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### ADVISORY OPINION 2023 - 2

The House Legislative Ethics Committee received a request from a Member for an advisory opinion related to whether his company could provide consultation to the local Housing Authority (Authority)<sup>1</sup>. Specifically, the Member explained that his company and he will provide consulting regarding facility repairs and upgrades, as well as development of new housing for the Authority's clients. A review of the Member company's website indicates that it engages in consulting for construction project management and business development; cultural competency training; and emergency notification.

Pursuant to House Rule 4.16C.(5), the Committee renders the following advisory opinion.

### DISCUSSION

Pursuant to the Ethics, Government Accountability, and Campaign Reform Act of 1991 (The SC Ethics Act), regarding the Rules of Conduct, S.C. Code Ann. Section 8-13-700 provides

No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic

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<sup>1</sup>"The Authority was created with financial aid primarily from the US Department of Housing and Urban Development." <https://www.hafsc.org/>

interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:

- (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
- (2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists.

Section 8-13-700 (A)-(B). (emphasis added).

In addition, Section 8-13-100(11) defines “economic interest” as

- (a) An interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
- (b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Section 8-13-100(11).

In this situation, the Member explained that he or she is using his or her business development background with the Member's company to help the Authority reach the agency's goals and not using his or her position as a Member to gain an economic interest for the business with which the Member is associated or himself or herself. In House Ethics Committee Advisory Opinion 93-16, the question was whether it would be a problem if a member's business applied for funds from state agencies (Governor's office for funds from the US Department of Energy or though DHEC). The Opinion noted Section 8-13-700 but stated “this section would not prohibit actions in which the member was not using his or her position as a House member” for an economic interest and the conduct must be evaluated on a case-by-case basis. (emphasis added). House Ethics Committee Advisory Opinion 93-16. See also, Senate Ethics Committee Advisory Opinion 1996-2 regarding a Senator voting on legislation that affected political subdivisions of the state in general if the Member's business sells goods or provides professional services to any political subdivision of this State. The Opinion provided three examples, two of which required recusal from voting on legislation. However, the Opinion noted “the ethics laws of our state were not designed to prevent Members from conducting their chosen business or profession.” *Id.*, p. 9.

The House Ethics Committee Advisory Opinion further addressed Section 8-13-745 that prohibits a member or his business from contracting with a governmental agency, which is funded with general funds if the member voted on the section of the appropriations bill relating to that government agency in the past year. The Opinion held, since the funds applied for from these state agencies, were not covered in the appropriations bill, as they were funds sent to South Carolina from the federal government, Section 8-13-745 did not apply.

House Ethics Committee Counsel verified with the House Ways and Means staff that there was no funding for the Authority in the last Appropriations bill. The House Ethics Committee further notes that the Authority receives federal funding. Thus, it appears that the Member's company and the Member may provide consulting services to the Authority if the Member is not using his or her position as a Member to gain an economic benefit for the Member's company and the Member. The Member would have the burden of proving that he or she was not using his or her position as a Member to gain an economic interest.

### **CONCLUSION**

In summary, the Member may provide consulting services to the local Housing Authority. The Committee notes that these decisions will be made on a case-by-case basis. However, if the Member should have a conflict of interest with a bill directly related to or a budget proviso funding the local Housing Authority in which the Member or the business with which the Member is associated would earn an economic interest, then the Member would need to comply with Section 8-13-700(B).

**Adopted February 9, 2023.**