from providing certain items of pecuniary worth to public officials and public employees. Moreover, it is also clear that the Legislature considered exceptions to the general prohibition since several subsections describe circumstances under which a lobbyist's principal may provide lodging, transportation, entertainment, etc. to public officials and public employees. For this reason, the Commission is unable to discern that the General Assembly intended a result in the present situation other than that achieved from a literal interpretation of Section 2-17-90. Therefore, the State Ethics Commission advises that Clemson University may not provide to a legislator free lodging, transportation, entertainment, food, meals, beverages or an invitation to a function paid for by the university even if it is provided solely because the legislator's spouse is a member of the Board of Trustees.

Addressing virtually the identical situation in advisory letter 93-10, the Secretary of State advised that Section 2-17-90 contained no applicable exceptions, and therefore, the public official should reimburse the lobbyist's principal for food, lodging, entertainment, etc. received.

With respect to athletic tickets, however, the Commission notes that the Secretary of State previously addressed the circumstances under which a gift or donation from a lobbyist's principal loses its prohibited character. In advisory letter 92-12 dated February 19, 1992, the Secretary of State opined that:

[I]t is our opinion that money given by one entity in sponsorship of seminars or events to another entity loses the prohibitions of the giving entity, as long as the gift is given without restrictions. For example, a lobbyist's principal may agree to sponsor a

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luncheon for the United Way. The lobbyist's principal would be prohibited from inviting just one Senator if the principal were holding the function on its own. The United Way would not be similarly prohibited as long as the gift of sponsorship was not contingent upon inviting whomever the lobbyist's principal desired.

Addressing a similar issue in advisory letter 92-41 dated February 25, 1992, the Secretary of State commented that:

It is the opinion of this office that what is critical to the prohibition of Section 2-17-90 is that the items must be offered by the lobbyist's principal. That is, if the food and beverages, etc. are paid for by someone else... then the public official or employee is not prohibited from accepting them...[T]his office would advise that funds legitimately donated to the state by a lobbyist's principal would become property of the state government upon acceptance by the state. "Legitimately donated" would mean that the donor loses all rights to control or use of the funds once donated.... It is the opinion of this office that once legitimately donated, the funds lose the characteristics and restrictions of the donor and accept the characteristics and restrictions of the receiver.

The State Ethics Commission believes that the analysis from the opinions cited above is applicable to the present situation. Based on the facts submitted, Clemson University appears to provide athletic tickets on the same basis to all of its trustees without restrictions of any kind. Accordingly, the Commission does not believe that Clemson University's practice of providing athletic tickets to its board members is a deliberate attempt to circumvent the prohibitions of Section 2-17-90. Therefore, provided the university imposes no conditions or limitations on the members' use of the tickets, the Commission does not object to a university board member giving an athletic ticket to her legislator spouse. The Commission notes, however, that the facts of this particular situation make it clear that the trustee is not giving a ticket to her legislator spouse for the purpose of influencing his official actions. Reaching the same conclusion in other cases could be extremely difficult, and for this reason, the State Ethics Commission calls attention to Section 8-13-705, which provides in part:

(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;

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- (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.

**2. May Clemson University provide to a public official lodging, transportation, entertainment, food, meals, beverages or an invitation to a function paid for by the university if it is provided solely on the basis of that individual's status as a Trustee Emeritus of Clemson University and the public official is receiving it only as a Trustee Emeritus of Clemson University?**

Notwithstanding their status as Trustees Emeriti, since these public officials do not fall within one of the exceptions enumerated in Section 2-17-90(A) and because their service as Trustees Emeriti does not appear to be mandated by law, the State Ethics Commission advises that Clemson University may not provide to public officials free lodging, transportation, entertainment, food, meals, beverages or an invitation to a function paid for by the university.