

SEC AO2008-008

May 21, 2008

SUBJECT: LOBBYIST SERVING AS AN OFFICER OF UNIVERSITY BOARD OF TRUSTEES.

SUMMARY: Serving as an officer of the university's board of trustees, i.e. the executive secretary, does not make the university's lobbyist a member of the board of trustees in violation of Section 2-17-110(D).

QUESTION: Whether a university's lobbyist may also serve as an officer of the university's board of trustees?

DISCUSSION:

The State Ethics 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 of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

The Ethics Reform Act at S.C. Code § 2-17-110(D) (Supp. 2007) provides:

A lobbyist may not serve as a member of a state board or state commission, except that any lobbyist serving as a member of a state board or a state commission before January 1, 1991, may continue to serve as a member of the same state board or state commission until the end of his current term.

Clemson University's Board of Trustees is the governing body of the University and the Board is a state board or commission. The Board of Trustees was created by the last will and testament of Thomas G. Clemson. Mr. Clemson's will set forth the structure and number of the Board of Trustee members, i.e. thirteen members. Seven members were to be self-perpetuating and six members were to be appointed by the General Assembly if it

accepted the terms of Mr. Clemson's bequest. Clearly, the General Assembly did accept the bequest and it has never altered the terms of the will, nor could it.

The University's Director of Governmental Affairs is one of the University's lobbyists. She has also been promoted to the position of Executive Secretary to the University's Board of Trustees. The Executive Secretary is appointed by the Board of Trustees and serves at the Board's pleasure. The University President and Executive Secretary who are both employees of Clemson University are considered *ex officio* members of the Board of Trustees, but have no vote and serve on no committees.

The Executive Secretary has not been appointed to one of the six seats of the Board of Trustees by action of the General Assembly, nor has she been appointed by one of the seven self-perpetuating members. The position of the Executive Secretary is a creation of the Board of Trustees, just as the other officers are. The Executive Secretary is not a member of a state board or commission simply because the Board of Trustees creates the position of Executive Secretary to assist the Board in its duties.

CONCLUSION: Clemson University's lobbyist is not in violation of Section 2-17-110(D) when she serves as an officer of Clemson University's Board of Trustees, i.e. the Executive Secretary, since she is not a member of the Board of Trustees.

KEY WORDS: lobbyist; public official; state board, commission or council

ANNOTATIONS: 2-17-10(13) and (18), 2-17-110(D), 8-13-100(31)
