



ALAN WILSON  
ATTORNEY GENERAL

October 16, 2018

Ms. Meghan Walker  
Executive Director  
South Carolina State Ethics Commission  
201 Executive Drive, Suite 150  
Columbia, SC 29210

Dear Ms. Walker:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

Please allow this correspondence to serve as a request for an opinion as to whether the State Ethics Commission (Commission) may require members of a charter committee or members of a board of directors of a public charter school to file a Statement of Economic Interests in accordance with the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (the Ethics Act).

As you may know, a charter school is considered a public school and part of the school district in which it is located for the purposes of state law and the state constitution. § 59-40-40(2)(a). A charter school is generally "exempt from all provisions of law and regulations applicable to a public school, a school board, or a district." However, the Charter School Act specifically requires that charter schools "be subject to the ethics and government accountability requirements for public members and public employees as contained in Chapter 13, Title 8." § 59-40-50(B)(11).

Pursuant to the Ethics Act, specified individuals are required to file Statements Economic Interests prior to taking the oath of office or entering his official responsibilities. § 8-13-1110. ... [Based on discussions with the Commission's General Counsel, Courtney Laster, it is this Office's understanding that the request is particularly concerned with whether S.C. Code Ann. § 8-13-

1110(B)(11) applies to charter school board members and charter committee members.]

A "charter committee" is the initial governing body of a charter school, formed to govern through the application process and until the election of a board of directors (board), at which time the board becomes the governing body. § 59-40-40(7). The Charter School Act sets forth the broad powers of a charter school's board, including the ability to sue and be sued, to buy and sell property, to obtain insurance for activities preformed in the course of official duties, and to accept gifts, donations, or grants. § 59-40-140; § 59-40-190.

In a prior opinion, this Office held that board members of a charter school are considered public officers who exercise a portion of the sovereign power of the State. See Op. S.C. Atty. Gen., October 18, 2017. In a previous opinion this Office distinguished board members from charter committee members; finding charter committee members are not considered public officers, as their powers are only for a limited duration which ends with the approval of the charter. Op. S.C. Atty. Gen., February 26, 2003.

Therefore, the Commission's question is as follows: may the Commission require a charter committee or a board of directors of a public charter school to file a Statement of Economic Interests in accordance with the Ethics Act?

#### Law/Analysis

This Office has consistently deferred to the State Ethics Commission's interpretation of the Ethics Act as follows:

"Of course, primary jurisdiction for interpretation of the Act is bestowed upon the State Ethics Commission, pursuant to § 8-13-320(11) [Commission to "issue, upon request from persons covered by this chapter, and publish advisory opinions on the requirements of this chapter, based upon real or hypothetical sets of circumstances ..."]. Thus, this Office typically defers to the Commission's interpretation of the Ethics Act."

Op. S.C. Atty. Gen., 2006 WL 2593082, at \*5 (August 24, 2006). However, as the Commission has requested this Office's opinion regarding applying the Ethics Act to a separate statutory scheme, this Office's opinion is provided below.

Ms. Meghan Walker

Page 3

October 16, 2018

It is this Office's opinion that a court would likely find S.C. Code Ann. § 8-13-1110(B)(11) does not authorize the Commission to require charter school board members or charter committee members to file a statement of economic interests as "a public member who serves on a state board, commission, or council." Act No. 83 of 2015 amended S.C. Code Ann. § 59-40-50 to add subsection (B)(11) which states that a charter school must "be subject to the ethics and government accountability requirements for public members and public employees as contained in Chapter 13, Title 8." Act No. 83 was titled as "AN ACT... TO PROVIDE THAT EMPLOYEES, BOARD MEMBERS, AND STAFF OF CHARTER SCHOOLS ARE SUBJECT TO THE ETHICS AND GOVERNMENT ACCOUNTABILITY REQUIREMENTS APPLICABLE TO PUBLIC MEMBERS AND PUBLIC EMPLOYEES." Thus, as demonstrated by the plain language of subsection 59-40-50(B)(11) and the title of Act No. 83 of 2015, the General Assembly intended that charter school board members would be subject to the ethics and government accountability act in Chapter 13, Title 8 ("Ethics Act") as public members.

While charter school board members are considered "public members," the Ethics Act requires only those public members who also serve on a "state board, commission, or council" to file a statement of economic interests. S.C. Code Ann. § 8-13-1110(B). It is this Office's opinion that a court likely would not find that charter school board members serve on such a state board, commission or council. The Ethics Act defines "state board, commission, or council" to mean "an agency created by legislation which has statewide jurisdiction and which exercises some of the sovereign power of the State." S.C. Code Ann. § 8-13-100(31). Charter schools are, in fact, formed according to the framework established by legislation, namely the South Carolina Charter Schools Act of 1996. However, charter schools are not created by this legislation directly. Instead, charter schools are created by an applicant who is responsible for forming a charter school as a non-profit corporation. S.C. Code Ann. § 59-40-60(D)(1). Similarly, the charter committee for a charter school is formed by this same applicant. S.C. Code Ann. 59-40-60(D)(2). Because charter schools and charter committees are created by an applicant instead of by direct legislation, it is this Office's opinion that a court likely would not find charter school board members or charter committee members to be public members who serve on a "state board, commission, or council." S.C. Code Ann. § 8-13-1110(B)(11). Therefore, it is this Office's opinion that S.C. Code Ann. § 8-13-1110(B)(11) does not authorize the Commission to require charter school board members or charter committee members to file a statement of economic interests.

While it is this Office's opinion that Section 8-13-1110(B)(11) is not applicable to charter school board members or charter committee members, Section 8-13-1110(B) lists eleven additional categories which a court may find applicable. The Commission may disagree with

this opinion or find that one of the other categories requires charter school board members or charter committee members to file a statement of economic interests. If the Commission does adopt such an interpretation, its interpretation would be afforded deference and could convince a court to uphold an interpretation it may not have adopted on its own. This Office has previously explained:

As our Supreme Court has recognized, ‘construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons.’ Op. S.C. Atty. Gen., October 20, 1997, quoting Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146, 148 (1986). The Courts have stated that it is not necessary that the administrative agency’s construction be the only reasonable one or even one the court would have reached if the question had initially arisen in a judicial proceeding. 11. Commerce Comm. v. Interstate Commerce Comm., 749 F.2d 825 (D.C. Cir. 1984). Typically, so long as an administrative agency’s interpretation of a statutory provision is reasonable, we defer to that agency’s construction.”

Op. S.C. Atty. Gen., 2013 WL 3133636, at \*1 (June 11, 2013). This Office believes that the Commission has the authority to interpret the Ethics Act’s application to positions created according to legislation apart from the Ethics Act. See SEC A093-066 (applying Ethics Act to both the Marine Research Fisheries Advisory Board and the Heritage Trust Advisory Board for the purpose of requiring filing of statements of economic interests). This Office would, therefore, defer to the Commission’s determination as to statements of economic interests filing requirements for charter school board members and charter committee members.

### **Conclusion**

It is this Office’s opinion that a court would likely find S.C. Code Ann. § 8-13-1110(B)(11) does not authorize the State Ethics Commission to require charter school board members or charter committee members to file a statement of economic interests as “a public member who serves on a state board, commission, or council.” While it is this Office’s opinion that Section 8-13-1110(B)(11) is not applicable to charter school board members or charter committee members, Section 8-13-1110(B) lists eleven additional categories which a court may find applicable. As discussed above, this Office has consistently deferred to the Commission’s construction of the Ethics Act. See Op. S.C. Atty. Gen., 2013 WL 3133636, at \*1 (June 11, 2013). This Office will, of course, continue to defer to the Commission’s construction of the Ethics Act in regards to statements of economic interests filing requirements for charter school board members and charter committee members.

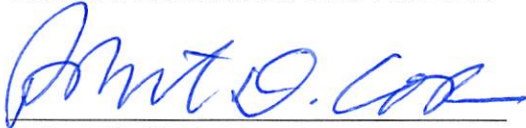
Ms. Meghan Walker  
Page 5  
October 16, 2018

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General