

State Regulation of Public Utilities Review Committee

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ADVISORY OPINION

RE: Public Service Commission Advisory Opinion - Legislative Receptions

February 27, 2006

SUBJECT: ATTENDANCE BY CANDIDATES FOR THE PUBLIC SERVICE COMMISSION AT LEGISLATIVE RECEPTIONS

SUMMARY: Candidates seeking election to the Public Service Commission should not attend legislative receptions sponsored by (1) a lobbyist's principal, (2) an entity regulated by the Public Service Commission, or (3) a party appearing before the Public Service Commission.

QUESTION: The Review Committee has been asked whether a candidate for the Public Service Commission may attend legislative receptions.

DISCUSSION: Members of the Public Service Commission (the commission) are subject not only to statutory constraints on their conduct and activities but also to constraints arising out of the Code of Judicial Conduct, Rule 501, SCACR. With respect to statutory constraints, a public official of a state agency, board, or commission must not accept lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal, unless the entire board or commission of which the public official is a member is invited. S.C. Code Ann. §2-17-90(A)(2). If a candidate is currently serving as a commissioner, he is prohibited by statute from attending a function unless the entire commission is invited. The Review Committee has been made aware that candidates for offices elected by the General Assembly sometimes attend receptions sponsored by lobbyists' principals even though they are not invited to the functions. If the entire commission is not invited, a commissioner must not attend a legislative reception sponsored by a lobbyist's principal.

Pursuant to §8-13-705, a person must not give, offer, or promise anything of value to a commissioner with the intent to influence the discharge of the commissioner's official responsibilities, and a commissioner must not receive anything of value in return for fulfilling his official responsibilities or duties. A reasonable person could deduce that the impartiality of a commissioner may be influenced by the hospitality shown by the host; therefore, a commissioner should not attend receptions sponsored by an entity regulated by the commission or by a party appearing before the commission.

Additionally, pursuant to §8-13-935, candidates seeking election to the Public Service Commission are prohibited from directly or indirectly contacting a member of the General Assembly regarding screening until the qualifications for all candidates have been determined by the Review Committee and a report on the qualifications has been formally released. Candidates have ample opportunities to contact members of the General Assembly at the appropriate time without attending legislative receptions.

Pursuant to §58-3-30(B), members of the Public Service Commission are bound by the Code of Judicial Conduct. Canon 1 of the Code of Judicial Conduct requires commissioners to participate in establishing, maintaining, and enforcing high standards of conduct, and to personally observe those standards. Canon 2 of the Code of Judicial Conduct requires commissioners to act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission, and avoid impropriety and the appearance of impropriety. "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the [commissioner's] ability to carry out [quasi-judicial] responsibilities with integrity, impartiality and competence is impaired." Canon 2, Commentary. Commissioners are subject to strict statutory prohibitions against ex parte communication. S.C. Code Ann. §58-3-260. Not only must commissioners refrain from improper ex parte communication, they also must avoid the appearance of engaging in improper ex parte communication. The opportunity exists for commissioners to engage in ex parte communications at legislative receptions sponsored by a lobbyist's principal, an entity regulated by the commission, or a party appearing before the commission; therefore, the attendance of a commissioner at a legislative reception could create the appearance of impropriety.

Canon 4D(5)(h) prohibits judges from accepting gifts from lawyers or their firms if they have come or are likely to come before the judge, or from their clients when the clients' interests have come or are likely to come before the judge. This canon, in addition to §8-13-705, prohibits commissioners from accepting gifts from lawyers who appear before the commission and from utilities regulated by the PSC. This would include legislative receptions. Canon 5 prohibits commissioners and commission candidates from attending political gatherings.

Statutory law does not address whether a candidate who is not currently serving on a state board or commission may attend a legislative reception. To ensure that all candidates are afforded equal treatment, the Review Committee is of the opinion that all candidates for the Public Service Commission, not just candidates who are incumbent commissioners, should not attend receptions sponsored by a lobbyist's principal, an entity regulated by the commission, or a party appearing before the commission. Attendance by a candidate for the Public Service Commission at a

legislative reception sponsored by a lobbyist's principal, an entity regulated by the commission, or a party appearing before the commission may be considered by the Review Committee as a disqualifying factor.

CONCLUSION: Candidates seeking election to the Public Service Commission should not attend legislative receptions sponsored by (1) a lobbyist's principal, (2) an entity regulated by the Public Service Commission, or (3) a party or person appearing before the Public Service Commission.

THIS OPINION IS ADVISORY IN NATURE ONLY. THE STATE ETHICS COMMISSION IS RESPONSIBLE FOR ENFORCING VIOLATIONS BY INCUMBENT COMMISSIONERS OF THE STATE ETHICS ACT AND THE CODE OF JUDICIAL CONDUCT. THE REVIEW COMMITTEE MAY CONSIDER VIOLATIONS WHEN IT CONSIDERS A CANDIDATE'S QUALIFICATIONS.

Candidates may contact Review Committee counsel, Breeden John at (803) 212-6216 or Bryan Triplett at (803) 734-3015 for questions or clarification regarding this advisory opinion.