



# Memo

To: SC Taxation Realignment Commission "TRAC"  
From: Staff  
CC: Appointees  
Date: 9/9/2009  
Re: Staff/Lobbyist Interactions

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In an informal opinion, the State Ethics Commission opined that although it is not a violation of subsection (F) of the TRAC bill for a lobbyist to give information to the Commission's staff or consultants outside of a public meeting, if the staff or consultant then reveals that information to a commission member, the lobbyist has violated subsection (F) of the bill. A lobbyist who violates subsection (F) is subject to a fine of up to \$2,500, imprisonment for one year, and the inability to lobby for 3 years. Information can be transmitted orally or in writing.

Thus, out of our desire to adhere to the General Assembly's intention of being an independent commission, and out of an abundance of caution for lobbyists and the severe repercussions associated with a violation of subsection (F), it is the Commission's desire for lobbyists not to contact any person who is aiding the Commission in its work except for the purpose of presenting information at a publicly held meeting and matters unrelated to the Commission's work. Further, the Commission will instruct any person doing work on behalf of the Commission to not engage in communications with lobbyists concerning the business of the Commission except for the purpose of public presentations.

The Commission requests that if a lobbyist wishes to present information to the Commission at a public meeting, the lobbyist should contact staff in writing. The contact should be limited to the request to present information and a brief outline describing the information to be presented. Prior to the presentation, staff may be provided copies of the presentation to be provided to the Commission members.



# State of South Carolina State Ethics Commission

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HERBERT R. HAYDEN, JR.  
EXECUTIVE DIRECTOR

July 17, 2009

Re: Request for Informal Opinion

Thank you for your recent request for an informal opinion. An informal opinion is the opinion of the Commission staff based on the State Ethics Commission's prior published opinions; however, an informal opinion is not binding on the Commission. S.C. Code Ann. §8-13-320 (Supp. 1997). The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991. This opinion is based on the facts as you submitted. Any material deviation from the submitted facts or failure to disclose relevant information will void this opinion. An opinion does not supersede any other statutory or regulatory restrictions which may apply to this situation.

## Issue

In your letter you state the following:

As a follow-up to our conversation of July 7, I am writing to request an informal advisory opinion concerning a provision in legislation recently passed by the General Assembly. More specifically, S. 12, R. 121, is an act to create the South Carolina Taxation Realignment Commission. Commission members will be appointed by certain designated legislative officials and the Governor. Member of the General Assembly may not be appointed to the Commission. In simplest form, the Commission is to study

the revenue system of South Carolina's state and local governments and must submit a report to the General Assembly on any recommended changes to the revenue system.

Included in the legislation is the following provision:

Commission members shall not receive information regarding the business of the commission from a lobbyist except through formal presentation to the commission at a meeting called in compliance with the Freedom of Information Act. Any lobbyist violating the provisions of this subsection is deemed guilty of a misdemeanor and, upon conviction, must be punished as provided in Section 2-17-130 of the 1976 Code.

S. 12, R. 121, Section 1(F)(hereinafter referred to as "Subsection F"). Our questions for you concerning this provision are based on two assumptions: (1) the State Ethics Commission is the jurisdictional agency for the enforcement of the provision; and (2) persons who are employed, appointed, or retained to influence members of the South Carolina Taxation Realignment Commission in their official duties are lobbying and would be considered lobbyists under the Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended. Below are the questions for which your opinion is sought:

1. Does Subsection F. prohibit a lobbyist giving information to the commission's staff or consultants?
2. Is Subsection F violated if the commission's staff or consultants gives information received from a lobbyist to a commission member?
3. May a lobbyist communicate with a member of the General Assembly, including members who make appointments to the commission, concerning the work of the commission?
4. Does the Subsection F prohibition apply to written and oral forms of information?
5. May the lobbyist's principal provide to a commission member information regarding the business of the commission without violating Subsection F?
6. Does Subsection F allow a lobbyist to attend a meeting at which is present only a commission member, the lobbyist and the lobbyist's principal? If so, may the lobbyist say anything to the commission member regarding the business of the commission?

I appreciate your consideration of the above questions. I look forward to your opinion. If you have any questions or need more information, please contact me at

**Law**

**South Carolina Taxation Realignment Commission**

**Section 1(F) provides:**

Commission members shall not receive information regarding the business of the commission from a lobbyist except through formal presentation to the commission at a meeting called in compliance with the Freedom of Information Act. Any lobbyist violating the provisions of this subsection is deemed guilty of a misdemeanor and, upon conviction, must be punished as provided in Section 2-17-130 of the 1976 Code.

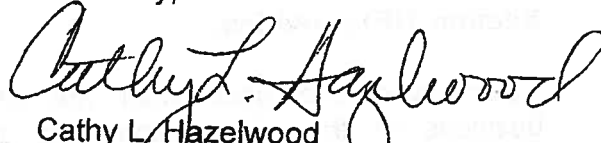
**Discussion**

At the outset, your assumptions are correct. The State Ethics Commission is the appropriate agency for the enforcement of the above provision and individuals employed, appointed, or retained to influence members of the South Carolina Taxation Realignment Commission are lobbyists.

1. Subsection F does not prohibit a lobbyist from giving information to the commission's staff or consultants. The plain reading is that such information must be provided to the commission members in a called meeting. No restriction is placed on staff.
2. Subsection F is violated if the commission's staff or consultants gives information received from a lobbyist to a commission member, unless staff presents it to the commission members during a called meeting.
3. A lobbyist may communicate with a member of the General Assembly, including members who make appointments to the commission, concerning the work of the commission.
4. Subsection F's prohibition extends to written and oral forms of information.
5. Although Subsection F prohibits lobbyists' interaction, I think a lobbyist's principal should not provide to a commission member information regarding the business of the commission outside a public meeting.
6. If this is not a called meeting pursuant to FOIA, then I do not think a commission member, a lobbyist and the lobbyist's principal should meet. If such a meeting occurs, then the lobbyist should say nothing to the commission member regarding the business of the commission.

Thank you for contacting the State Ethics Commission. If I can be of further assistance in matters within the Commission's jurisdiction, please contact me.

Sincerely,



Cathy L. Hazelwood  
Deputy Director and General Counsel

CLH:raw