

ADVISORY OPINION 1994-3

DATE: SEPTEMBER 29, 1994
TO: MEMBERS, SOUTH CAROLINA SENATE
FROM: HUGH K. LEATHERMAN, SR. CHAIRMAN
SENATE ETHICS COMMITTEE
RE: ADVISORY OPINION 1994-3

The Senate Ethics Committee has been asked the following question:

Can a Member accept an honorary membership to a country club granted to a Member by the Board of Directors of the club? The membership exempts the individual from the initiation fee of \$2000.00 and monthly dues of \$85.00. The club membership would be valid as long as the Member holds elective office. If a Member is allowed to accept the club membership, how would it be reported on his annual *Statement of Economic Interest Form*? If it is accepted but never used would the value be \$0?

The *Ethics, Government Accountability, and Campaign Reform Act of 1991*, addresses gifts to Members and the reporting thereof. Section 8-13-100(1)(a) and (b) defines anything of value as follows:

- (1) (a) "Anything of value" or "thing of value" means:
 - (i) a pecuniary item, including money, a bank bill, or a bank note;
 - (ii) a promissory note, bill of exchange, an order, a draft, warrant, check, or bond given for the payment of money;
 - (iii) a contract, agreement, promise, or other obligation for an advance, a conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;
 - (iv) a stock, bond, note, or other investment interest in an entity;

- (v) a receipt given for the payment of money or other property;
- (vi) a chose-in-action;
- (vii) a gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;
- (viii) a loan or forgiveness of indebtedness;
- (ix) a work of art, an antique, or a collectible;

- (x) an automobile or other means of personal transportation;
- (xi) real property or an interest in real property, including title to realty, a fee simple or partial interest in realty including present, future, contingent, or vested interests in realty, a leasehold interest, or other beneficial interest in realty;
- (xii) an honorarium or compensation for services;
- (xiii) a promise or offer of employment;
- (xiv) any other item that is of pecuniary or compensatory worth to a person.

(b) "Anything of value" or "thing of value" does not mean:

- (i) printed informational or promotional material, not to exceed ten dollars in monetary value;
- (ii) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;
- (iii) a personalized plaque or trophy with a value that does not exceed one hundred fifty dollars;
- (iv) educational material of a nominal value directly related to the public official's, public member's, or public employee's official responsibilities;
- (v) an honorary degree bestowed upon a public official, public member, or public employee by a public or private university or college;
- (vi) promotional or marketing items offered to the general public on the same terms and conditions without regard to status as a public official or public employee; or
- (vii) a campaign contribution properly received and reported under the provisions of this chapter.

In this situation, the Committee has determined that the club membership is definitely a "thing of value", as defined in 8-13-100(1)(a)(xiv). An item, whether tangible or intangible, as in this case, does have worth to the recipient, unless the item is specifically exempted in 8-13-100(1)(b). A club membership, a discount for goods and services, anything except those gifts exempted is determined to have value and worth to the Member.

The Committee must also determine if the club membership is being offered to the Member, because he is a State Senator. In this case the country club has informed the Member that the club membership will be valid so long as the Member "holds elective office."

The Committee must seek guidance from Section 8-13-700(A), which states,

(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 member of his immediate family, 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 which does not result in additional public expense.

The Committee has determined, that in this situation, the country club membership would constitute an economic interest for the Member. The Committee feels very strongly that the Member may not accept the club membership.