



# State of South Carolina

## Office of the Governor

NIKKI R. HALEY  
GOVERNOR

1205 PENDLETON STREET  
COLUMBIA 29201

September 9, 2015

Herb Hayden, Executive Director  
South Carolina State Ethics Commission  
5000 Thurmond Mall Suite 250  
Columbia, SC 29201

RE: Advisory Opinion Request

Dear Mr. Hayden:

On behalf of both the Office of the Governor and the University of South Carolina (USC), we jointly and respectfully request an advisory opinion from the State Ethics Commission regarding USC providing the Office of the Governor with season tickets located in a suite for the upcoming football season. These tickets are being provided to another state agency as shared resources for use for official state purposes.

As you are aware, the language in South Carolina Code Section 2-17-90 prohibits, except in certain circumstances, complimentary lodging, transportation, entertainment, food, meals, beverages or invitations to a function from lobbyists' principals intended for the benefit of an individual such as a member of the General Assembly, public employee or cabinet officer. It does not, however, prohibit the provision of these items for the benefit of an entity or office.

Here, use of the tickets in a suite are not being offered on a game by game basis; rather, USC will provide them to the Office of the Governor for the entire season for state-related purposes. They are not given for the benefit of the Governor in her capacity as a public official. In fact, many times the Governor would not use the tickets; instead, others would be invited by the Office of the Governor to use them for state-related purposes. Use of the tickets will not extend to any particular governor beyond his or her term in office. The benefit will continue to accrue solely to the Office of the Governor, a governmental entity, instead of any particular governor or office-holder. Similarly, many times gifts given by both lobbyists' principals and others are received by the Office of the Governor, but these items are maintained as assets of the State. As with the tickets in the suite, once a particular governor's term ends, these gifts will remain for the benefit of the State, not the individual governor. As a result, we believe it is clear that it is not a violation of South Carolina Code Section 2-17-90 for USC to provide tickets in a suite to the Office of the Governor.

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While this precise issue is a matter of first impression for the Commission<sup>1</sup>, your agency has recognized and accepted this distinction between an item being given for the benefit of a state entity rather than for the benefit of a particular public official or employee. *See* State Ethics Commission Opinion A092-120 (determining that a complimentary registration fee for a state employee that may otherwise be prohibited by the Ethics Act or subject to disclosure was not because it was a “gift to the agency, rather than the employee”); State Ethics Commission Opinion A092-112 (determining that “employees engaged in covering an event as part of their official responsibilities would not be prohibited from attending the event or accepting a meal or hospitality which is incidental to the performance of their duties”). Further, because these items are provided to the Office of the Governor for use for state-related purposes, rather than the governor in his or her capacity as a public official and because the Governor would not accept the tickets pursuant to an exemption in Section 2-17-90, we believe she would not be required to report it on her Statement of Economic Interests, and the University would not be required to report it on its Lobbyist’s Principal Disclosure Form. *See* S.C. Code Section 2-17-90(C) (“any public official. . .who accepts lodging, transportation, entertainment, food, meals, or beverages under section (A) or (G) must report on his statement of economic interest”), and S.C. Code Section 2-17-90(D)(“a lobbyist’s principal extending an invitation under subsection (A) must report all expenses as required by Section 2-17-35”).

We appreciate your timely attention to this request. If you have any questions or need additional information, please do not hesitate to contact us.

Sincerely,



Walter H. Parham  
General Counsel  
University of South Carolina

Sincerely,

Holly G. Pisarik  
Chief Legal Counsel  
Office of the Governor

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<sup>1</sup> State Ethics Commission Opinion A094-015 is inapplicable in this situation. In SEC A094-015, the Commission addressed the application of the “constitutional officer exemption” contained in 2-17-90(A)(5) to the general prohibition in 2-17-90(A). In that opinion, the Commission opined that it was appropriate for a lobbyist principal to invite an individual constitutional officer to a function as long as they comply with the monetary limits in statute. The Commission noted that “lobbyist’s principals may desire to invite a constitutional officer to a function that involves only his or her area of responsibility.” Importantly, in this instance, USC is neither individually inviting the Governor, nor are they inviting her or her office to a function that involves “only . . .her area of responsibility.” USC would not even be aware of her presence should she attend as USC would not ask for a record of invitees or attendees to games, and as stated previously, many times the Governor will not personally use the tickets.