

Senate Ethics Committee



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ADVISORY OPINION #92-13

To: Members, South Carolina Senate

From: Senate Ethics Committee

Re: Reimbursement of Member Expenses by a Lobbyist's Principal

Date: December 23, 1992

A question has arisen concerning whether a member may accept reimbursement for expenses incurred while performing his duties as president of a professional association¹ which is a registered lobbyist's principal. These reimbursements have typically involved actual expenses incurred in travelling to and from association functions or meetings, lodging and meals during association meetings and postage and long distance telephone charges relating to association business. The lobbyist who is an employee of the association has traditionally driven the president as well as other officers to association meetings in order to conveniently discuss association business or matters which will be considered at association meetings.

It is noteworthy that this entity is a professional association which seeks to offer reimbursement for the reasonable expenses incurred by the president or other officers while serving in their official capacity. The reimbursements under discussion are identical to those which have been traditionally afforded to the president and other officers. The membership of this association is comprised of individuals who are licensed and/or

¹The association is not a firm doing business as a professional corporation. The association was formed to enhance professional development through seminars and continuing education as a means to discuss common problems and to represent the interests of the profession in various forums.

regulated by the State of South Carolina. Membership in this association or service as an officer is in no way related to or obtainable by virtue of the member's service in the Senate.

Section 2-17-80 establishes the general prohibition against a member accepting anything of value from a lobbyist or a person acting on behalf of a lobbyist. Section 2-17-80(C), however, allows a member to accept lodging, transportation, entertainment, food, meals, beverages, or any other thing of value from a lobbyist "which is also 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." In the instant situation, the lobbyist would be providing transportation in the same manner and fashion as had been the case for presidents or officers in the past. Therefore, the transportation is being furnished without regard to the member's status as a public official and would be "furnished on the same terms" to any member of the public occupying an office within the association.

In pertinent part, Section 2-7-90 prohibits a lobbyist's principal from offering, and prohibits a member of the Senate from accepting, lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal unless the entire General Assembly or certain groups of legislators are invited. In such cases, the value of what a member may accept is limited to twenty-five dollars per day and two hundred dollars in the aggregate per year from each lobbyist's principal. Sections 2-17-100 and 8-13-715 allow the reimbursement of a member's reasonable expenses associated with speaking engagements.

With regard to a lobbyist's principal, the Ethics, Governmental Accountability and Campaign Reform Act has no provision which expressly authorizes a member to receive reimbursement for the type of expenses mentioned earlier when the member serves as an officer of an association which is a lobbyist's principal. The act was designed and intended to provide bright-line rules to govern conduct as well as copious disclosure in many instances such as when acceptance of a thing of value is allowed. Among the key purposes of the new act were to preserve and maintain the integrity of the governmental policy-making process and to prohibit even the appearance of undue influence which may be inferred from excessive expenditures made by private entities on behalf of public officials.

This Committee, since its inception, has been charged with the duty and responsibility of advising members of the Senate when such opinions would serve the public interest. This role has become increasingly important as legislation even as comprehensive as this act does not, and cannot, anticipate and address every factual situation which may arise. Failure to consider the purposes of the

act and to inject common sense into the analysis of this Committee, would cause the Committee to not fully perform its role.

Thusly, it could be suggested that the association could provide a stipend² in lieu of direct reimbursement for the expenses incurred. This arrangement, however, could actually cause, rather than solve problems, particularly if the stipend exceeds the actual expenses incurred. Should this occur, the stipend would arguably be more in the nature of an honorarium. Also, under this arrangement, only the stipend rather than the actual expenses would be subject to disclosure on the member's Statement of Economic Interests. If the stipend is not adequate to cover the actual reasonable expenses, while permissible under the act, it hardly seems to fair to require a member to absorb the out-of-pocket expenses incurred while serving as president when the professional association has customarily deemed certain expenses to be appropriate for reimbursement. In short, the substance of this issue should control any decision of this Committee rather than the form that any payment may or may not take.

Equally as important, members should not be discouraged from being active in associations which further and enhance their professional development. Service as an officer in a professional association may affect a member's opinion on a given issue but it is absurd to suggest that someone who aspires and obtains such a position would become unduly influenced because he does not have to absorb his own expenses to fulfill his role as an officer of the association. As stated earlier, service as an officer in the professional association and the reimbursement that would be provided in no way relates to or would be given to seek to influence the member's official conduct. Disallowing reimbursement, based on the facts presented, would be as nonsensical as suggesting that someone seek new employment if he worked for a corporation which was also a lobbyist's principal at the time he is elected to the Senate. In this instance, disclosure, rather than prohibition, adequately furthers the purposes of the ethics act.

Therefore, the Committee concludes that a bona fide professional association which is a lobbyist's principal may reimburse an officer of the association for the expenses related to his service in the same manner, and within the same limits, as have been traditionally provided, irrespective of whether the officer concurrently serves in the South Carolina Senate. The Committee

² A stipend, which is a set payment for services or expenses must be distinguished from an honorarium for which custom or propriety forbids a price to be set. A lobbyist's principal is prohibited from paying an honorarium to a member pursuant to Section 2-17-110(H).

further concludes that the member may accept transportation, such as a ride in a car driven by the association's lobbyist, to and from official functions of the association in the same manner and fashion that such assistance has been customarily provided to association presidents or officers in prior years. The member is reminded that Section 8-13-710(A) requires the member to report the value of anything received from a lobbyist's principal on his Statement of Economic Interests which must be filed in April.

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