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Leonidas E. "Leon" Stavrinakis

Jane O. Shuler
Chief Legal Counsel

House Legislative Ethics Committee



Julia J. Foster
Assistant Legal Counsel

Lynne Short
Executive Assistant

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: 803-734-3114
FAX: 803-734-8795

ADVISORY OPINION 2019 - 9

The House Legislative Ethics Committee ("Committee") received a request from Members regarding the recusal protocol to follow regarding line-item vetoes to the Annual Appropriations Bill. Pursuant to House Rule 4.16C.(5), the Committee renders the following advisory opinion.

DISCUSSION

As has been noted by the Committee previously, the Senate Ethics Committee, and the State Ethics Commission have issued numerous Advisory Opinions setting forth the proper procedure to which a public official must adhere when required to take an official action on a matter that would affect the economic interest of a business with which he is associated.¹

S.C. Code Ann. § 8-13-700, part of the Rules of Conduct, provides:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:

¹ A non-exhaustive list of such opinions follows: Committee Advisory Opinion 2019-5, 2019-4, 2017-4, 2017-1, 2016-4, 2016-3, 93-12, 93-8, 93-5, 92-37, 92-33, 92-27, 92-19, 92-17, 92-14, and 92-11; Senate 1997-3 and 1996-2; State Ethics Commission Advisory Opinion AO2015-003, AO2010-003, AO2009-005, AO2000-11, AO92-14, AO92-77, AO92-115, AO92-152, and AO95-10.

- (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
- (2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists . . .

S.C. Code Ann. § 8-13-700(B). The Ethics Act defines “economic interest” as follows:

- (a) "Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
- (b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

S.C. Code Ann. § 8-13-100(11). (emphasis added).

Thus, the Ethics Act prohibits a House Member from making, participating in making, or in any way attempting to use his office to influence a governmental decision in which he or she has an economic interest. “The intent of the Ethics Act was not to disallow legislators from voting on legislation within their professional expertise, but rather to assure that elected officials would not use their influence to create a direct economic benefit for themselves.” House Ethics Opinion 92-39. Additionally, the Ethics Act does not prohibit a Member from participating in, voting on, or influencing an official decision if the only economic interest that may accrue to the Member accrues to him or her as a member of a profession, occupation, or larger class to no greater extent than the benefit would accrue to other members of the group as a whole. See S.C. Code Section 8-13-100(11).

Further, Section 8-13-740 of the South Carolina Code of Laws governs House Members representing clients before governmental entities. Subsection (C) provides that where a Member is permitted such representation, he should refrain from voting on that section of the Appropriations Bill pertaining to the governmental entity before which he appeared, if the appearance occurred within one year to the vote. This section does not preclude Members from voting on other sections of the Bill or the Bill as a whole. In turn, this would not preclude a Member from voting on a conference report.

Turning to vetoes, line-item vetoes by definition strike specific provisions of a bill without affecting other provisions. The executive's power to veto some provisions in a legislative bill without affecting other provisions. Black's Law Dictionary (11th ed. 2019). As such, though a Member may have a conflict with a section of the Appropriations Bill, he or she may not necessarily have a conflict with a specific line-item veto. In other words, a Member may not have to abstain from a vote on a line-item veto simply because the Member had a conflict with another provision of the Appropriations Bill. There may be specific line-items which create a conflict because of a specific scenario or fact pattern, but more information would be necessary to render an advisory opinion on those specific issues.

CONCLUSION

The ethics laws specifically state that a Member may not use his office to obtain an economic interest for himself or herself or a business with which he is associated. Because line-item vetoes are specific strikes, which do not affect other provisions of a bill, Members can vote on vetoes as long as a Member does not have a conflict with the veto in question. A very careful review on a case-by-case basis of the Appropriations Bill and specific line-item vetoes is necessary in determining whether a conflict of interest exists and recusal is necessary.

Adopted December 16, 2019