

Hayden, Herb

From: Pardue, Doug <dpardue@postandcourier.com>
Sent: Friday, August 21, 2015 11:36 AM
To: Hayden, Herb
Subject: RE: New question

Gracias

From: Hayden, Herb [<mailto:Herb@ethics.sc.gov>]
Sent: Friday, August 21, 2015 11:31 AM
To: Pardue, Doug
Subject: Re: New question

The ethics law applies to them however they also have House rules and Senate rules that apply to each body. There is also a specific section in the law, article 9, which speaks to their procedures for handling complaints. Their respective rules can be found on their website at SCstatehouse.gov

Sent from my iPhone

On Aug 21, 2015, at 10:42, Pardue, Doug <dpardue@postandcourier.com> wrote:

Mr. Hayden,

Now I'm going to sound really dumb, but I hope you can clarify this for me.

Since both houses of our state Legislature are governed by their own ethics committees, do they have separate ethics rules that govern behavior of Senators and House members?

If so where are these rules.

Or

Do the House and Senate ethics committees simply govern the same laws/rules that your Ethics Commission enforces?

Doug

From: Hayden, Herb [<mailto:Herb@ethics.sc.gov>]
Sent: Thursday, August 20, 2015 5:23 PM
To: Pardue, Doug
Subject: RE: Question re: ethics

Attached is an advisory opinion which answers your question regarding constitutional officers. The dollar amount quoted in the opinion has changed and is \$60 per day or \$480 per year. The statute does not provide any exception if the constitutional officer is a member of the board of trustees.

The Commission has no jurisdiction over legislators and does not answer questions regarding their activities. You should contact the respective legislative ethics committee.

From: Pardue, Doug [<mailto:dpardue@postandcourier.com>]
Sent: Thursday, August 20, 2015 3:42 PM
To: Hayden, Herb
Subject: RE: Question re: ethics

Mr. Hayden,

The main issue here is with the Univ. of South Carolina ticket/sky box gifts. As I read it, USC qualifies as an LP. So would it be against the ethics provisions for USC to give away free tickets to the governor or other constitutional state officials, or legislators?

What about if the governor or constitutional officer is a member of the university's board of trustees?

Doug

From: Hayden, Herb [<mailto:Herb@ethics.sc.gov>]
Sent: Thursday, August 20, 2015 3:24 PM
To: Pardue, Doug
Subject: RE: Question re: ethics

I can't give you a yes or no answer. It depends on whether the university is a lobbyist's principal (LP), and if so, the answer varies depending on the position. Take a look at Section 2-17-90 of the state code of laws. If the university is not a LP there are no restrictions unless the gift is given to influence. Regardless of whether the university is a LP the gift must be disclosed on the official's Statement of Economic Interests.

Herbert R. Hayden, Jr.
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State Ethics Commission
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Columbia, SC 29201
803/253-4192

From: Pardue, Doug [<mailto:dpardue@postandcourier.com>]
Sent: Thursday, August 20, 2015 11:27 AM
To: Hayden, Herb
Subject: Question re: ethics

Mr. Hayden,

Sorry to impose on your time, but I am not clear on whether it is okay for statewide elected officials, constitutional officers, to receive free seats or sky boxes/luxury boxes at football or other sporting events from the University of South Carolina or any other state public college or university?

Also the same question involving state legislators.

Thank you so much.

Doug

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<http://www.postandcourier.com/apps/pbcs.dll/personalia?ID=64>

SUBJECT: CONSTITUTIONAL OFFICER ACCEPTING INVITATION TO A FUNCTION PAID FOR BY A LOBBYIST'S PRINCIPAL

SUMMARY:

Pursuant to Section 2-17-90(A)(5), a lobbyist's principal may invite an individual constitutional officer to a function and provide that officer with lodging, transportation, entertainment, food, meals or beverages so long as the value of what is provided does not exceed \$25 in a day or \$200 in a calendar year.

QUESTION:

The General Counsel for Clemson University inquires how many constitutional officers must be invited to a function paid for by a lobbyist's principal in order to comply with Section 2-17-90(A)(5). In the past, Clemson University has interpreted this section to require inviting an individual constitutional officer in order to take advantage of the exception that allows a lobbyist's principal to provide a constitutional officer with lodging, transportation, entertainment, food, meals or beverages.

DISCUSSION:

This opinion is rendered in response to a letter dated December 14, 1993 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

The State Ethics Commission calls attention to Section 2-17-90 which provides in part as follows:

(A) Except as otherwise provided under Section 2-17-100, no lobbyist's principal may offer, solicit, facilitate, or provide to a public official or public employee, and no public official or public employee may accept lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal, except for:

(5) as to statewide constitutional officers, a function to which a **statewide constitutional officer is invited** (emphasis added);

(B) No lobbyist's principal or person acting on behalf of a lobbyist's principal may provide to a public official or a public employee pursuant to subsections (A)(1), (A)(2), (A)(3), (A)(4), or (A)(5) the value of lodging, transportation, entertainment, food meals, or beverages exceeding twenty-five dollars in a day and two hundred

dollars in a calendar year per public official or public employee.

The State Ethics Commission notes that customarily, when the language of a statute is clear and unambiguous, it must be held to mean what it plainly says. Rabon v. South Carolina Highway Department, 258 S.C. 154, 187 S.E. 2d 652 (1972). However, if it is obvious from the act itself that the legislature intended that the language be used in a different sense than its common meaning, this test will be abandoned. Vol. 2A Sutherland Statutory Construction, Section 45.09.

The legislative purpose behind Section 2-17-90 was to define the instances when lobbyist's principals could provide certain items of pecuniary worth to public officials and public employees. Certainly, one can argue that interpreting Section 2-17-90(A)(5) so as to require inviting an individual constitutional officer to an event appears inconsistent with the section's other enumerated exceptions, which necessitate inviting designated groups of public officials and public employees. See Section 2-17-90(A)(1) - (A)(4). Nevertheless, the State Ethics Commission acknowledges the inherent differences between constitutional officers and other public officials subject to the Ethics Reform Act. Constitutional officers, for example, take official actions individually instead of as a member of some larger legislative body, board or committee. Moreover, a lobbyist's principal may desire to invite a constitutional officer to a function that involves only his or her area of responsibility. Accordingly, the State Ethics Commission is unable to discern that the General Assembly intended a result in the present situation other than that achieved from a literal interpretation of Section 2-17-90(A)(5). Therefore, the Commission advises that lobbyist's principals may invite an individual constitutional officer to a function and provide that officer with lodging, transportation, entertainment, food, meals, or beverages so long as the value of what is provided does not exceed \$25 in a day and \$200 in a calendar year.