

Senate Ethics Committee

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ADVISORY OPINION #92-4

To: Members, South Carolina Senate

From: Ethics Committee

Re: Acceptance of Anything of Value From a Lobbyist's Principal or Non-Lobbyist's Principal and Proper Reporting Thereof

Date: March 11, 1992

The Committee has received numerous requests for advisory opinions relating to the acceptance and proper reporting of anything of value from a lobbyist's principal or a non-lobbyist's principal. The analysis for each of the six questions presented below, in large part, if not exclusively, relate to two newly enacted Code sections (Sections 8-13-710 and 8-13-715). The Committee addressed these specific questions in a single opinion so as to provide a broad overview of these provisions, an aspect which would not be readily apparent if each question was presented and answered in a separate opinion.

PART I -- INVITATION TO A SPEAKING ENGAGEMENT

May the "out-of-pocket" costs (transportation, lodging, food) incurred by a member while attending an in-state or out-of-state meeting of the American Legislative Exchange Council (ALEC), "a non-profit bipartisan association of legislators from all fifty states" be reimbursed by that organization, when ALEC "gets its funding" for these meetings from "private sector businesses, some of which operate within South Carolina"?

The member indicated that he would be attending certain "briefings" with federal officials but did not indicate whether he

would be speaking or participating in panel discussions. As discussed below, whether a member is merely attending, rather than speaking before a public or private group, may have a bearing on the amount of reimbursement, if any, a member may appropriately receive. Whether the offeror is a lobbyist's principal or non-lobbyist's principal is also a key factor in determining whether, and in what amount, a member may accept reimbursement for expenses incurred in merely attending or speaking at a public or private gathering.

Sections 8-13-715 and 2-17-100, which are virtually identical, control the acceptance of a speaking engagement. Section 8-13-715 provides that a public official "acting in an official capacity"¹ may not receive anything of value for "speaking before a public or private group." Thus, any sort of honorarium for a speaking engagement is prohibited. At the outset, it may also be helpful to note that lobbyists should not facilitate the offer of anything of value to a member, as a lobbyist is prohibited from facilitating the offer of anything of value to a member under Section 2-12-80.

Section 8-13-715 further provides that "[n]otwithstanding the limitations of Section 2-17-90,² a public official or public member may receive payment or reimbursement for actual expenses incurred for a speaking engagement." The expenses subject to payment or reimbursement, however, must be reasonable and must be incurred in a reasonable time and manner in which to accomplish the purpose of the engagement.

With these general comments in mind, the threshold question of this inquiry is whether Section 8-13-715 is applicable to the facts presented by the member. In other words, in the absence of a statutory definition, how should "speaking engagement" or "speaking before a public or private group" be defined? The Committee concludes that a "briefing" in its plain and ordinary meaning would not be a "speaking engagement" so as to make applicable the

¹Although not expressly defined in the act, it may reasonably be assumed that a member is speaking in his official capacity if matters relating to the General Assembly are discussed, or in those instances when the member may reasonably conclude that but for his office, he would not have been invited to speak.

²In most relevant part, Section 2-17-90 establishes a twenty-five dollar per day and two hundred dollar annual aggregate limitation on anything of value received from a lobbyist's principal and only permits these expenditures when an invitation is extended to the entire General Assembly, the entire Senate, or other specified groupings of members. As it relates to members of the Senate, these groupings include "one of the committees, subcommittees, joint committees, legislative caucuses, or county legislative delegations."

provisions of Sections 8-13-715 and 2-17-100 (which allow a lobbyist's principal to reimburse a member's reasonable expenses). The Committee further concludes that being a panelist as a part of a panel discussion would meet the definition of a "speaking engagement". Therefore, the only limitation on the reimbursement of actual expenses incurred for an in-state speaking engagement is that they must be "reasonable" as referenced above. If the expenses relate to an out-of-state speaking engagement, a member of the Senate must receive prior written approval from the President Pro Tempore of the Senate for the payment or reimbursement of the reasonable expenses incurred. These conclusions are unaffected by whether the invitation is made by a lobbyist's principal or a non-lobbyist's principal.

If a member is merely attending a meeting rather than speaking before a meeting held by a public or private group, Section 8-13-710 does not relieve the member from the limitations established in Chapter 17 of Title 2 (lobbying provisions). Section 8-13-710(A) does not create an exception to Section 2-17-90,³ as is the case with Section 8-13-715, relating to speaking engagements. Section 8-13-710(A) simply requires that anything of value received from a lobbyist's principal must be reported on the statement of economic interests required to be filed by each member. Therefore, a lobbyist's principal may not invite one individual member of the Senate to attend a meeting or other function as the invitation is prohibited by Section 2-17-90.

The member did not indicate whether any lobbyist's principals would be contributing to defray a member's expenses for attending this meeting. The member's inquiry only states that ALEC "gets its funding for these meetings from private sector business, some of which operate within South Carolina." This sentence raises a question with regard to the involvement of lobbyist's principals in contributing to a conference or a meeting which warrants brief discussion. The new law clearly prohibits a lobbyist's principal from doing indirectly what may not be accomplished directly. Although the Committee is expressing no opinion in this instance,⁴ it is possible that involvement by lobbyist's principals may rise to the level of effectively being an invitation from a lobbyist's principal. Factors which may be relevant to such a determination by the Committee are the contribution level, the funding arrangements, and the costs to which any funds are allocated that are received from a lobbyist's principal. As stated above,

³See footnote #2.

⁴The Committee does not have enough information to determine whether any lobbyist's principals registered in this State are participating in the meeting at all, let alone, whether the involvement of lobbyist's principals would rise to the level of doing indirectly what is directly prohibited.

resolution of this question can be essential as a lobbyist's principal **may not** invite an **individual** member to attend a meeting or conference, as to do so is prohibited by Title 2, Chapter 7.⁵ If the member determines that lobbyist's principals are involved with this organization, he may wish to present these details to the Committee for further consideration.

If no lobbyist's principals are involved in the hosting of an event and so long as no lobbyist's principals are actually contributing to reimburse a member's expenses for **attending a meeting**, the provisions of Section 8-13-710(B) would be applicable. Except as specified in Section 7-13-705, there is no prohibition against or limitation on what a **non-lobbyist's principal** may provide to a member.⁶ However, in pertinent part, Section 8-13-710(B) requires a member to report, on his statement of economic interests, the receipt or acceptance of anything of value, from a person, worth twenty-five dollars or more in a day or two hundred dollars or more in the aggregate calendar year if:

"there is reason to believe the donor would not give the thing of value but for [the member's] office".⁷

Although, in the first instance, it is the member who must determine whether something would not be offered but for the member's office, the Committee is certainly available to assist the membership with this determination. A relevant, but not totally determinative consideration would be whether the thing of value is provided to all public officials, all legislators, or some subunit such as a committee or a county delegation.

The Committee concludes that under the facts presented, a member would have to report on his statement of economic interests anything of value worth twenty-five dollars or more received from a non-lobbyist's principal while attending the meeting as provided in Section 8-13-710(B). The Committee also concludes that approval by the President Pro Tempore in order to accept payment or reimbursement for expenses **is not** required for **attendance** at an out-of-state meeting where the member will not be speaking, as

⁵See footnote #2.

⁶The text of Section 7-13-705(A) is presented in the summary at the end of this opinion. Please note that the provisions of Section 7-13-705 should always be considered in accepting anything of value from any person.

⁷Section 8-13-710(B) also provides other conditions which, if met, would require a member to report anything of value received from any person, but they are not relevant to this inquiry as they relate to contractual matters. Section 8-13-210 also provides exceptions to the reporting requirements which are not relevant to this inquiry.

Section 8-13-715 applies only if a member is speaking before a public or private group. Please keep in mind, however, only a non-lobbyist's principal may make an invitation to an individual member to attend a meeting, conference, or other function. The Committee further concludes that Sections 2-17-100 and 8-13-715 apply to both in-state and out-of-state speaking engagements. The difference in application is that prior written approval by the President Pro Tempore is required for out-of-state speaking engagements and not for in-state speaking engagements.

PART II -- INVITATION FROM A LOBBYIST'S PRINCIPAL TO A MEMBER FOR AN OUT-OF-STATE SPEAKING ENGAGEMENT

May a member who is invited to speak at an out-of-state conference on Friday afternoon accept lodging accommodations for Friday and Saturday night as a guest of a lobbyist's principal?

In his inquiry to the Committee, the member indicates that he is "on the program to speak Friday afternoon and attend a dinner that night. I may or may not be speaking to the Association on Saturday." The member also stated that a lobbyist's principal has offered to "pay for my room and meals on Friday night and Saturday and provide a mileage reimbursement."

As discussed in PART I, this invitation is governed by Sections 8-13-715 and 2-17-100. These provisions allow a member to 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. This section also requires that **a member receive prior written approval** for the payment or reimbursement of expenses **from the President Pro Tempore** when the expenses involve an out-of-state engagement.

As mentioned in Part I, members are cautioned with regard to invitations to speaking engagements from a lobbyist as a lobbyist is prohibited from facilitating the offer of anything of value to a member under Section 2-17-80.

Based on the facts presented, such as the location of the meeting and the cost-effectiveness of the travel involved, in this instance, the Committee concludes that, unless the member is part of a panel or otherwise active as a program participant on Saturday, accepting lodging for Saturday evening would not be reasonable in time and manner to accomplish the purpose of the speaking engagement on Friday. Should the member be a part of the panel or otherwise active as a program participant, accepting lodging and meals for that day would be reasonable.

PART III -- MEMBER RECORDKEEPING FOR ATTENDANCE AT FUNCTIONS HELD
BY LOBBYIST'S PRINCIPALS AND NON-LOBBYIST'S PRINCIPALS

A member has asked for guidance as to:

Whether a member of the South Carolina Senate may attend a function to which he/she is invited as a legislator without maintaining an account of what, when, and where attended, and how much, if anything, consumed?

The appropriate response to this inquiry depends upon whether the host or hosts who are extending an invitation are a lobbyist's principal or a non-lobbyist's principal. As mentioned earlier, Section 2-17-80 prohibits a lobbyist or a person acting on behalf of a lobbyist from offering or facilitating the providing of anything of value to a member of the Senate. The following discussion is limited to invitations which do not involve an invitation to speak to a public or private group as this was addressed in Part I and Part II.

If the function is hosted by one or more lobbyist's principals and the invitation has been extended to appropriate groupings⁸, the acceptance of such an invitation would be permissible so long as a thing of value from each lobbyist's principal **does not exceed** twenty-five dollars in a day and two hundred dollars in a calendar year. Section 2-17-90, as it relates to members of the Senate, only allows a lobbyist's principal to invite the groupings⁹ as were addressed in Part I. Section 2-17-90(C) requires a member to report¹⁰ "the value of anything received" except those activities relating to state or local economic development as authorized in item (E).¹¹ Section 8-13-710(A) also makes it clear that the value of anything received by a member from a lobbyist's principal **must be reported** on the member's statement of economic interests.

⁸The entire membership of the Senate, the General Assembly, a committee, subcommittee, joint committee, legislative caucus, or a county legislative delegation of which the legislator is a member (Section 2-17-90).

⁹Please see comments in Footnote #2 and #8.

¹⁰The Committee calls your attention to page 3 of the Senate Journal from Wednesday, February 19, 1992, where Senator Courson asked that the letter from Secretary Miles regarding §2-17-90(C) be printed. It states that item (C) would require the reporting of the value of things received on the statement of economic interests.

¹¹It is important to note that, although there is an exception from the disclosure of anything of value received, the invitation must still be according to the grouping provided in item (A) and the expenditure limits of (B) of Section 2-17-90 are still applicable.

If a function is being hosted by a **non-lobbyist's principal**, Section 8-13-710(B) requires a member to report on his statement of economic interests the receipt of anything of value worth twenty-five dollars **or more** in a day and anything of value worth two hundred dollars **or more** in the aggregate in a calendar year. As discussed in Part I, the reporting requirements **with regard to non-lobbyist's principals** apply only if the member has reason to believe that the thing of value would not be given but for the member's office.¹² It may also be helpful to note that a non-lobbyist's principal is not bound to invite members based upon the groupings specified in Section 2-17-90.

To assist the membership in complying with the reporting provisions relating to functions held by lobbyist's principals and non-lobbyist's principals, the Committee on Invitations has been requesting from each host, information discussed above relating to costs of each function to which the entire Senate has been invited. Thus, it should be as simple as having your staff periodically compare your personal calendar with the information on hand in the Invitations Committee. The Committee also points out that the Invitations Committee would not report out an invitation to be placed on the Senate calendar if a **lobbyist's principal** informed the Committee that more than twenty-five dollars is being spent per expected attendee. The Invitations Committee is also requesting a **non-lobbyist's principal** to indicate if a non-lobbyist's principal host is intending to spend more than twenty-five dollars per each expected attendee.

For purposes of record keeping in filing your statement of economic interests, the Committee would suggest your attendance at an event hosted by a **lobbyist's principal** be reported as "twenty-five dollars or less". If a member becomes concerned as to whether you are approaching the two hundred dollar aggregate limit from a given lobbyist's principal in a calendar year, more detailed information could be requested from that lobbyist's principal, as they are required to maintain similar records. Non-lobbyist's principals are not subject to the reporting requirements of lobbyist's principals. However, if you believe that you have accepted anything of value in excess of twenty-five dollars and two hundred dollars in the aggregate, you may contact the Invitations Committee or the non-lobbyist's principal directly.

¹²Please see comments generally on page 3 and footnote #6.

PART IV -- ACCEPTANCE AND REPORTING OF A THING OF VALUE RECEIVED
FROM A NON-LOBBYIST'S PRINCIPAL

May a member and his spouse accept a dinner invitation from a mayor extended on behalf of the city council?

Although a city may be a member of the Municipal Association, which is a lobbyist's principal, the city would not be a lobbyist's principal unless it employs, appoints, or retains a lobbyist (see subitems (13) and (14) of Section 2-17-10). Thus, it is assumed for purposes of this response that the city would not be a lobbyist's principal.

Section 8-13-710(B) requires a member to report on his statement of economic interests anything of value received from a "person" worth twenty-five dollars or more in a day and anything of value worth two hundred dollars or more in the aggregate in a calendar year.¹³ Section 8-13-100(24) defines "person" to include a corporation. The city is a corporate entity and the mayor and council members are effectively the board of directors of the corporation.

The committee concludes that the member and his wife may accept a meal and transportation. If the cost of the transportation and meal exceeds twenty-five dollars, the member must report this information on his statement of economic interests. The Committee concludes that a member should report any costs as near to the exact amount as practicable and suggests that the most prudent course of action would be to report the exact amount, if it is known.

PART V -- DISCOUNT OFFERED BY NON-LOBBYIST'S PRINCIPAL TO A MEMBER
FOR LODGING

May a member accept discounts on lodging which are provided to all legislators and if so, how, if at all, must the acceptance of this discount be reported on my statement of economic interests?

Although a particular hotel may be a member of an association which is a lobbyist's principal, an individual hotel would not be a lobbyist's principal unless it employs, appoints, or retains lobbyist (see subitems (13) and (14) of Section 2-17-10). Thus, it is assumed for purposes of this response that the individual hotel would not be a lobbyist's principal.

Section 8-13-710 requires a member to report on his statement of economic interests anything of value received worth twenty-five

¹³There is no question in this instance that the invitation was extended because of the member's office as the inquiry indicates that the entire legislative delegation was invited to dinner.

dollars or more in a day and anything of value worth two hundred dollars or more in the aggregate in a calendar year. In relevant part, Section 8-13-100(1) defines anything of value or thing of value as a gift or any other item that is of pecuniary or compensatory worth to the person. Subitem (16) of this section defines gift to mean anything of value "to the extent that consideration of anything of equal or greater value is not received. A gift includes a rebate or discount on the price of anything of value unless it is made in the ordinary course of business without regard to that person's status."

Except as specified in Section 8-13-705, there is no prohibition against accepting anything of value from a non-lobbyist's principal. Therefore, if the value is worth twenty-five dollars or more in a day or two hundred dollars or more in the aggregate in a calendar year, the Committee concludes that the value of the discount must be reported on the member's statement of economic interests. To arrive at the value of the discount, a member should subtract the legislative rate from either the standard rate offered all customers for a similar room or the corporate rate offered to business customers for a similar room **rather than** the "government rate" which may be applicable to other state or federal employees. For purposes of reporting, if the value of the total discount is two hundred dollars or more, a member need only report the aggregate amount of the discount and the number of nights for which this discount was given.

PART VI -- DISCOUNT OFFERED BY A NON-LOBBYIST'S PRINCIPAL TO A MEMBER FOR GOODS AND SERVICES

May a member accept a discount from a local dry cleaning establishment which is not offered to the general public and if so, must the value of the discount be reported on my statement of economic interests?

Following reasoning presented in PART V above, the Committee concludes that a member may accept the value of the discount.

In the first instance, it is the member who must determine whether anything of value would not be offered but for the member's office. The member did not indicate whether he felt the discount was offered because of the office he holds. In fact, the member indicated that he was aware that similar discounts were provided to other customers, particularly eleemosynary organizations, but was not sure of why the offer was made to him. If the member is unable to resolve this question, he may submit additional information for the Committee's consideration.

Assuming that the member decides that the discount is offered because of the office he holds and assuming that the dry cleaning establishment is a non-lobbyist's principal, the member must report anything of value which is worth twenty-five dollars or more in a day or two hundred dollars or more in the aggregate in a calendar

year.

SUMMARY --

This advisory opinion has addressed six different questions which all primarily relate to the proper reading of Sections 8-13-710 and 8-13-715. It is essential to note that in each of these discussions it has been assumed that an offer of anything of value to a member was or would not be done in violation of Section 8-13-705. Among the other items contained in this Code section, Item (A) provides that:

"A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

(1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;

(2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or

(3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities."