



# NORTH CAROLINA STATE ETHICS COMMISSION



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## ANNUAL ADVISORY OPINION NEWSLETTER

In January the Commission celebrated its 10<sup>th</sup> anniversary! We look forward to another 10 years serving the people of North Carolina by ensuring compliance with the Ethics Act and Lobbying Laws.

Below is a table summarizing 2016 Formal Advisory Opinions interpreting the Ethics Act. These summaries are for general information purposes; please contact the Commission’s staff with specific questions. Although Commission staff continues to provide informal advice interpreting the Lobbying Law, in 2016 the Commission did not receive any requests for formal lobbying advice. All formal advisory opinions are available on the Commission’s web site: <http://www.ethicscommission.nc.gov/ao/default.aspx>. While all advice issued by the Commission or its staff is strictly confidential, requesters may authorize the release of unedited advisory opinions.

### 2016 FORMAL ETHICS ADVISORY OPINIONS

CATEGORY	STATUTE	AO #	TITLE & SUMMARY
<b>Conflict of Interest Standards—Service on Corporate Boards</b>	G.S. 138A-31(a)-(c); G.S. 138A-34; G.S. 138A-36(a) & (c)	E-16-001	<p><b>Permissibility of State Treasurer Serving on Corporate Boards of Directors**</b></p> <p>The former State Treasurer asked whether the Ethics Act restricted her from serving on corporate boards of directors and accepting compensation, meals, and travel expenses associated with her board service.</p> <p>The Commission determined that the Ethics Act would not restrict the former State Treasurer from serving on corporate boards of directors and accepting compensation, meals, and travel expenses. However, although the State had no investments in either of the companies under consideration, the Commission concluded that if such investment opportunities arose the conflict of interest provisions of the Ethics Act would restrict her from taking official action with respect to those investment decisions. The Commission also stated that the former State Treasurer would be restricted from using her official title in advertisements for those companies and from using confidential or nonpublic information to benefit them.</p> <p>**Treasurer Cowell waived confidentiality and authorized the publication of an unedited version of this opinion.</p>
<b>Conflict of Interest Standards—Private Consulting Services</b>	G.S. 138A-31(b); G.S. 138A-34; G.S. 138A-36(a) & (c)	E-16-002	<p><b>Permissibility of Licensing Board Member Providing Expert Witness Services</b></p> <p>The Commission was asked whether the Ethics Act would restrict a member of a State licensing board from providing expert witness services in litigation in which the professional negligence of a</p>

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			<p>licensee is at issue.</p> <p>The Commission determined that the Ethics Act would not restrict a licensing board member, in his/her private capacity, from providing expert witness services regarding the standard of care applicable to licensees. However, the Commission concluded that the Ethics Act's conflict of interest provisions would restrict him from taking official action in his capacity as a board member if that action would impact a law firm that hired the board member as an expert or the client represented by the law firm. Moreover, he may not use confidential or nonpublic information obtained as a board member to benefit the law firm or client.</p> <p>The Commission also noted that although board members may generally include their board membership on a resume or biographical listing, the member should delete any reference to his board service from biographical information provided in connection with his expert witness services. This would reduce the perception that those services are provided in the board member's official capacity.</p>

**INFORMAL ADVICE AND FORMAL ADVISORY OPINIONS  
THE ETHICS ACT & LOBBYING LAW**

**Who can request advice?** Anyone affected by the Ethics Act or Lobbying Law may request informal advice or a formal advisory opinion.

**What type of advice may be requested?** Requests for advice must relate to real or reasonably anticipated fact settings or circumstances. In 2016 Commission staff responded to 538 requests for informal advice. Issues addressed included registration and disclosure requirements under the Lobbying Law (9%), the permissibility of the giving and acceptance of gifts (47%) under the Ethics Act and Lobbying Law, conflicts of interest under the Ethics Act (16%), use of official titles and use of State funds in advertising (5%), other questions arising under the Ethics Act and Lobbying Law such as the contingency fee lobbying restriction, the "cooling off" period, and scholarship reporting (10%), and other ethics matters arising outside the parameters of the Ethics Act or Lobbying Law (13%).

**What is the difference between "informal advice" and a "formal advisory opinion"?** Informal advice is issued by Commission staff and does not confer immunity. Requests for informal advice may be either verbal or written. A formal advisory opinion request must be in writing and is issued by the Commission. Reliance on a formal advisory opinion confers immunity from investigation by the Commission or the Secretary of State's Office.

**Are requests and advisory opinions confidential?** Yes. Requests for advice or a formal advisory opinion, and all related documents, are confidential. However, the Commission is required to share unredacted copies of formal advisory opinions interpreting the Lobbying Law with the Secretary of State's Office and must publish redacted formal advisory opinions on the Commission's website.

**How do I request informal advice or a formal advisory opinion?** Contact the State Ethics Commission at (919) 814-3600 or by e-mail at [ethics.commission@doa.nc.gov](mailto:ethics.commission@doa.nc.gov). We look forward to hearing from you!

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