SEC AO2016-001 September 16, 2015

SUBJECT: Application of Section 2-17-90 to a State University lobbyist's principal providing season football tickets and suite access to another government entity.

SUMMARY: A State University that is a lobbyist's principal would ordinarily not be able to provide directly to a Constitutional officer gifts in excess of the daily and yearly dollar limitations set forth in Section 2-17-90. The providing of these gifts to the public employees on officer's staff would be more restrictive, only under limited circumstances. However, in the case of season football tickets and suite access provided by the University to the public office (rather than the public official individually) for state-related purposes, such a gift would not be subject to restrictions of Section 2-17-90, provided that state-related uses for the tickets take priority over the personal use by individual public officials, public employees, and others.

QUESTION:

The Office of Governor Nikki Haley and the General Counsel for the University of South Carolina are jointly requesting an opinion regarding the University's long tradition of providing to the Office of the Governor season tickets located in a luxury suite for football games. The tickets are provided to the Governor's Office without regard to who is occupying the Office, and use of the tickets will not extend to any particular governor beyond his or her term in office.

Because the University is a registered lobbyist's principal, the question is whether the providing of these season tickets violates the prohibition on gifts to a public official and public employees contained in S.C. Code Ann. § 2-17-90.

APPLICABLE LAW:

S.C. Code Ann. § 2-17-90 provides in part:

> (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:
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> ...
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> (2) as to a public official of a state agency, board, or commission, a function to which an official of a state agency, board, or commission is invited if the entire board or commission of which the public official is a member is invited;
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> ...
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> (4) as to public employees of any statewide constitutional officer, a function to which all statewide constitutional officers are invited;
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> (5) as to statewide constitutional officers, a function to which a statewide constitutional officer is invited;
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> ...

(B)(1) 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 subsection (A)(1), (A)(2), (A)(3), (A)(4), (A)(5), or (A)(7) the value of lodging, transportation, entertainment, food, meals, or beverages exceeding fifty dollars in a day and four hundred dollars in a calendar year per public official, public employee, or cabinet officer.

DISCUSSION:

The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; S.C. Code § 2-17-15 et. seq. and S.C. Code § 8-13-100 et. seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

As a first point, it is important to note that under Section 2-17-90(A)(5), the Governor is permitted to personally accept a gift from a lobbyist's principal, but the gift would be subject to the dollar limitations contained in 2-17-90(B)(2) of sixty (60) dollars per day and four-hundred eighty (480) dollars per year. As for the staff of a Constitutional officer, these gifts are impermissible unless all statewide Constitutional officers are invited under 2-17-90(A)(4) or the public employee's presence is reasonably and directly related to economic development efforts under 2-17-90(A)(6). The Commission understands that the value of the football tickets here will far exceed these dollar limitations, on a daily and yearly basis.

As Section 2-17-90 only restricts gifts from lobbyist's principals to public officials and public employees, the statute is inapplicable to provision of things of value to a government office. *See* Op. S.C. State Ethics Commission, SEC AO92-120, March 25, 1992 (Complimentary registration does not financially benefit a S.C. Commission for Higher Education staff member because "[i]t is a gift to the agency, rather than to the employee...."). Both the University and the Governor's Office state that the football tickets are a gift to the Office of the Governor, and we have no reason to doubt their veracity in describing the intention for the gift. However, the nature of the use of football tickets, or tickets to similar events, makes this situation unique and therefore worthy of further scrutiny. Football tickets can only be used for a four hour period on a specific Saturday. This should be distinguished from a gift of long-term value provided to an office, such as a painting, a plaque, or a piece of furniture that could remain as an asset of the office long after the officeholder is gone. In the present situation, the public officials and employees, and possibly family members, are personally using football tickets with no tangible lasting value to the office. Once the game is over, the value of game tickets to the public office is zero.

In similar circumstances, the Commission considered Clemson University's practice of providing athletic tickets to its Trustees Emeriti. Op. S.C. State Ethics Commission, SEC AO94-006, September 15, 1993. In deciding that Section 2-17-90 did not restrict the giving of these tickets, the Commission cited two Secretary of State advisory letters which stated that, so long as a gift is provided without restrictions to the donee, it loses the prohibitions associated with the

donor. More specifically, Secretary of State's advisory letter 92-41, dated February 25, 1992, states as follows:

> It is the opinion of this office that what is critical to the prohibition of Section 2-17-90 is that the items must be offered by the lobbyist's principal. That is, if the food and beverages, etc. are paid for by someone else... then the public official or employee is not prohibited from accepting them....[T]his office would advise that funds legitimately donated to the state by a lobbyist's principal would become property of the state government upon acceptance by the state. "Legitimately donated" would mean that the donor loses all rights to control or use of the funds once donated.... It is the opinion of this office that once legitimately donated, the funds lose the characteristics and restrictions of the donor and accept the characteristics and restrictions of the receiver.

Applying this analysis to the current situation, once the University of South Carolina donates these tickets to the Office of the Governor without any restrictions, then the tickets lose the characteristics and restrictions associated with the University as a lobbyist's principal. The tickets would be the property of the Office of the Governor to dispose of in any way it pleases. Therefore, the restrictions of Section 2-17-90 would not apply.

The Commission believes the analysis of Advisory Opinion 94-006 applies to the present circumstances, with one caveat. Notwithstanding that these tickets are donated by the University to the Office of the Governor for state-related purposes, if the actual use of the tickets is predominantly personal in nature, we would not consider these to be a true gift to the public entity, but to the individual public officials or employees. On the other hand, if the tickets donated to the Office of the Governor are being used for state-related purposes, then Section 2-17-90 truly does not apply. State-related purposes would include, though not be limited to, economic development and the hosting of out-of-state dignitaries. With that being said, the Commission recognizes that an official state-related justification may not always exist for use of the football tickets. If this is the case, we are not advocating for the tickets to go to waste. So long as the Governor's Office follows the guideline that official state business for using these tickets always takes priority over personal use, then we believe the practice of the University donating these tickets may continue without restriction.

To be clear, the Commission is only making this decision under the narrow circumstances of this situation, including the University's long history of providing tickets to numerous Offices of the Governor without respect to who is holding the office. This is evidence that it truly is intended as a donation to the office. In no way is the Commission opening the door to intentional circumvention the gift restrictions of 2-17-90 by falsely categorizing a gift as one to a public agency that in actuality is one to a public official or public employee. Any attempt to do so will be heavily scrutinized by the Commission.