



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

October 29, 2007

Re: International Study Trip & the “Educational Meeting” Gift Exception
G.S. 120C-303(a) and (b), and 138A-32(e)(3)
AO-L-07-0012

Dear Requestors:

You sent the State Ethics Commission (“Commission”) a letter in which you requested a formal advisory opinion concerning whether a lobbyist principal organization (“lobbyist principal”) and a non-lobbyist principal organization (“non-lobbyist principal”) could pay various travel expenses for certain legislators and public servants to participate in an international study trip. Your letter stated that the lobbyist principal and the non-lobbyist principal considered these legislators and public servants to be “policymakers” in areas related to the international study trip. Specifically, you asked: (1) whether the lobbyist principal and non-lobbyist principal’s international study trip qualifies as an educational meeting under the new ethics legislation, which consists of Chapter 138A, the State Government Ethics Act, and Chapter 120C, the Lobbying Law; and (2) whether the lobbyist principal and the non-lobbyist principal are allowed to pay the travel-related expenses of this international study trip, which includes travel, lodging, and food expenses, and other incidental expenses of nominal value connected to this trip, for these legislators and public servants.

G.S. 120C-102 applies to written requests for an advisory opinion from any person affected by Chapter 120C. G.S. 120C-102 requires the request for a formal written advisory opinion (“formal advisory opinion”) be in writing and relate to real or reasonably anticipated fact settings and circumstances. All opinions are based on the particular facts presented and only have prospective application. G.S. 120C-102(a). Once issued the Commission’s formal advisory opinion confers limited civil immunity upon the requester if the advice given is followed. Good faith reliance upon a requested formal advisory opinion on a specific matter immunizes the requester from investigations by the Commission and from investigation by the North Carolina Secretary of State regarding such.¹ If

¹ Section 10 of House Bill 1111 (Session Law 2007-348) amended G.S. 120C-102 to expand the scope of immunity to investigations by the Secretary of State. Section 31 of HB 1111 (amending G.S. 138A-13) did the same with regard to “ethics” advisory opinions. These particular changes were effective August 9, 2007.

the requester is a legislator, legislative employee, or public servant, the Commission's formal advisory opinion also immunizes the requester from any adverse action by his or her employing entity regarding the same. Formal advisory opinions do not confer immunity from any criminal investigation or prosecution. Requests for advisory opinions, the opinions themselves, and all materials related thereto are confidential and not a matter of public record, although the Commission is required to publish redacted formal advisory opinions annually. G.S. 120C-102(d). Furthermore, Commission staff may share all information related to formal advisory opinion requests pertaining to Chapter 120C with staff of the Office of the Secretary of State and all information related to formal advisory opinion requests pertaining to legislators with staff to the Legislative Ethics Committee, all of whom must treat such information as confidential and not a public record.² Finally, the Commission must forward an unedited copy of formal advisory opinions issued under 120C-102 of Chapter 120C on or after August 9, 2007, to the Secretary of State at the time such opinion is issued.

I. Overview of the Facts

Through your initial letter request, the formal agenda for the international study trip, other documents presented to me, and our discussions, the following facts were presented. All of the money for this international study trip, including the money for the travel-related costs of the invited legislators and public servants determined to be "policymakers," is given to the lobbyist principal in the form of grants from two private foundations. Neither of these private foundations is a lobbyist principal.

The money is given by these two private foundations to be used for this international study trip with no conditions or requirements attached. The two foundations have no involvement in the planning, administration, or coordination of the trip. The two foundations make no decisions regarding the trip and have no input as to the selection of the participants. The lobbyist principal and the non-lobbyist principal plan, administer and coordinate the entire trip. The lobbyist principal and the non-lobbyist principal determine and select the individuals who will be invited to participate in this trip. The lobbyist principal only pays for the travel-related costs of the participants who have been determined to be "policymakers;" the other invited participants must pay for their own travel-related costs of this trip. The only invited participants who have been determined to be "policymakers" are North Carolina legislators and public servants as defined under G.S. 138A-3(30). Legislators and these public servants are "designated individuals" under the Lobbying Law. G.S. 120C-100(a).

The lobbyist principal and the non-lobbyist principal have sponsored previous international study trips, and the participants for all of these previous trips have been invited based on their positions, both public and private. The participants for this trip, again, are being invited based on their positions. Accordingly, many of the participants being invited have been on previous international trips sponsored by the lobbyist principal and the non-lobbyist principal. The invited participants for the trip who have been determined by the lobbyist principal and the non-lobbyist principal to be "policymakers" consist of four legislators, and two public servants.

² See Sections 10 and 31 of HB 1111 (Session Law 2007-348).

The purposes of this international trip are to study another country's governmental institutions and systems, with an emphasis on examining particular areas, including math and science, and to examine how the country has merged its governmental institutions and systems with the economic development of the country, and the benefits of such merger. This study and examination will be conducted and accomplished by visiting governmental institutions and systems, and private businesses and companies; and meeting and discussing with leaders and employees of governmental institutions and systems, business and company representatives, and members of the general public who use these governmental institutions and systems and/or who may be affected by these governmental institutions and systems merging and integrating with the economic development of the country. This study process will also include examining the country's approach to identifying leaders in particular areas of its governmental institutions and systems, and the methods it uses to teach and train these identified leaders.

The country which is the subject of this trip was chosen for five major reasons:

- (1) its educated population are top performers in math and science;
- (2) it is a world leader in using technology as an educational and economic tool;
- (3) its governmental institutions and entities succeed with very diverse populations;
- (4) it has a "grow your own leadership" approach; and
- (5) it considers education a foundation block in building stronger governmental institutions, entities, and businesses, and has an integrated approach to planning for education and economic development.

The itinerary for this international study trip, excluding travel time to and from the country chosen, consists of six days. These six days consist of 73.5 hours of non-sleeping time. Of these 73.5 hours, 40.5 hours are scheduled for educational time, 6.5 hours of travel time from one educational event to another and back to the hotel, and 26.5 hours for non-educational time, such as free time, cultural site visits, museum visits and tours. All of the participants, which include the paying participants and the participants sponsored by the lobbyist principal, may elect to stay in the country the following weekend, and depart for North Carolina Sunday afternoon. However, if any of the four legislators, or the two public servants, or any other participant who may be covered under the Lobbying Law elects to remain in the country after the international study trip formally concludes, and does not depart for North Carolina on Saturday, they will be responsible for all of their own expenses, including hotel, food, transportation, entertainment and any other expenses they may incur on Saturday and Sunday.

II. Applicable Law

The Lobbying Law, Chapter 120C, applies to lobbyists, lobbyist principals, and legislative liaison personnel, as these terms are defined in Chapter 120C. The Lobbying Law prohibits, among other things, a lobbyist, lobbyist principal, or legislative liaison personnel from giving gifts (including anything of monetary value), directly or indirectly, to a designated individual (legislators, legislative employees, and public servants) unless an exemption to the gift ban listed in G.S. 138A-32(e) applies. For the lobbyist principal to be able to pay for the travel-related expenses of this international study trip for legislators or public servants, a gift ban exemption under G.S. 138A-32(e) must be met. The gift ban contained in G.S. 120C-303 is not applicable to non-lobbyist principals. Therefore, a non-lobbyist principal may give gifts to designated individuals.

G.S. 138A-32(e)(3)(i) permits a lobbyist principal to pay for the “reasonable actual expenditures” of a public servant, legislator, or legislative employee incurred in connection with the individual’s attendance at an educational meeting “for purposes primarily related to the public duties and responsibilities of the covered person” Any food, beverages, transportation, or entertainment must be provided to all attendees or defined groups of 10 or more attendees and the meeting must: (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. Any entertainment provided at the meeting “must be incidental to the principal agenda of the meeting.” The educational meeting exception allows a public servant, legislator, or legislative employee to accept “reasonable actual expenditures” for food, beverages, registration, travel, lodging, other incidental items of nominal value, and incidental entertainment in connection with their attendance at the educational meeting.

G.S. 120C-403(b)(5) requires each lobbyist principal to report, among other things, all reportable expenditures made for the purpose of lobbying, all reportable expenditures³ for gifts given under any of the gift ban exemptions of G.S. 138A-32(e) (1) – (9), -(e)(11), -(e)(12),⁴ and all gifts given under the gift ban exemption of G.S. 138A-32(e)(10) with a value of more than \$200. The lobbyist principal reports are to be filed with the Secretary of State’s Office quarterly when the General Assembly is not in session and monthly when the General Assembly is in session. G.S. 120C-403(a) and (c). Accordingly, a sponsor, that is a lobbyist principal and that is providing a gift allowed under the gift ban exemption of G.S. 138A-32(e)(3), is required to report on its lobbyist principal report “reasonable actual expenditures” for food, beverages, registration, travel, lodging, other incidental items of nominal value, and incidental entertainment in connection with each designated individual’s attendance at the educational meeting if the value of the expenditures is greater than \$10 per day per individual legislator, individual public servant, or that individual’s immediate family. G.S. 120C-403(b)(5) and G.S. 120C-100(a)(12)a.

A sponsor, that is not a lobbyist principal and that is providing a gift allowed under the gift ban exemption of G.S. 138A-32(e)(3), is required to report reportable expenditures made for the purpose of lobbying, including gifts, if: (1) the reportable expenditures given per individual legislator, individual public servant or that person’s immediate family equal a total cumulative value of over \$200 in a calendar quarter; (2) the sponsor is located in North Carolina or the designated individual is in North Carolina when he/she receives the reportable expenditures; and (3) the reportable expenditures are not excluded from Article 8 of Chapter 120C by subsection (e) of G.S. 120C-800. *See* G.S. 120C-800.

III. Application of the Commission’s Educational Meeting Criteria

³ “Reportable expenditures” for gifts include gifts with a singular or cumulative value greater than \$10 per designated individual and/or their immediate family members per single calendar day. G.S. 120C-100(a)(12)a.

⁴ With the passage of HB 1111 on August 9, 2007, two new gift ban exemptions listed as (11) and (12) were created under G.S. 138A-32(e). *See* section 41 of HB 1111. These gift ban exemptions of –(e)(11) and –(e)(12) are retroactive to January 1, 2007. *See* section 44 of HB 1111.

At its February 22, 2007, meeting the Commission adopted seven non-exclusive factors that will be considered when determining what is an “educational meeting” under G.S. 138A-32(e)(3)(i) (“Criteria”). The “Criteria” are for guidance purposes only, and no one factor is controlling. The determination as to whether a particular meeting, conference or event is an “educational meeting” under G.S. 138A-32(e)(3)(i) is for the Commission to determine based on the specific facts presented regarding the event. The following is a discussion of the Criteria as applied to the question of whether the international study trip sponsored by the lobbyist principal and the non-lobbyist principal qualifies as an educational meeting.⁵

A. What is the meeting’s *primary purpose*? Is it to influence a public servant, legislator, or legislative employee with respect to executive or legislative action or to curry favor concretely? Or, is the meeting primarily intended to present information to enhance a person’s understanding of a subject matter or for the purpose of self-improvement?

Meetings intended to influence rather than educate may include meetings that are directly related to an upcoming official vote, recommendation, or other legislative or executive action. In determining the purpose of the meeting, the Commission will consider whether the entity holding the meeting:

- has legislation pending before the General Assembly or intends to request legislative action;
- is seeking to introduce legislation or impact executive action at the time of the meeting;
- will be impacted by upcoming actions or decisions of the public servant, legislator, or legislative employee; or
- is holding the meeting for the purpose of advocating on behalf of legislative or executive action.

Here, the lobbyist principal’s legislative initiatives that were proposed during the 2007 General Assembly session included: (1) a bill that the lobbyist principal drafted and that passed, resulting in the Senate allocating money for a program; this program is currently being operated by the lobbyist principal and a non-profit private foundation; and (2) a successful bill that sought funding for a program that the lobbyist principal administers. Thus, although the international study trip’s primary purpose is not to influence legislative or executive action, or to advocate on behalf of legislative or executive action, the lobbyist principal’s position and priorities on both legislative and executive issues and actions are likely to be discussed during the international study trip. The purpose of the lobbyist principal hosting this international trip is to both educate and influence the participants whom the lobbyist principal considers the “policymakers.”

B. What is the nature of the entity holding the meeting?

⁵ Because the participating legislators and public servants were only invited because they were “policymakers” in the relevant areas, the educational content of the meeting related to their specific duties and responsibilities and satisfied the first educational meeting test: Is the educational content of the meeting related to a specific public duty or responsibility of the public servant, legislator, or legislative employee? *See* “Criteria for Determining an ‘Educational Meeting’ Under §138A(e)(3)(i).” Consequently, this opinion begins with the “primary purpose” analysis.

- Is the entity a State agency or governmental entity?
- Is the entity an educational institution?
- Is the entity an organization that routinely sponsors meetings with educational content?
- Is the entity holding the meeting a lobbyist principal?

The lobbyist principal is a North Carolina corporation with its membership consisting of elected officials, both in the legislative and executive branches of North Carolina government, and others who also have the power to affect and make public policy regarding particular issues and areas. The non-lobbyist principal is an entity of the state with 501(c)(3) status when applying for grants. The non-lobbyist principal does not have a lobbyist and is not a lobbyist principal. Accordingly, the gift ban does not apply to the non-lobbyist principal.

C. Is the lobbyist principal paying for the person's attendance at the meeting also sponsoring the meeting?

The lobbyist principal, along with the non-lobbyist principal, is sponsoring the international study trip, but only the lobbyist principal is paying for the travel-related costs, including airfare and other necessary transportation, lodging, meals, and other incidental items of nominal value connected to the study trip, of the participants that it considers "policymakers," which are legislators and public servants. Note that the lobbyist principal is not paying the travel-related costs of the participants that it does not consider "policymakers." These participants will pay a "registration fee" which will cover their airfare, other transportation, lodging, meals, and other incidental items of nominal value connected to the study trip.

D. What is the agenda of the meeting?

- Other than the speech or roundtable discussion in which the public servant, legislator, or legislative employee is participating, what proportion of the individual events scheduled at the meeting have a speaker, roundtable discussion, or other educational content?
- What proportion of those sessions is held in the absence of a meal or entertainment?
- What proportion of the meeting agenda includes meals or entertainment with formal educational content?
- Does the agenda cover a wide range of topics or have a very limited, industry or client-specific focus?
- Would the meeting take place regardless of whether the invited designated individual(s) attends?
- Who are the speakers?
 - Are they associated with the lobbyist principal or its lobbyist?
 - Are they independent experts in their field?

The lobbyist principal and the non-lobbyist principal's "meeting" is a six-day international study trip consisting of approximately 12- to 13-hour days, including educational time, personal time, lunch, dinner, and travel time. The itinerary includes time spent on the purposes and goals of the study trip, travel to and from the various governmental entities, institutions, and systems, private businesses and companies, and other necessary locations, and personal time for the participants. The educational time includes: presentations on the history and culture of the country they are studying; a political

overview of the country; the relationship of the governmental entities, institutions and systems with the country's economic policies; visits to various governmental entities, institutions, and systems with accompanying presentations, tours, discussions, and observation time; visits to various companies and businesses with accompanying presentations and discussion with management and employees; discussions with business professionals, educators, and members of the general public who use and/or may be affected by these governmental entities, institutions, and systems, and the merger and integration of such with private businesses and companies for the economic development of the country. The personal participant time includes guided tours of the country, optional cultural activities and visits, and overall free time. Breakfast, lunch and dinner are included every day. The speakers are not associated with the lobbyist principal and many may be deemed experts in their fields, whether that is in governmental issues, public policy issues, education, business, economics or the link and interconnection of the country's governmental public policy issues and the economics of the country. A focus of the lobbyist principal is to have legislators and public servant policymakers participate in this trip, and that is why the lobbyist principal pays for the trip-related costs and expenses of these "policymakers." The lobbyist principal has acknowledged that this international study trip probably would not take place if these "policymakers" did not attend; however, a number of other individuals are expected to participate with each of them paying for the trip.

E. Is the location of the meeting directly related to the meeting's educational content?

- Is there a reason for holding the meeting in a location other than where the attendees live or work?
- Is it necessary to the meeting's educational purpose that an individual travel in connection with the meeting?
- Is the meeting sponsored by a state, national, or international organization for the benefit of its state, national, or international membership?
- Is the location of the meeting otherwise integral to the educational content of the meeting?
- Would an individual be capable of obtaining a comparable degree of educational information through other means that would not require travel?

The lobbyist principal and the non-lobbyist principal's international study trip is being held in another country. This country was selected as the location for this trip for five major reasons, all related to the country's governmental institutions and systems, with an emphasis on examining particular areas, including math and science, and to examine how the country has merged its governmental institutions and systems with the economic development of the country, and the benefits of such merger. Holding the trip in this country is necessary for the lobbyist principal and the non-lobbyist principal to meet the educational goals they have set for this trip. Being in this country is integral to the educational content of the trip. For example, the trip includes: visits and tours of this country's governmental entities, institutions, and systems, and of private businesses and corporations; meetings and discussions with the leaders and employees of various governmental entities, institutions and systems of this country, business representatives, and professionals, experts in various fields, educators, and members of the general public who use and/or may be affected by the interaction and integration of these governmental entities, institutions, and systems, and their public policy issues with private businesses and corporations. An individual would not be capable of obtaining a comparable degree of educational information through other means.

F. Is the length of the educational meeting reasonably necessary to fulfilling the educational purpose of the trip?

The lobbyist principal and non-lobbyist principal's international study trip, including travel time to and from the country, will commence Friday and end a week later on either Saturday or Sunday, depending on what day the participant decides to depart for North Carolina. The formal itinerary for the trip commences on Sunday and ends the following Friday. The majority of all of the days, except the travel days and the day they arrive in the country, is spent on presentations, tours, visits and other activities related to the educational goals and purpose of this trip. The length of the trip is not unreasonable in relationship to the educational goals and purpose of this trip, and the travel time necessary due to the distance between North Carolina and the country.

G. What degree of personal benefit does the individual gain from attendance at the meeting?

- Does the personal benefit outweigh the public benefit gained by the educational value of the meeting?

This "meeting" involves an out-of-the-country trip to a country that many people may wish to visit, but which is not considered a common vacation destination. A majority of every day of this trip is being held in various settings and locations with educational presentations, tours and discussions. It has significant educational value. Therefore, the personal benefit in attending this international study trip would not outweigh the public benefit gained by the educational value.

H. Are there other factors that would support the conclusion that the meeting is educational?

I am not aware of other factors that would support the conclusion that the meeting is educational.

IV. Conclusion

Based on the facts presented and the forgoing discussion, the Commission determined that the lobbyist principal and non-lobbyist principal's international study trip satisfies the Commission's educational meeting criteria and is an educational meeting pursuant to G.S. 138A-32(e)(i). The facts presented also established that: (a) any food, beverages, transportation, or entertainment that is being provided as part of this trip is being provided to all trip participants; (b) the trip has an established formal agenda; and (c) notice of the trip has already been provided to interested individuals, including all of the paying participants and the "policymaker" participants, thereby meeting the requirement of at least 10 days advance notice. It is also the Commission's understanding, based on the facts that were provided, that any entertainment provided during this trip will be "incidental to the principal agenda of the meeting."

Based on all of the foregoing conditions being met, this international study trip will meet the education gift ban exemption listed under G.S. 138A-32(e)(i) and the lobbyist principal will be allowed to pay for the "reasonable actual expenditures" of the four legislators and two public servants for food, beverages, registration, travel, lodging, other incidental items of nominal value, and incidental entertainment in connection with their participation in this international study trip.

The lobbyist principal will need to report the “reasonable actual expenditures” it pays for food, beverages, registration, travel, lodging, other incidental items of nominal value, and incidental entertainment in connection with the designated individuals’ participation in this international study trip on its lobbyist principal report that it files with the Secretary of State’s Office. G.S. 120C-403(a) and (c).

It is the Commission’s understanding that the non-lobbyist principal is not paying for any of the expenditures of the designated individuals who are participating in this international study trip. Accordingly, the non-lobbyist principal is not giving anything of monetary value to the designated individuals and, therefore, it has nothing to report.