

SUBJECT: CONSTITUTIONAL OFFICER ACCEPTING INVITATION TO A FUNCTION PAID FOR BY A LOBBYIST'S PRINCIPAL

SUMMARY:

Pursuant to Section 2-17-90(A)(5), a lobbyist's principal may invite an individual constitutional officer to a function and provide that officer with lodging, transportation, entertainment, food, meals or beverages so long as the value of what is provided does not exceed \$25 in a day or \$200 in a calendar year.

QUESTION:

The General Counsel for Clemson University inquires how many constitutional officers must be invited to a function paid for by a lobbyist's principal in order to comply with Section 2-17-90(A)(5). In the past, Clemson University has interpreted this section to require inviting an individual constitutional officer in order to take advantage of the exception that allows a lobbyist's principal to provide a constitutional officer with lodging, transportation, entertainment, food, meals or beverages.

DISCUSSION:

This opinion is rendered in response to a letter dated December 14, 1993 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 2-17-5 et seq. and 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.

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:

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

(B) No lobbyist's principal or person acting on behalf of a lobbyist's principal may provide to a public official or a public employee pursuant to subsections (A)(1), (A)(2), (A)(3), (A)(4), or (A)(5) the value of lodging, transportation, entertainment, food meals, or beverages exceeding twenty-five dollars in a day and two hundred

dollars in a calendar year per public official or public employee.

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.

The legislative purpose behind Section 2-17-90 was to define the instances when lobbyist's principals could provide certain items of pecuniary worth to public officials and public employees. Certainly, one can argue that interpreting Section 2-17-90(A)(5) so as to require inviting an individual constitutional officer to an event appears inconsistent with the section's other enumerated exceptions, which necessitate inviting designated groups of public officials and public employees. See Section 2-17-90(A)(1) - (A)(4). Nevertheless, the State Ethics Commission acknowledges the inherent differences between constitutional officers and other public officials subject to the Ethics Reform Act. Constitutional officers, for example, take official actions individually instead of as a member of some larger legislative body, board or committee. Moreover, a lobbyist's principal may desire to invite a constitutional officer to a function that involves only his or her area of responsibility. Accordingly, the State Ethics 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(A)(5). Therefore, the Commission advises that lobbyist's principals may invite an individual constitutional officer to a function and provide that officer with lodging, transportation, entertainment, food, meals, or beverages so long as the value of what is provided does not exceed \$25 in a day and \$200 in a calendar year.