



Nikki R. Haley  
Governor

**SOUTH CAROLINA**  
DEPARTMENT OF COMMERCE

Robert M. Hitt III  
Secretary

December 14, 2015

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

Dear Mr. Hayden:

Please accept this letter as a request for a formal advisory opinion at the next scheduled State Ethics Commission meeting in January 2016.

### **REQUESTED OPINION**

Whether and how Commerce employees may accept invitations for lunch and other ordinary course relationship-building activities from economic development allies who are registered lobbyist principals without seeking pre-approval from the Governor for each separate invitation or paying personally for the meal or other activity?

### **BACKGROUND**

Commerce's mission of economic development involves a number of public and private players to be effective, and the network of Commerce economic development allies is varied and extensive. Examples of state and local public partners include entities such as Santee Cooper and its member co-operatives, the State Ports Authority, and county or municipal economic developers, among others. Examples of private sector allies include economic development alliances, utility providers (i.e., SCANA, SCE&G, and Duke Power), the Class I railroads (i.e., Norfolk Southern and CSX), banks, engineering firms, and law firms.

Commerce encourages its employees, especially members of the front-line sales team, to develop relationships with the agency's economic development allies. The most common way to do so is by going out for meal (usually lunch) with economic development counterparts who are employed by these entities and who have budgets available for that purpose.<sup>1</sup> Sometimes, invitations are made to individual Commerce employees, and sometimes the entire sales team.

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<sup>1</sup> While Commerce raises private funds for all development, those funds are allocated to other activities for which state funds are unavailable and are not available to employees to support individual relationship-building activities.

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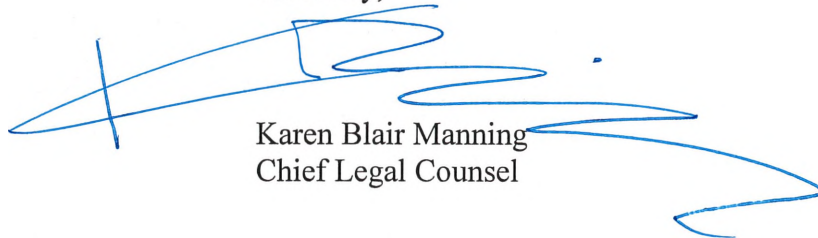
Virtually all of Commerce's interaction with its allies is related to state or local economic development, and some, but not all, of Commerce's economic development allies are registered lobbyist principals. The invitations to Commerce employees typically emanate from ally employees whose duties involve economic development. So, even if the ally entity is a lobbyist principal, the invitations are not extended by lobbyists employed or engaged by the lobbyist principal, and any ally entities that are lobbyist principals must comply with the provisions of S.C. Code § 2-17-90. Accordingly, when individual Commerce employees are the recipients of invitations, these employees may accept them as "reasonably and directly related to state or local economic development efforts," but only if they seek pre-approval from the Governor pursuant to S.C. Code § 2-17-90(A)(6) prior to participating in the offered activity.

The problem lies in the practicality of seeking pre-approval for these types of activities on a consistent basis. Not only is the administrative burden on Commerce and the Governor's Office potentially substantial for these ongoing relationship-building activities, but many times, there is simply no realistic opportunity to seek pre-approval for the last minute lunch or coffee and doughnuts invitation. Additionally, Commerce does not believe that requiring agency employees to pay their own way to participate in these types of activities is fair to (or necessarily affordable for) individual employees. If the agency encourages employees to go out to lunch with public or private allies who have funds available for these types of activities, we would like to find a path forward that allows the employee to accept an invitation without having to seek pre-approval for every meal or cup of coffee.

In the past, we have considered in consultation with Ethics Commission legal counsel whether Commerce could seek a blanket pre-approval from the Governor's Office for relationship-building activities for certain individual employees or categories of employees, but are unclear whether this is the best or only potential resolution. Regardless of any recommendations made by the Ethics Commission, Commerce intends to continue seeking pre-approval for other economic development related activities hosted by lobbyist principal allies when events are planned and pre-approval can be sought well in advance of the proposed activity.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karen Blair Manning", with a long, sweeping horizontal line extending to the right.

Karen Blair Manning  
Chief Legal Counsel