

SUBJECT: ASSOCIATION LOBBYIST PROVIDING PAC SUPPORT

SUMMARY: Based on the facts presented, a lobbyist and a subordinate staff person who reports directly to the lobbyist are both prohibited from performing functions related to the PAC of the lobbyist's principal.

QUESTION:

The Executive Vice President of the Home Builders Association of South Carolina (HBA) requests an advisory opinion concerning a lobbyist's involvement with the administration of a political action committee (PAC). The HBA of South Carolina encompasses 3,400 members with 18 local associations with their own officials. At the state level, the association has two employees, a CEO who also serves as the lobbyist and an assistant who reports directly to the lobbyist. The HBA of South Carolina has a PAC which operates with its own officers and board of trustees. Prior to the passage of the Ethics Reform Act, the HBA managed the PAC on a fee basis; however, the PAC is now controlled by a volunteer chairman with billing, accounting, and reporting provided by a CPA on a fee basis. The lobbyist questions whether, in a small office, the non-lobbyist staff member could perform functions related to the PAC operation.

DISCUSSION:

This opinion is rendered in response to a letter dated July 29, 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 notes that in advisory letter 93-07 (March 7, 1993) addressed to Mr. Kenneth E. Ormand, Jr. the Secretary of State advised that a lobbyist may perform administrative functions of receiving contributions from association members, making bank deposits, and scheduling meetings of PAC trustees and contributors. However, the Secretary of State also advised that the lobbyist was prohibited from writing or signing PAC checks, providing periodic reports to contributors, soliciting donations either in publications, direct mail, or verbal requests, or conducting meetings of PAC trustees.

The Secretary of State's advisory letter is based on Section 2-17-80(A) which provides:

(A) A lobbyist **or a person acting on behalf of a lobbyist** (emphasis added) shall not offer, solicit, facilitate, or provide to or on behalf of any member of the General Assembly, the Governor, the Lieutenant Governor, any other statewide constitutional officer, any public official of any state agency who engaged in covered agency actions, or any of their

employees any of the following:

* * *

(5) contributions, as defined in Section 8-13-1300(7).

Thus, not only is a lobbyist prohibited from performing the specified activities but also any "person acting on behalf of a lobbyist". Accordingly, the State Ethics Commission believes that the General Assembly intended to prohibit a lobbyist from accomplishing indirectly through an agent those activities that he could not perform directly. Therefore, since the HBA staff member is under the lobbyist's direct administrative control, the State Ethics Commission advises that the staff member is subject to the same restrictions as the lobbyist.