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FORMAL ADVISORY OPINION—EDITED FOR PUBLICATION

May 8, 2015

RE: Ethics Act Coverage of Committees
AO-E-15-002

Dear Requester:

This is in response to your request for a formal advisory opinion. You have asked whether members of two recently-created committees would be required to file a Statement of Economic Interest (“SEI”) under the State Government Ethics Act (“Ethics Act”).

This opinion was adopted by the State Ethics Commission (“Commission”) at its May 8, 2015, meeting.¹

I. Brief Conclusion.

After applying the Commission’s coverage criteria, the Commission determined that neither of the committees would be covered by the Ethics Act for two primary reasons:

1. They are not State boards created by statute or executive order; and
2. They will perform in an advisory role only.

II. Facts.

You seek advice regarding two committees. The first is a search committee appointed by a public official that will make hiring recommendations to that official consistently with the job description provided. The second is a committee created by a public official with members appointed by the public official. That committee will study and make recommendations to that official on the enhancement of various public services. Neither committee was created by statute or executive order.

¹ Please see the enclosure entitled “Formal Advisory Opinions Issued by the State Ethics Commission” for further information regarding the protections offered to individuals receiving those opinions.

III. Applicable Statutory Provisions.

A “Board” is defined in G.S. 138A-3(1c) as “any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, as determined and designated by the Commission, except for those public bodies that have only advisory authority.” When analyzing a board to determine whether it is subject to the mandates of the Ethics Act, the Commission first determines whether the entity is a “State board,” created by statute or executive order. If it meets that definition, the Commission applies criteria established by rule in 30 NCAC 02.0101 for determining whether the board performs non-advisory functions. Specifically, the rule provides:

A board as defined in G.S. 138A-3(1c) that is authorized to perform any of the following functions shall be deemed a non-advisory board:

- (1) Allocate, spend, award, or invest public money where the expenditures do not relate solely to the internal operations of the boards;
- (2) Issue, renew, deny, revoke or suspend licenses;
- (3) Adopt rules, regulations, standards, or criteria affecting those outside of the board or commission;
- (4) Enter into or approve contacts involving public money; or
- (5) Set policy governing operation of a State agency.

IV. Analysis.

The committees you describe were not created by statute or executive order. Rather, they are entities established by a public official who will determine their membership and responsibilities. Moreover, according to your description, they will serve solely in an advisory role to the public official and the legislature in some cases.

Applying these coverage criteria to the above-referenced entities, the Commission has determined that they do not meet the criteria of being a State board, created by statute or executive order, which performs non-advisory functions. Thus, it is the Commission’s coverage determination that the above-referenced committees should not be covered under the Ethics Act or subject to the Commission’s jurisdiction.

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.

Formal Advisory Opinions Issued by the State Ethics Commission
Pursuant to the Ethics Act

Upon the written request of a public servant or legislative employee, G.S. 138A-13(a) of the State Government Ethics Act (“the Ethics Act”) authorizes the State Ethics Commission (“Commission”) to issue formal advisory opinions on the “meaning and application” of the Ethics Act “and the public servant’s or legislative employee’s compliance therewith.” Reliance upon a formal advisory opinion immunizes the public servant or legislative employee making the request from (1) investigation by the Commission, except the alleged violation of criminal law while performing his or her official duties, (2) adverse action by his or her employing entity, or (3) investigation by the Secretary of State. G.S. 138A-13(a2).

In addition, the Commission may issue formal advisory opinions on “specific questions involving the meaning an application” of the Ethics Act. G.S. 138A-13(a1).

Once issued by the Commission, formal advisory opinions are published in a redacted format on the Commission’s website within 30 days of issuance. G.S. 138A-13(d). Otherwise, requests for advisory opinions, the opinions themselves, and all materials related to the opinions are confidential and are not public records. G.S. 138A-13(e).