

**SUBJECT:** BIPEC's submission of names to General Assembly and/or Governor for appointment or election to office constitutes lobbying.

**SUMMARY:**

If BIPEC forwards names of individuals in the business community to be considered for positions on various boards, councils, or commissions and the vacancies are filled by election of the General Assembly and/or appointed by the Governor, the activity constitutes lobbying.

**QUESTION:**

An attorney for the South Carolina Business & Industry Political Education Committee, BIPEC, asks whether forwarding names of individuals in the business community to be considered for positions on various boards, councils, or commissions where the vacancies are filled by election of the General Assembly or appointment by the Governor constitutes lobbying. BIPEC has an Advisory Council and Board of Directors which is composed of an Executive Committee. Members of the Advisory Council also serve on the S.C. Business Merit Selection Panel.

**DISCUSSION:**

This opinion is rendered in response to a letter dated June 28, 1996, requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act, S.C. Code §2-17-10; 8-13-100 (Supp. 1995). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

The State Ethics Act provides in relevant part that:

Lobbying means promoting or opposing through direct communication with public officials or public employees: (a) the introduction or enactment of legislation before the General Assembly or the committees or members of the General Assembly; (b) covered gubernatorial actions; (c) covered agency actions; or (d) consideration of the election or appointment of an individual to a public office elected or appointed by the General Assembly.

Lobbying does not include the activities of a member of the General Assembly, a member of the staff of a member of the Senate or House of Representatives, the Governor, the Lieutenant Governor, or a member of the executive staff of the Governor or Lieutenant Governor acting in his capacity as a public official or public employee with regard to his public duties.

S. C. Code §2-17-10 (12) (Supp. 1995).

Covered gubernatorial actions means:

(a) gubernatorial approval or veto of legislation; (b) gubernatorial consideration or issuance of any executive order; (c) gubernatorial consideration or making of any appointment; or (d) gubernatorial consideration of or the decision to award any grant derived from federal or other funds or from any source.

S. C. Code §2-17-10 (3) (Supp. 1995).

In SOS 92-44, Burris, the Secretary of State advised T. Moffatt Burris of BIPEC that if BIPEC made recommendations to the Governor for appointments then Mr. Burris would be required to register as a lobbyist. This finding was based on an interpretation of S. C. Code §2-17-10 (12) (Supp. 1995). We agree.

The Act regulates promoting or opposing, e.g., lobbying, two words that are not defined within the Act. For reference, we refer to Black's Law Dictionary where the term "promote" is defined to mean:

To contribute to growth, enlargement, or prosperity of; to forward; to further; to encourage; to advance.

Blacks, at 1093.

"Oppose" is a word of such common meaning that Blacks declined to define it. The American Heritage Dictionary ascribes the meaning as:

To be in contention or conflict with...; to be resistant to...; to place in opposition or be in opposition to;...

The act of submitting names to the Governor or General Assembly is by its very nature that of promoting some and opposing others whose names are not submitted. The person compiling a list of persons to recommend is exercising a subjective evaluation based on some criteria to arrive at a list of persons suitable, qualified, or desirous of the position. Therefore, we can not say that simply providing information in the form of a list of names is not "promoting" the person whose name appears on the list. To find otherwise would ignore the meaning of the words selected by the Legislature to describe and define what constitutes lobbying.

Therefore, we find that BIPEC's activity of recommending person(s) for appointment by the Governor or election by the General Assembly is "covered gubernatorial action" as defined under the Ethics Act. Our finding is based upon the nature of BIPEC, which is affiliated with the S.C. Business Good Government Political Action Committee, the likelihood that the anticipated

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activity is subject to repetition; and the absence of an exclusion from the lobbying registration requirements in S.C. Code §2-17-10(13) (a) through (h) (Supp. 1995).<sup>1</sup>

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<sup>1</sup> Lobbyist means any person who is employed, appointed, or retained, with or without compensation, by another person to influence by direct communication with public officials or public employees: (i) the action or vote of any member of the General Assembly, the Governor, the Lieutenant Governor, or any other statewide constitutional officer concerning any legislation; (ii) the vote of any public official on any state agency, board, or commission concerning any covered agency actions; or (iii) the action of the Governor or any member of his executive staff concerning any covered gubernatorial actions. `Lobbyist' also means any person who is employed, appointed, or retained, with or without compensation, by a state agency, college, university, or other institution of higher learning to influence by direct communication with public officials or public employees: (i) the action or vote of any member of the General Assembly, the Governor, the Lieutenant Governor, or any other statewide constitutional officer concerning any legislation; (ii) the vote of any public official of any state agency, board, or commission concerning any covered agency actions; or (iii) the action of the Governor or any member of his executive staff concerning any covered gubernatorial actions. *Lobbyist does not include:* (a) an individual who receives no compensation to engage in lobbying and who expresses a personal opinion on legislation, covered gubernatorial actions, or covered agency actions to any public official or public employee; . . . (h) an individual who receives no compensation to engage in lobbying and who does not make expenditures or incur obligations for lobbying in an aggregate amount in excess of five hundred dollars in a calendar year. S.C. Code §2-17-10(13) (a) & (h) (Supp. 1995). (Emphasis added).