

SUBJECT: APPLICABILITY OF ETHICS REFORM ACT TO MEMBERS OF LOBBYIST'S PRINCIPAL TRADE ASSOCIATION

SUMMARY:

Mere attendance by a trustee and an employee of a local electric cooperative at an educational seminar hosted by the cooperative's lobbyist's principal trade association does not constitute lobbying. Also, since the trustee and employee are not "employed, appointed, or retained" to influence public officials, their incidental communication with a legislator on matters affecting their local cooperative does not make the trustee or employee a "lobbyist."

QUESTION:

An attorney for The Electric Cooperatives of South Carolina ("ECSC") requests an advisory opinion concerning the lobbying provisions of the Ethics Reform Act of 1991. The ECSC, a trade association of electric cooperatives and lobbyist's principal, is planning an educational seminar for its members on a proposed bill that will affect their business. In accordance with Section 2-17-90(A), the ECSC will also invite the members of a legislative committee and its staff to attend and answer questions on the bill. The ECSC's lobbyist will present the program, and the ECSC will pay the expenses for the invitations, meals and educational materials. Accordingly, the ECSC will report the necessary expenses on its Lobbyist's Principal Disclosure Report.

In addition to the public officials and public employees who will attend this event, the local cooperatives who choose to participate will send a salaried management level employee and/or a member of their board of trustees. The employee's and trustee's duties do not entail lobbying as a regular and normal part of their services. Moreover, the local cooperative has no regular program of legislative activity, and no employee is appointed, retained or engaged for the purpose of lobbying. Other than the employee's normal salary, he will receive no additional compensation as a result of attending this event. The local cooperative, not the ECSC, will pay the employee's mileage and out-of-pocket expenses as well as the per diem for the trustee.

DISCUSSION:

This opinion is rendered in response to a letter dated November 1, 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 that may apply to this situation.

**1. Are the trustees and employees of the local cooperatives who attend the program to monitor the discussion and learn the issues "lobbying"? If so, are they exempt from registering under Section 2-17-10(13)(h)?**

"Lobbying" is defined in Section 2-17-10(12) as:

. . . promoting or opposing through direct communication with public officials or public employees:

- (a) the introduction or enactment of legislation before the General Assembly or the committees or members of the General Assembly;
- (b) covered gubernatorial actions;
- (c) covered agency actions;
- (d) consideration of the election or appointment of an individual to a public office elected or appointed by the General Assembly.

"Lobbyist", according to Section 2-17-10(13) means:

any person who is employed, appointed, or retained, with or without compensation, by another person to influence by direct communication with public officials or public employees: (i) the action or vote of any member of the General Assembly, the Governor, the Lieutenant Governor, or any other statewide constitutional officer concerning any legislation; (ii) the vote of any public official on any state agency, board, or commission concerning any covered agency actions; or (iii) the action of the Governor or any member of his executive staff concerning any covered gubernatorial actions....

"Lobbyist" does not include:

- (a) an individual who receives no compensation to engage in lobbying and who expresses a personal opinion on legislation, covered gubernatorial actions, or covered agency actions to any public official or public employee;

\* \* \*

- (h) an individual who receives no compensation to engage in lobbying and who does not make expenditures or incur obligations for lobbying in an aggregate amount in excess of five hundred dollars in a calendar year.

According to the information provided, the trade association, ECSC, is a lobbyist's principal; however, the local electric cooperatives are not. In addition, the facts state that the trustees' and employees' primary purpose in attending the seminar is to represent their local cooperatives and obtain information concerning the proposed legislation. Accordingly, the State Ethics Commission advises that the trustees' and employees' attendance at the seminar does not constitute "lobbying" within the meaning of Section 2-17-10(12).

## **2. Do the local cooperatives' payments to either their trustees or employees constitute "lobbying expenses"?**

As stated above, the State Ethics Commission does not believe that merely sending representatives to

the educational seminar constitutes lobbying by the local cooperatives. Therefore, the cooperatives' payments to their trustees and employees are not lobbying expenses.

**3. Does ECSC have to report in its lobbying report that portion of the program cost attributable to educating the cooperative employees and trustees who attend the meeting?**

Since the ECSC is a trade association in which the local cooperatives are members, the State Ethics Commission advises that the ECSC does not have to report in its lobbying report that portion of the program cost attributable to educating the cooperative employees and trustees who attend the meeting.

**4. Assume the same hypothetical as above, but that a trustee or employee during the meeting tells his house member, "I hope you can see how this hurts the local cooperative and will vote against it." The trustee or employee was not instructed to ask the legislators to take any position on the bill or to speak on behalf of the local cooperative. Does this change the answer to any of the above questions?**

The State Ethics Commission has previously advised that, "infrequent expressions of an opinion [by a non-lobbyist] on legislation . . . do not constitute lobbying." SEC AO94-005 (August 18, 1993). Therefore, since the trustees and employees were not "employed, appointed, or retained" to influence public officials, their incidental expression of an opinion on the pending legislation would not alter the Commission's answers to the above questions.