

United States Senate

SELECT COMMITTEE ON ETHICS

HART SENATE OFFICE BUILDING, ROOM 220
SECOND AND CONSTITUTION AVENUE, NE
WASHINGTON, DC 20510-6425

April 30, 2004

Ms. Carmen Balber
The Foundation for Taxpayer and Consumer Rights
1750 Ocean Park Boulevard, # 200
Santa Monica, CA 90405-4938

Dear Ms. Balber:

This responds to your letter to the Select Committee on Ethics, on behalf of the Foundation for Taxpayer and Consumer Rights, alleging that Senator Bill Frist's advocacy for recent healthcare legislation to limit hospital and malpractice insurer liability constitutes a conflict of interest, because the Senator has personal and financial ties to the Columbia/HCA Healthcare Corporation ("HCA") and to its subsidiary Health Care Indemnity ("HCI"). In your letter, you state that the Senator's financial disclosure statements reveal that he and his family "hold millions of dollars in HCA stock," and that these financial disclosure statements further reveal that "the family's fortune rests upon the welfare of HCA."

Senate Rule 37, Paragraph 4, sets forth the relevant considerations in situations where there is a question of potential conflicts between the business interests or financial holdings of a Member of the Senate, or a Member's family and matters which come before the Senate or committees upon which the Member serves. Specifically, Rule 37, paragraph 4, provides:

No Member, officer or employee shall knowingly use his official position to introduce or aid the progress or passage of legislation, a principal purpose of which is to further only his pecuniary interest, only the pecuniary interest of his immediate family, or only the pecuniary interest of a limited class of persons or enterprises, when he, or his immediate family, or enterprises controlled by them, are members of the affected class.

In connection with this provision of the Rules, the Committee has observed that, "[t]hose who elect Senators and Congressmen are entitled to have their elected representatives represent them by voting and fully participating in all aspects of the legislative process. This representation is carried out with the understanding that the votes cast by the Senators and Congressmen are predicated on their perceptions of the public interest and the public good, not on personal pecuniary interest." In its report accompanying the original Senate Code of Official

Conduct, the Nelson Committee explained the narrow scope of Paragraph 4 as follows:

The Committee recognizes that in many cases, legislation advancing through the Senate will have some impact on the financial situation of a member, officer, and employee. All tax legislation has such an impact. Ordinarily, however, the impact on an individual's holdings is likely to be quite minimal in comparison to the impact of the legislation on the public mind and on the public interest served. . . . Legislation may have a significant financial effect on a Senator because his holdings are involved, but if the legislation has a broad, general impact on his state or the nation, the prohibitions of the paragraph would not apply.

Thus, for example, if a dairy farmer represented a dairy farming state in the Senate, and introduced, worked for, and voted for legislation to raise or maintain price supports for dairy producers, he would not fall under the strictures of this rule. The strong presumption would be that the Member was working for legislation because of the public interest and the needs of his constituents and that his own financial interest was only incidentally related. In the terminology of the paragraph, the dairy farmer would be part of a class affected by the legislation, but not a member of a "limited class," as envisioned in this paragraph. (Emphasis added.)

After noting that it had found the attempt to apply a specific number to the term "limited class" futile, the Nelson Committee went on to discuss the meaning of the term as used in Paragraph 4:

[T]he Committee intends that a class of people or enterprises sharing a particular economic interest (*i.e.*, dairy farmers; shoemakers; disabled veterans) would not be a "limited class." By "limited class," the Committee means a class which resembles much more closely the class of people affected by a private bill. Therefore, to return again to the example of the Senator who was a dairy farmer, he would not be prohibited from working for legislation to help boost or maintain the price supports of dairy products. If, however, legislation was introduced to purchase a piece of land made up in part of a piece of his property and in part of pieces of his neighbors' property, in order to build a federal project there, the Senator would be foreclosed from working on the legislation.

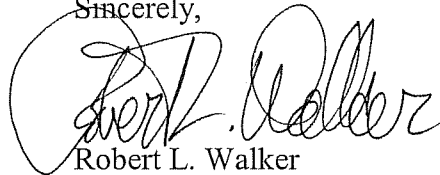
If the legislation does meet the "principal purpose" (and "limited class") standards as necessary, the Committee intends that the disqualification from involvement with the legislation should be total.

However, before the above-referenced paragraph would preclude a Senator's involvement in a legislative proposal, both the "principal purpose" and the "limited class" test must be met.

With respect to the specific matter that you have referred to the Committee regarding Senator Frist, Senate Resolution 338, section 2(a)(1), which sets forth the jurisdiction of the Select Committee on Ethics, vests the Committee with the authority to “receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct and violations of rules and regulations of the Senate, relating to the conduct of individuals in the performance of their duties as Members of the Senate, or as officers or employees of the Senate, and to make appropriate findings of fact and conclusions with respect thereto. . . .”

In light of the foregoing discussion of Paragraph 4 of Senate Rule 37 – and given the apparently broad and general scope of the legislation at issue and the specifics of Senator Frist’s, and his family’s, apparently non-controlling financial interests in HCA and HCI – this matter does not appear to merit action by the Committee. Therefore, the matter is hereby dismissed.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Walker". The signature is written in a cursive style with a large initial "R" and "W".

Robert L. Walker

Chief Counsel and Staff Director