

# *State of South Carolina*

## *State Ethics Commission*

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**SEC AO2017-004**

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**SUBJECT:** Question of whether the Ethics Reform Act allows a lobbyist's principal to limit its status as a lobbyist' principal to only specified public offices or public bodies.

**SUMMARY:** A lobbyist's principal has the option of acting as a lobbyist's principal only as to designated public offices or public bodies. If the lobbyist's principal makes this selection, then the gift limitations of Section 2-17-90 only apply to the lobbyist's principal's relationship with those designated entities.

**QUESTION:** Duke Energy has requested an advisory opinion, asking the Commission whether a lobbyist's principal may, if it chooses, act as a lobbyist's principal only as to designated public offices or public bodies. More specifically, Duke Energy wishes for the Commission to clarify its interpretation on the apparent inconsistency between the definition of lobbyist's principal under S.C. Code § 2-17-10(14), which states that "a person is considered a lobbyist's principal only as to the public office or public body to which he has authorized...a lobbyist to engage in lobbying," and S.C. Code § 2-17-90, which imposes broad restrictions against lobbyist's principals without any mention of the possibility of limiting the scope of this status.

**APPLICABLE LAW:**

S.C. Code § 2-17-10 provides in part:

(14) "Lobbyist's principal" 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. A person is considered a lobbyist's principal only as to the public office or public body to which he has authorized, pursuant to this chapter, a lobbyist to engage in lobbying.

Section 2-17-20 provides in part:

(A) Any person who acts as a lobbyist must, within fifteen days of being employed, appointed, or retained as a lobbyist, register with the State Ethics Commission as provided in this section....

(B) The registration must be in a form prescribed by the State Ethics Commission and be limited to and contain:

...

(2) an identification of the public office or public body which the lobbyist will engage in lobbying and the subject matter in which the lobbyist will engage in lobbying, including the name of legislation, covered agency actions, or covered gubernatorial actions, if known; and

...

(4) If a lobbyist fails to identify the public office or public body for which he is authorized to engage in lobbying, as required by item (2) of this subsection, then the lobbyist's principal for whom the lobbyist is authorized to engage in lobbying is deemed a lobbyist's principal as to all public offices or public bodies of the State.

Section 2-17-90 provides in part:

(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:

...

(B)(1) 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 subsection (A)(1), (A)(2), (A)(3), (A)(4), (A)(5), or (A)(7) the value of lodging, transportation, entertainment, food, meals, or beverages exceeding fifty dollars in a day and four hundred dollars in a calendar year per public official, public employee, or cabinet officer.

...

(C) Except as otherwise provided by subsection (E), any public official or any public employee who is required to file a statement of economic interests under Section 8-13-1110 and who accepts lodging, transportation, entertainment, food, meals, or beverages under subsection (A) or (G) must report on his statement of economic interests pursuant to Section 8-13-1120 the value of anything received.

...

(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 or to a public official or a public employee who pays the face value of a ticket to attend a ticketed event sponsored by a lobbyist's principal when the ticketed event is open to the general public.

(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.

Section 8-13-100 provides in part:

(1)(b) "Anything of value" or "thing of value" does not mean:

...

(iii) a personalized plaque or trophy with a value that does not exceed one hundred fifty dollars;

(26) "Public member" means an individual appointed to a noncompensated part-time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services.

#### DISCUSSION:

The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (the "Ethics Reform Act"). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd." Id. At 91. "A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." State v. Sweat, 379 S.C. 367, 377, 665 S.E.2d 645, 650-51 (Ct. App. 2008), aff'd as modified, 386 S.C. 339, 688 S.E.2d 569 (2010). In light of principles of statutory construction, the Commission must determine whether the legislature intended to create a limited purpose lobbyist's principal in Sections 2-17-10(14) and 2-17-20(B)(2).

In the opinion of the Commission, the statutory history of Sections 2-17-10 and 2-17-20 reveals an unmistakable legislative intent to allow lobbyist's principals to designate themselves as such only as to certain public offices and public bodies. The language is very clear and not

susceptible to interpretation. The relevant language in those code sections was not contained in the Ethics Reform Act of 1991, but was added to both statutes pursuant to Act 6 of 1995 (H.B. 4070). Since 1995, the Ethics Reform Act was significantly amended in 2003, 2008, 2011, and 2016, and the relevant language was never removed or altered. Section 2-17-90 was in existence at the time Act 6 of 1995 became law. Although this section was amended pursuant to Act 76 of 2003 (H.B. 3206), it has never contained any language contemplating a limited purpose lobbyist's principal.

Because the Commission believes that a limited purpose lobbyist's principal designation is allowable under the Ethics Reform Act, we turn to the question of how Section 2-17-90 should function for lobbyist's principals who fit into that category. Being mindful of the principle that "[s]tatutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative," Butler v. Unisun Ins., 323 S.C. 402, 475 S.E.2d 758 (1996), we interpret Section 2-17-90 to only apply to gifts of lobbyist's principals for the entities they are registered to lobby. While we believe this interpretation might render Section 2-17-90 as susceptible to abuse, we are guided by the rulings of the South Carolina Supreme Court and decline to substitute our judgment of how the statute should operate.

In light of this ruling, we direct Commission staff to take all necessary and appropriate steps to ensure that the Commission's electronic filing system provides an option for a limited purpose lobbyist's principal designation. Until that is accomplished, any lobbyist's principal that wishes to so limit its purpose may indicate its intention to do so in writing to the Commission. With regard to any limited purpose lobbyist's principal, Commission staff must also provide the entity and its lobbyists written notification to as to the appropriate application of Section 2-17-90 with respect to the entity's lobbying activities.