

SUBJECT: MATTERS AFFECTING PUBLIC HOSPITAL EMPLOYEES AND BOARD MEMBERS

SUMMARY:

County Council members are advised to refrain from accepting meals and accommodations provided by vendors or other entities which have or are seeking to enter into contracts requiring approval of the Council.

QUESTION:

The Attorney for Lexington County Council advises that County Council created the Lexington County Health Service District in 1988 pursuant to S.C. Code §44-7-2150. ¹ The Health Service District assumed all power with respect to the Lexington County Hospital. S.C. CODE 44-7-2130 provides that a Health Service District is an agency of the County to operate health care facilities. Therefore, the Health Service District is the managing body for the Lexington Medical Center. The Board of the Health Service District is comprised of 21 members, 20 of which are appointed by the majority of County Council. Of the appointed members, two are from each of the nine County Council Districts and two are at-large members (the person that is holding the position as chief of staff of the hospital automatically serves as a board member).

We note that S.C. CODE §44-7-2020 (1976) states that "the corporate powers and duties of the district shall be exercised by a board of directors of that number of members as the enactment directs to be filled by residents of the respective authorizing political subdivisions in the district, as provided in the enactment, so as to provide for reasonable representation from each county or municipality in the district. Board members shall be appointed by the governing body of the authorizing political subdivision as to the respective seats provided for the subdivision."

The Attorney further advises that the Health Service District has an annual retreat where it invites members of County Council to attend. The hospital pays for the retreat which includes meals and lodging. In 1992, the Commission issued an opinion (SEC AO 92-092) that it was not a violation of 8-13-705 for the hospital to pay for the County Council members' expenses as long as it was not done to influence County Council in the conduct of their official duties. "With recent talk of a possible merger / purchase / consolidation of the Lexington Medical Center with various entities, I would like to ask once again on behalf of Lexington County Council to get an opinion ... as to

¹ S.C. CODE 44-7-2150 provides that "Health Services Districts established pursuant to the provisions of [the Regional Health Services Districts Act] may also incorporate as a public corporation in the manner provided by this article."

whether there is any ethical problem with the County Council having their expenses paid by the Health Service District. The purpose of this annual retreat has always been to update the County Council on matters at the hospital. This year, there will be discussions of the hospital's possible merger/ purchase/consolidation. County Council would have to approve of such a change in operations.

In SEC AO 92-092 we quoted the applicable provisions of the Act which are S.C. Code §8-13-705; 710(B) and held that 8-13-710(B) "does not prohibit the acceptance of anything of value, but instead requires disclosure of anything of value received worth \$25 or more in a day and \$200 in a year on the Statement of Economic Interests. Therefore, the Commission knows of no reason why the Hospital could not provide accommodations and meals for the members of County Council and Hospital Board members; unless given to influence them in the conduct of their official duties as prohibited by Section 8-13-705. " The opinion did not, however, discuss the effect of a matter within County Council's decision making authority and pending before County Council affecting the District. Therefore, we address the questions posed seriatim.

DISCUSSION:

This opinion is rendered in response to a letter dated February 20, 1996, 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 revisits SEC AO 92-092 but does not supersede any other statutory or regulatory restrictions or procedures that may apply to this situation.

1. Does §8-13-705 apply to the ... fact situation [described above] where the entity that pays for the retreat is appointed by the County Council and is an agency of the County?

The suggestion is made that since County Council appoints the entity which would pay for the retreat and the entity is an agency of the County, that Section 8-13-705 would not apply. To the extent that this requires a finding that the District is not a "person" under the Act, we disagree.

Section 8-13-705 applies to any situation where a *person* directly or indirectly offers, etc., and a public member or employee directly or indirectly accepts, etc., anything of value in return for being influenced in the discharge of one's official responsibilities; to commit, etc, in the act of fraud; or to be induced to perform or fail to perform an act in violation of one's official responsibility.

The Health Service District is an agency of the County, S.C. Code §44-7-2130, and exists as a public corporation. S.C. Code 44-7-2150. Notwithstanding the fact that the Health Service District was created by the enactment of the governing body of Lexington County, S.C. Code 44-7-2020, it is a separately existing corporation.

The act prohibits a "person" from giving something of value to a public official in order to influence.

A person means an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert. S.C. CODE 8-13-100(24). To find that incorporated entity is not a person under the Act and immune from the prohibition in 8-13-705 is not supported by the law or the facts.

The Health Service District falls under the definition of a governmental entity under the Act. However, we do not find that such affects the application of Section 8-13-705. The Act defines a governmental entity as the State, a county, municipality, or political subdivision thereof with which a public official, public member, or public employee is associated or employed. 'Governmental entity' also means any charitable organization or foundation, but not an athletic organization or athletic foundation which is associated with a state educational institution and which is organized to raise funds for the academic, educational, research, or building programs of a college or university. S.C. CODE 8-13-100(17). It is our opinion that governmental entities will be treated as persons under the Ethics Act for purposes of applying 8-13-705. ²

2. If applicable does §8-13-705 prohibit the Health Service District from paying the expenses for Lexington County Council members to go on this year's retreat considering the fact that specific issues will be discussed as set forth [in the request letter] ... in which County Council will have to make the ultimate decision?

The Commission previously advised in SEC AO 92-027 that the Greenville County Planning Commission should not attend the National Association of Home Builders convention if the County Home Builders Association paid the expenses. The commission determined that the County Planning Commission had jurisdiction over interests vital to the members of the Home Builders Association and that if the trip was of benefit to the County, the County should pay the expense.

Here, Lexington County Council has jurisdiction to permit or prohibit the sale, merger or consolidation of the Health Service District. This matter is will be debated at the retreat. Since the Council has jurisdiction over matters vital to the Health Services District, the County should not accept payment of expenses from the District.

This is in accord with our previous opinions including SEC AO 92-067 where we stated that when a school board has relationships with vendors, the decision to accept travel, food, and lodging should be determined on a case by case basis, depending on the parties and whether there are matters

² This finding does not address the fact that the Health Services District can act only through its Board of Director who are persons under the Act. Therefore, whether it is the District or the members thereof who are at issue, both are equally responsible for compliance with the Act.

pertaining to the donor before the school board and SEC AO92-194 where we held that acceptance of meals provided by a vendor which had contracts executed or pending before the recipient should be determined on a case by case basis, depending upon the intent of the donee, the donor, the type and amount involved, and whether there are any matters pertaining to the donor before the agency with which the officeholder or employee is associated.

3. Would it make a difference if the hospital paid for the retreat expenses with funds received from a nonprofit entity which were given to the hospital to be used for having education retreats such as described in ... [the request letter]?

No, S.C. Code §8-13-705 prohibits a person from directly or indirectly giving, offering, or promising anything of value to a public official, public member, or public employee with the intent to influence the discharge of a public official's, public member's, or public employee's official responsibilities; influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities. Therefore, the District would be prohibited from indirectly financing a trip through a third party.