

SUBJECT: ABILITY OF CANDIDATE FOR SOLICITOR TO ACCEPT CAMPAIGN CONTRIBUTIONS FROM LOBBYISTS

SUMMARY:

Since Judicial Circuit Solicitors are not statewide constitutional officers, Section 2-17-80 does not prohibit a candidate for Solicitor from accepting campaign contributions from lobbyists, provided the candidate is not otherwise serving as a public official of any state agency, including the SC Commission on Prosecution Coordination, that engages in covered agency actions.

QUESTION:

A candidate for the office of Fifth Judicial Circuit Solicitor inquires whether Section 2-17-80 forbids him from accepting campaign contributions from registered lobbyists.

DISCUSSION:

This opinion is rendered in response to a letter dated March 18, 1994 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 2-17-80, which provides in part as follows:

(A) A lobbyist or person acting on behalf of a lobbyist 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** (Emphasis added), or any of their employees any of the following:

* * *

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

(B) A 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** (Emphasis added), or any their employees shall not solicit or receive from a lobbyist or a person acting on behalf of a lobbyist any of

the following:

* * *

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

Although "statewide constitutional officer" is not defined in the Ethics Reform Act, the State Ethics Commission advises that this term refers to the seven elective offices, in addition to the Governor and Lieutenant Governor, provided for in Article VI, Section 7 of the S.C. Constitution that are eligible to be voted upon by all electors of the State, *i.e.*, Secretary of State, Attorney General, Treasurer, Superintendent of Education, Comptroller General, Commissioner of Agriculture and Adjutant General. Since Judicial Circuit Solicitors are not eligible to be voted upon by all electors of the State, the only other language in Section 2-17-80 that could conceivably prohibit candidates for Solicitor from accepting contributions from lobbyists is that language which refers to "any public official of any state agency who engaged in covered agency actions." "'Covered agency actions', according to Section 2-17-10(2), 'means the proposal, drafting, development, consideration, amendment, withdrawal, or promulgation of a regulation under Article 1, Chapter 23 of Title 1 of the 1976 Code.'" Accordingly, since the Circuit Solicitors' Offices do not appear to be engaged in covered agency actions, the State Ethics Commission advises that candidates for Solicitor are not prohibited from accepting campaign contributions from lobbyists. The Commission also notes that this interpretation is consistent with an earlier decision by the Secretary of State in which he advised, "[i]t is my clear understanding that the legislative intent was to exclude county officials such as county treasurers or solicitors from the provisions of the Act pertaining to lobbying." Sec. of State Op. 92-107 (July 16, 1992).

Nevertheless, if a Solicitor or a candidate for Solicitor otherwise serves as a public official of a state agency engaged in covered agency actions, including the SC Commission on Prosecution Coordination, then he or she would be precluded from accepting contributions from lobbyists.