ETHICS ADVISORY OPINIONS

(1997-1992)

97-1	Can member lease land to son if son obtains loans to develop the land from State Housing Finance and Development Authority
97-2	Purchase of tickets to athletic events from lobbyist principal
97-3	(1) Legislative caucus acceptance of copy machine from lobbyist; (2) if gift to public official has no market value, can it still be a "thing of value"?
97-4	Use of campaign funds to purchase fruit baskets for constituents
96-1	Soliciting campaign funds with promise of return if member runs unopposed
96-2	Application of Ethics Act to newsletters Members send
96-3	House member's spouse to lobbyist sponsored event
96-4	Maximum amount of loans to campaign fund from family member
96-5	same issue as 97-1
95-1	Invitations from non-lobbyist principal foundation where legislation will be discussed
95-2	Use of campaign funds for Christmas gifts for Blatt custodial staff
95-3	Use of campaign funds for the purchase of handicap parking signs at fire department
95-4	Use of campaign funds to pay for travel expenses of championship teams to the Statehouse
95-5	Use of campaign funds to campaign for a different office; Member's contributions to the Democratic Party from a campaign account
95-6	Reporting requirements on Statement of Economic Interests for the purpose of reforesting farm land
95-7	Use of campaign funds for dinner thanking constituents for support during membership tenure
94-1	House Member's spouse acceptance of an investment opportunity from a person with whom the spouse had no relationship prior to the Member being elected
94-2	Use of campaign funds for event for volunteer firemen where there will be discussion of pending legislation
94-3	Member's playing in a charity basketball game against lobbyist, House staff team, and news media team with lobbyist paying for related expenses
94-4	Member's serving on a state board agency that oversees agency where they work
94-5	Contribution caps at reception given by SC Optometric Association
94-6	Members (also Congressional candidates) receive contributions from lobbyist
94-7	Proper way for two members to have joint Fundraiser with equal split of money
94-8	Ticketed fundraiser where tickets are $10 and used to defray costs
94-9	Presenting award at Miss SC during election year
94-10	Use of campaign funds for donations to a church or to pay constituents utility bills
93-1	Receipt of sculpture from person not directly involved in lobbying
93-2	Use of campaign funds for tickets to Business and Arts Partnership Awards

	sponsored by Joint Committee on Cultural Affairs
93-3	Purchase of tickets to College and University athletic events
93-4	Creation of an appreciation fund to defray debts incurred while in office
93-5	Voting on Appropriations Bill if member has (1) spouse that is Area Director of State agency; or (2) business which deals with state and local agencies
93-6	Use of campaign funds for framing of Resolution presented
93-7	SCAMPS hold a dinner for only those members representing electric cities in SC
93-8	Appraiser introduce and vote on bill that affects appraisal industry if there is no gain or advantage
93-9	Supplies used for office equipment (under 92-51) being purchased using campaign funds to offset the cost
93-10	Acceptance from lobbyist principal (1) $24.95 book; (2) check for $100
93-11	Member in real estate business (1) sell real estate to judges and lobbyist, (2) provide financing for the sales
93-12	Member who holds ABC license and poker machines vote on bill related to those subjects
93-13	Lobbyist principal give contributions to ALEC when portion of that will be used to pay expenses for Legislators who attend
93-14	Insurance Agent/Broker Member participate in decisions with LCI (and property and casualty subcommittee)
93-15	#20 of Statement of Economic Interests Form refer to agencies that contract with HOR or with any agency
93-16	Problems of a Member applying for funds from state agencies
93-17	When do new filing requirements go into effect
93-18	Member serving on BEST Policy Committee
93-19	Federal Retiree Member take actions to help resolve the federal tax reimbursement issue
93-20	Reimbursement for accommodations and meals when speaking before the SC Association of Premium Companies Conference
93-21	Members attending ALEC conference have expenses off-set by the ALEC scholarship fund
93-22	Licensed Insurance Member consulting on insurance matters for state trade association which employs lobbyist in SC
93-23	Lawyer member represents client before (1) legal department of DOT (2) suit against DOT
93-24	Acceptance of ticket to National Black Caucus banquet from Congressman
93-25	Reimbursement for a trip that was in some way connected with office activities
93-26	Possible conflicts when (1) Member is employed by State University (2) Candidate is employed by State University (3) Member/Candidate and independent consultant to state agencies
93-27	**NOTE: HEC ADVISORY OPINION 2021-4 OVERRULED PART ONE.** Member either (1) is employed by a State supported university (2) serves as economic development consultant for entity such as an electric co-op or subdivision

	of govt
93-28	Use of Campaign Funds for ticket for Caucus Fundraiser or be given away
93-29	(1) Going on a trip with lobbyist (2) socializing with lobbyist with no value given (3) meaning of 2-17-80(c) in general
93-30	Members of House Freshman Caucus breakfast sponsored by college affiliated group
93-31	Member writing a letter of recommendation for student trying to get into University
92-1	Member raising funds for County Health Department (as officer of National Association of Real Estate Brokers)
92-2	Acceptance of gift from organization not involved in lobbying, no matter the cost
92-3	Permissive use of campaign funds under New Ethics Act (purchase of flag for school/local govt/non-profit, membership dues/contributions to various clubs/service organization, expenditure of office items
92-4	Member seeking employment with state agency
92-5	Use of campaign funds if Member decides to run for Senate
92-6	Democratic Presidential Candidate accept invitation for lunch in Blatt Building
92-7	Acceptance of jacket from Washington Redskins as being honored by community
92-8	Lobbyist principals contribute to upcoming campaign
92-9	Member attending an out of state ALEC meeting
92-10	Standing committee acceptance of invitation from lobbyist as only authorized agent of lobbyist principal in SC
92-11	Potential Conflicts of Interest and Voting and Appropriations Bills
92-12	Members acceptance of plane ticket from lobbyist principal for winning golf tournament sponsored by lobbyist principal national organization
92-13	Educational Seminars for Members
92-14	(1) Conflicts in General Appropriations Bill funding schools where Member's firm represents the school district (2) Members firm represents the Procurement Review Board
92-15	
92-16	
92-17	Voting on House portion of Appropriations Bill
92-18	Member insurance agent voting on insurance act
92-19	(1) Pharmacist Member voting on Appropriations bill regarding pharmacist license fees (2) Medicaid Recipient Member voting on Appropriations bill regarding raising Medicaid funds (3) Provisions that specifically affect the Medicaid funding of pharmacist
92-20	Lobbyist Principal donates gifts of less than $25 as prizes for charity
92-21	Reimbursement of Member by ALEC for out of pocket expenses incurred while attending ALEC meeting
92-22	Clarification of 92-21
92-23	Endorsement letters for candidates to a position elected by General Assembly
92-24	Fundraising by SC Black Caucus and lobbyist principal

92-25	(1) Reporting on disclosure forms invitations approved by House Invitations Committee (2) Reporting those on W-2
92-26	Legislators serving on Medical University's Board of Visitors
92-27	(1) Corporation which member is stockholder selling goods to state and local govt entities and voting in Appropriations Bill (2) Correct procedure for abstention noted in House Journal
92-28	Conflict of Interest for lawyers, especially tort lawyers, for voting on no-fault insurance bill
92-29	Payment for accommodations and food provided by group whose function Member is a speaker
92-30	Member serving on Policy Board for the SC Center for the Advancement of Teaching and School Leadership
92-31	Potential Ethics violations for events sponsored by Redevelopment Authority
92-32	Invitation to legislators for dinner on Campus
92-33	Member law firm represents state agencies in state tort claims actions recusal during Appropriations Bill
92-34	Member employed by school district voting on County School Board Legislation
92-35	Member lawyer representing clients before the Board of Probation, Parole and Pardon Services and the Tax Commission
92-36	Acceptance of honorarium for speaking engagement from organization which Member has been active in for many years
92-37	Insurance Agent Member voting on insurance legislation
92-38	Bank Employee Member listing lobbyist or lobbyist principals who do business with bank on Economic Interests sheet
92-39	Attorney or Insurance Agent Member voting on No Fault Insurance Bill
92-40	Use of campaign funds to (1) pay dues to ALEC (2) politically oriented group like College Republicans
92-41	Merchant Member contributing to Richland County Troopers Association for their Christmas Party
92-42	Where Member reports travel expenses reimbursed by lobbyist principal who hosted a meeting Member participated in
92-43	Use of campaign funds to reimburse for mileage incurred while campaigning
92-44	Use of campaign funds to high school students raising money for school trip
92-45	Invitation to SC Association of Counties Conference where food, lodging and registration is paid for by the county
92-46	Use of campaign funds for contributions to political party caucuses or high school fund raising project
92-47	State Loan (Jobs-Economic Development Authority) received by Company which Member has a small interest
92-48	Member receipt of gift from organization that does not retain a lobbyist
92-49	Member attendance at a function put on by a group that is not a lobbyist or lobbyist principal
92-50	Use of campaign funds for advertisements in publications printed by non-profit

	organizations
92-51	Purchase of a fax machine with campaign funds to be used at Member's house which is used as constituent office to accommodate constituent situations that require immediate attention

Opinion 97-1

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Does the Ethics Act prohibit a member of the House from leasing land to his son if the son obtains loans to develop the land from the State Housing Finance and Development Authority?

The Ethics Act allows a member to lease land to his son even if the son obtains loans from the State Housing Finance and Development Authority. However, this type of lease agreement is subject to the following restrictions: (1) pursuant to § 8-13-700(B) of the S.C. Code, the legislator has not voted on or discussed a particular piece of legislation that will benefit his son to a greater degree than it will benefit others who obtain loans from the Authority and (2) the member is not associated with his son in a partnership, business, company, or a corporation where his interest is greater than five percent. § 8-13-745(C). In addition, the member is subject to the strict reporting requirements of the Ethics Act. Section 1120(A) requires the member to disclose the amount of any income or loan received from the government by a member of the filer's immediate family.

The Committee strongly suggests that a member refrain from voting on a budget line, in this case the budget line pertaining to the Authority, that might create any <u>appearance</u> of impropriety.

Opinion 97-2

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: May a House member purchase tickets to athletic events from a lobbyist principal?

Yes. A member may purchase tickets to athletic events from a lobbyist principal. Section 2-17-90(A)(1) prohibits a lobbyist principal from providing members with longing, transportation, entertainment, food, meals, beverages, or invitations to functions paid for by the lobbyist principal unless the entire membership of the House, the Senate, or the General Assembly is invited, or one of the committees, subcommittees, joint committees, legislative caucuses, or county legislative delegations of the General Assembly of which the legislator is a member is invited. Subsection (B) of this section states that the value of such a function cannot exceed $25 a day and $200 in a calendar year per public official. However, subsection (F) allows an exception where the member "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." In this case, the member paid more than the face value of the ticket and the event was open to the general public. Therefore, the purchase of tickets was appropriate.

Opinion 97-3

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: (1) May a legislative caucus accept a copy machine from a lobbyist's principal? (2) If a gift to a public official has no market value, can it nevertheless be a "thing of value" subject to House Ethics rules?

(1) Yes. A legislative caucus may accept a copy machine from a lobbyist's principal but not from a lobbyist. Section 2-17-90(A) of the South Carolina Code prohibits a public official from accepting or soliciting lodging, transportation, entertainment, food, meals, beverages and invitations to functions from lobbyist's principals. However, it does not prohibit the receipt of a "thing of value," such as a copy machine, from lobbyist's principals to public officials. See House Ethics Opinion 92-90. Because the Ethics Act does not expressly prohibit gifts to individual public officials, the suggested inference is that the Act does not prohibit gifts to a caucus or collection of General Assembly members. By contract, all gifts to members of the General Assembly from lobbyists are prohibited under § 2-17-80(B) of the S.C. Code.

(2) Even if a gift to a public official has no market value, it may still be a "thing of value" subject to House Ethics rules. Any "gift" is a thing of value under § 2-17-10(1)(a)(iii) of the S.C. Code. Consequently, a copy machine determined to have no trade-in value by Columbia Business Equipment is nonetheless subject to House Ethics rules as a thing of value. As a result, the caucus should disclose receipt of the copy machine.

Finally, the Committee warns members to use discretion concerning whether the solicitation of a thing of value would be proper as a political or practical matter.

Opinion 97-4

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: May a House member use campaign funds to purchase fruit baskets for constituents?

A House member may provide fruit baskets to constituents (1) as refreshments at a meeting with constituents where legislation affecting their interests is discussed, or (2) as long as the fruit baskets advertise the member's name. Pursuant to § 8-13-1348 of the South Carolina Code, no candidate may use campaign funds to "defray personal expenses which are unrelated to the campaign or the office[.]" The "Laundry List" Opinion holds that personal gifts or flowers for constituents are not related to the campaign or office and are thus prohibited. In the instant case, the member could not use campaign funds to provide fruit baskets to a senior citizens' group for a Christmas party without advertising his name on the basket.

Opinion 96-1

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: May a House member solicit campaign contributions with the condition that the member would return the campaign contributions if the member was unopposed in the election?

The Ethics Act does not specifically prohibit or allow a House member to raise funds conditioned upon remaining unopposed in an election. However, if a member conditions acceptance of a contribution upon not facing opposition in an upcoming election, the Ethics Act may consider such a contribution a "loan." For the Ethics Act to consider the contribution a "loan," the following elements must be present: (1) a transfer occurs; (2) the transfer involves money, property, guarantee or anything of value; (3) in exchange for an obligation, conditional or not, to repay in whole or in part. See § 8-13-1300(22) of the S.C. Code.

The necessary elements are present in this situation. First, contributing money to the candidate constitutes a transfer. The second element is present because money is involved. The third element is present because the situation involves an obligation to repay based upon a condition. If another candidate does not run against the legislator, then he has an obligation to return the contributions. The condition is that the legislator will not face opposition. Since the Ethics Act considers those contributions "loans," then the rigid reporting requirements apply.

Moreover, a House member may return contributions after an election if receipt of those contributions is not conditioned upon remaining unopposed in a future election. See § 8-13-1370(A)(5) of the S.C. Code.

Opinion 96-2

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: How does the Ethics Act apply to newsletters House members issue?

The Ethics Act allows for House members to send a newsletter to constituents. Section 8-13-1346(B) allows for members to prepare on state paper and on state time a newsletter "reporting [the] activities of the body of which a public official is a member." An issue and opinion survey on an issue currently before the House is a "newsletter."

However, a House member shall not use government materials in an election campaign. Thus, the member should print a disclaimer on a campaign-related newsletter that appears to be printed on state paper. For example, if the member uses House of Representatives letterhead on a campaign-related newsletter, the member should print a disclaimer on that newsletter indicating that (1) the paper is not "state paper" and (2) that the member paid for the newsletter with either personal funds or campaign funds.

Opinion 96-3

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

May a House member's spouse accompany a House member to a lobbyist's principal sponsored function at the expense of the lobbyist principal?

Yes. The Ethics Act does not specifically prohibit the practice. Section 2-17-90(B) of the S.C. Code does not specifically prohibit a lobbyist's principal from providing, within the applicable limits, the spouse of a legislator with lodging, transportation, entertainment, food, meals, or beverages. The restrictive language of the statute applies only to members and not to spouses.

Opinion 96-4

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: What is the maximum amount a House member may accept in loans to the campaign from a family member?

Loans to campaigns are subject to the contribution limitations of the Ethics Act. Thus, a House member may accept a loan no greater than $1,000 unless: (1) the loan comes from a "commercial lending institution;" (2) the loan is made "in the regular course of business;" (3) the loan is made "on the same terms ordinarily available to members of the public;" or (4) if the loan is "secured or guaranteed upon which collection is not made." S.C. Code Ann. § 8-13-1326 (Law. Co-op. 1976, as amended). Moreover, § 8-13-1326(B) precludes a candidate or candidate's family member from being repaid more than $10,000 in the aggregate after an election.

Opinion 96-5

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Does the Ethics Act prohibit a member of the House from leasing land to his son if the son obtains loans to develop the land from the State Housing, Finance, and Development Authority.

Section 8-13-700(B) and 8-13-745(C) of the Ethics Act will prohibit a member from leasing land to his son for a 99-year term if the legislator voted on or discussed a particular piece of legislation that benefitted the son to a greater degree than it benefitted others who obtain loans from the Authority. A member may enter into the lease if the member is not associated with his son in partnership, or a business, company, or a corporation where his interest is greater than five percent. Section 8-13-1120 of the Ethics Act also requires a member to report the existence of the lease.

Opinion 95-1

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question(s):

1. Does the Ethics Act allow a legislator to accept an invitation from a foundation that is not a lobbyist's principal, to a conference sponsored by the foundation where legislative issues will be discussed? To what extent does a legislator have to report the expenses incurred while attending the conference and what expenses may the sponsoring foundation provide for?
2. May the sponsoring foundation, which is not a lobbyist's principal, pay for the legislator's wife to attend the conference?

Answer:

1. According to Advisory Opinion 92-9, if a forum is for a legitimate legislative purpose, there is no prohibition against the legislator accepting the invitation. Advisory Opinion 92-45, pursuant to § 8-13-715 of the S. C. Code outlines the reporting requirements applicable to the present situation. If the legislator receives anything of value worth $25.00 or more in a day or $200.00 or more in a year, then the legislator must file a statement of economic interests pursuant to § 8-13-1110. Section 8-13-715 allows for the payment and reimbursement of actual and reasonable expenses incurred while attending an out of state speaking engagement, subject to the Speaker's approval. Thus, in the present situation, the legislator may attend a conference paid for by a foundation that is not a lobbyist's principal as long as the conference is for a legitimate legislative purpose; however, the legislator must file a statement of economic interests if the value received will exceed $25.00 in a day or $200.00 in a year.

2. The Ethics Act does not specifically address whether it is permissible for a legislator's spouse to attend a conference with the legislator where legislative issues will be discussed. Section 8-13-1348 allows for a legislator to use campaign funds to pay the reasonable and necessary travel and food expenses for immediate family when in connection with a political event. Because the Ethics Act allows a legislator to use campaign funds to pay for a spouse, it seems reasonable that the Act will further allow a foundation that is not a lobbyist's principal to pay for the spouse's expenses.

Opinion 95-2

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: May a legislator use campaign funds to contribute to a fund to purchase Christmas gifts for custodians in the Blatt Building?

Answer: No. Custodial workers are paid by the State and members are not individually required or expected to compensate them. Furthermore, members have not traditionally been expected to make such donations. Thus, it would be improper to make such an expenditure from your campaign account.

Opinion 95-3

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: May a legislator use campaign funds to purchase handicap parking signs for a fire department?

Answer: Yes. The Ethics Committee in Advisory Opinion 92-3 permitted legislators to purchase flags for schools because it was a traditional practice that was expected of House members. Additionally, section 8-13-1348 of the S.C. Code, as amended, requires expenditures made from campaign accounts to be campaign or office related. Buying a sign for a fire station benefits a large segment of a legislator's community and may be seen as a legitimate office related expense. Although the purchase of these signs is not a traditional practice, it is hard to distinguish the resulting benefit from that of purchasing flags for schools. Just as the purchasing of flags for school's benefits segments of the community that the General Assembly has traditionally sought to provide for, so too does the purchasing of handicap signs for fire stations.

Opinion 95-7

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can a legislator use campaign funds to pay for a reception to thank constituents for their support throughout his tenure as a member of the South Carolina House of Representatives?

Answer: The dinner which the legislator will be hosting is for the benefit of his constituents and will bestow no personal benefit to the legislator. Advisory Opinion 94-2 allows members to use their campaign funds to pay for dinners and receptions for constituents that serve a legitimate legislative purpose or serve an ordinary function of office. Hosting a reception for constituents, who made the donations to the campaign in the first place appears to be an ordinary function of the legislator's office and does not violate the spirit of language of the Ethics Act.

Opinion 94-2

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can a member use a campaign account to sponsor an event for volunteer firemen and pay for food at such an event where the purpose of the event is to discuss pending legislation concerning firemen?

Section 8-13-1348(A) requires that expenditures from campaign funds be related to the member's campaign or office (Advisory Opinion 92-44 applies to this section). "Each expenditure should be judged upon whether it is an ordinary office or campaign related expense or instead a personal expense not connected to the ordinary duties of office." Advisory Opinion #92-44. Contributions to a civic function are not related to the ordinary function of the office holder. The event described in the request letter is one where the member discussed pending legislation and some interests of the persons which will be affected by it. This is clearly related to a member's office and is a permissible office related expenditure under Section 8-13-1348.

Opinion 94-3

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can House members play a charity basketball game against a lobbyist's team, House staff team, or news media team and have the lobbyist pay for any related expenses?

The Ethics Act does not prevent the media or House staff from participating in such an event. Under Section 8-13-710(B), however, the members must report anything of value received from these groups.

Concerning lobbyists, the Ethics Act does not prohibit members from socializing with lobbyists, but S.C. Code Ann. § 2-17-80 does prohibit lobbyists from giving or facilitating the transfer of "anything of value" to members. Items of pecuniary or compensatory worth to a person are considered within the meaning of "anything of value," and lobbyists are specifically prohibited from transferring transportation, beverages, or any other thing of value. See S.C. Code Ann. § 8-13-100(1). The lobbyists can play, but they could neither drive the members to the game nor provide beverages for the members. In addition, the lobbyists would be prohibited from funding the endeavor or renting the facility since they would be doing so, in part, on behalf of the members. There is an exception in Section 2-17-80(D) which would allow transfers of items of value if given in the "rendering of emergency assistance given gratuitously and in good faith."

Opinion 94-4

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can a House member serve on the state board or agency that oversees the county agency for which he/she works?

Section 8-13-735 states that "no person who serves at the same time on: the governing body of a state, county, municipal, or political subdivision board or commission, and ... serves in a position which is subject to the control of that board or commission may make or participate in making a decision which affects his economic interests." If the action would confer an economic interest on the person, therefore, he/she would be required to refrain from taking any action regarding the matter. Section 8-13-100(11) defines "economic interest" as one "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 ... may gain an economic benefit of fifty dollars or more."

Section 8-13-730 states that "no person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated." "Business" is defined in Code Section 8-13-100(3) as "a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual." A county agency does not, however, qualify as a business under Section 8-13-730 because the definition specifically relates to private, non-governmental entities.

There are also other sections that a member in such a position should also be aware of. Section 8-13-700 also prohibits members from using their office to gain an "economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Section 8-13-705 prohibits a member from receiving or soliciting "anything of value" to influence the discharge of his official responsibility.

Opinion 94-5

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: What are the contribution caps for items given to House members at a reception hosted by the South Carolina Optometric Association?

The first step is to determine the lobbying status of the group hosting the event. According to the State Ethics Commission, the South Carolina Optometric Association is a registered lobbyist's principal and is, therefore, governed by Section 2-17-90. There are two requirements under this section. First, the entire House membership or other recognized group must be invited. Secondly, "no lobbyist's principal may offer, solicit, facilitate, or provide to a public official lodging, transportation, entertainment, food, meals, or beverages, or an invitation to a function paid for by a lobbyist principal unless one of the exceptions in 2-17-90 is met. When an entity sponsors an event such as a reception, the host can total the costs of having the event and divide that total by the number of guests invited. In your request letter, you stated that the association plans to spend $10,000 on the function and invite approximately 400 people. You could divide the cost of the event by the number of guests invited. This is a fair measure of computing the value of the items offered equally to each guest. In this scenario, the cost per person would be $25. Since this cost does not exceed the $25 mark found in the statute, it would be permissible.

Opinion 94-6

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: May House members, who are also congressional candidates, receive contributions from lobbyists?

Section 2-17-80 prohibits members from accepting contributions from lobbyists. The term "contribution," as applied in Section 2-17-80, is defined in Section 8-13-1300(7) as being "a gift, subscription, loan, guarantee upon which collection is made to a candidate ... or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate[.]" The term candidate is defined as not including "a candidate within the meaning of Section 431(b) of the Federal Campaign Act of 1976." A congressional candidate fits this exemption, and a contribution to a congressional candidate is not a contribution that is prohibited under Section 2-17-80. Therefore, a congressional candidate who is also a member of the House can accept contributions only for his congressional campaign from lobbyists.

Opinion 94-7

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: What is the proper way in which to have a joint fundraiser for two Representatives where tickets will be sold and the money raised is to be combined and divided between the two?

Although joint fundraisers are not prohibited by the Ethics Act, there are no guiding provisions to govern how one is to be carried out. The proceeds may not be placed into one person's account for that person to write a check to the other for his share because Section 8-13-1340(A) prohibits a candidate from making a contribution to another candidate. It is also impermissible for two candidates to establish a joint account because Section 8-13-1322 prohibits a candidate from having "more than one campaign checking account and one campaign savings account for each office sought."

Section 8-13-1312 does allow an agent to collect money on behalf of a candidate and hold them for a short period. The establishment of an escrow account under the control of an agent who would collect and account for the monies from the fundraiser avoids the potential ethical pitfalls relating to a joint fundraiser. The escrow account would not require a contribution from one candidate's campaign account to another candidate's, and the escrow account would not be considered a regular campaign savings or checking account. Neither candidate would have control over the funds, as in a regular campaign account, until they are divided by the agent and transferred to the individual campaign accounts.

Section 8-13-1312 provides deadline to consider and observe in dealing with receiving contributions through an agent:

> all contributions received by the candidate ... directly or indirectly, must be deposited in the campaign account by the candidate ... within ten days after receipt. All contributions received by an agent of a candidate ... must be forwarded to the candidate ... not later than five days after receipt. A contribution must not be deposited until the candidate ... receives information regarding the name and address of the contributor. If the name and address cannot be determined within ten days after receipt, the contribution must be remitted to the Children's Trust Fund.

The reason that the names and addresses are called for is to facilitate and comply with reporting and record keeping requirements of Section 8-13-1302 and 8-13-1360. The names and addresses of the ticket purchasers, as well as the amount of their purchase, must be kept since each purchaser is making a contribution to each candidate (one half of the purchase price to one candidate and one half to the other).

Since the contributions are to come from selling of tickets, Section 8-13-1324 allows for anonymous contributions to be accepted if the contribution is in the form of a ticket to an event "where food or beverages are served or where political merchandise is distributed." The ticket cost may not exceed $25, and the proceeds from the tickets must be used to defray at least some of the costs of the function. If the tickets are solely political contributions and are not used to

defray the costs of the fundraiser, then anonymous contributions would not be allowed, and each candidate must keep the name and address of each ticket purchaser since half of the price of each ticket is a contribution to each candidate.

Aside from the escrow account, another way to have the ticketed joint fundraiser would be for the candidates to only accept cash in return for the tickets and then divide the proceeds up between themselves after the event. As discussed above in reference to anonymous contributions, the tickets for the event could not exceed $25 and must be used to defray the costs of the fundraiser.

Therefore, a joint fundraiser can be held without violating the Ethics Act if conducted in accordance with this opinion.

Opinion 94-8

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: This is an inquiry into the proper handling of the proceeds of a ticketed fundraiser where the cost of a ticket is $10, and the price of each ticket is used to defray the costs of the fundraiser.

Section 8-13-1312 allows a candidate to have only one campaign checking and one campaign savings account.

Since some of the money raised will go into the campaign account, the expenses of the dinner are patently campaign related and should be paid from the campaign account to comply with Section 8-13-1312 (except as provided under Section 8-13-1348(c), which provides "[e]xpenses paid on behalf of a candidate or committee must be drawn from the campaign account)." See also Advisory Opinion 92-46.

Normally the name and address of anyone contributing to a campaign needs to be maintained for record keeping purposes. This type of event, however, presents an exception to that general rule. The cost of the tickets will be $10, and the proceeds from sales will be used to defray the costs of the meals. Therefore, one does not have to report the name and address of the purchases of those tickets. Section 8-13-1324. If the cost of the tickets were not used to defray the costs of the dinner, then the name and address of every ticket purchases would have to be maintained since is would not fall into the exception in Section 8-13-1324. If, however, someone at the dinner wishes to make a contribution to your campaign, then, unlike the ticket exception noted above, the normal practice of taking the name and address of each contributor would apply.

All money from the ticket sales should be placed into the campaign account and references as receipts on the Campaign Disclosure Form. All expenses should be paid from the campaign account, and the names and addresses of the recipients of these expenditures must be placed on the Form on Schedule "B."

Opinion 94-9

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Would a member's appearance at the Miss South Carolina Pageant to present an award be proper during an election year?

Section 8-13-100(1) governs the transfer or gift of "anything of value" and Section 8-13-710 requires a member to report anything of value over $25 if the donor is only giving the item of value because of the member's position. As long as the television appearance is solely for the purpose of the pageant and is not being used as a campaign message, then no item of value is being given. The appearance would not normally be an item of "pecuniary or compensatory worth" as stated in Section 8-13-100(1)(xiv). However, if the televised air time was used for a campaign message or if the pageant sponsors or WSPA were using the pageant to make a gift of air time, then it would be an in-kind contribution and considered an item of value.

Opinion 94-10

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Is it proper for a member to use campaign funds to make contributions to churches or to pay the utility bills of constituents?

Section 8-13-1348 of the South Carolina Code of Laws governs the use of campaign funds. The ambiguity of this provision has led to numerous advisory opinion requests and, in the past, this Committee has undertaken a "case-by-case" approach, determining whether an expense is personal and unrelated to the campaign or office. This Committee has taken a very strict approach, finding that any expenses not related to the campaign or office held are "personal," and thus prohibited. This Committee has uniformly viewed any expenditures made that do not enhance a candidate's campaign efforts and that are not made in carrying out the duties of House member as expenditures that would have been made out of personal funds had that person not been a candidate or member. See e.g., House Legis. Ethics Comm. Adv. Ops. 92-3; 92-40; and 92-44.

This case-by-case approach is consistent with the design of the Ethics Act--a design allowing the respective Ethics Committees of each body of the General Assembly to interpret statutory provisions, provide guidance and/or directives to its members and candidates, and then allow those members and candidates time to comply without being subject to sanctions based on violations of the Act. Although members and candidates are protected from being automatically sanctioned as the Ethics Committee makes these determinations on a case-by-case basis, members and candidates are still being attacked by political opponents and/or the press for violating the Ethics Act based on campaign expenditures that may or may not be permissible.

In light of this situation, the Committee has determined that it is necessary to establish a new standard to be used by candidates and members in evaluating the propriety of campaign expenditures. The Committee advises you to take remedial measures by reimbursing your campaign account for any of the expenditures at issue here. You should also refrain from making any expenditures from campaign funds in the future which, in your view, are not clearly expenses traditionally incurred in House campaigns across the State nor clearly traditionally incurred in relation to the office held.[1] If there is any question in your mind about whether the expenditure fits into one of these categories, the expenditure should not be made until after this committee approves it in an advisory opinion finding that it is indeed campaign or office related.

[1] This standard does not require consultation with candidates from every House district, but a candidate would be wise to consult a diverse group of fellow candidates-- e.g., in both rural and urban areas and from every region of the State.

Opinion 93-1

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Is it permissible for a member to receive a sculpture and other gifts from an entity not directly involved in lobbying?

There are no restrictions to a public official accepting a gift from a non-lobbying entity, no matter the value of the gift. Therefore, there are no conflicts with the act as far as the validity of such a gift, but the gifts must be reported on the Statement of Economic Interests form. According to Section 8-13-710(B), a gift must be reported if it is given because of the member's elected position and over $25 per day or $200 per year in the aggregate.

Opinion 93-2

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can members, using campaign funds, purchase tickets to the annual Business and the Arts Partnership Awards dinner which is sponsored by the Joint Committee on Cultural Affairs?

Section 8-13-1348(B) provides for the payment of some reasonable and necessary expenses for immediate family members in connection with a political event. The annual Business and the Arts Partnership Awards dinner is sponsored by the Joint Legislative Committee on Cultural Affairs and is, therefore, a political function. The same result could be accomplished upon final disbursement of the campaign account as permitted in Section 8-13-1370(A). If an account has already undergone final disbursement, however, then the account will be re-activated if such a purchase is made. The purchase must be reported on the next Campaign Disclosure Form.

Opinion 93-3

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Is it permissible for House members to purchase from State Colleges and Universities tickets to athletic events involving those institutions?

The general rule of thumb in analyzing ethics questions under the 1991 Ethics Act is to determine if a transfer of an item of economic value is involved in which one party realizes an unfair economic benefit. It is clear that House members, as public officials, must not use their office to obtain an economic interest, nor shall they accept gifts given with the intent to influence the discharge of the public official's duties. S.C. Code §§ 8-13-700 and 8-13-705. It is equally clear that educational institutions which employ a registered lobbyist must abide by the restrictions on lobbyist's principals extending invitations or things of value to public officials under Section 2-17-90, which establishes caps and reporting requirements for gifts.

This question, however, does not deal with the *gratis* offering of tickets or anything else of value to public officials, but rather the sale of those tickets at face value. There is no economic gain realized by a public official when he or she purchases something at the fair market value of the item. The price printed by the university on the face of the ticket is the obvious value of the ticket. Under Section 16-17-710 of the S.C. Code, the sale of the tickets for more than one dollar over the face value is prohibited. Regardless of the lack of availability of tickets because of the size of the arena, public demand, prestige of the event, etc., the value of the ticket is constant. As long as the House member pays from his own funds the purchase price for the ticket, the transaction is legitimate and the public official receives no added economic benefit.

Therefore, the practice of an educational institution of this State offering at face value tickets to sporting events violates no provision of State law or House rule, no matter whether the entity is a lobbyist's principal or not. The entities are under no obligation to offer for sale the tickets directly to public officials, but neither are they forbidden from that practice.

Opinion 93-4

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Could a person create an appreciation fund, outside of any campaign account, in order to defray debts incurred while a candidate for office?

Section 8-13-1318 of the Ethics Act states that, if a candidate incurs a debt in a campaign, the candidate may accept contributions to retire the debt as long as they are within the contribution limits applicable to the last election in which the candidate sought the elective office for which the debt was incurred, and such debts must be reported.

By reference to this established provision for the repayment of debts, the Ethics Act would preclude establishing an appreciation fund account to repay personal loans to your former campaign. These monies were spent on the campaign and were listed as such on Campaign Disclosure forms. Any repayment of the monies spent through the campaign account should be channeled back through the account. Therefore, the correct method for obtaining repayment of personal loans for campaign purposes is by utilizing the campaign account, and these funds must be reported every quarter on the Campaign Disclosure form.

Opinion 93-5

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Is a member prohibited from voting on any section of the Appropriations Bill if the member has (1) a spouse who holds a position as an Area Director of a State agency and/or (2) a business which deals with state and local agencies?

Concerning the first question, a spouse's employment at a state agency, Section 8-13-700(8) controls. It states that:

> [n]o public official ... may make, participate in making, or in any way attempt to influence a governmental decision in which he, a member of his immediate family ... has an economic interest. A public official ... who, in the discharge of his official responsibilities, is required to take action or make a decision which affects an economic interest of himself, a member of his immediate family ... 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 ... a member of the General Assembly, he shall deliver a copy of the statement to the [Speaker].

The Speaker will then have the statement printed in the Journal and require the member to be excused from votes, deliberations, and other actions concerning the conflict. Therefore, the member would not be able to vote on the section of the appropriations covering the State agency and must follow the abstention procedure outlined in Section 8-13-700(B)(2).

In reference to the second inquiry, the dealings between the member's business and governmental agencies and entities, Section 8-13-745(C) controls. This section states that:

> no member of the General Assembly ... or a business, company, corporation, or partnership where his interest is greater than five percent may enter into any contract for goods or services with an agency, a commission, board, department, or other entity funded with general funds or other funds if the member has voted on the section of that year's appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote.

Although this section does not preclude the member from voting on sections of the appropriations bill covering the entities buying from the member's business, it would preclude the member from contracting with them in the coming year if he or she voted on sections of the appropriations bill concerning the businesses which contract with the governmental entity. Members are allowed to abstain from voting on such sections if they wish to contract with the entities covered in Section 8-13-745©. In order to do so, they must follow the procedure set forth in Section 8-13-700(B)(1).

Opinion 93-6

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Is it permissible for a member to use campaign funds to frame and present a Resolution to a constituent?

The applicable provision relating to expenditures from active campaign is Section 8-13-1348. The two requirements placed on such expenditures are that the expenditures must be either office or campaign related. The Committee in the past has held that it was permissible for a member to purchase a Statehouse flag for constituents since it could be seen as a "service generally expected of a House member" and an opportunity incidental and unique to membership in the House. (Ethics Opinion #92-3)

In the same context, the passage of a Resolution is a unique function of a legislator in his official capacity, and the framing and presentation of such an item could be seen as a service generally expected of a member and an opportunity unique to a member in his official capacity. Therefore, the framing and presentation of a Resolution for a constituent by the use of campaign funds is permissible. It is an office related expense similar to the member buying a Statehouse flag for a constituent in his official capacity.

Opinion 93-7

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Does Section 2-17-90 permit the South Carolina Association of Municipal Power Systems (SCAMPS) to hold a dinner only for the members representing the twenty-one electric cities in South Carolina?

Section 2-17-90 is the applicable section covering this type of contact between lobbyist's principals and House members. The section, in relevant part, reads as follows:

> (A) No lobbyist's principal may offer, solicit, facilitate, or provide to a public official ... transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal, except for: (1) as to members of the General Assembly, ... if the Entire membership of the House ... or General Assembly is invited, or one of the committees, subcommittees, joint committees, legislative caucuses, or county legislative delegations ... is invited.

This section would clearly prohibit an invitation or function extended to specific members without including the membership of one of the above mentioned groups to which the specific members belong. An invitation extended to or a function provided for one of these specific city's representatives would have to include an invitation for the members of the whole county delegation or other Section 2-17-90(A)(1) group.

Section 2-17-90(F) does provide for an alternative situation. This section would allow the invitation to such a function to be extended only to those representatives for the specific cities without inviting one of the above mentioned groups, however, the individual members would have to pay for their own transportation, meals, entertainment, and beverages.

Opinion 93-8

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Does the Ethics Act prohibit a member, who is a licensed appraiser, from introducing and voting on a bill that affects the appraisal industry if the member gains no advantage over other appraisers?

Section 8-13-700(B) prohibits a House member from making, participating in making, or in any way attempting to use his office to influence a governmental decision in which he has an economic interest. "Economic interest," as defined in Section 8-13-100(11), does not prohibit a House member from participating in, voting on, or influencing an official decision if the only economic interest that may accrue to the member accrues to him as a member of a profession, occupation, or larger class to no greater extent than the benefit would accrue to other members of these groups. Therefore, if the only economic interest that would affect the member affects him to no greater extent than all other appraisers, then the member may be involved in the legislation.

There may be specific provisions or amendments which create a conflict because of a specialized appraisal authorization or other aspect not typical of all appraisers, but more information would be necessary to render an advisory opinion on those specific issues.

Opinion 93-9

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: How can supplies for office equipment, bought or rented under compliance with Advisory Opinion #92-51, be purchased using campaign funds to offset the cost?

The procedure set forth in Opinion 92-51 states that a member could either lease office equipment using campaign funds or purchase it using personal funds and reimburse himself with campaign funds on a charge-per-use basis. These are only allowed as long as the equipment is used solely for campaign or office related services.

Since most supplies cannot be leased and will be expended in the use of the equipment, they are best treated under the charge-per-use procedure. The member should keep a record of each office or campaign related use. Then, when it is time to purchase supplies, the member should purchase the supplies (for example - toner for a copier) with personal funds and off-set his cost with campaign funds proportionate to the amount of campaign or office uses. In addition, the costs for the supplies cannot exceed their fair market value as required in Section 8-13-1348(D), and these expenditures must be reported on the member's Campaign Disclosure Form.

Opinion 93-10

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Is it permissible for a member to accept, from lobbyist's principals, (1) a book valued at $24.95 and (2) a check for $100.00?

Section 2-17-90 regulates the offering of lodging, transportation, entertainment, food, meals, beverages, or invitations between lobbyist's principals and members. There is also a cap of $25 per day and 200 per year on these items. This section, however, contains no language prohibiting the offering of "other things of value" as does the provision governing lobbyists. Therefore, if the book were classified as a "thing of value" it would be permissible to accept, and if it were "entertainment," it would then be permissible to accept it since its value is under the $25.00 per day requirement.

In regards to the check, it is unclear as to whether the money was intended to be a gift or a campaign contribution. The cover letter that accompanied the check does not clearly express the intent of the donor. There are two possible ways to treat the check, either as gift or a campaign contribution.

The first option, accepting the check as a gift and using it for personal expenses, is the most problematic in application. Money is considered "a thing of value" and is not prohibited as a gift under Section 2-17-90. There are other provisions, however, that could be relevant to accepting the check for personal use. Section 8-13-705(B) prohibits a member from accepting money in return for being:

> (1) Influenced in the discharge of his official responsibilities; (2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or (3) induced to perform or fail to perform an act in violation of his official responsibilities.

A member could also accept the check as a campaign contribution and place it in his campaign account to be used solely for campaign purposes and not to be used for personal use. Members are allowed to accept campaign contributions from lobbyist's principals unless the contribution is conditioned upon the performance of specific actions. In that case the same prohibitions for influencing an official decision discussed above would apply. (Section 8-13-705(G))

Since the intent of the donor is unclear, at least to the Committee, the more prudent approach would be to treat the check as a campaign contribution. Money accepted as a campaign contribution is subject to more stringent use constraints and therefore could not be used in violation of the donor's intent, even if intended to be a gift. If, however, the intent of the donor was to provide a member with a campaign contribution and the member mistakenly used the money for personal purposes, the member may be subjected to accusations of and investigations for an ethics violation.

The member may, however, in his own discretion, either write the donor a letter stating that he is going to use the money a certain way, as a campaign contribution for example, or write a letter

asking the donor what his intentions were in giving the check. In any event, the receipt of the cash gift would have to be reported as a gift from the donor.

Opinion 93-11

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can a member, who is engaged in the real estate business, (1) sell real estate to judges and lobbyists and (2) provide financing for these sales?

Concerning lobbyists, the applicable section of the Ethics Act is Section 2-17-80(C). This provision allows the "furnishing of ... any other thing of value ... which also is furnished on the same terms or at the same expense to a member of the general public without regard to status as a public official or public employee." Section 2-17-10(1)(a)(xi) states that a "thing of value" includes "real property or an interest in real property." Therefore, Section 2-17-80(C) would allow an arm's length transaction involving real estate. As the agent, the commission and related compensation should be in be in keeping with the norms and standards of the profession in this area. In addition, this transaction must be reported pursuant to Section 8-13-1130.

Unlike the provision governing lobbyists, there are no similar provisions directly prohibiting such dealings with judges or House appointed officials. Therefore, neither transaction is in violation of the Ethics Act, and the sale to the lobbyist must be reported on the member's Statement of Economic Interest Form.

Opinion 93-12

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Could a member vote on any alcoholic beverage bill/amendment or any bill relating to poker machines while the member holds ABC licenses and operated coin operated poker machines?

The Ethics Act, in Section 8-13-700(B), states that "[n]o public official ... may make, participate in making, or in any way attempt to use his office ... to influence a governmental decision in which he ... has an economic interest." "Economic interest" is defined in Section 8-13-100(11) as not prohibiting:

> a public official ... 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 ... accrues to the public official ... 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 members of the profession, occupation, or large class.

According to the State Tax Commission and the Alcoholic Beverage Control Commission respectively, there are 1,599 licensed video poker machine operators and 9,697 "on premise" beer and wine licensed operators in the State. The Ethics Committee is of the opinion that the operators of video poker machines and ABC license holders constitute a large enough class to fall within the exception set forth in Section 8-13-100(11). Therefore, it would be permissible for the member to vote on bills/amendments relating to alcoholic beverages and video poker machines as long as the only economic interest that would affect the member would not be greater than the effect on all of the ABC license holders and video poker machine operators.

Opinion 93-13

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can a lobbyist's principal give contributions to ALEC (American Legislative Exchange Council) when a portion of those funds given will be used to pay the expenses of South Carolina legislators who attend ALEC sponsored functions?

Under the Ethics Act, a person cannot do something indirectly if it would be impermissible to do it directly. Therefore, if a lobbyist's principal's funds were to be used for the reimbursement of a member's expenses (a scholarship fund, for example), then the function would have to be treated as if it were sponsored by the lobbyist's principal and would be subject to the provisions of the act relating to lobbyist's principals. If the member is merely an attendee, Section 2-17-90(A), provides that:

> (A) No lobbyist's principal may offer, solicit, facilitate, or provide to a public official ... and no public official or employee may accept lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by the lobbyist's principal, except for: (1) as to member of the General Assembly, a function to which a member of the General Assembly is invited if the entire membership of the House ... is invited, or one of the committees, subcommittees, joint committees, legislative caucuses, or county legislative delegations of the General Assembly ..."

As a result, any monies set aside to pay for the expenses of a member of the House could only be used when one of the above groups were invited, and the reimbursement would have to be offered to all of the members of that group attending the function.

A separate provision of the Ethics Act, however, draws a distinction between attending a function and being an active participant in a speaking engagement. Section 2-17-100 states that:

> Notwithstanding the limitations of Section 2-17-90, a public official 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.

The House Ethics Committee is of the opinion that a function at which a member is serving as either an actual "speaker" or as a "panelist" would be considered a "speaking engagement" for purposes of the coverage of Section 2-17-100. This is in contrast to a member simply being an attendee at such a function, in which case the restrictions in Section 2-17-90 discussed above would apply. In either event, the expenditure must be reported by both the lobbyist's principal and the members receiving the reimbursements.

Opinion 93-14

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Could a member, who is an insurance agent and broker, participate in insurance decisions and issues before both the Labor, Commerce, and Industry Committee and the Property and Casualty Sub-Committee?

The controlling section of the Ethics Act in dealing with such matters is Sections 8-13-700(A) and (B) which state that "[n]o public official ... may knowingly use his office, membership, or employment to obtain an economic interest for himself..." and that "[n]o public official ... 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 ... has an economic interest."

Section 8-13-100(11)(b) defines an economic interest as not prohibiting a public official

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 ... is incidental to the public official's ... position or which accrues to the public official ... 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.

Therefore, a member is not prohibited from making decisions in an area in which he has an economic interest if the benefit that he receives is no greater than the benefit that all members of the same profession, occupation, or large class receives. There may, however, be specific provisions or amendments which create a conflict because of a specialized line of insurance policies carried or because of other aspects of business not typical of all insurance agents, but more information would be necessary to render an advisory opinion on those specific issues.

Opinion 93-15

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Does item #20 on the Statement of Economic Interest Form refer only to agencies that contract with the House of Representatives or to a contract with any agency?

The code section that gave rise to item #20 is Section 8-13-1120(A)(8). This section provides that:

> if a public official ... receives compensation from an individual or business which contracts with the governmental entity with which the public official ... serves or is employed, the public official ... must report the name and address of that individual or business and the amount of compensation paid to the public official ... by that individual or business.

Therefore, the information requested in item #20 concerns those businesses who contract with the House. Also, if a member is also employed by another governmental agency, then any compensations from entities who contract with it would be reported in item #20.

Opinion 93-16

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: What would be some of the problems of a member's business applying for funds from state agencies (either through the Governor's office with funds from the U.S. Department of Energy or through DHEC)?

Since a member is involved, certain regulations are applicable. Section 8-13-700 prohibits a member from using his or her office or position to gain an economic interest "for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." This section would not prohibit actions in which the member is not using his or her office or position as a House member. The conduct prohibited under this Section can only be evaluated on a case by case basis as it arises.

Section 8-13-745(C) prohibits a member, or a member's 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 governmental agency in the past year. The funds that the member is applying for from these State agencies are not covered in the appropriations bill. They are funds sent to South Carolina from the federal government. The Ethics Committee is of the opinion that, since these funds are not State funds and the member has no control over these funds, the prohibition concerning a member voting on the appropriations bill section relating to the agency being contracted with does not apply in this case.

Opinion 93-17

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: When do the filing requirements of S.C. Code Ann. § 8-13-920, relating to positions voted on by the House members, go into effect?

In relevant part, Section 8-13-920 states as follows:

> A person running for an office elected by the General Assembly must file a report with the Chairman of the Senate Ethics Committee and the Chairman of the House of Representatives Ethics Committee of money in excess of one hundred dollars spent by him or in his behalf in seeking the office. The report must include the period beginning with the time he first announces his intent to seek the office. The report must not include travel expenses or room and board while campaigning. Contributions made to members of the General Assembly during the period from announcement of intent to election date must be included.
>
> Persons soliciting votes on behalf of candidates must submit expenses in excess of one hundred dollars to the candidate which must be included on the candidate's report.

It is the interpretation of the Committee that, according to the above Section, the initial campaign report is due after an aggregate of one hundred dollars has been spent, either by the candidate or by someone acting on his behalf, in the effort to get elected by the General Assembly. The starting point for the totaling of the campaign expenditures is the time that the candidate "first announces his intent to seek the office." (See above.) This money is an aggregated amount and includes all expenditures made by the candidate and anyone making an expenditure on behalf of the candidate. Contributions to members of the General Assembly must be reported, but travel expenses or room and board while campaigning do not have to be included.

In addition to the initial report, other updates and reports are required to be filed. After the initial campaign report, the candidate must file quarterly updates in order to keep the information current and precise. Another report is due five (5) days prior to the election, and upon completion of the election, each candidate who is filing the campaign reports must file a final campaign report thirty (30) days after the election.

Opinion 93-18

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Would it be proper for a member of the House of Representatives to serve on the Trident Region's B.E.S.T. (Building Economic Solutions Together) Policy Committee. Specifically, is such an appointment to the Committee a violation of Section 8-13-770 of the 1992 Ethics Act?

Section 8-13-770 places a limitation on the State boards and commissions on which a member of the General Assembly may serve. It states:

> [a] member of the General Assembly may not serve in any capacity as a member of a state board or commission, except for the State Budget and Control Board, the Advisory Commission on Intergovernmental Relations, the Legislative Audit Council, the Legislative Council, the Legislative Information Systems, the Reorganization Commission, the Judicial Council, the Sentencing Guidelines Commission, the Commission on Prosecution Coordination, and the joint legislative committees.

The status of the BEST Committee has gone through a transformation since it was first created by Governor Carroll Campbell, Jr. under executive order number 93-17. According to the Committee office, the BEST Committee has since been incorporated as a non-profit organization. The tax application has been sent to the I.R.S. As a non-profit organization, the BEST Committee would not be classified as a State board or commission although it was originally created by an executive order. It would not, therefore, in the opinion of the House Ethics Committee, fall under the application of Section 8-13-770 of the 1992 Ethics Act.

Opinion 93-19

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Can a member, who is a federal retiree, take actions to help and resolve the federal retiree tax reimbursement issue?

As a federal retiree, the member may be receiving an economic benefit in the State is ordered to reimburse federal retirees a percentage of their past taxes. In dealing with a situation in which a member stands to gain economic benefits, Sections 8-13-700(A) and (B) state that a member may not use his office to obtain an "economic interest" for himself or use his office to influence a governmental decision in which he has an "economic interest."

In both of the two sections above, the main criteria under consideration is the realization of an economic interest. The term "economic interest" is defined in Section 8-13-100(11)(b). It states that the definition:

> does not prohibit a public official ... 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 ... is incidental to the public official's ... position or which accrues to the public official ... 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.

The Ethics Committee has applied this Section to various other questions dealing with the "profession, occupation, or large class" exception. In Advisory Opinions #92-28 and #92-39, House members who are also lawyers were permitted to vote on the No-Fault Insurance proposition since it would not affect any of the attorneys to a greater extent than it would affect the occupation as a whole. Likewise, in Advisory Opinions #92-37 and #92-39, House members who were also insurance agents were permitted to vote on insurance issues which would affect the insurance profession as a whole. These opinions also state that "[t]here may be specific provisions or amendments which create a conflict because of a specialized aspect of [the member/agent's] business that are not typical of the occupation or large class. In that case, the member would not be affected to the same extent as the other members of the occupation or large class and would be precluded from taking official action on the issue.

It is the opinion of the Committee that the number of persons affected by the pending federal retiree lawsuit is sufficient enough to constitute a "large class" under the exception found in Section 8-13-100(11)(b). A member who has the chance for gain could, therefore, take action on the federal retiree issue. This is conditioned; however, and the member may not take any action unless he or she would be reimbursed to the same extent as all federal retirees in the State.

Opinion 93-20

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Can a member, who is scheduled to speak at the S.C. Association of Premium Service Companies conference in North Myrtle Beach, be reimbursed for accommodations and meals incurred in connection with the speaking engagement by the Association?

The Association is a lobbyist's principal. Although Section 2-17-90 would limit and restrict any reimbursement from a lobbyist's principal, Section 2-17-100 creates an exception if the member will be participating in the conference. That Section states that:

> [n]otwithstanding the limitations of Section 2-17-90, a public official 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. The payment or reimbursement must be disclosed by the lobbyist's principal as required by Section 2-17-35 and by any public official who is required to file a statement of economic interest under Section 8-13-1110. [If the expenses were incurred out of state, the member would have to obtain the prior written approval of the Speaker.]

The Committee rendered a decision on this Section in Advisory Opinion 93-13. In that Opinion, the Committee ruled that a member who is either a speaker or panelist in a program, as opposed to an attendee, may be reimbursed for actual expenses incurred in connection with the speaking engagement under Section 2-17-100.

Therefore, the Association can reimburse the member for actual expenses incurred, including meals and lodging, in connection with the speaking engagement as long as the amounts are reasonable and incurred in a reasonable time and manner. The member must also report the reimbursement on his or her next Statement of Economic Interests Form.

Opinion 93-21

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Can members attending an ALEC convention have their expenses off-set by the ALEC scholarship fund? The scholarship fund is composed of monies donated by South Carolina Industries, including lobbyist's principals.

It is the opinion of the Committee that the fund can be used to reimburse the House members who attend the upcoming convention if the entire membership of the House, or other recognized group of members, is invited to attend the function in accordance with Section 2-17-90. The reimbursements must not exceed twenty-five dollars per day, and all members attending must be reimbursed equally.

Opinion 93-22

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Can a member, who holds an insurance license, act as a consultant on insurance matters for a state trade association which employs a lobbyist in South Carolina?

The relevant issue posed by this question is the legality of a member of the House of Representatives being employed by a lobbyist's principal. The Ethics Act prohibits two forms of employment of a member by a lobbyist's principal. Section 2-17-15 prohibits a member or someone of the member's immediate family from serving as a lobbyist during the time the member holds office and for one year after such public service ends. Section 2-17-110(G) prohibits a lobbyist's principal from employing a member on a retainer. For the purposes of this prohibition, retainer is defined as the payment for the availability to perform services rather than for actual services rendered.

The member could, therefore, be employed by the state trade association as long as the member is not retained nor serves as a lobbyist or employed on retainer. Other Sections concern limitations on current members in voting on and working with matters in which they have interests, such as employment.

Opinion 93-23

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Can a member who is also an attorney represent a client before (1) the legal department of the Department of Transportation and possibly (2) in a law suit against the Department of Transportation?

There are several provisions of the Ethics Act which are pertinent regarding these inquiries. Section 8-13-740(A)(2) states that:

> A member of the General Assembly, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before a governmental entity, except:
> (a) As required by law;
> (b) Before a court under the unified judicial system; or
> (c) In a contested case, as defined in Section 1-23-310, excluding a contested case ...

Concerning the representation of a client before the Department of Transportation, subsection (c) above is controlling. "Contested case" is defined in Section 1-23-310(2) as "a preceding ... in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing." Therefore, the propriety of representing a person before the Department of Transportation depends on whether the representation falls within the definition of "contested case" above.

If the representation does fall within the meaning of a "contested case" and the member represents a person before the Department, then the member must report his or her fees earned, services rendered, names of persons represented, and the nature of the contacts made with the governmental entity on the next Statement of Economic Interests. In addition, a member who does represent a client before a governmental entity as allowed in Section 8-13-740(A)(2)(c) above must refrain from voting on the section of the appropriations bill relating to that entity for one year after such representation.

Sections 8-13-745(A) and (B) also impose limitations on a member representing a person before a governmental entity. Subsection (A) states that a member, or the member's business, may not represent a client for a fee in a contested case before a governmental entity if the member "has voted in the election, appointment, recommendation, or confirmation of a member of the governing body" of the entity. Subsection (B) states that a member, or a member's business, may not represent a client for a fee in a contested case before a governmental entity elected, appointed, recommended, or confirmed by the House if "that member has voted on the section of that year's general appropriations bill or supplemental appropriation bill" relating to that entity within one year from the date of the vote.

Concerning the representation of a person or client before a court under the unified judicial system, the Ethics Act places no limitation on such representation.

Opinion 93-24

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Can a member accept a ticket to the National Black Caucus Foundation banquet from a Congressman, or does he have to pay for the value of the ticket?

A Congressman was given a ticket to the National Black Caucus Foundation banquet, and the Congressman then gave the ticket to the member. The member inquired as to the propriety of accepting the ticket or whether he needed to reimburse the Foundation or the Congressman for the ticket.

The National Black Caucus Foundation is not registered as a lobbyist's principal in South Carolina, and any items of value given by them are not, therefore, subject to the reimbursement limitations governing lobbying entities. Any such tickets or reimbursements must be reported on the Statement of Economic Interests, however, in accordance with Section 8-13-710(B) if it is given by "a person, if there is reason to believe the donor would not give the thing of value but for the public official's ... office or position ..." Therefore, if the ticket was given because of your office, it would have to be reported.

Opinion 93-25

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Could a member be reimbursed for a trip that was in some way connected to his activities in office?

A member visited a manufacturer of items sold by an eleemosynary organization in South Carolina. The member had introduced pending legislation relating to eleemosynary organization, and it was such an organization which requested the member to visit the manufacturer. The purpose of the trip was to learn about the nature of the business and how sales were conducted by the manufacturer on behalf of the Association.

The manufacturer providing the reimbursement for the trip is not engaged in lobbying in South Carolina, and, therefore, any items of value given by them are not, therefore, subject to the reimbursement limitations governing lobbying entities. Any such tickets or reimbursements must be reported on the Statement of Economic Interest, however, in accordance with Section 8-13-710(B) if it is given by "a person, if there is reason to believe the donor would not give the thing of value but for the public official's ... office or position[.]" It is the opinion of the Committee that there is some correlation between the legislation that was introduced in the member's official capacity and the trip. The reimbursement, therefore, needs to be reported on the next Statement of Economic Interest.

Opinion 93-26

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: What are some of the possible conflicts involved in:

(1) being a member of the House of Representatives and being employed by a State supported University;
(2) being a candidate for the House of Representatives and being employed by a State supported University; and
(3) being either a candidate or member of the House of Representatives and an independent consultant to state agencies such as school districts?

Regarding the first two inquiries, a member/candidate of the House is allowed to be employed by a State supported University. The relevant issue posed by these questions is the legality of a member of the House of Representatives being employed by a lobbyist's principal, since most state supported universities retain lobbyists. The Ethics Act prohibits two forms of employment of a member by a lobbyist's principal. Section 2-17-15 prohibits a member or someone of the member's immediate family from serving as a lobbyist during the time the member holds office and for one year after such public service ends. Section 2-17-110(G) prohibits a lobbyist's principal from employing a member on a retainer. For the purposes of this prohibition, retainer is defined as the payment for the availability to perform services rather than for actual services rendered.

Concerning the third inquiry, the Ethics Act does address certain issues which members need to be conscious of. Section 8-13-1120(A)(2) requires disclosure of the employment arrangement and the amount of income received. This section would also require the same disclosures if the agency is regulated by the House. The lobbying status of the employer may also be relevant. If the state agency retains lobbyists then the same restrictions that applied to the university discussed above may be applicable. Other Sections deal with the actions of current members in voting on and working with matters in which they have interests such as employment or contracts. Such regulations include abstention from voting on certain matters.

PART ONE of House Ethics Committee Advisory Opinion 93-27 OVERRULED BY HOUSE ETHICS COMMITTEE ADVISORY OPINION 2021-4

Opinion 93-27

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Can a member either (1) be employed by a State supported university or (2) serve as an economic development consultant for an entity such as an electric co-op or subdivision of government?

Concerning the first question, a member being employed by a State supported university, several section of the Ethics Act are applicable, but none prohibit such employment. First, Section 8-13-745(C) states that "no member of the General Assembly ... may enter into any contract for goods or services with an ... entity funded with general funds if the member has voted on the section of that year's appropriation bill relating to that ... entity." If a State supported university is financed partly with general funds, an employment contract would constitute a contract for services within the meaning of the above section. A member would be prohibited, therefore, from entering into an employment contract with such a university if her or she voted on the section of the appropriations bill concerning the university for the year which employment is sought.

Sections 8-13-700(A) and (B) are concerned with a member using his office to affect his economic interest. Subsection (A) requires that a member not "use official office, membership, or employment to obtain an economic interest for himself." Subsection (B) states that "[n]o public official ... 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 ... has an economic interest." These sections would prohibit a member from voting or working on an issue or matter which would affect him economically. If the member is in a position in which he is called upon to make such a decision, then he must abstain from voting on the matter pursuant to Section 8-13-700(B).

In regard to the second inquiry, the Ethics Act does address certain issues which members need to be conscious of. For the governmental sub-division, Section 8-13-1120(A)(2) requires disclosure of the employment arrangement and the amount of income received. This section would also require the same disclosures in regard to the electric co-op, if it is regulated by the House. Other Sections which would have implications on such employment include Sections 8-13-700(A) and (B) as discussed above. These sections would prohibit a member from voting or working on an issue or matter which would affect him economically.

The lobbying status of the employer may also be relevant. IF the Co-op, or governmental sub-division retains a lobbyist, then the "no cup of coffee" rule, Section 2-17-90, and other provisions could affect the member's relationship with a lobbyist's principal employer. Another issue concerns the sub-division or co-op being funded with general funds. Section 8-13-745(C) prohibits a public official from contracting with a governmental entity if the member voted on the section of the appropriations bill relating to that entity in the past year. Such a vote needs to be on the section of the Appropriations bill directly related to the entity.

Opinion 93-28

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Is it permissible to use campaign funds in purchasing tickets to a caucus fundraiser, and whether or not those tickets can be given away to others?

The answer to these questions depends on the status of the campaign account. If the account is active, one which has not undergone final disbursement, then Section 8-13-1348 would govern. Subsection (B) provides that the uses of campaign funds for "[t]he payment of reasonable and necessary" food and beverage expenses consumed by the candidate or members of his immediate family while at, and in connection with, a political event are permitted. Therefore, using an active campaign account, tickets may be purchased but only for immediate family members.

If the account is undergoing final disbursement, Section 8-13-1370 would govern. Subsection (A)(2) states that the excess campaign funds can be contributed to committee or party. Since it is a contribution to the committee, the tickets purchased from such an account could be given to friends, supporters, and constituents.

Opinion 93-29

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issues:
(1) Is it a violation of the Ethics Act for a House member to go on a trip with lobbyists, in the context of the above stated facts?
(2) Is there any provision in the Ethics Act which precludes a House member from socializing with a lobbyist, so long as the lobbyist does not provide anything of value to the member?
(3) What is the meaning and import of § 2-17-80(c) in the context of the Ethics Act as a whole?

Issue 1: Is it a violation of the Ethics Act for a House member to go on a trip with lobbyists?

The question deals not only with the conduct of public officials, but also the conduct of lobbyists. Section 2-17-80(B) relates to what a member of the General Assembly must not receive from a lobbyist. It states: "a member ... shall not solicit or receive from a lobbyist ... (1) lodging; (2) transportation; (3) entertainment; (4) food, meals, beverages, money, or any other thing of value." The items restricted from transfer are types of economic benefits. The transfer of any such items from a lobbyist to a member, the picking up of a check for a meal, for example, is prohibited by the above-cited section. Nothing in the Act, however, prohibits lobbyists and members from sharing hotel accommodations, traveling together, playing golf or partaking in any other entertainment, or dining together, as long as the member does not allow the lobbyist to pay or incur any of the expenses of such activities on behalf of the member.

Section 2-17-80(A) relates to the conduct of lobbyists. It states that "[a] lobbyist or a person acting on behalf of a lobbyist shall not offer, solicit, facilitate, or provide to or on behalf of any member of the General Assembly ... or any of their employees any of the following: (1) lodging; (2) transportation; (3) entertainment; (4) food, meals, beverages, money, or any other thing of value; (5) contributions." It would be impermissible, therefore, for the lobbyist to not only provide the member with any of the above items of value but also to offer or solicit to provide such items. According to the facts provided, each person on the trip paid his own expenses.

It should be noted that Section 2-17-80(A) prohibits lobbyists from not only providing, offering, or soliciting items of value to members, but also from "facilitating" the transfer of items of value to members. The term "facilitate" is not a defined term in the Ethics Act and has been the subject of various interpretations. In the context of Section 2-17-80, and the Ethics Act in its entirety, the word "facilitate" as interpreted by this Committee refers to activity on the part of a lobbyist to indirectly provide, solicit, or offer items of value to a public official that the lobbyist could not permissibly provide, solicit, or offer directly.

For example, a lobbyist's principal is generally permitted to make campaign contributions to members. A lobbyist, on the other hand, is prohibited from making such contributions. A lobbyist could not then be able to aid or assist in the transfer of the contribution. Even though the contribution would be from the funds of the lobbyist's principal and not the lobbyist, the lobbyist is prohibited from facilitating the transaction. The media and others have raised questions of the

propriety of a lobbyist making travel arrangements on behalf of members, implying that to do so would be to facilitate the transfer of items of value. Whether the plans and reservations were booked by a member, lobbyist, or private citizen is inconsequential if the members realized no economic benefit in the process.

Issue 2: Is there any provision in the Ethics Act which precludes a House member from socializing with a lobbyist, so long as the lobbyist does not provide anything of value to the member?

Beyond the restrictions outlined in response to Question 1, the Ethics Act has few prohibitions on the contact between lobbyist and members, but socializing between lobbyists and House members is subject to some obvious limitations. Generally, the Act is concerned with transfers of economic benefits and items of value and does not attempt to regulate or restrain a public official's freedom of association. Likewise, a lobbyist's access to a member should not be and is not limited because of his vocation. The Ethics Act merely prohibits a lobbyist from having an unfair advantage over private citizens in that he cannot use money or other things of value as a means of creating access to or influence over a member. It is an accepted reality that friendships exist between many lobbyists and members. Those relationships may even have been in existence prior to a member's service in the General Assembly and/or the lobbyist's employment as a lobbyist. The fact that a lobbyist and legislator share a personal friendship does not imply any wrongdoing by either party. The parties should however, be aware of public perception and strive to avoid the appearance of any impropriety.

Issue 3: What is the meaning and import of § 2-17-80(c) in the context of the Ethics Act as a whole?

Section 2-17-80(c) is an exception to the general rules regulating the activities between lobbyists and House members. Section 2-17-80(c) states that the prohibitions against the transfer of items of value between lobbyists and members does not apply,

... to the furnishing of lodging, transportation, entertainment, food, meals, beverages, or any other thing of value which also is furnished on the same terms or at the same expense to a member of the general public without regard to status as a public official or public employee.

This subsection creates an exemption for business transactions in which members and lobbyists interact. A lobbyist would not be prohibited, for example, from patronizing a bank merely because a member works there. (See Advisory Opinion #92-38). Also, a member who is a real estate agent would not be prohibited from selling real estate to a lobbyist. (See Advisory Opinion #93-11). Those goods and services must also be offered by the member/lobbyist to the general public without regard to status, and any such transactions must be in keeping with the same exact terms offered to members of the general public and done "at arm's length."

Opinion 93-30

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Can the members of the House Freshman Caucus accept an invitation to a breakfast sponsored by a college affiliated group?

If the group is not a lobbyist or lobbyist's principal, then legislators may be invited to attend. If the members are invited because of their elective office, then Section 8-13-710 states that the members must report any items received on their Statement of Economic Interests if the value is over $25 per day or $200 per year in the aggregate.

If the group is a lobbyist's principal, then only recognized groups of members, pursuant to Section 2-17-90, may be invited. For purposes of the 1991 Ethics Act, the "Freshman Caucus" is not a recognized legislative caucus. That does not mean that the freshman House members cannot organize and meet; it only means that the group is not included in the list of identifiable groups which may be invited to functions sponsored by lobbyist's principals. Section 2-17-90 of the S.C. Code allows for lobbyists to entertain legislative members when invited as part of the entire membership of either or both houses, a committee, subcommittee, county legislative delegation, or legislative caucus. Section 2-17-10(11) recognizes as a "legislative caucus" only those caucuses based on racial or ethnic affinity, gender, or political party. Therefore, if the group is a lobbyist's principal, the freshman caucus members would not be allowed to accept the invitation under Section 2-17-90.

Opinion 93-31

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Issue: Can a member write a letter of recommendation for a person trying to get into a university?

The Ethics Act does not preclude members from writing such letters. It would not result in any economic benefit, and a letter of recommendation does not qualify as a "representation" under the act unless the member actually appears in the person's behalf.

Opinion No. 92-1

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Questions: Can a House member participate in raising private funds for a County Health Department and as an officer in the National Association of Real Estate Brokers? Specifically, does the new Ethics Act, which took effect January 1, 1992, prohibit the member's involvement with either endeavor?

From your letter and the accompanying documents, it appears that, you receive nothing from your work other than food during an occasional working breakfast. Basically you have been engaged in soliciting contributions on behalf of Richland County and also for the Real Estate Brokers group. There is no prohibition to a House member helping an organization or governmental entity in raising funds in a situation in which the House member receives nothing of value for his time or efforts.

You may not receive anything of value from a lobbyist and there are caps of $25 per day and $200 per year on gifts from lobbyists principals, but gifts or other items of value received by a public official are not banned. If gifts are received and they are reasonably believed to be because of your elective office, then there is a reporting requirement if those items received are valued at more than $25 per day and/or $200 per year, under 8-13-710 and 8-13-1120.

Opinion No. 92-2

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Under current House Rules and Ethics laws can a House member accept a gift from an organization not involved in lobbying, no matter the cost of the gift?

Under the new Ethics Act, which took effect January 1, 1992, there are no restrictions to public officials accepting a gift from an organization not involved in lobbying, no matter the value of the gift. You would, however, have to report the gift under 8-13-710(A), if you received the gift because of your elective office and it is valued at more than $25.

As you know the House Rules governing ethics and receipt of gifts were rescinded on January 16, 1992. House Rules 12.2(A) and 11.1(10), which dealt with House members accepting gifts, were in effect at the time of the function in which the framed print was presented to you. Under those former House Rules, $25 was the maximum value allowed of a gift to a House member from a non-lobbyist if the gift was given because of the member's office.

Since the restrictions applied at the time of the gift, but are no longer applicable, you would seem to have two courses of action to avoid any appearance of impropriety. You could either have the donor of the gift take back the gift and give the gift to you again so that there would be no question as to which gift giving rules apply; or, you could merely reimburse the organization the differences so that the gift would not exceed $25 and would not be in violation of the House Rules in effect at the time of the presentation.

While both solutions may seem rather extreme for such a trivial gift, I am sure you will agree that it is better to err on the side of caution and adherence than on the side of expedience and convenience.

Opinion No. 92-3

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Questions: What are the permissive uses of campaign funds under the new Ethics Act? Specifically, whether the following expenses would be considered personal or campaign/office related: purchase of flags for schools, local governments, and other non-profit organizations; membership dues or contributions to various clubs and service organizations; and, expenditures for office items such as lamps, photos, etc.

Funds collected by a candidate for public office is money received by contributors who are attempting to help the candidate get elected. Those funds should, thus, be utilized only for the purposes of facilitating the candidate's campaign and assisting the candidate carry out his or her duties of office if elected, 8-13-1348 of the Ethics Act, which took effect January 1, 1992, specifies that campaign funds may not be used "...to defray personal expenses which are unrelated to the campaign or the office." Those funds may, however, be used "...the defray and *ordinary* expenses incurred in connection with an individual's duties as a holder of elective office." Using that language as a guide, each expenditure should be judged upon whether it is an ordinary office or campaign related expenses or instead a personal expense not connected to the ordinary duties of office.

The purchase of flags for schools, scouts, etc, in your district is a service generally expected of a House member and can be seen as a constituent service and an informal responsibility of the office. Therefore, campaign funds could be used for that purpose.

Your questions on office furnishings and membership dues/contributions require more specific answers. Dues or contributions to some organizations, but not all, could be paid from a campaign account, depending upon the nature of the group. Money paid to political or partisan organizations such as the Greenville County Republican Party are obviously campaign related and can justifiably be paid from campaign funds. However, dues paid to other organizations whose primary purpose is community service oriented rather than politically oriented cannot be considered ordinary expenses of office or closely related to a campaign. Such dues or contributions must not come from campaign funds.

Expenditures for office furnishings and accessories in your Blatt Building office would be considered ordinary expenses related to your office. Similarly, such expenditures for an office facility in your district which is used solely for public purposes, would be permissible. Expenditures for furnishings or equipment which are located in an office which is also used for your private or business use, however, would be prohibited since the items could be used in a manner unrelated to your public office.

Opinion No. 92-4

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Is a member of the House of Representatives prohibited from seeking and obtaining employment with a state agency?

There are several sections of the new Ethics Act which are pertinent to the issue, but none prohibit such employment. Most notably, Sections 8-13-1120(A)(2) requires disclosures of the employment arrangement and the amount of income received. Section 8-13-745(C) is also applicable. That provision prohibits a public official from voting on that part of the appropriations by which relates to the agency, department, etc. with which the official has a contractual arrangement for goods or services. Any conflicts of interest which may arise because of the public employment must be handled as outlined in section 8-13-700(B), which may include abstention from certain votes.

Opinion No. 92-5

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: What are the uses of campaign funds if a House member decides to run for the Senate? How would any monies donated be used in a Senate campaign?

Section 8-13-1350 deals with the rollover of campaign funds from one campaign to another campaign for a different office by the same candidate. Although the Ethics Act went into effect January 1, 1992, 8-13-1350, which prohibits such a rollover, does not take effect until January 1, 1993. Thus, until the end of 1992, there is no prohibition from transferring campaign funds collected for a House race into an account for use in a Senate campaign. The only way to rollover those funds after 1992, however, is to have the contributors give written authorization. See 8-13-1352.

If a public official is defeated or chooses not to run again for public office, the remaining campaign funds must be accounted for in a final disbursement, under 8-13-1370. There are several ways those funds may disbursed, including donation to a charitable organization, return of funds on a pro rata basis to the original contributors, contribution to the State general fund, or a combination thereof.

Opinion No. 92-6

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can a democratic presidential candidate who has been invited by the House Democratic Caucus accept an invitation for lunch in the Blatt Building?

8-13-765 of the new Ethics Act addresses the use of public facilities for campaign purposes. The section disallows the use of government office buildings, equipment, personnel, and materials in election campaigns. That provision was intended to prevent elected officials from utilizing for personal use public services or property, since candidates not currently in office could not have access to such resources and the use of those resources would be at public expense. Public facilities may be used if those facilities are available to other candidates on similar terms.

As a legislative caucus, the House Democratic Caucus is entitled to the use of the Blatt Building for meetings. Any guest invited to speak before caucus, whether a political candidate or not, is allowed to do so in the Blatt Building at the invitation of the caucus holding the meeting. The same guidelines would apply, for example, if the House Republican Caucus chose to invite U.S Senate candidate Tommy Hartnett or President Bush to talk to the caucus. Furthermore, there is ample evidence to suggest that the Ethics Act does not even apply to campaigning for federal office. In the definitional section of the act, "elective office" and "candidate" specifically exclude offices above the state and local level, as federal campaign law controls.

In conclusion, there exists no conflict between Senator Kerry's appearance at the caucus meeting and the Ethics Act.

Opinion No. 92-7

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: What is propriety of accepting a jacket as a gift from a member of the Washington Redskins who was honored in a legislator's community?

Under the new Ethics Act there are no restrictions to a public official accepting a gift from someone not involved in lobbying, no matter the value of the gift. You would, however, have to report the gift under 8-13-710(A), if you received the gift because of your elective office and it is valued at more than $25.

Opinion No. 92-8

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can lobbyist's principals contribute to a member's upcoming campaign? Are there any restrictions or methods by which this should be done?

There is nothing in the Ethics Act which prohibits a House member from asking a lobbyist's principal to contribute to a campaign. It should be treated like any other contributor to the campaign. Section 8-13-1314 states that within an election cycle, no candidate or anyone acting on his behalf may solicit or accept a contribution which exceeds one thousand dollars in case of a candidate for the House of Representatives. The only restrictions are those which apply to any other contributors as listed in the Ethics Act.

Opinion No. 92-9

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Does the Ethics Act prohibit a House member from attending an out of state meeting paid for by the American Legislative Exchange Council (ALEC)?

Section 8-13-715 allows for the payment or reimbursement of actual, reasonable expenses incurred while attending an out of state speaking engagement, subject to the speaker's approval. It is the Committee's opinion that as long as this is a working conference serving a legitimate legislative purpose, it is permissible for the member to have his expenses paid for by ALEC.

Opinion No. 92-10

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can a Standing Committee of the House accept an invitation from a lobbyist when he is the only authorized agent of the lobbyist principal in South Carolina?

The Ethics Committee, being charged with overseeing compliance of the Ethics Act within the House, must require all invitations to comply with the strict prescriptive of the Act. The Act clearly states in 2-17-80 that any invitations by a lobbyist are prohibited as is their receipt by members of the House, if they include an offer of anything of value.

Opinion No. 92-11

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

RE: Potential Conflicts of Interest and Voting on Appropriations

This memorandum serves as a reminder to all House members of the sections of the Ethics Act pertaining to conflicts of interests and voting on the Appropriateness Bill. Section 8-13-700(B) is a general conflict of interest provision. This section provides that where a member has a potential economic interest in a piece of legislation, he must send a written statement describing the potential conflict to the Speaker. The Speaker will print the statement in the House journal and excuse the member from voting, deliberating, or taking other action on the legislation which poses a potential conflict.

Section 8-13-740 governs House members representing clients before governmental entities. Subsection (C) provides that where a member is permitted such representation, he should refrain from voting on that section of the Appropriations Bill pertaining to the governmental entity before which he appeared, if the appearance occurred within one year prior to the vote. This section does not preclude members from voting on other sections of the bill or the bill as a whole.

Sections 8-13-725(B) and (C) prohibits members from representing clients before or contracting with boards, commissions, or other entities if the member voted on that entities' section of the Appropriations Bill in the prior year.

Opinion No. 92-12

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can a House member or public employee accept a plane ticket from a lobbyist principal for winning a golf tournament sponsored by the lobbyist principal's national organization?

Because the plane tickets are given by a registered lobbyist's principal, section 2-17-80(A) applies. This section clearly states that no lobbyist's principal may provide to a public official or public employee, and no public official or public employee may accept transportation. None of the six exceptions listed in section 2-17-90(A) appear to apply to that situation, to exempt it from prohibition.

Opinion No. 92-13

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

This letter is in response to your inquiry concerning whether your group may conduct seminars for legislators and staff under the new Ethics Act. Whether the act applies is determined by your status as a lobbying group. Section 2-17-10 defines "lobbying" as promoting or opposing through direct communications with public officials or public employees the introduction or enactment of legislation before the General Assembly or the committees or the members of the General Assembly. You represent in your letter that the proposed workshops are for educational purposes only and will not involve lobbying as defined above. Therefore, your ability to conduct the workshops should not be constrained by the Ethics Act.

Opinion No. 92-14

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Questions: 1) Is there a conflict regarding voting on and participation in deliberations on the sections of the General Appropriations Bill funding pre-elementary, elementary, and secondary education programs when my law firm represents a local school district?
2) Is there a conflict regarding voting on and participating in deliberations on any funding items in the General Appropriations Bill and my law firm's representation of clients before the Procurement Review Board?

In answer to your first question, no conflict exists as long as the funding measure is on a statewide basis and does not uniquely impact the employer/district. Section B-13-745(c) prohibits contracting for services with an agency, board, commission, or department by a legislator if the legislator voted on the appropriation bill section relating to that agency, board, etc. Where there is no direct appropriation to the specific school district represented, no conflict exists.

In answer to your second question, section 8-13-740(A)(2)(c) states that House members and their businesses may not knowingly represent another person before a governmental entity except, *inter alia,* in a "contested case" as defined in the Administrative Procedures Act. Section 8-13-740(c) prohibits a member from voting on a section of the Appropriations Bill funding an agency or commission if that member or benefit of fifty dollars or more "does prohibit a public official... from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonable foreseeable benefit that may accrue to the public official...is incidental to the public official's position..." This definition of economic interest appears to take your vote outside the proscriptions in section 8-13-700 in two ways. First, your vote to appropriate money to DSS and DHEC for specific programs that you help implement would likely not be a personal interest, but rather an interest of the general public. Second, any economic benefit you might realize would likely be incidental to your position, rather than the main target of the appropriation. Naturally, you should not vote on any appropriation that directly affects your salary grade because it would not be of general public interest.

Opinion No. 92-17

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Under the Ethics Act, can I vote on the House portion of the General Appropriation Bill?

Section 8-13-700(B) prohibits a House member from making, participation in making, or in any way attempt to use his office to influence a governmental decision in which he has an economic interest. "Economic interest" is defined in the Ethics Act.

Section 8-13-100(11). A public official is not prohibited from participating in, voting on, or influencing an official decision, however if the only economic interest that may accrue to the public official accrues to him as a member of a profession, occupation, or large class to no greater extent than the benefit would accrue to other members of these groups. As a member of the South Carolina House of Representatives, you would not be affected any differently than all other House members.

Concerning voting on legislator's salaries, no benefit would accrue to you because any pay increase cannot go into effect until the next legislative term.

Opinion No. 92-18

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Questions: 1) Under the Ethics Act, can I vote on the House portion of the General Appropriation Bill?
2) As an insurance agent, does my voting on the insurance bill create a conflict of interest?

1) See Opinion No.92-17 above.
2) Your vote on the insurance bill in general is not prohibited because, like any economic benefit that may accrue to you as an insurance agent, it will not be different from the benefits accruing to the class of insurance agents as a whole. There may be specific provisions or amendments which create a conflict, but more information would be necessary to render an advisory opinion on those issues.

Opinion No. 92-19

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Questions: 1) As a pharmacist, may I vote on the section of the Appropriations Bill pertaining to pharmacist license fees?

2) As a recipient of Medicaid funds, through my pharmacy, may I vote on provisions of the Appropriations Act designed to raise Medicaid funds?

3) Can I vote on provisions designed to specifically effect Medicaid funding of pharmacies?

In answer to your first question, section 8-13-700(B) provides that no member may make, participate in making, or in any way attempt to use his office to influence a governmental decision in which he or his business has an economic interest. Economic interest is defined in section 7-13-100(1)(A) as an "interest distinct from the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official...may gain an economic benefit of fifty dollars or more." The license fees at issue do not appear to fall within the definition above. Furthermore, subsection (B) expressly states that a member of a profession to no greater extent than the potential benefit could reasonably be foreseen to accrue to all other members of the profession. Because your voting for or against a license fee increase affects you no differently than other pharmacists, you would not be prohibited from voting on that section of the Appropriations Bill.

In answer to your second and third questions, the exception in the economic interest definition for general benefits to the whole profession should allow you to vote on the items you addressed.

Opinion No. 92-20

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Questions: Can a member request that lobbyists' principals donate gifts of less than $25.00 value as prizes for a charitable event?

Section 2-27-80(B) of the Ethics Act is quite clear in prohibiting a member from soliciting from a lobbyist anything of value. "Anything of value" includes gifts according to section 2-27-10(1)(a)(vii). Even though you would not personally receive such donations, the language of the Act separately and distinctly prohibits both the solicitation and the receipt of things of value. None of the exceptions in subsections (c), (d), or (E) appear to apply.

Section 2-17-90 of the Ethics Act is the provision which relates to lobbyists' principals contacts with public officials. Unlike the provision concerning lobbyists referred to above, this section is silent concerning a member's solicitation and receipt of "other things of value." A possible impediment in the act is contained in section 8-13-710(B) which provides that a member "who receives, accepts, or takes, directly or indirectly, from a person, anything of value worth twenty-five dollars or more in a day" must report the thing of value on his statement of economic interests. This section likely would not apply because the charity would receive the gifts, not you, and the value of the gifts would be less than $25.00.

In conclusion, soliciting gifts from lobbyists is prohibited in the Ethics Act. In contrast, nothing in the Act expressly prohibits a member from soliciting gifts from a lobbyists' principal. A member should use his discretion concerning whether such solicitation would be proper as a political or practical matter, however.

Opinion No. 92-21

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Is it proper for a House member to be reimbursed for out-of-pocket expenses by ALEC for costs incurred while attending meetings of ALEC?

It is assumed that ALEC, an intergovernmental organization, does not employ a registered lobbyist in South Carolina. As such, provisions placing limits on the amount of things of value received by a House member are not applicable. Your receipt of expense reimbursement money for attending ALEC meetings is not in violation of the letter nor the spirit of the law. Reimbursement or payment for an out-of-state speaking engagement does require prior written approval from the Speaker. A similar question was addressed in Opinion No. 92-9.

Opinion No. 92-22

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Re: Opinion No. 21, above.

You asked for clarification of the statement concerning prior approval by the Speaker. The above line was added to your previous letter merely for informational purposes to make you aware of that requirement should you attend a similar event at which you be speaking.

Opinion No. 92-23

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Are endorsement letters for candidates to a position elected by the General Assembly a violation of the Ethics Act?

Letters of endorsement written by members are not violation of the Ethics Act as written. Section 8-13-930 prohibits candidates from directly seeking pledges from members prior to screening. This section also prohibits members from pledging their vote to a candidate prior to screening. The Act is silent concerning endorsement letters written on behalf of candidates by members prior to screening. Because the letters in question are written by members to other members, neither prohibition in the Act applies.

Opinion No. 92-24

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

You posed several questions concerning fundraising activities by the South Carolina Legislative Black Caucus. Concerning solicitation of contributions from lobbyists, section 2-17-80(5) prohibits a House member from soliciting or receiving contributions from a lobbyist or a person acting on behalf of a lobbyist.

"Contributions," as defined by 8-13-1300(7), include monetary gifts to candidates or committees, legislative caucus committees included. Nothing in the Ethics Act prohibits a House member or committee from soliciting funds from a lobbyists' principal, however. The Ethics Act, section 8-13-1322(A), limits contributions from a person to a committee and acceptance of contributions by a committee aggregating more than three thousand five hundred dollars in a calendar year. Any contributions collected from lobbyists' principals does not count against their $25/day, $200/year limit for members of the General Assembly, as those caps relate to the "no cup of coffee" rule exceptions rather than to political contributions.

Opinion No. 92-25

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Questions: 1) Do House members need to report on disclosure forms, meals, etc. from functions approved by the House invitations Committee?
2) Should House members report on W-2 forms the value of any reception/meals valued at $25.00 or more?

The answer to your first question is found in section 8-13-1120(A)(9). This section requires that members list in their economic interests forms the source and a brief description of any lodging, food, or entertainment received during the preceding calendar year from a person who likely would not have provided the hospitality, but for the member's office. Additionally, section 2-17-90(c) requires members to report on their economic interests forms the value of anything received from lobbyists' principals in accordance with section 2-17-90(A) & (B), which includes food and entertainment.

Your second inquiry is not a matter within the purview of the Ethics Committee. It is suggested that you contact House bookkeeping or the State Tax Commission for such individual tax advice.

Opinion No. 92-26

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

This letter is in response to your inquiry concerning legislators serving on the Medical University's Board of Visitors and Health Sciences Foundation in light of section 8-13-770. This code section prohibits state legislators from serving on state boards and commissions. State boards and commissions are those which have been created by an act of the General Assembly or those in which a majority of the membership of the board or commission consists of legislators. The Board of Visitors of MUSC does not meet either of these criteria. The Board of Visitors and the Health Sciences Foundation are internally organized bodies which were created by the Board of Trustees of MUSC.

Likewise, the Health Sciences Foundation is not a statutorily created state board or commission. Therefore, legislators are not precluded from serving on such a foundation under the Ethics Act.

Opinion No. 92-27

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Questions: 1) Is it permissible for a corporation, of which a House member is the majority stockholder, to sell goods to various state and local governmental entities, and if so, must the member abstain from voting on any sections of the Appropriations Bill?

2) What is the correct procedure for having one's abstention noted in the House Journal?

Section 8-13-745(c) prohibits a member's business from contracting for goods or services with an agency, commission, board, department, or other entity funded by the appropriations bill if that member has voted on the section of that year's budget funding the particular entity. It was not contemplated to include simple "over the counter" type retail transactions in the definition of "contracting for goods", however. No recusal from voting on sections of the appropriations bill are necessary in that situation.

Section 8-13-700(B) sets forth the procedure for having one's abstention from voting on legislative issues which pose a potential conflict of interest noted in the record. A written statement describing the matter requiring action and potential conflict must be submitted to the Speaker for printing in the House Journal. The Clerk of the House has printed forms at the desk that may be used to expedite the process.

Opinion No. 92-28

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Does a conflict of interest exist for lawyers in general and tort lawyers specifically in voting on the no-fault insurance bill?

In neither case would a House member who is an attorney have a conflict of interest regarding a vote on the no-fault insurance bill. Section 8-13-700(B) provides that no member, may make, participate in making, or in anyway attempt to use his office to influence a governmental decision in which he has an economic interest. Economic interest is defined in section 8-13-199(11)(A) as an "interest distinction from the general public in a purchase, sale lease, contract, option, or other transaction or arrangement involving property or services in which a public official... may gain an economic benefit of fifty dollars or more." Subsection (B) of the definition, however, expressly states that voting on a bill is not prohibited when the economic benefit that may accrue to a member by virtue of his profession does so to no greater extent than the benefits that may accrue to all other members of the profession. Because any foreseeable benefit gained or detriment incurred caused by passage of or defeat of the no-fault insurance bill would affect you no differently, generally,than any other attorney, you would have no conflict as a lawyer in voting on the bill.

Opinion No. 92-29

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: May I receive payment for hotel accommodations and food by the group at whose function I will be speaking?

Section 8-13-715 prohibits a House member acting in an official capacity from receiving anything of value for speaking before a public or private group. However, this section does allow for the payment or reimbursement for actual reasonable expenses incurred for a speaking engagement.

Meals and accommodation costs incurred at an out of town convention at which you will be speaking on legislative matters certainly are reasonably connected with accomplishing the purpose of the speaking engagement. No prior approval for in-state speaking engagement is required. Reimbursement or payment for out-of-state speaking engagement expenses does require prior written approval from the House Speaker.

Opinion No. 92-30

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: May I continue to serve on the internally created Policy Board of the statutorily created South Carolina Center for the Advancement of Teaching and School Leadership?

Section 8-13-770 prohibits state legislators from serving on state boards and commissions. State boards and commissions are those which have been created by an act of the General Assembly or those in which a majority of the membership of the board or commission consists of legislators. The Commission on Higher Education was directed to establish the South Carolina Center for the Advancement of Teaching and School Leadership in section 59-18-25. The Policy Board of the Center, of which you are a member, was internally created by the bylaws of the center, not in any legislation. The Policy Board is not made up primarily of legislators. Therefore, your service on the Policy Board does not fall within the prohibitions outlined in section 8-13-770.

Opinion No. 92-31

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

This letter is in response to your inquiry concerning any potential Ethics Act violations resulting from the proposed events sponsored by the Redevelopment Authority which include legislators. Whether the Ethics Act applies is determined by your status as a lobbying group. Section 2-17-10 defined lobbying as promoting or opposing through direct communication with the public officials or public employees the introduction or enactment of legislation before the General Assembly. Your letter and agenda are not clear on whether any lobbying activity will take place. Regardless of a lobbying activity, section 2-17-90(A)(1) allows a lobbyists' principal to provide transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyists' principal if the entire county delegation is invited if expenditures do not exceed $25 per day and $200 per year, per legislator. If the Authority does not have a registered lobbyist, then the monetary caps do not apply. Your letter states that the entire Greenville County delegation will be invited, therefore, whether lobbying activity occurs or not the Ethics Act will not prohibit your function.

Opinion No. 92-32

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

This letter is in response to your inquiry concerning whether it is permissible under the Ethics Act for you to invite area legislators to a meeting; including a luncheon or dinner at your campus. Whether the Act applies is determined by your status as a lobbying group. Section 2-17-10 defines lobbying as promoting or opposing through direct communication with public officials the introduction or enactment of legislation before the General Assembly or the committees or members of the General Assembly. You represent in your letter that the proposed meeting is for informational purposes and will not involve lobbying as defined above. Therefore, your ability to invite area legislators to such a meeting is not constrained by the Ethics Act.

The only requirement concerning the meals would be in section 8-13-710(B). This section requires public officials to report on their statements of economic interests anything of value worth twenty-five dollars or more in a day received from a person if there is reason to believe the donor would not give the thing of value but for the public official's office. Because the legislators are being invited due to their status as officeholders, if the value of the meal is twenty-five dollars or more, the individual legislator must report it on his statement. Therefore, it would be of great assistance to the legislator invitees to include a dollar value of the meal for their records.

Opinion No. 92-33

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Because of my law firm's representation of state agencies in state tort claims actions via the Insurance Reserve Fund and Attorney General's Office, am I required to recuse myself from voting on the sanctions of the General Appropriations Bill which fund the agency/client?

The short answer to your inquiry is no recusal is necessary. S.C. Code section 8-13-745(c) prohibits a legislator or his firm from entering into a contract for services with a state agency if the legislator has voted on that agency's budget in the preceding year. Since the contracting party is the insurance Reserve Fund, you have rightfully abstained from voting on that entity's budget. Representation of a client which did not directly contract with or compensate you or your firm would not create a situation in which recusal from considering budgetary matters for those agencies would be required. Therefore, you are free to vote on appropriations for state agencies you represent in court via the Insurance Reserve Fund.

Opinion No. 92-34

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Is there conflict in voting on legislation relating to a member's local County School Board legislation if that member is employed by the district?

Your position with the local school district is far removed from the local school board. You are hired by the superintendent of schools and are directly supervised by an employee ranked below the superintendent. The question has arisen whether it is a conflict for you to vote on local legislation proposing to reduce the school board from 12 members to 8 members.

Section 8-13-700(B) provides that no member may make, participate in making, or in any way attempt to use his office to influence a governmental decision in which he has an economic interest. Economic interest is defined in section 8-13-100(11)(A) as " 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 may gain an economic benefit of fifty dollars or more." Clearly, your vote on the proposed legislation will not convey an economic benefit to you. Therefore, section 8-13-700(B) does not apply and will not act to restrain your vote on the mater.

The purposes section of the Act's preamble does state that even the appearance of conflicts of interest should be avoided. This language merely states the intentions of the Legislature in passing the Act but is not part of the codified law.

Opinion No. 92-35

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: As a practicing attorney, can I represent clients before the South Carolina Board of Probation, Parole and Pardon Services and the Tax Commission?

The Ethics Act does prohibit the representation of clients for a fee in a contested case before state agencies, boards, and commissions, etc. in certain circumstances. Section 8-13-745(A) prohibits such representation by a member or his firm if the member has voted in the election, appointment, recommendation, or confirmation of a member of a governing body of the board within the twelve proceeding months. Section 8-13-745(B) prohibits such representation by a member or his firm if the member has voted on the section of that year's general appropriation bill or supplemental appropriation bill relating to that board within one year from the date of the vote.

"Contested case" is defined in section 1-23-310(2), the Administrative Procedures Act (APA), as "a proceeding...in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing." The South Carolina Tax Commission is governed by the Administrative Procedures Act. Therefore, your representation of clients before the Tax Commission is subject to the above limitations.

S.C. Code section 1-23-10(4) specifically exempts the Probation, Parole and Pardon Board from coverage under the APA. Due to the lack of procedural controls, prohibition against representing another person before a governmental entity in section 8-13-740(B) applies and you should not represent clients before the Parole Board.

Opinion No. 92-36

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: May I accept an honorarium for speaking at an engagement for an organization in which I have been an active participant for many years?

Section 8-13-715 of the Ethics Act prohibits a House member acting in an official capacity from receiving anything of value for speaking before a private group. Nothing in the Ethics Act prohibits receipt of honoraria when a House member is hired as a speaker for reasons other than their status as a House member. You state in your letter that you have been a leader at all levels in your sorority prior to becoming a House member. Unfortunately, a definitive answer to whether you can accept the honorarium in this instance cannot be given because it is not known the capacity in which you were asked to speak. The decision must be made by you yourself or with guidance from the inviting chapter.

Opinion No. 92-37

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: As a licensed insurance agent, is discussion of and voting on insurance legislation a conflict of interest?

Section 8-13-700(B) prohibits a House member from making, participating in making or in any way attempting to use his office to influence a governmental decision in which he has an economic interest. "Economic interest", as defined in section 8-13-100(11), does not prohibit a House member from participating in, voting on, or influencing an official decision if the only economic interest that may accrue to the member accrues to him as a member of a profession, occupation, or larger class to no greater extent than the benefit that would accrue to other members of these groups. Therefore, your vote on an insurance bill in general is not prohibited if any reasonably foreseeable benefit that may accrue to you likely will not be different than the benefit accruing to insurance agents as a whole. There may be specific provisions or amendments which create a conflict because of a specialized line of insurance policies that you may carry or because of the other aspects of your business that are not typical of all insurance agents, but more information would be necessary to render an advisory opinion on those specific issues. (See also Opinion No. 92-18 and 92-39)

Opinion No. 92-38

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: As a bank employee, am I required to list on my economic interests statement any lobbyists or lobbyists principals who do business with my employer bank?

As a House member, section 8-13-1130 requires you to report on your economic interests statement anyone you know to be a lobbyist or lobbyist principal whom you know has purchased services from your bank worth over two hundred dollars. Accordingly, any known customers whom you know to be a lobbyist or lobbyist principal and also know has purchased services worth over two hundred dollars must be reported. You represent that in your job at the bank you have little customer contact and know personally fewer than one percent of your bank's customers. Therefore, if you do not know any of the customers meeting the requirements, no such reporting is necessary. However, to be safe you may want to insert a disclaimer on the report to the effect of; "I work in a bank which may service the accounts of lobbyists or lobbyist principals. I have little customer contact and am not aware of any lobbyists or lobbyist principals who bank with us."

Opinion No. 92-39

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can House members, who are attorneys or insurance agents, cast their vote for or against the no fault insurance bill without violating section 8-13-700(A) or (B) or the spirit of these sections?

Section 8-13-700(B) prohibits a House member from making, participating in making, or in any way attempting to use his office to influence a governmental decision in which he has an economic interest. As this Committee has pointed out on previous advisory opinions, however, "Economic interest", as defined in section 8-13-100(11), does not prohibit a House member from participating in, voting on, or influencing an official decision if the only economic interest that may accrue to the member accrues to him as a member of a profession, occupation, or larger class to no greater extent than the benefit would accrue to other members of these groups. Therefore, a vote on an insurance bill in general by a lawyer or insurance agent is not prohibited if any reasonably foreseeable benefit that may accrue to him would not likely be different than the benefit accruing to insurance agents or lawyers as a whole. While the area of practice may vary from one attorney to another, with some concentrating on personal injury cases, all attorneys admitted to practice in South Carolina have the legal authority to handle such cases. The intent of the Ethics Act was not to disallow legislators from voting on legislation within their professional expertise, but rather to assure that elected officials would not use their influence to create a direct economic benefit for themselves.

There may be specific provisions or amendments which create a conflict because of a specialized line of insurance policies carried or because of other aspects of business not typical of all insurance agents, but more information would be necessary to render an advisory opinion on those specific lawyers may have a conflict with. However, that particular issue would need to be presented to the Ethics Committee if an advisory opinion is desired prior to the vote. (See also Opinions. No. 92-18, 92-28, and 92-37.)

Opinion No. 92-40

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can campaign funds be used to (1) pay dues to certain organizations like ALEC and (2) make contributions to a politically oriented group like the College Republicans?

(1) Legislative oriented groups like ALEC serve legitimate legislative purposes, and this expenditure is therefore permitted under section 8-13-1348 which states that campaign funds may not be used "to defray personal expenses which are unrelated to the campaign or office."
(2) Opinion 92-3 states that "dues or contributions to some organizations... could be paid from a campaign account, depending on the nature of the group." Political and Partisan groups are generally regarded as campaign related and dues can thus be paid to them.

Opinion No. 92-41

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Is it permissible for area merchants to make contributions to the Richland County Troopers Association for that organization's annual Christmas party?

The Association is neither a lobbyist's principal nor lobbyist. The relevant sections of the act on this type of activity are concerned with intent behind and the materials used in the solicitation. The receipt of or the solicitation for the donations must not have any intent or motivation of influencing governmental decisions or procedures which are stated in section 8-13-706. Also, any solicitation that involves the use of official materials as outlined in section 8-13-700 is in violation of the act unless it falls within the exception of incidental use which is stated further in the section.

Disclaimer: This opinion in no way binds the Richland County Troopers Association. This only reflects the opinion of the House Ethics Committee, and the Association falls under the jurisdiction of the State Ethics Commission. Their ruling or interpretation of the matter would apply regardless of the above advisory opinion.

Opinion No. 92-42

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Questions: Where does a member have to report travel expenses that were reimbursed by the lobbyist's principal who hosted the meeting in which the member was a participant?

Any member who receives any compensation or reimbursement pursuant to section 2-17-90 must report the items compensated for and their value. The place to report a reimbursement by a lobbyist's principal is under question number 19 on the Statement of Economic Interests form in the same manner it was done in the past.

The limit is $25 per day or $200 per year in the aggregate. However, if the member is speaking at the engagement, section 2-17-100 allows that member to be reimbursed for actual expense incurred, even if they exceed $25.

Opinion No. 92-43

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can candidates reimburse themselves for mileage incurred while campaigning at the current state rates from the candidate's own campaign funds?

(Section 8-23-1348- expenses related to the campaign or office)
The expenditure for money for transportation while campaigning is campaign related, and the current state rate for reimbursing mileage is within the "fair market" limitations of section 8-13-1348(D).

Opinion No. 92-44

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can a House member use his campaign account to make a contribution to a group of high school students who are raising money for a school trip?

(Section 8-13-1348- expenses related to campaign or office)
Each expenditure should be judged on whether it is an ordinary campaign or office related expense or a personal expense not connected to the ordinary duties of office. Dues to some political groups are campaign related, but dues to civic organizations are not. Contributions to a school trip, likes dues to a civic organization, are not related to campaign or office and should be made from personal funds.

Opinion No. 92-45

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Is it permissible for a member to accept an invitation to the annual South Carolina Association of Counties Conference at which the food, lodging, and registration would be paid for by the county?

The Ethics Act does not prevent a member from attending a meeting to discuss legislation and its effects on the member's home district, but the reporting requirements for the reimbursement of any expenses would depend on who was reimbursing the member. The Association does retain a lobbyist, but the opinion request letter stated that the county was paying for the expenses. Therefore, the section covering reimbursements by a lobbyist's principal does not apply. The County is not made a lobbyist's principal just for being a part of an organization that has a lobbyist.

The relevant report requirement is section 8-13-710(B) which covers expenditures made on behalf of the member because of his elected position.

Opinion No. 92-46

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Concerning contributions to political party caucuses or to a high school fund raising project, can those be paid from personal funds or must these be paid from campaign funds?

There are three general categories dealing with the possible expenditures from a campaign account. Expenditures unrelated to the campaign or office (section 8-13-1348), like contributions to a school fundraising project, cannot be made using campaign funds. On the other hand, expenditures, like a campaign ad on a billboard, "paid on behalf of a candidate or committee must be drawn from the campaign account." These are patently campaign related expenses and must come from the campaign account. Finally, some expenditures can be made from either the campaign account or personal funds. Items which are to be paid using the candidate's discretion are those which are either incurred as a result of the duties of elective office (e.g., dues to the House Democratic Caucus) or which are only generally and indirectly related to a campaign, such as the purchase of tickets to a county political rally or barbecue.

Opinion No. 92-47

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Would a company incorporated under the laws of South Carolina be precluded from receiving a state Jobs-Economic Development Authority loan because a legislator owned a minor interest in it if the company met all other criteria set down by the agency to receive a loan?

Section 8-13-745(C) states that a member's business, if he owns more than five percent, may not enter into a contract with a governmental agency if the member voted on the section of the Appropriations Bill dealing with that agency within the past year. Therefore, if the member voted on the Appropriation section dealing with JEDA in the last year, then the member's business cannot contract with JEDA to receive a loan.

Opinion No. 92-48

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can a member accept a gift from an organization that does not retain a lobbyist nor does it belong to an association which employs a lobbyist?

There are no restrictions placed on a public official accepting a gift from an organization not involved in lobbying. If the gift is because of a member's elected position, then Section 8-13-710(B) requires it to be reported if it is in excess of $25 per day or $200 per year.

Opinion No. 92-49

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can a member attend a function put on by a group that is not a lobbyist or lobbyist's principal?

Section 8-13-710(B) requires a report of expenses over $25 per day or $200 per year from such a function if:

(1) It is due to the member's position as an elected official;
(2) The donor is seeking business with the governmental entity to which the member belongs; or
(3) The donor's operations are regulated by the governmental entity to which the member belongs.

Opinion No. 92-50 **Repealed See Opinion 1999-1**

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Would it be permissible to use campaign funds to purchase advertisements in publications printed by non-profit organizations?

Advertisements purchased in such publications need to be made upon final disbursement of the campaign account as covered under Section 8-13-1370. If advertisements are made using an active account, the advertisement must be either clearly campaign or office related as provided in Section 8-13-1348(A).

Opinion 92-51

Pursuant to House Rule 4.16(a)(2), the House Legislative Ethics Committee has enclosed for your information a brief synopsis of this opinion.

Question: Can campaign funds be used to purchase a FAX machine for a member to place in his home, which is used as a constituent office, in order to accommodate constituent or office related situations which require immediate attention?

In a similar question, Advisory Opinion 92-3 stated that campaign funds could not be used to purchase furniture for an office "which is also used for your private or business use" since the furniture could be used in a manner unrelated to the member's public office as is the case here. The opinion did state, however, that the funds could be used to purchase furniture for a member's Blatt Building office and for an office facility in the member's home district "which is used solely for public purposes." Also, a member is permitted to rent, using campaign funds, office equipment for his campaign headquarters as long as they are used solely for the campaign.

Permanent type office equipment which will be of personal use after a member is no longer involved in campaigning and/or in office, should not be purchased with campaign funds, even if that equipment will be used purely for campaign or office related purposes while the member is in running for and/or holding public office. In order for a member to still have use of a fax machine or other such office equipment for legitimate campaign or office related purposes and use campaign funds to offset the cost of that use, the campaign account could be used to pay for the equipment use on a lease or a charge-per-use basis. The member must decide whether it is more practical to lease the office equipment from a retailer or to purchase the machine using his own personal funds and have his campaign account pay a lease or use fee back to himself. In the latter scenario, the equipment would be the property of the individual even after leaving public office. Regardless of the method chosen, a written record should be kept clearly delineating the situation and setting forth any and all money transfers.