



STATE ETHICS COMMISSION

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
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EXECUTIVE DIRECTOR

CONFIDENTIAL FORMAL ADVISORY OPINION

February 8, 2013

Mr. Adam Hartzell
Executive Director
The Center for International Understanding
100 East Six Forks Road, Suite 300
Raleigh, NC 27609

RE: Paying Expenses of Legislators and Public Servants to Participate in the 2013 Global Leaders Program Study Trip "Economic Development – China and North Carolina"
AO-E-13-001

Dear Mr. Hartzell:

This is in response to your December 11, 2012, request for a formal advisory opinion regarding whether the State Government Ethics Act ("Ethics Act"), G.S. Chapter 138A, would allow legislators and other public servants to participate in an international study trip to China planned for October 18-27, 2013 ("2013 China Trip"); and whether the Lobbying Law, G.S. Chapter 120C, would allow registered lobbyist principals to donate funds to The Center for International Understanding ("the Center"), in order to pay the trip-related costs of those participating legislators and public servants.

This formal advisory opinion is based upon the information provided by the Center and was adopted by the State Ethics Commission ("Commission") at its February 8, 2013, meeting.

I. Brief Conclusion.

The Commission has determined that the 2013 China Trip qualifies as an educational meeting related to the public duties of attending legislators and that the additional meeting requirements of G.S. 138A-32(e)(3)a.-d. will also be satisfied. Therefore, lobbyist principals may donate funds to the Center in order to pay for the reasonable actual travel expenditures of participating legislators. However, the Commission will need additional information regarding the identity of attending public servants in order to determine if the China Trip qualifies as an educational meeting as to those public servants or meets other applicable Ethics Act gift ban exceptions.

II. The Facts.

The Center operates within the University of North Carolina's ("UNC's") General Administration. It is not a lobbyist principal. The Center is planning the 2013 China Trip in order to allow participants to study economic development through biotechnology, specifically the pharmaceutical and medical devices industry. This is the fourth international study trip in the Center's Global Policy Series.

Approximately 20-30 individuals are expected to participate in the 2013 China Trip. The Chinese People's Association for Friendship with Foreign Countries ("AFFC") has offered to pay for the cost of the meals, lodging, and ground/air transportation of 10 legislators and public servants while those participants are in China. AFFC is not a registered lobbyist principal. In addition, Quintiles, the Local Government Federal Credit Union, and the Moise and Vera Khayrallah Fund of the Triangle Community Foundation will provide additional funding for the travel expenses of those participating legislators and public servants. None of those organizations are registered lobbyist principals.

The Center is also continuing to seek donations from additional entities, some of whom may be registered lobbyist principals, to defray the travel costs of attending legislators and public servants. None of the 2013 China Trip sponsors will be involved in the planning or administration of the trip or the selection of the participants. You have indicated that there may also be public servants who will be invited to participate, but that had not been determined at the time of this opinion's issuance.

Other participants, including State business and policy leaders representing economic development interests and individuals from pharmaceutical, clinical research, and medical devices companies, will be charged a program fee of \$5,800 for the 2013 China Trip.

Participants in the 2013 China Trip will visit three major cities: Beijing, Shanghai, and Nanjing, to study successful economic practices. Educational goals of the trip are to:

- Expand understanding of China's economy today;
- Explore the role of the pharmaceutical and medical devices industries in China's economy and the potential opportunities and challenges they present for North Carolina;
- Learn about features of Chinese culture, history, and government which impact business interactions; and
- Identify policies, resources, and practices which might strengthen North Carolina's economy through increasing exports to and engagement with China.

The 2013 China Trip, excluding travel time to and from China, is a nine-day trip consisting of 8 to 10 hours of scheduled activities during a seven-day period beginning on Sunday, October 20th, including meetings, presentations, and site visits. Entertainment includes optional cultural visits to the Great Wall and the Forbidden City from October 27-29, 2013.¹

¹ Legislators and public servants who stay in China until Tuesday, October 29th, are required to pay for their lodging, meal, ground travel, and entertainment expenses for those days.

Scheduled activities include presentations from officials from AFFC; Sinopharm, a Chinese pharmaceutical company; Jiangsu Province, an eastern coastal province in China that has experienced rapid economic development; and China's Ministry of Health. There will also be site visits to a hospital affiliate of Fudan University Hospital, a partner institution of the UNC system; Zhangjiang High Tech Park, an industrial development zone which specializes in life sciences research and is home to several major pharmaceutical companies including GlaxoSmithKline and Novartis; Nanjing's New Biotech Center, which hosts biomanufacturing, medical device, and biosimilar companies; and a North Carolina partnership school in Nanjing. Topics to be discussed include healthcare delivery, biomedicine, marketing strategies for success in China, legal aspects of doing business in China, intellectual property rights, and science education.

Prior to the trip, participants will be required to read background materials and attend a two-day orientation workshop on China's emergence as a global economic power. Upon their return, participants will attend a full-day debriefing session.

III. Applicable Statutory Provisions.

The Lobbying Law prohibits a lobbyist, lobbyist principal, or legislative liaison² from giving gifts ("anything of monetary value"), to a designated individual (legislators, legislative employees, and public servants), unless an exception to the gift ban listed in G.S. 138A-32(e) applies. G.S. 120C-303(a). One of those exceptions, G.S. 138A-32(e)(3), allows a lobbyist principal, but not an interested person or lobbyist, to pay for "reasonable actual expenditures" incurred by a public servant, legislator, or legislative employee in connection with that individual's attendance at the four types of meetings delineated in that exception.

G.S. 138A-32(e)(3)(i) allows the payment of expenses incurred for attending *an educational meeting* "for purposes primarily related to the public duties and responsibilities of the covered person" Permissible expenses include food, beverages, registration, travel, lodging, incidental items of nominal value, and incidental entertainment. The Commission has adopted several non-exclusive factors that will be considered when determining what is an "educational meeting" under G.S. 138A-32(e)(3)(i). Those factors are codified in the N.C. Administrative Code under 30 NCAC 07C.0101.

In addition to the specific meeting criteria outlined above, G.S. 138A-32(e)(3) sets forth general requirements applicable to those meetings. They include a requirement that any food, beverages, transportation, or entertainment be provided to all attendees or defined groups of 10 or more attendees and that the meeting: (a) be attended by at least 10 or more participants; (b) have a formal agenda; and (c) be noticed at least 10 days in advance. Moreover, any entertainment provided "must be incidental to the principal agenda of the meeting."

Unless an exception applies, public servants are also restricted from accepting gifts, either directly or through a third party, from persons who are seeking to do business with, are engaged in activities that are regulated by, the public servant's employing entity, or that otherwise have financial interests that may be substantially and materially affected by the public servant ("interested persons"). G.S. 138A-32(d) and (d1). Although the educational meeting exception

² State entities, such as the Center, are not restricted from giving gifts to designated individuals.

outlined above is not applicable to gifts from interested persons, G.S. 138A-32(f) allows a public servant to accept certain expenses that would otherwise be reimbursed by the public servant's agency if the public servant receives advance approval to accept those expenses on behalf of the State.

IV. Analysis.

Based upon a review of the itinerary for the 2013 China Trip, it appears that the meeting's content is related to the public duties of invited legislators. However, the Commission is unable to make this determination with respect to those public servants who may attend, without knowing their identity.

Moreover, the 2013 China Trip fits the educational meeting criteria of G.S. 138A-32(e)(3)(i). Factors that support the educational purpose of the meeting include the fact that the meeting agenda includes scheduled educational activities throughout each day, a wide variety of presentations from topic experts, and related governmental, business, and educational site visits.

You have stated that there will be at least 10 participants in the 2013 China Trip. In addition, the trip has a formal agenda, has been noticed at least 10 days in advance, and incidental entertainment, if any, is being provided to all participants. Although the cultural visits on October 27-29, 2013, do not fit within the "incidental entertainment" limitations of the meeting exception, you are requiring that each legislator and public servant pay for the expenses of those cultural visits, including meals and lodging for Sunday evening. Thus, the meeting also complies with the general meeting requirements imposed by G.S. 138A-32(e)(3)a.-d.

Therefore, it is permissible for registered lobbyist principals to donate funds to the Center for food, beverages, registration, travel, lodging, and incidental items of nominal value and incidental entertainment to attending legislators.

It may also be permissible for registered lobbyist principals to donate funds for the participation by public servants, depending upon the public servant's position. Without knowing who the attending public servants will be, the Commission is unable to determine whether the gift ban applicable to the receipt of expenses from interested persons would apply. However, if interested persons (or lobbyists) donate funds for the purpose of paying for the expenses of attending public servants, the meeting exception would be inapplicable, since it applies only to gifts from lobbyist principals.

Alternatively, G.S. 138A-32(f) would allow a public servant's receipt of such expenses. That exception provides that public servants may accept a "gift" that represents an "expense appropriate for reimbursement" by the State agency employing a public servant. Under this provision (a) the "gift" must be consistent with those types of expenses that would otherwise meet the agency's expense reimbursement policies and (b) the public servant must receive approval from the employing entity to receive such items of value. The Commission recommends that the public servant receive that approval in writing.

V. Closing.

Thank you for contacting the State Ethics Commission. Please do not hesitate to call the Commission's staff if you have any questions about the foregoing formal advisory opinion. Pursuant to G.S. 120C-102(d1), an unedited copy of this formal advisory opinion will be forwarded to the Secretary of State. The Secretary of State is statutorily obligated to treat the opinion as confidential and not a public record.