



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION **UNEDITED WITH APPROVAL OF REQUESTER**

November 13, 2009

Mr. John Dornan
Executive Director
Public School Forum of North Carolina
3739 National Drive, Suite 100
Raleigh, NC 27612

Ms. Millie Ravenel
Executive Director
NC Center for International Understanding
412 North Wilmington Street
Raleigh, NC 27601

RE: Application of the Educational Meeting Exception to the Gift Ban to
International Trip - "Learning From Singapore – January 15-24, 2010"
G.S. 120C-303(a) and G.S. 138A-32(e)(3)(i)
AO-L-09-012

Dear Mr. Dornan and Ms. Ravenel:

You requested a formal advisory opinion from the State Ethics Commission ("Commission") regarding whether the Public School Forum of NC, Inc. ("the Forum") and the NC Center for International Understanding ("the Center") could pay various travel expenses for certain legislators and public servants to participate in your international study trip to Singapore planned for January 15-24, 2010 ("Singapore II Trip"). This formal advisory opinion addresses the application of Chapter 120C of the North Carolina General Statutes ("G.S.") ("the Lobbying Law") to these payments, and addresses whether the Singapore II Trip qualifies as an educational meeting and meets the five statutorily required conditions of the educational meeting gift ban exception of subsection 32(e)(3)(i) of G.S. Chapter 138A, the State Government Ethics Act ("the Ethics Act").

This formal advisory opinion was adopted by the Commission at its November 13, 2009, meeting.¹

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.

I. Brief Conclusion.

The transportation, lodging, meals, and other incidental items of nominal value that are provided in connection with the Singapore II Trip are subject to the gifts ban of the Lobbying Law. Accordingly, a gift ban exception must be applicable for these gifts to be given to legislators and public servants. Based on the information presented, the Commission has concluded that the Singapore II Trip will qualify as an educational meeting and the G.S. 138A-32(e)(3)(i) educational meeting exception will apply under the circumstances outlined below. The Forum, as a lobbyist principal, and any other sponsoring lobbyist principals, must report all expenditures made on behalf of the attending legislators and public servants on principal reports filed with the Secretary of State for the first quarter in 2010.

II. The Facts.

The Forum is a North Carolina corporation. The membership of its Board of Directors consists of elected officials, both in the legislative and executive branches of North Carolina government, others who have policymaking responsibility in the North Carolina public education system, educators, and business leaders. It is a lobbyist principal. The Center operates within the University of North Carolina's ("UNC's") General Administration. The Center is not a lobbyist principal.

Most of the money for the Singapore II Trip, including the money for the travel-related costs of the invited legislators and public servants, is given to the Forum in the form of grants from the Burroughs Welcome Fund ("BWF"), a private philanthropic foundation, which is not a lobbyist principal. In addition, other organizations and companies, some which are lobbyist principals, give money to the Forum so additional legislators and public servants may participate in this study trip. BWF and these other sponsors have no involvement in the planning or administration of the trip, or the selection of the participants.

This study trip will be the second time the Forum and the Center have sent educational policymakers to study and examine Singapore's educational system. Singapore was chosen as the subject of this second trip because it has created one of the most comprehensive approaches to education. Educational goals of the trip are:

- To examine how Singapore has effectively blended economic development and educational planning into a single process;
- To expand the frame of reference of North Carolina policymakers and educators by exposing them to educational and governmental approaches not routinely used in the United States, and, more specifically, in North Carolina;
- To expose North Carolina policymakers and educators to best practices that could be imported to North Carolina and adapted to strengthen education across the State; and
- To establish relationships between North Carolina and Singapore that are educational exchanges and that create economic development opportunities for North Carolina.

A stated priority of the Singapore II Trip is to connect and educate additional North Carolina policymakers on the merging of educational and economic development planning. To this end, the

Forum and Center have invited legislators and public servants who did not participate in the first Singapore study trip. In addition, educators, foundation officials, and others were invited to attend.

The Forum and the Center will pay for the travel-related costs of their participating staff members, one BWF official, invited legislators, and the public servants representing the UNC and Community College Systems and the State Board of Education. The other invited participants must pay a "registration fee" of \$4,790.00, which will cover their travel-related costs, including airfare and other necessary transportation, lodging, meals, and incidental expenses connected to the study trip. Approximately 30 participants are expected, with 13 paying participants and 17 non-paying participants, including 11 policymakers, four staff members, one Teaching Fellows graduate and one BWF official.

The Singapore II Trip, excluding travel time to and from Singapore, is a six-day trip consisting of 10 to 12 hour days, including educational time; breakfast, lunch, and most dinners; travel to and from the educational locations within Singapore; and entertainment. Entertainment being provided as part of or in conjunction with this study trip includes an Imperial River Cruise with dinner on Friday, January 22nd, an optional tour of Sentosa Island at 4 p.m. on January 18th, and optional Singapore cultural visits Saturday morning, January 23rd. Legislators and public servants who stay in Singapore until Sunday, January 24th, are required to pay for their lodging and meal expenses for January 23rd. However, any additional costs associated with the River Cruise, Sentosa Island visit, or Singapore cultural visits are not addressed by your request.

Educational sessions scheduled include: an overview of the educational system in Singapore, the history and culture of Singapore, the system for developing workforce projections, and of the linkages between education, the workforce, and economic development in Singapore; visits with the Ministers of Parliament, Education, Trade and Industry, and Manpower; presentations and classroom visits to and tours of schools, universities, and colleges including classroom observations, conversations with students and faculty, and visits with educators and/or business professionals; visits to companies with accompanying presentations and discussion with management and employees, with emphasis upon how the Singapore educational system develops manpower that meets the economy's needs.

Prior to the trip, participants are required to read background briefing materials and attend two to three days of intensive briefings on the educational system, the state of economic development, and the governing system of Singapore. Upon their return, participants will attend a full-day debriefing session. In addition, a final report that includes findings and their implications for North Carolina will be issued.

III. Applicable Statutory Provisions.

G.S. 120C-303(a) prohibits 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 exception to the gift ban listed in G.S. 138A-32(e) applies.

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 [their] public duties and responsibilities...." 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." G.S. 138A-32(e)(3)b-d.

G.S. 120C-403(b)(5) generally requires each lobbyist principal to report all reportable expenditures for gifts given under any of the gift ban exceptions of G.S. 138A-32(e)(1)–(9), among others, if the value of the expenditures is greater than \$10 per day per individual legislator, legislative employee, or public servant, or immediate family. G.S. 120C-100(a)(12)a.

A. The Commission's Educational Meeting Criteria.

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).² Those factors recognize the extensive benefits that may be received because of this exception (i.e., travel, lodging, meals, and meeting registration costs) and are designed to identify meetings planned for the primary purpose of influencing particular designated individuals or groups of designated individuals with respect to current or future legislative or executive action. Those factors include the following.

- Whether the meeting is related to a specific public duty or responsibility of the official.
- Whether the meeting is primarily intended to present information to enhance a person's general understanding of an issue or to influence legislative or executive action.
- Whether the entity hosting the meeting is a lobbyist principal, an educational institution, a governmental entity, and/or an entity that routinely sponsors meetings with educational content. If it is a lobbyist principal, is the meeting host also paying for the designated individual's attendance at the meeting?
- The meeting's Agenda, considering the following factors.
 - The proportion of meeting sessions held in the absence of a meal or entertainment and the amount of formal meeting content relative to the length of the meeting.
 - Whether a wide range of topics is covered or the meeting has a very limited industry, issue, or client-specific focus.
 - Whether the meeting would take place even if the invited designated individual(s) do not attend.
 - Whether the speakers are associated with the lobbyist principal or its lobbyist.
 - Whether the speakers are independent experts in the area concerned.
- Whether the location of the meeting is directly related to the meeting's educational content or the location of the attendees or members of the sponsoring organization.

² In this opinion, the Commission has summarized the educational meeting criteria in order to assist in its application.

IV. Discussion.

Based on the information submitted and applying the above-referenced criteria to the facts presented, the Commission has determined that the Singapore II Trip qualifies as an educational meeting. In addition, the advance agenda and notice requirements of G.S. 138A-32(e)(3) have been met and trip expenses are being provided on behalf of at least 10 trip participants, including a total of 11 legislators and public servants.

However, as planned, the Trip includes activities that do not fit with the “incidental entertainment” limitations. The outing to Sentosa Island, the Imperial River Cruise, and the cultural visits on Saturday, January 23rd are not “incidental” to the principal agenda of the Trip. Accordingly, the educational meeting exception will not apply to the Singapore II Trip if any of these entertainment events and the costs associated with them are provided free of charge to the participating legislators and public servants. Those costs include entrance fees, transportation, and any other incidental items of value given in connection with each event, in addition to the cost of lodging and meals in Singapore for Saturday, January 23, 2010.

Although the visit to Sentosa Island and the January 23 Singapore cultural visits are optional, your request states that the legislators and public servants are currently required to pay their “own expenses” for January 23rd. However, it is not clear whether those expenses include travel-related expenses, meals, and entrance fees incurred by the legislators and public servants in connection with their participation in the River Cruise and those optional activities. In order to satisfy the G.S. 138A-32(e)(3) meeting exception each legislator and public servant must pay for the costs incurred on his or her behalf for the entertainment events noted above, including meals and lodging on January 23, 2010. If this requirement is satisfied, other reasonable actual expenditures incurred by North Carolina legislators and public servants in connection with their participation in this study trip may be provided.

The Forum and other sponsoring lobbyist principals must report those expenditures it pays on behalf of the attending legislators and public servants on its principal report filed with the Secretary of State for the first quarter in 2010.

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.

State Ethics Commission

By: _____
Robert L. Farmer
Chairman

Formal Advisory Opinions of the State Ethics Commission
Issued Pursuant to the Lobbying Law

Upon the written request of any person, State agency, or governmental unit affected by G.S. Chapter 120C (“the Lobbying Law”), G.S. 120C-102(a1) authorizes the State Ethics Commission (“Commission”) to issue formal advisory opinions “on the meaning and application” of the Lobbying Law and “that person’s, State agency’s or any other governmental unit’s compliance therewith.” All opinions have prospective application only and must relate to real or reasonably anticipated fact settings or circumstances. G.S. 120C-102(a). Formal advisory opinions confer limited civil immunity upon a requester who follows the advice given. G.S. 120C-102(a1).

Once issued by the Commission, formal advisory opinions are published in an edited format on the Commission’s website within 30 days of issuance. G.S. 120C-102(c). Requests for advisory opinions, the opinions themselves, and all materials related to the opinions are confidential and are not public records. G.S. 120C-102(d). However, the Commission is required to send an unedited copy of each formal advisory opinion to the Secretary of State’s Office at the time the formal advisory opinion is issued to the requester, and the Secretary of State is required to treat the formal advisory opinion as confidential and not a matter of public record. G.S. 120C-102(d1). In addition, Commission staff is specifically authorized to share all information and documents related to requests for formal advisory opinions with the Secretary of State’s Office. The Secretary of State’s Office is required to treat any such information and documents in its possession as confidential and not a matter of public record G.S. 120C-102(d1).