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PROPOSED ADVISORY OPINION 2016-2

TO: **Members of the House of Representatives**

FROM: **House of Representatives Legislative Ethics Committee**

RE: **Laundry List Opinion**

DATE: **September 1, 2016**

Due to apparent confusion over application of S.C. Code Ann. § 8-13-1348, which relates to the use of campaign funds by a candidate or Member of the General Assembly, the House of Representatives Legislative Ethics Committee Chairman appointed a subcommittee to respond to Members who requested advisory opinions from the Committee. The Subcommittee met to discuss questions received from Members regarding the permissible and impermissible use of campaign funds. This opinion is not meant to serve as an exhaustive list of what are permissible and impermissible expenditures from the campaign account. The Committee will continue to review Members' specific requests regarding permissible and impermissible expenditures from campaign funds. For the current requests received, the Subcommittee compiled these inquiries into the following list:

Whether it is acceptable to use campaign funds for the following expenditures:

A. Dues for membership in a service-type organization or as a renewing member;
B. Membership at a private club;
C. Dry cleaning;
D. Member's meal with a constituent;

E. Maintenance for a Member's personal vehicle used for campaigning or official business;
F. Fines and penalties received as a result of office;
G. Gifts for Individual Members;
H. Personal or constituent's living expenses;
I. An. Election in a different body;
J. Contributions to charitable organizations, churches, or schools;
K. Sponsorships which include an advertisement and dues;
L. Member's cell phone bill when the cell phone is used for campaigning and House official business as well as for personal use;
M. Expenses for Promotional items, Merchandise, or Advertising that contain the Candidate or Member's Name and Office;
N. Office Equipment Expenses;
O. Dues for membership in an organization or as a new member;
P. Clothing;
Q. Gifts or Flowers for Office Staff, House Staff, or Constituents including Gifts, Resolutions, and Cards for Deaths, Births, or other Special Events sent by the Speaker or Members to other Members;
R. Travel expenses and meals for a person, district group, or team being recognized by the House of Representatives;
S. Resolutions and Flags;
T. Signs that benefit the Community;
U. Food or meals for functions that are directly related to the office;
V. Meals and/or beverages for campaign workers;
W. Meals for Members and Staff by a Committee Chairman, Speaker, and Speaker Pro Tempore;
X. Tickets to a political event;
Y. Legal expenses associated with a candidate or Member's campaign; and
Z. Newspapers and News Services.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion as a response for guidance.[1] The Committee notes that this opinion will apply to any campaign expenditures made prospectively from the date of the Committee's approval. Any change in the Committee's prior positions on permissible or impermissible use of campaign funds will not apply retrospectively.

DISCUSSION

S.C. Code Ann. § 8-13-1348(A) provides:

> (A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this

[1] The Committee found that Committee Advisory Opinions 95-3 is not accessible in full nor are Committee Advisory Opinions 95-4 through 95-6 accessible. Therefore, the Committee has only considered the relevant portion of Committee Advisory Opinion 95-3 available in drafting this Opinion.

> subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

S.C. Code Ann. § 8-13-1348(A)(1991 as amended) (emphasis added).

The State Ethics Commission (SEC) recently reiterated that "the terms 'personal' and 'unrelated to the campaign'" with regard to expenditures, are "not defined in the Ethics Act and the Act itself provides no clear guidance on what is and what is not an acceptable expenditure from the campaign funds." See SEC AO2016-004, p. 2 (January 20, 2016).

The Committee also provided instruction as to the permissible and impermissible use of campaign expenditures in Committee Advisory Opinion 2015-3. The Committee found that donating to the Blatt Building's custodial staff and House staff as well as purchasing flowers for staff members and constituents due to certain events were not expenses that would exist irrespective of the Member's duties as an officeholder. Thus, the Committee held that these were permissible expenditures from a Member's campaign funds.

The Committee Advisory Opinion 2015-3 utilized Committee Advisory Opinion 92-3, for guidance. Specifically, Opinion 92-3 gave the following test to evaluate the permissibility of a campaign expenditure:

> 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 "to defray any 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.

Committee Advisory Opinion 92-3 (emphasis added). Using the test set forth in Advisory Opinion 92-3, the Subcommittee considered the specific expenditures noted above.

I. IMPERMISSIBLE USE OF CAMPAIGN FUNDS

1. Dues for Membership in a Service-Type Organization or as a Renewing Member

Committee Advisory Opinion 92-3 explained that "dues paid to other organizations whose primary purpose [wa]s community service oriented rather than politically oriented cannot be considered ordinary expenditures of the office or closely related to a campaign," and, thus, dues and contributions could not come from campaign funds.

Membership at a Private Club

The Committee finds that membership at a private club is not an appropriate use of campaign funds. Oftentimes, this membership is associated with meals--such as the Palmetto Club in Columbia--and not distinguishable from meal expenses incurred at a restaurant, and, therefore, it is an inappropriate use of campaign funds. Campaign funds only may be used to pay an expense at a private club if it is related to a campaign event. This position is in accordance with the position taken by the State Ethics Commission in Commission Advisory Opinion 2016-004.

2. Dry Cleaning

The issue has been raised about paying for dry cleaning of suits or clothing used for "official use" as a Member from campaign funds. The Committee finds dry cleaning these articles of clothing is a personal expense and campaign funds may not be used for this expenditure.

3. Member's Meal with a Constituent

In SEC AO2016-004, the State Ethics Commission addressed the issue of a public official's meals with constituents paid with the public official's campaign funds as follows:

> [I]t is important to note that the Commission has prosecuted enforcement matters under Section 8-13-1348 for the purchase of meals with campaign funds. A notable example of this is the case of former Lieutenant Governor Ken Ard. That complaint matter involved, among other things, questionable reimbursement from a campaign account for food at various restaurants. These expenditures were explained by Mr. Ard because these meals were occasions to meet with past and prospective contributors to raise money for his campaign account. This justification was rejected by the Commission. In a Consent Order reached by the parties in the Ard matter, the Commission stated "[i]t is now and always has been the Commission's position that . . . [p]urchasing normal daily meals with campaign funds while traveling on campaign related business either before or after an election is prohibited. Such expenditures are personal.
>
> SEC AO2016-004, p. 3 (January 20, 2016).

Therefore, the House Ethics Committee, in accordance with the State Ethics Commission, finds that if a Member has a meal with a constituent or lobbyist and the Member would have purchased the meal as a normal daily meal, then this meal is considered a personal expenditure. This meal should not be paid with campaign funds. The Committee also recognizes the exception discussed in Committee Advisory Opinion 94-22, concerning the permissibility of using campaign funds to sponsor an event with food where pending legislation is discussed.

4. Maintenance for a Member's Personal Vehicle Used for Campaigning or Official Business

Maintenance, fuel, and other expenses incurred by the Member in the operation of his or her vehicle during the campaign or the office he or she holds is not a permissible use of his or her campaign funds. See Committee Advisory Opinion 2014-1.

5. Fines and Penalties Received as a Result of Office

Payments of the fines or penalties received as a result of office (for example, a fine for failing to timely file a required report) and particularly those levied by the Committee are not allowed to be made with campaign funds because they are not related to the campaign or office as required by S.C. Code Ann. § 8-13-1348. See Committee Advisory Opinion 2000-1.

6. Gifts for Individual Members

The Committee finds that Members buying individual gifts for other Members are personal expenditures and, therefore, not allowed under S.C. Code Ann. § 8-13-1348.

7. Personal or Constituent's Living Expenses

The Committee finds that a Member may not pay personal or a constituent's living expenses with campaign funds because it is either personal in nature or not an expense traditionally incurred in House campaigns across the State nor clearly traditionally incurred in relation to the office held. See Committee Advisory Opinion 94-10. These expenditures are "personal expenses which are unrelated to the campaign or the office" as set forth in Section 8-13-1348(A).

8. An Election for a Different Office

As previously stated in Committee Advisory Opinion 92-5, the Committee finds a Member cannot use campaign funds received for one elective office toward achieving a different elective office, unless the Member obtains the contributors' written authorizations to do so.

II. PERMISSIBLE USE OF CAMPAIGN FUNDS

1. Contributions to Charitable Organizations, Churches, or Schools

In Senate Ethics Opinion 1997-2, the Senate Ethics Committee found that "participating in fundraising activities for organizations, churches, schools, colleges, universities, communities, . . . political parties, . . ., and a whole range of charitable giving and charitable good works is a longstanding function of elected officials, especially Members of The Senate of South Carolina." Thus, the Committee finds that contributions to charitable organizations, including churches or schools, is the type of expense incurred in relation to the office held. Therefore, contributions from a candidate or Member's campaign funds made to churches and other charitable organizations are permissible but the candidate or Member may not contribute campaign funds to any charitable

organization or church which the candidate, the Member, their immediate family, or business with which they are associated, derive a personal and financial benefit. Members are no longer required to follow Committee Advisory Opinions: 92-44; 92-46, as it relates to a school fundraising project; and 94-10, as it relates to contributions to churches. The Committee notes that contributions are also permitted to a charitable organization upon final disbursement of the candidate or Member's campaign funds. See SC Ann. § 8-13-1370(A)(2).

2. Sponsorships which include an Advertisement and Dues

With respect to sponsorships, such as for a booster club which included an advertisement and dues, the Committee previously stated in Committee Advisory Opinion 1999-1, "a contribution to a non-profit organization is allowed as an office or campaign related advertising expenditure under Section 8-13-1348(A) if it results in publication of the member's name and public title or the candidates' name and public office sought." Thus, the Committee finds that dues made by a Member to a booster club which includes the Member's advertisement is a permissible expenditure from the Member's campaign funds as the Member would not make this expenditure except for the official position the Member holds.

3. Member's Cell Phone Bill When the Cell Phone is Used for Campaigning and House Official Business as well as for Personal Use

In the past, it has been the practice of Members to pay for part of their cell phone bills from their campaign funds. The rationale was the Members did not want to own two cell phones--one for personal use and one for official use as a Member and for campaigning. It is not clear how the Member divided the cell phone bill to determine the amounts paid for personal and official use.

The Committee finds that dividing the cell phone bill between personal and official use would be permissible only if the Member purchased the phone with personal funds and could produce supporting documentation for the portion that was used for legislative business and campaigning prior to expending campaign funds for the relevant portion. However, the Committee finds the better practice is to dedicate a cell phone for official use as a Member and for campaigning, so that the entire cell phone bill would be a permissible expenditure from campaign funds. If the cell phone is purchased with campaign funds and dedicated for official use, then it must be listed as an asset on the campaign disclosure report, and the Member is subject to proper accounting and disbursement of this asset as set forth in Sections 8-13-1368 and 8-13-1370 of the Ethics Act.

4. Expenses for Promotional, Merchandise, or Advertising Items that contain the Candidate or Member's Name and Office

The Committee finds that campaign funds used to purchase promotional items to give away to the public with the candidate or Member's name and the office sought or held are related to the campaign and may be paid for with campaign funds.

5. Office Equipment Expenses

As previously stated in Committee Advisory Opinion 99-3, Members may purchase a computer, fax machine, or other permanent-type office equipment with campaign funds if such equipment is used solely for campaign or office-related purposes. These purchases must be listed as an asset on the campaign disclosure report. These expenditures must be reported on the Member's campaign disclosure form.

Upon final disbursement of a Member's campaign funds and assets, the Member is still subject to proper accounting and disbursement of all the campaign funds and assets, including any permanent-type office equipment, as set forth in SC Code Ann. § 8-13-1368 and § 8-13-1370.

6. Dues for Membership in an Organization or as a New Member

In Committee Advisory Opinion 98-3, the Committee found that contributions "to political or partisan groups are ordinary office related expenses" which are to be decided on a case-by-case basis. The Committee further stated that "an organization is deemed political or partisan only if its primary purpose is political or partisan, rather than community service oriented." Committee Advisory Opinion 98-3. In the past, expenditures of political dues made from campaign funds to a party caucus have been considered a permissible expenditure and it continues to be a permissible expenditure.

More recently, in Committee Advisory Opinion 2002-1, a Member was permitted to use his or her campaign funds to pay dues to a non-political organization if invited to join because of his or her status as a Representative.

The Committee is mindful of the Senate Ethics Committee Advisory Opinion 93-4, Example B, which provided the example of a member joining a civic organization as a way to keep in touch with the civic leaders in her district. The opinion noted, "The member would not otherwise be a member of the organization except for her office and receives no personal gain from being a member. The member may pay the dues of the organization from her campaign funds." Senate Ethics Committee Advisory Opinion 93-4, Example B.

Thus, the Committee adopts the reasoning provided in Senate Ethics Committee Advisory Opinion 93-4 that if the Member joined the civic organization as a way to assist him or her to stay in touch with civic leaders in his or her district, the dues would be a permissible expenditure from the campaign account. The Committee cautions that the Member must join the organization in his or her official capacity as a legislator.

7. Clothing

The issue has been raised about paying for suits or clothing from campaign funds. In the past, Members have been advised that purchasing clothing, that is, a suit or dress, for legislative session was a permissible expenditure from campaign funds <u>if</u> the Member limited his or her use of the clothing to strictly "official use" as a Member. The Committee finds that a Member may use his or her campaign funds for clothing purchases solely to wear as a Member during the legislative session or to an event in his or her district where he or she is attending as a House Member.

However, the Member must list the clothing as an asset on his or her campaign disclosure form and account for it when his or her campaign account is closed pursuant to the requirements in SC Code Ann. § 8-13-1368 and § 8-13-1370.

8. Gifts or Flowers for Office Staff, House Staff, or Constituents including Gifts, Resolutions, and Cards for Deaths, Births, or other Special Events sent by the Speaker or Members to other Members

In Committee Advisory Opinion 2015-3, the Committee found donating gifts of appreciation--such as fruit baskets--to custodial staff for the Blatt Building (Blatt Christmas Custodial Fund) and House staff and purchasing flowers for staff members and constituents due to certain events are not expenses that would exist irrespective of the Member's duties as an officeholder. Therefore, the Committee stated it was permissible to use campaign funds for these expenses. The Committee also finds that gifts (such as flowers), resolutions, and cards sent by the Speaker or Members to other Members for a death, birth, or other special event, are permissible expenditures from the Speaker or Members' campaign account.

9. Travel Expenses and Meals for a Person, District Group, or Team Being Recognized by the House of Representatives

The Committee finds it is proper for a Member to use campaign funds to pay for a person, group from his or her district, or team's travel expenses incurred and a meal also held for this person, group, or team as a direct result of the person, group, or team being recognized by the House of Representatives, as these expenses are an integral part of a Member's official service.

10. Resolutions and Flags

In Committee Advisory Opinion 93-6, the Committee found it was permissible for a Member to use campaign funds to frame and present Resolutions and interpreted Committee Advisory Opinion 92-3 to allow a Member to purchase a Statehouse flag for constituents or nonprofit organizations, such as schools or firehouses, because it could be seen as a service generally expected of a Member as well as an opportunity incidental and unique to membership in the House.

11. Signs that Benefit the Community, such as, Handicap Parking Signs and Community Oriented Signs

As previously mentioned in Committee Advisory Opinion 95-3, a Member may use campaign funds to purchase handicap parking signs for a fire department because it could be seen as a service generally expected of a Member as well as an opportunity incidental and unique to membership in the House. This analysis also applies to other signs that benefit the community, such as neighborhood watch signs, and thus, the payment of these signs would be a permissible campaign expenditure.

12. Food or Meals for Functions that are Directly Related to the Office

The Committee finds that Members may use campaign funds to sponsor an event such as one for a group of constituents and pay for food at such an event where the main purpose of the event was to discuss legislation. See Committee Advisory Opinion 94-2. The Member, however, should use discretion regarding the cost of the meals paid for from his or her campaign account for this purpose. In addition, as stated in Committee Advisory Opinion 95-7, a Member is allowed to use campaign funds to pay for a dinner held to thank constituents for support during one's membership.

13. Meals and/or Beverages for Campaign Workers

The Committee notes that it is permissible to pay for meals and alcoholic beverages incident to a meal for campaign workers out of campaign funds. However, the Committee cautions that Members should be cognizant of the liability that may arise, such as social host liability. Pursuant to S.C. Const. Art. XVII Section 14, under no circumstances should individuals, including campaign workers, under the age of twenty-one be served alcohol.

14. Meals for Members and Staff by a Committee Chairman, Speaker, and Speaker Pro Tempore

A Chairman of a House Legislative Committee requested the ability to use his campaign funds to pay for a Committee thank you dinner for all of the Members who serve on the Committee and all of the staffers who staff the Committee. The Committee finds that paying for a dinner for all of the Committee Members and staff as a thank you is a permissible expenditure from campaign funds as the Chairman would not have this expenditure but for the office he holds. The Committee also finds it is permissible for the Speaker and Speaker Pro Tempore to pay for meals for the Chairmen of Committees and Caucuses.

15. Tickets to a Political Event

In Committee Advisory Opinion 93-2, the Committee found that a Member may use campaign funds to purchase tickets to a political event. In addition, a Member may use campaign funds to purchase food for the Member or the Member's immediate family who also attend the political event. See Committee Advisory Opinion 93-28.

16. Legal Expenses Associated with a Candidate or Member's Campaign

As noted in Committee Advisory Opinion 2013-2, the Committee narrowly determined that legal expenses flowing directly from one's campaign may be an appropriate use of campaign funds, but the analysis must be fact specific. In addition, a candidate or Member may use campaign funds to reimburse personal funds spent for legal expenses flowing directly from one's campaign. See Committee Advisory Opinion 2013-2. However, this determination does not apply to legal expenses resulting from a candidate or Member's personal misconduct. A candidate or Member's misconduct becomes personal, for example, when a criminal charge or indictment is brought against that candidate or Member. At that time, the candidate or Member should not use his or her campaign funds to pay for the legal expenses incurred. If the criminal charges do not result in

conviction of the candidate or Member, the candidate or Member can reimburse his or her legal fees from campaign funds with guidance from the Committee. The Committee cautions that this may be done only on a case-by-case basis.

17. Newspapers or News Services

Many Members have subscribed to one or more SC newspapers or news services in order to keep abreast of matters in their districts and this state. The Committee finds that a Member may pay for SC newspaper subscriptions and news services from campaign funds pursuant to Section 8-13-1348(A) since keeping informed of local and state news and events is related to the office the Member holds.

Adopted September 1, 2016.

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ADVISORY OPINION 2016-3

The House Legislative Ethics Committee (HEC) received two requests from Members for an advisory opinion regarding whether a Member is permitted to vote at any point in the legislative process regarding a Medicaid issue if the Member's business, which the Member has an ownership interest in receives payment from Medicaid. Specifically, one Member is a member of a LLC which owns a durable medical equipment provider who accepts Medicaid money for the medical equipment purchased or rented. The other Member is an owner of a pharmacy which accepts Medicaid money as payment for the prescriptions filled.

The question is whether the receipt of Medicaid payments by the Member's business results in a conflict of interest requiring the Member's abstention from voting on Medicaid issues at any point in the legislative process.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

Medicaid is a joint state and federal program that assists with the medical costs for people that have limited incomes and resources.[1] It provides coverage for families, children, pregnant women, the elderly and people with disabilities. It is administered by the state in accordance with federal requirements. To receive Medicaid, individuals apply to their state Medicaid agency and if eligible, receive an enrollment card. Medicaid covers home health services, physician services, laboratory and x-ray services, inpatient hospital services, and many other services, including medical prescriptions.[2]

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[1] Medicare.gov: The Official U.S. Government Site for Medicare, June 9, 2016, https://www.medicare.gov/your-medicare-costs/help-paying-costs/medicaid/medicaid.html.
[2] Medicaid.gov, June 9, 2016, https://www.medicaid.gov/medicaid-chip-program-information/by-topics/benefits/medicaid-benefits.html.

When a client obtains services from a company that deals in durable medical equipment or through a pharmacy which fills prescriptions, the client may provide Medicaid as his or her insurance for payment of the item provided. The company providing these services does not have a special contract with Medicaid. The company is treated the same as any other similar provider. They are merely receiving a reimbursement for the item plus cost.

Pursuant to the Rules of Conduct regarding conflicts of interest in the Ethics, Government, Accountability, and Campaign Reform Act of 1991, S.C. Code Ann. § 8-13-700 provides,

> (A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.
> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
> (2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;
> (3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

(emphasis added). S.C. Code Ann. § 8-13-700.

In the instant situation, the Committee must first review the term "a business with which he is associated," which is defined as "a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class." S.C. Code Ann. § 8-13-100(4). It is the Committee's understanding that the Member who is a member of a durable medical company and the Member who is a pharmacist at the company he owns, may meet the definition of "business with which he is associated."

The next step is to ascertain the meaning of "economic interest" pursuant to S.C. Code Ann. § 8-13-100(11) as used in the Rules of Conduct. Economic interest means:

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

(emphasis added). S.C. Code Ann. § 8-13-100(11).

Even if it appears that the Member may have a conflict of interest, the large class exception permitted in S.C. Code Ann. § 8-13-100(11)(b) allows Members of a profession, occupation, or large class to participate in and vote on decisions that would have an economic interest to them because of the profession, occupation, or large class to which they belong. The economic interest or benefit must be such as could have been reasonably foreseen to accrue to anyone in that profession, occupation, or large class.

House Ethics Advisory Opinion 92-19 provides guidance regarding the large class exemption in a conflict of interest situation. The questions in the opinion included "as a recipient of Medicaid funds, through my pharmacy, may I vote on provisions of the Appropriations Act designed to raise Medicaid benefits and can I vote on provisions designed to specifically affect Medicaid funding of pharmacies." The opinion explained that "the exception in the economic interest definition for the general benefits to the whole profession should allow you to vote on the items you addressed." House Ethics Advisory Opinion 92-19.

Additional opinions related to the large class exemption include: 1) House Ethics Advisory Opinion 92-37, where a licensed insurance agent was not prohibited from voting on insurance legislation because, under the guidance of the large class exception, the insurance agent would not accrue any benefit that would be foreseeably different than the benefit accruing to insurance agents as a whole; and 2) House Ethics Advisory Opinion 93-14, which allowed a Member, who was an insurance agent and broker, to participate in insurance issues before the Labor, Commerce, and Industry Committee as well as the Property and Casualty Subcommittee.

Thus, a Member who is a member of a LLC which owns a durable medical equipment provider that accepts Medicaid money for the medical equipment purchased or rented as well as a Member who owns a pharmacy and accepts Medicaid money for prescriptions filled both fall within the large class exception. They are able to vote and make decisions relevant to Medicaid

including budgetary issues because they receive an economic benefit from Medicaid reasonably foreseen to accrue to anyone in that profession.

CONCLUSION

In summary, the large class exception allows the Members to participate in voting on decisions relevant to Medicaid.

Adopted September 1, 2016.

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ADVISORY OPINION 2016-4

The House Legislative Ethics Committee (HEC) received a request from a Member for an advisory opinion regarding whether a lawyer/legislator can be associated with a law firm that represents clients pursuant to S.C. Code Ann §§ 8-13-740 and 8-13-745 provided that the lawyer/legislator properly abstains from voting on matters relating to the clients whom the law firm represents. See also S.C. Code Ann §§ 8-13-700(B). Specifically, the law firm has clients that it currently represents in lobbying activities.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

SC Code Ann. § 8-13-740, part of the Rules of Conduct, provides:

(A) . . . (2) 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 for a rate or price fixing matter before the South Carolina Public Service Commission or South Carolina Department of Insurance, or in an agency's consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing. . . .
(7) The restrictions set forth in items (1) through (6) of this subsection do not apply to:
(a) purely ministerial matters which do not require discretion on the part of the governmental entity before which the public official, public member, or public employee is appearing;
(b) representation by a public official, public member, or public employee in the course of the public official's, public member's, or public employee's official duties;

(c) representation by the public official, public member, or public employee in matters relating to the public official's, public member's or public employee's personal affairs or the personal affairs of the public official's, public member's, or public employee's immediate family. . . .

(B) A member of the General Assembly, when he, an individual with whom he is associated, or a business with which he is associated represents a client for compensation as permitted by subsection (A)(2)(c), must file within his annual statement of economic interests a listing of fees earned, services rendered, names of persons represented, and the nature of contacts made with the governmental entities.

(C) A member of the General Assembly may not vote on the section of that year's general appropriation bill relating to a particular agency or commission if the member, an individual with whom he is associated, or a business with which he is associated has represented any client before that agency or commission as permitted by subsection (A)(2)(c) within one year prior to such vote. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole.

(emphasis added). SC Code Ann. § 8-13-740; see also House Ethics Committee Advisory Opinion 93-23. Thus, the Member may not represent another person before a governmental entity unless certain exceptions are complied with. Furthermore, if those exceptions are met, then the Member cannot vote on the section of the budget related to a particular agency if the Member or the business with which he is associated, that is, the law firm, has represented that client before that agency within one year prior to the vote. Further, the Member must report any legal fees earned, names of the persons represented, and the nature of contact with the governmental entities on his or her Statement of Economic Interests.

The Member also references another Rule of Conduct, SC Code Ann. § 8-13-745 which states:

(A) No member of the General Assembly or an individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case, as defined in Section 1-23-310, before an agency, a commission, board, department, or other entity if the member of the General Assembly has voted in the election, appointment, recommendation, or confirmation of a member of the governing body of the agency, board, department, or other entity within the twelve preceding months.

(B) Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or any individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case, as defined in Section 1-23-310, before an agency, a commission, board, department, or other entity elected, appointed, recommended, or confirmed by the House, the Senate, or the General Assembly if that member has voted on the section of that year's general appropriation bill or supplemental appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole.

> (C) Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or an individual with whom he is associated in partnership 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. This subsection does not prohibit a member from voting on other sections of the appropriation bill or from voting on the general appropriation bill as a whole.
> (D) The provisions of this section do not apply to any court in the unified judicial system.
> (E) When a member of the General Assembly is required by law to appear because of his business interest as an owner or officer of the business or in his official capacity as a member of the General Assembly, this section does not apply. . . .

(emphasis added). SC Code Ann. § 8-13-745; see also House Ethics Committee Advisory Opinion 92-35. Therefore, the lawyer/legislator is prohibited from representing clients for a fee in a contested case before state agencies, boards, and commissions in certain circumstances. First, the representation is prohibited by the lawyer/legislator or his firm if the Member voted in the election, appointment, confirmation, etc. of a member to the board's governing body within the twelve preceding months. Second, the representation is prohibited by the lawyer/legislator or his firm if the Member voted on the section of that year's appropriation's bill relating to that agency, board, etc. within one year of the vote. If the lawyer/legislator meets these exceptions, then the lawyer/legislator or his firm may represent clients for a fee in a contested case before agencies, boards, and commissions.

Lastly, there is another Rule of Conduct that must be considered. SC Code Ann. § 8-13-700(B), which requires a Member to abstain from voting on legislative issues that may be a conflict of interest and this conflict of interest must be noted on the record. In this situation, the Member will not represent or have any contact with the clients the law firm represents for lobbying activity. Moreover, the Member plans to abstain from voting on legislative issues pursuant to Section 8-13-700(B) which pertain to the clients the law firm represents in lobbying matters.

In an analogous opinion, SEC AO93-007, the State Ethics Commission considered whether a councilwoman who was employed with a law firm was disqualified from any votes, deliberations, or other actions regarding the firm client's rate request before the Public Service Commission (PSC) pursuant to SC Code Ann. § 8-13-700(B). The firm represented the client before the PSC and also engaged in lobbying activities. The Commission explained that the Council member would be required to follow the procedures of Section 8-13-700(B) if the issue would affect the economic interests of the law firm with which she was associated. The Commission noted that "the procedures of Section 8-13-700(B) are required if the matter requiring official action entails an economic benefit." SEC AO93-007, p.3.

In the instant case, the lawyer/legislator plans to work for a law firm which represents clients, which includes engaging in lobbying activity for those clients. It is the Committee's understanding that the lawyer/legislator will not directly engage in representation of these clients. If there is a vote on a bill in which the law firm is currently representing a client on lobbying

matters and it would affect the economic interest of the law firm with which the lawyer/legislator was associated, then the lawyer/legislator would follow the abstention procedure in Section 8-13-700(B).

Finally, while the HEC does not have jurisdiction over the South Carolina Rules of Professional Conduct governing lawyers, we have reviewed the rules regarding conflicts of interest, that is, Rule 1.10 (general imputation rule) and Rule 1.9 (duties to former clients).Rules of Professional Conduct, Rule 4017, SCACR. In the lawyer/legislator matter, the lawyer/legislator will not engage in any representation or contact with the clients that the law firm represents in lobbying activities.

CONCLUSION

In summary, a Member who is a lawyer/legislator can be associated with a law firm that represents lobbyist clients as long as the lawyer/legislator complies with the requirements of S.C. Code Ann §§ 8-13-700(B), 8-13-740, and 8-13-745. Specifically, the lawyer/legislator must abstain from voting on matters for the clients who are currently represented by the law firm at the time of the vote.

Adopted September 1, 2016.