

SUBJECT: APPLICABILITY OF ETHICS REFORM ACT TO ADMINISTRATIVE LAW
JUDGES

SUMMARY:

Administrative law judges are "public officials" under the Ethics Reform Act of 1991 and, thus, are subject to the Act's requirements.

QUESTION:

An administrative law judge (ALJ) requests an advisory opinion regarding: (1) the applicable ethical standards for an ALJ; and (2) the propriety of an ALJ attending a function sponsored by a lobbyist's principal with whom the ALJ's fiancée/spouse is employed.

DISCUSSION:

This opinion is rendered in response to a letter dated December 1, 1994 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 ALJs covered as "public officials" under the 1991 Ethics Act and thus bound to both the Code of Judicial Conduct and the Ethics Act, or does the enactment of Section 1-23-560, as the latest legislative pronouncement, govern to the exclusion of the Ethics Act? If an ALJ's conduct is subject to scrutiny under both standards, which standard governs in the case of a conflict between the two?

As noted in the Commission's previous advisory opinions, the Ethics, Government Accountability, and Campaign Reform Act of 1991 (the "Act") covers three categories of government officers: public officials, public members, and public employees. "Public official," the classification into which ALJs would most likely fall, is defined with slight variations in each of the Act's three definitional sections. According to Section 2-17-10(18), "'public official' means any elected or appointed official of the State, including candidates for any such state office. **However, 'public official' does not mean a member of the judiciary.**" (Emphasis added.) Moreover, Section 8-13-100(27) defines "public official" as "an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office. **'Public official' does not mean a member of the judiciary** except that for the purposes of campaign practices, campaign disclosure, and disclosure of economic interests, a probate judge is considered a public official and must meet the requirements of this chapter." (Emphasis added.) Similarly, "public official", according to Section 8-13-1300(28), "means an elected or appointed official of the State, a county, a municipality or a political subdivision thereof, including candidates for the office.

However, "public official" does not mean a member of the judiciary except for the purposes of campaign financing. A probate judge is considered a public official and must meet the requirements of this article." (Emphasis added.) Accordingly, the paramount issue in resolving the Act's applicability to ALJs is whether ALJs are members of the judiciary.

Section 1-23-500, which creates the Administrative Law Judge Division, states, "[t]here is created the South Carolina Administrative Law Judge Division, **which is an agency of the executive branch of the government of this State.**" (Emphasis added.) 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). Thus, notwithstanding Section 1-23-560, which binds ALJs to the Code of Judicial Conduct, it is the Commission's opinion that the General Assembly did not intend for ALJs to be members of the judiciary. Therefore, the State Ethics Commission advises that Administrative law judges are "public officials" under the Ethics Reform Act of 1991 and are subject to the Act's requirements. In regard to the question concerning the governing standard in the case of a conflict between the Code of Judicial Conduct and the Ethics Reform Act, the Commission notes that the request letter did not refer to an actual conflict. Consequently, in the absence of a specific example, the Commission recommends that in the event of a conflict between the Code of Judicial Conduct and the Ethics Reform Act, ALJs should adhere to the more stringent standard.

2. Please advise as to the propriety of an ALJ attending a function sponsored by a lobbyist's principal under the following scenario. The ALJ's fiancée/spouse is an employee of the lobbyist's principal corporation; however, the fiancée/spouse is not a lobbyist. As an employee of the corporation, the fiancée/spouse is invited to a company party and wishes to have the ALJ accompany her to the function. Would the ALJ be in violation of Section 2-17-90 if he attended the function, or would the ALJ merely be considered the guest of the fiancée/spouse and not in violation of the statute?

In relevant part, Section 2-17-90 provides:

(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:

(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;

(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.

Addressing a similar question in Advisory Opinion 94-006 (September 15, 1993), the State Ethics Commission advised Clemson University, a lobbyist's principal, that it may not provide to a public official free lodging, transportation, entertainment, food, meals, beverages or an invitation to a function paid for by the University even if it would be provided solely because the public official's spouse is a member of the Clemson University Board of Trustees. In this decision, the Commission noted its belief that the General Assembly considered exceptions to the general prohibition contained in Section 2-17-90 since several subsections describe circumstances under which a lobbyist's principal may provide lodging, transportation, entertainment, etc. to a public official. Accordingly, the Commission was unable to discern that the Legislature intended a result other than that achieved from a literal interpretation of Section 2-17-90. Therefore, based on this earlier opinion as well as the facts presented, it is the Commission's opinion that an ALJ may not accept from a lobbyist's principal free lodging, transportation, entertainment, meals, food, or beverages at a function to which he has been invited solely because the ALJ's , **fiancee** (*emphasis added*), is an employee of the lobbyist's principal.¹

¹This determination is also consistent with an opinion previously issued by Secretary of State Jim Miles, Sec. of State Advisory Letter, No. 92-25 (February 20, 1992), which advised that a lobbyist's principal is generally prohibited from providing a gift to a public official or public employee who is married to an employee of the lobbyist's principal.

The Commission notes the recent enactment of, H4070 which became law, the Governor's signature notwithstanding, on January 12, 1995. Section 2-17-90(G) was added which provides:

(G) Notwithstanding any other provisions of this section, a 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 if it is provided to the public official or public employee solely on the basis that the spouse of the public official or public employee is an official or employee of the providing lobbyist's principal and the spouse's receipt of the lodging, transportation, entertainment, food, meals, beverages, or invitation is purely incidental to the spouse's office or employment with the lobbyist's principal and the public official or public employee is receiving it only as the spouse of an official or employee of the providing lobbyist's principal.

From the facts as submitted, it appears that Section 2-17-90(G) provides that the ALJ may attend the company party as the guest of his **spouse**, (*emphasis added*).