

SEC AO2016-005

January 20, 2016

SUBJECT: PERMISSIBILITY OF BLANKET PRE-APPROVAL OF CERTAIN ECONOMIC DEVELOPMENT ACTIVITIES WITH LOBBYIST'S PRINCIPALS UNDER SECTION 2-17-90(A)(6) OF THE ETHICS ACT

SUMMARY: When a Department of Commerce official or employee engages in certain relationship building activities with representatives of lobbyist's principals, the economic development exception to S.C. Code Ann. § 2-17-90 will apply, provided prior written approval from the Governor is obtained. In this case, it is permissible for this pre-approval to be provided in a blanket form rather than on a case-by-case basis.

QUESTION:

As part of its overall economic development mission, South Carolina Department of Commerce ("Commerce") officials and employees regularly engage in relationship building activities with representatives of numerous public and private entities. Most often, these relationships are built over a meal, coffee, or similar social meetings. When Commerce is interacting with entities that are lobbyist's principals, the restrictions of Section 2-17-90 attach. Under that statute, unless an exception applies, a lobbyist's principal may not provide specified benefits to public officials or public employees. One exception, which encompasses many activities of Commerce, is for "activities reasonably and directly related to state or local economic development efforts" under Section 2-17-90(A)(6).¹ In the case of a Commerce

¹ Statewide economic development is the core mission of the Department of Commerce, as evidenced by the agency's purpose in its enabling legislation. *See* Section 13-1-20 ("The Department of Commerce shall conduct an adequate statewide program for the stimulation of economic activity to develop the potentialities of the State...and enhance the economic growth and development of the State through strategic planning and coordinating activities."). Therefore, the Commission has no doubt that most relationship building activities of Commerce officials or employees will fall within that exception.

official or employee, this exception can be applied so long as “prior written approval” is first obtained from the Governor.

Commerce states that many of these relationship building activities involve last minute meal or coffee invitations where it is an administrative burden on Commerce and the Governor’s Office to seek this pre-approval in advance. Further, as Commerce encourages its employees to engage in such activities, the agency sees an inequity in requiring them to pay their own way and later seek reimbursement from the agency. Therefore, Commerce is asking the Commission whether a more streamlined approach, through the Governor’s blanket pre-approval of such activities, would be allowable under Section 2-17-90. Commerce states that regardless of the Commission’s ruling, it will continue to seek pre-approval for economic development activities hosted by lobbyist’s principals when the approval can be sought well in advance.

APPLICABLE LAW:

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

...

(6) as to public officials or public employees, activities reasonably and directly related to state or local economic development efforts. However, the public official or public employee first must obtain prior written approval from:

(a) the Governor, in the case of any of his employees or of any public officials of any state agencies or any of their employees which are not listed in a subitem below....

DISCUSSION:

The Ethics Act is silent on whether blanket pre-approval under Section 2-17-90(A)(6) is allowed. As the Commission has never been asked to interpret this statutory provision in a formal advisory opinion, we must analyze the statute being mindful that “[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Charleston County School District v. State Budget and Control Board, 313 S.C. 1, 437 S.E.2d 6 (1993).

In sum, the Commission does not read “prior written approval” under Section 2-17-90(A)(6) as having to necessarily be obtained on a case-by-case basis. In carving out this exception, the Legislature evinced a clear intention that state and local economic development activities should not be negatively impacted by the Ethics Act’s restrictions on lobbyist’s

principals. This exception was not narrowly drawn, but contains “reasonably and directly” language that significantly broadens the scope of the exception. As the language of the statute does not restrict the form of the approval, and the Legislature appeared to intend this exception to be expansive, we find it unlikely that the Legislature would prohibit blanket pre-approval of such activities.

The next question for the Commission is the scope of the prior written approval. Of course, the Governor’s prior written approval may only cover “activities reasonably and directly related to state or local economic development efforts,” and thus must not be more expansive than what is provided for in the statute. Further, the Commission believes it would be prudent to limit this pre-approval to certain officials or employees (such as the sales team) whose primary duties involve these relationship building activities. Finally, nothing in this opinion should be construed as expanding the scope of the exception to *all* activities of Commerce officials and employees. For example, the Commerce procurement manager having a lunch meeting with a vendor that is a lobbyist’s principal about computers for the agency would clearly not fall within this exception.