Withdrawn Effective January 15, 2026 to the extent the opinion prohibits public employees from accepting direct expense reimbursement for speaking engagements under Section 8-13-715 Lobbying

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SUBJECT: APPLICABILITY OF ETHICS REFORM ACT TO NONPROFIT TRADE ASSOCIATION

SUMMARY:

Based on the facts presented, a nonprofit trade association's ad hoc espousal of a position on legislation or other official State action does not constitute lobbying, and neither the association nor its board members or officers are lobbyists or lobbyist's principals within the meaning of the Ethics Reform Act.

QUESTION:

The South Carolina Economic Developers Association (SCEDA) requests an advisory opinion concerning the lobbying provisions of the Ethics Reform Act (Act). SCEDA is a nonprofit trade association dedicated to improving the economy of South Carolina. Accordingly, SCEDA undertakes educational programs which enhance the professional skills of the State's economic development professionals and promotes cooperation and exchange of information among its members and between its membership and the public.

SCEDA's membership includes bankers, attorneys, employees of the State Development Board, local economic development corporations, chambers of commerce, utility providers and construction companies, as well as other individuals involved in the process of recruiting business and industry to locate or expand in South Carolina. In addition, many of SCEDA's members are employed by companies which are lobbyist's principals within the definition of the Ethics Reform Act. Although some of SCEDA's members are employed by firms which engage in lobbying activities, SCEDA's officers and directors are not aware of any current members who are lobbyists. Moreover, the Association's officers and directors are not compensated for their service to SCEDA.

SCEDA's activities bring it into contact with various departments of State government, including those in the legislative and executive branches, as well as local officials. This contact, together with the public status of many SCEDA members, creates concern regarding the impact of the Ethics Reform Act on traditional SCEDA activities. In the past, Association activities have included hosting a legislative reception and soliciting sponsorships for its annual conference.

DISCUSSION:

This opinion is rendered in response to a letter dated July 20, 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.

1. Are SCEDA or any of its officers or the members of its Board of Directors lobbyists or lobbyist's principals under the Act? If not, are there any registration or reporting requirements applicable to SCEDA, its officers and directors or public officials or employees who are guests at functions hosted by SCEDA?

Section 2-17-10(12) provides in part as follows:

> "Lobbying" means promoting or opposing through direct communication with public officials or public employees:
> (a) the introduction or enactment of legislation before the General Assembly or the committees or members of the General Assembly;
> (b) covered gubernatorial actions;
> (c) covered agency actions;
> (d) consideration of the election or appointment of an individual to a public office elected or appointed by the General Assembly.

"Lobbyist", according to Section 2-17-10(13) means:

> any person who is employed, appointed, or retained, with or without compensation, by another person to influence by direct communication with public officials or public employees: (i) the action or vote of any member of the General Assembly, the Governor, the Lieutenant Governor, or any other statewide constitutional officer concerning any legislation; (ii) the vote of any public official on any state agency,

> board, or commission concerning any covered agency actions; or (iii) the action of the Governor or any member of his executive staff concerning any covered gubernatorial actions....

"Lobbyist" does not include:

> (a) an individual who receives no compensation to engage in lobbying and who expresses a personal opinion on legislation, covered gubernatorial actions, or covered agency actions to any public official or public employee;
> (b) a person who appears only before public sessions of committees or subcommittees of the General Assembly, public hearings of state agencies, public hearings before any public body of a quasi-judicial nature, or proceedings of this State; ... or
> (h) an individual who receives no compensation to engage in lobbying and who does not make expenditures or incur obligations for lobbying in an aggregate amount in excess of five hundred dollars in a calendar year.

According to the information provided, SCEDA's officers and directors have on occasion expressed their position on legislation and other official action pertaining to economic development through oral and written communication with members of the General Assembly, the Governor and his staff, other constitutional officers and officials of the State Development Board and other State and local agencies and public bodies. However, "[t]hese individuals (SCEDA's officers and directors) are strictly volunteer and, other than possible telephone and mileage expenses of a de minimis nature, expend no money on lobbying. Nor does SCEDA reimburse them for any costs." In addition, the facts indicate that SCEDA's officers and directors have been elected by the membership in order to run the overall business of the organization; the primary purpose of which is to provide seminars and other forums which educate and enhance the professional skills of the membership. Accordingly, it appears that SCEDA has not "employed, appointed, or retained" its officers and directors for the purpose of influencing public officials. For these reasons, the State Ethics Commission advises that SCEDA's infrequent expressions of an opinion on legislation or other official action do not constitute lobbying and that SCEDA's officers and directors are not lobbyists within the meaning of the Ethics Reform Act.

"Lobbyist's principal", according to Section 2-17-10(14) means:

> the person on whose behalf and for whose benefit the lobbyist engages in lobbying and who directly employs, appoints, or retains a lobbyist to engage in lobbying. However, a lobbyist's principal does not include a person who belongs to an association or organization that employs a lobbyist, nor an employee, officer, or shareholder of a person who employs a lobbyist. If a membership association or organization is a lobbyist's principal, the association or organization must register and report under the provisions of this chapter.

As previously noted, the Commission does not consider SCEDA's officers and directors to be lobbyists. Thus, based on the above definition as well as the facts presented, until it hires or appoints and benefits from a lobbyist, SCEDA does not appear to be a lobbyist's principal. Therefore, the lobbying provisions of the Ethics Reform Act do not appear to contain any registration or reporting requirements that are applicable either to SCEDA or its officers or directors. Nevertheless, the State Ethics Commission calls attention to Section 8-13-710(B) which provides in part as follows:

> (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:
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> (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;

Accordingly, those public officials, public members and public employees who are required to file statements of economic interests and who are invited to SCEDA functions solely by virtue of their public positions must report the value of anything received from SCEDA worth twenty-five dollars or more in a day or two hundred dollars or more in the aggregate in a calendar year. For this reason, SCEDA should be prepared to provide information regarding the per person cost of an event. In an earlier opinion addressing the valuation of an event, the State Ethics Commission advised that the per person cost of an event "is calculated by dividing the total cost by the number of persons confirmed to attend." SEC AO92-106 (February 26, 1992).

2. May SCEDA continue to solicit private sponsorships for its annual conference and other events where some sponsors may be lobbyists or lobbyist's principals? If so, must the Association provide attendees with a statement as to the per capita value of the food and beverages served, of the use of the facilities and of related costs?

According to the facts presented, SCEDA's officers and directors are not aware of any current Association members who are registered lobbyists; therefore, the Commission will narrow its discussion to potential member-sponsors who are lobbyist's principals. Section 2-17-90 of the Act states, "no lobbyist's principal may offer, solicit, facilitate, or provide to a public official or public employee... lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function **paid for by a lobbyist's principal....**" The Commission notes that the issue of lobbyist's principals contributing to various events and seminars has been previously addressed by the Secretary of State. 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 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 <u>not</u> 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, provided that such contributions are not given in a deliberate attempt to circumvent the prohibitions of Section 2-17-90. Moreover, the Commission has previously advised that public officials and public employees who are members of an association which is a lobbyist's principal may take part in association functions and enjoy all benefits provided to other members of the same association. SEC AO92-054 (January 27, 1992). Therefore, as long as the donations are made without conditions or limitations, SCEDA may continue to solicit conference and event support, including in-kind contributions, from among its lobbyist's principal members. In light of this conclusion, and also because SCEDA is neither a public agency nor an association composed entirely of public officials or public employees, the State Ethics Commission does not object to SCEDA's practice of crediting its member cosponsors for their assistance without divulging the specifics surrounding any particular contribution.

3. May SCEDA continue to provide meals for members of its Board of Directors and their spouses, where members of the Board may be public officials or employees and where the meals are provided in conjunction with Association business? If so, must the Association provide attendees with a statement as to the per capita value of the food and beverages served, of the use of the facilities and of related costs?

As stated above, and in accordance with prior Commission opinions, public officials and public employees who belong to a membership association are not prohibited from receiving the benefits provided to all other members of the same association. Accordingly, SCEDA's board members and officers who happen to be public officials or public employees appear entitled to all benefits provided on the same basis to SCEDA's privately-employed board members and officers. Additionally, since SCEDA is neither a lobbyist nor a lobbyist's principal, its board members and officers who happen to be public officials or public employees need not report the value of meals or accommodations provided in conjunction with Association business. However, since it appears that the Executive Director of the State Board for Technical and Comprehensive Education and the Executive Director of the State Development Board are SCEDA Board members solely by virtue of their State positions, the State Ethics Commission advises that pursuant to Section 8-13-710(B), these public officials should report the value of anything received from SCEDA worth twenty-five dollars or more in a day or two hundred dollars or more in the aggregate in a calendar year.

4. What restrictions, if any, does the Ethics Act place on SCEDA's providing meals, transportation, and lodging to public officials and employees who speak at its functions, including without limit any reporting requirements?

The State Ethics calls attention to Section 8-13-715 which provides as follows:

> A public official, public member, or public employee acting in an official capacity may not receive anything of value for speaking before a public or private group. Notwithstanding the limitations of Section 2-17-90, a public official or public member may receive payment or reimbursement for actual expenses incurred for a speaking engagement. The expenses must be reasonable and must be incurred in a reasonable time and manner in which to accomplish the purpose of the engagement. If the expenses are incurred out of state, the public official or public member incurring the expenses must receive prior written approval for the payment or reimbursement from:
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> (1) the Governor, in the case of a public official of a state agency who is not listed in an item in this section;
> (2) a statewide constitutional officer, in the case of himself;
> (3) the President Pro Tempore of the Senate, in the case of a member of the Senate;
> (4) the Speaker of the House, in the case of a member of the House of Representatives; or
> (5) the chief executive of the governmental entity in all other cases.

In previous opinions, the Commission has advised that **public officials** (emphasis added) may be paid or reimbursed for actual and reasonable transportation, food and lodging expenses incurred while speaking in their official capacities. For **public employees** (emphasis added), the Commission has held that the sponsoring group may pay or reimburse the public agency for actual and reasonable costs associated with the speaking engagement. SEC AO92-063 (February 26, 1992). Moreover, the Commission notes that the definition of "anything of value" includes an "honorarium or compensation for services". See Section 8-13-100(1)(a)(xii). The Commission does not believe acceptance of a meal received by a public employee, public official, or public member who is participating in an event where the same meal is served to all other persons attending or participating in the same event to be compensation for services or for speaking. Accordingly, a meal accepted under the above restrictions would not be violative of the Ethics Reform Act. SEC AO92-023(January 27, 1992).

5. May SCEDA host receptions where public officials and employees are invited without inviting such persons as one of the groups designated in the Ethics Act? If so, what are the reporting requirements?

Section 2-17-90(A) of the Ethics Reform Act prohibits lobbyist's principals from providing public officials and public employees with "lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal" except as part of one of certain specified groups. However, since SCEDA is not a lobbyist's principal, the Association appears free to host events to which public officials and employees are invited without inviting such persons as part of a designated group. Nevertheless, because these public officials and employees would be invited to such an event due to their official status, the Commission advises that pursuant to Section 8-13-710(B), these individuals should report the value of anything received from SCEDA worth twenty-five dollars or more in a day or two hundred dollars or more in the aggregate in a calendar year.