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*Annual Lobbying Summary*

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## LOBBYING NEWSLETTER

### SUMMARY OF 2009 & 2010 LOBBYING ADVISORY OPINIONS

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This newsletter contains summaries of the formal lobbying advisory opinions issued by the Commission from January 1, 2009 through December 31, 2010. Please note, these are summaries and are for guidance purposes only. Complete formal advisory opinions are available on the Commission's website at <http://www.ethicscommission.nc.gov/opinionsLobbying.htm>. Anyone who has a specific question or who would like to request a formal advisory opinion should contact the State Ethics Commission at (919) 715-2071 or by e-mail at [ethics.commission@doa.nc.gov](mailto:ethics.commission@doa.nc.gov).

In addition, the North Carolina General Assembly has amended the ethics and lobbying laws since the Commission issued these advisory opinions. The Commission has also adopted administrative rules interpreting parts of the ethics act and lobbying law. These rules became effective January 1, 2011, and are codified in [Title 30 of the North Carolina Administrative Code](#). Therefore, the opinions may no longer reflect current law or Commission rules. Any questions relating to the applicability of statutory changes or rules concerning these opinions should be directed to the State Ethics Commission.

## GIFT BAN, GIFT BAN EXCEPTIONS & REPORTING

### GENERAL GIFT BAN

- **Gifts from Lobbyists & Lobbyist Principals.** Public servants, legislators, and legislative employees shall not knowingly accept a gift, either directly or indirectly, from a registered lobbyist or lobbyist principal ([G.S. 138A-32\(c\)](#)), and registered lobbyists and lobbyist principals shall not knowingly give a gift, either directly or indirectly, to a public servant, legislator, or legislative employee ([G.S. 120C-303\(a\)\(1\)](#)).
- **Gifts from Liaison Personnel ("Legislative Liaisons").** Legislators and legislative employees shall not knowingly accept a gift, either directly or indirectly, from designated liaison personnel ([G.S. 138A-](#)

[32\(c\)](#)), and liaison personnel shall not knowingly give a gift, either directly or indirectly, to a legislator or legislative employee ([G.S. 120C-501\(d\)](#)).

- **Gifts from “Interested Persons”.** Public servants shall not knowingly accept a gift, either directly or indirectly, from an “interested person”<sup>1</sup> ([G.S. 138A-32\(d\) & \(d1\)](#)).
- **“De Minimis” Gifts.** There is no de minimis, or small gift, exception to the gift ban.

## EXCEPTIONS TO THE GIFT BAN

### I. RECEPTIONS, DINNERS, & OTHER FOOD & BEVERAGE EVENTS

**Relevant Law:** [G.S. 138A-32\(e\)\(1\)b](#). allows a lobbyist, lobbyist principal, or interested person to provide food and beverage for immediate consumption to legislators, legislative employees, and public servants at a gathering of an organization with at least 10 individuals in attendance if the gathering is open to the general public and a sign or other communication is displayed at the meeting which lets the public know the gathering is open.

[G.S. 138A-32\(e\)\(1\)c](#). allows a lobbyist, lobbyist principal, or interested person to provide food and beverage for immediate consumption to legislators, legislative employees, and public servants so long as certain designated legislative or public servant groups are invited; either 10 individuals associated with the person actually attend or all persons affiliated with the host or sponsor located in North Carolina are notified and invited to attend; and, a written invitation containing the date, time, and location is sent at least 24 hours in advance.

- A. [L-09-001](#) **Legislative Reception and Fundraiser with Multiple Sponsors — Who is the “Person” and Who is “Associated with the Person?”** [G.S. 120C-303](#); [138A-32\(e\)\(1\)c](#). (*In accordance with [G.S. 120C-102\(d\)](#), the requester authorized publication of the unedited version of this opinion.*)

Issued: January 16, 2009

**Facts:** The host, AENC, is not a lobbyist principal, but sponsors are lobbyist principals and interested persons. Invitees include all members of the General Assembly, certain public servants, and their immediate family members. Food and beverage for immediate consumption are being provided, and a high school jazz band is playing background music. A written invitation is sent to all public servants and legislators who are invited, and the invitation contains the date, time, and location of the reception, along with a statement that the reception meets the requirements of [G.S. 138A-32\(e\)\(1\)c](#).

1. *May AENC, a non-lobbyist principal, host, and lobbyist principals sponsor the legislative reception and provide food and beverage for immediate consumption and the background music?*

**Opinion ([L-09-001](#)).** **Yes.** AENC’s event meets the requirements of [G.S. 138A-32\(e\)\(1\)c](#). The Commission also provides the following interpretations regarding [G.S. 138A-32\(e\)\(1\)c](#):

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<sup>1</sup> An “interested person” is a person whom the public servant knows or has reason to know:

- Is doing or seeking to do business of any kind with the public servant’s employing entity;
- Is engaged in activities that are regulated or controlled by the public servant’s employing entity; or
- Has financial interests that may be substantially or materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of official duties.

- **“Individuals Associated with the Person Actually Attend.”** For purposes of determining when “at least 10 individuals associated with the person... actually attend,” the Commission determined that “the person” is the group of lobbyist principals sponsoring the event and not any sponsoring non-lobbyist principals, and “associated with” includes, but may not be limited to, those relationships defined in [G.S. 138A-3\(3\)](#), “Business with which associated.” Therefore, individuals associated with the non-lobbyist principal do not qualify as an “individual associated with the person,” and the *lobbyist principal sponsors* of the event must have a total of 10 individuals associated with their group actually attend the reception.
- **“Invited” Means “Written Notice.”** A notice or invitation by e-mail qualifies as written notice.
- **“Gift.”** Generally, a “gift” is anything of monetary value from a lobbyist, lobbyist principal, liaison personnel, or “interested person.” Based on the facts, the Commission determined that the background music provided by the high school jazz band does not have independent monetary value, and therefore, is not a gift of entertainment. Whether entertainment provided at an event will be deemed a gift will be determined on a case-by-case basis.

**Note: The Commission has also adopted the following relevant rules, effective January 1, 2011:**

[30 NCAC 07B .0102](#) Associated with the Person or Governmental Unit

[30 NCAC 07B .0103](#) Invited

2. *If a \$250.00 fee is charged for admission, is the gathering considered “open to the public”?*

**Opinion ([L-09-001](#)).** **No.** For purposes of the gift ban exception in [G.S. 138A-32\(e\)\(1\)b](#), an event or gathering for which the general public has to pay an admission charge to attend is **not** “open to the general public” and would not qualify for this gift ban exception.

**Note: The Commission has also adopted the following relevant rule, effective January 1, 2011:**

[30 NCAC 07B .0101](#) Gatherings Open to the General Public

3. *What are the reporting requirements for the reception?*

**Opinion ([L-09-002](#)).** (see also [L-07-006](#) & [L-07-0010](#))

- **AENC.** Since AENC is not a lobbyist principal and did not use any of its funds to pay for the reception, it does not have any reporting requirements under Chapter 120C.
- **Lobbyist Principals.**
  - Each lobbyist principal contributing to the reception must report the total amount of its sponsorship contribution. ([G.S. 120C-403\(b\)](#) & [L-07-0010](#)).

- Each lobbyist principal must report the “fair market value” of the food and beverage received by legislators, legislative employees, and public servants. ([G.S. 120C-401\(b\)](#) and [-401\(b1\)](#)).
  - “Fair market value” may be calculated using the actual per person cost of the food and beverage.
  - Lobbyist principals should note on their report that the reception was hosted by multiple lobbyist principals and the co-sponsors shared the cost of the food and beverages.
- **Other Sponsors.** Sponsors who are not lobbyists or lobbyist principals must report the fair market value of the food and beverage *if* the sponsor makes an expenditure over \$200 per calendar quarter for the purpose of lobbying to any of the legislators, legislative employees, or public servants.

**B. [L-09-003](#) Gathering Open to the General Public - Requisite Sign Displayed at Gathering. [G.S. 120C-303](#); [138A-32\(e\)\(1\)b](#) (In accordance with [G.S. 120C-102\(d\)](#), the requester has authorized the publication of an unedited version of this opinion.)**

Issued: February 13, 2009

**Facts.** The Greater Raleigh Chamber of Commerce (Chamber) is a lobbyist principal. The Chamber is hosting and paying for a Computer Game Development Forum consisting of a panel of speakers. The Chamber is inviting legislators, public servants, and other public officials; opening the Forum to the public at no-charge; and, posting a sign in the lobby in an area visible to the general public and immediately outside the meeting room stating that the Forum is open to the general public.

1. *May the Chamber provide food and beverage for immediate consumption to legislators and public servants?*

**Opinion. Yes.** So long as the Chamber displays the signs as noted above and 10 or more individuals attend the Forum, the Chamber may provide food and beverage for immediate consumption to the legislators and public servants.

2. *What are the reporting requirements?*

- The entire cost of the event must be reported by the Chamber.
- If the value of the food & beverage exceeded \$10 per designated individual (legislator, legislative employee, or public servant) per day, the fair market value must be reported as a gift.

**C. [L-10-003](#) Legislative Reception Sponsored by A Lobbyist Principal — Complimentary Transportation Cannot be Provided under the Food and Beverage Gift Ban Exception. [G.S.120C-303\(a\)](#); [138A-32\(e\)\(1\)c](#)**

Issued: November 19, 2010

**Facts:** A lobbyist principal wants to provide food, beverage, and transportation for an event being held at the lobbyist principal’s offices. The event will not be open to the general public. In addition to inviting all legislators and all legislative employees, either 10 individuals associated with the

lobbyist principal would actually attend the event or everyone affiliated with the lobbyist principal would be invited. Invitations would be sent out 10 days in advance and include the date, time, and location of the event along with a statement that the event is permitted under the Ethics Act. Transportation would be provided during the event from the Legislative Building to the event. The transportation would be available to the general public; however, the general public would not be permitted to attend the event.

*May a lobbyist principal provide food, beverages, and complimentary transportation to legislators and legislative employees attending an event sponsored by the lobbyist principal?*

**Opinion.** **Food & Beverage. Yes.** The lobbyist principal may provide food and beverage for immediate consumption at the event. [G.S. 138A-32\(e\)\(1\)c.](#) permits a lobbyist principal to provide food and beverage for immediate consumption to certain defined groups, including all legislators or all legislative employees, so long as certain criteria are met.

**Complimentary Transportation. No.** Complimentary transportation to the event is not permitted. The exception in [G.S. 138A-32\(e\)\(1\)c.](#) only permits food and beverages for immediate consumption. It does not permit complimentary transportation, even when in connection with the event. Furthermore, although [G.S. 138A-32\(e\)\(6\)](#) permits giving anything “generally made available to the general public or all other State employees,” transportation to and from this event is specifically tailored to benefit the legislators and legislative employees attending the private event. Although members of the public would be permitted to ride the shuttle from the Legislative Building to the event, the general public would not be permitted to attend the event. The transportation would not be noticed in a way that will reasonably convey to the general public that the bus is available at no charge. In addition, allowing the general public to ride a private bus at no charge on a date, at limited times, and on a route that is specifically tailored for the benefit of event attendees does not result in the transportation being “generally made available to the general public.” Therefore, the complimentary transportation does not fit within the gift ban exception of [G.S. 138A-32\(e\)\(6\)](#).

## II. EDUCATIONAL MEETING EXCEPTION & SPEAKER/PANEL MEMBER EXCEPTION

**Relevant Law.** [G.S. 132A-32\(e\)\(3\)\(i\) and \(ii\)](#) allow a lobbyist principal to pay for reasonable actual expenditures for the following if the meeting is considered educational or if the legislator, legislative employee, or public servant is a speaker or panel member: registration; food; beverage; lodging; transportation; incidental entertainment; and items of nominal value. Food, beverages, and transportation must be provided to all attendees or defined groups of 10 or more as part of or in conjunction with the meeting. Entertainment must also be provided to all attendees or defined groups of 10 or more and must be incidental to the principal agenda. The meeting must be attended by at least 10 participants, have a formal agenda, and notice must be given at least 10 days in advance.

A meeting is educational if it is primarily related to the legislator’s, legislative employee’s, or public servant’s public duties and responsibilities. The Commission has also adopted non-exclusive criteria for determining when a meeting is “educational.” (See [L-07-0003](#). In addition, the Commission has adopted [30 NCAC 07C .0101](#), Educational Meeting Criteria, effective January 1, 2011.)

In order for the speaker/panel member exception to apply the legislator, legislative employee, or public servant must be a “bona fide speaker or participant.”

- A. [L-09-007](#) **Permissibility of Providing Free Registration to NCSEA Forum.**  
[G.S. 120C-303\(a\)](#); [138A-32\(e\)\(3\)\(i\)](#) (In accordance with [G.S. 120C-102\(d\)](#), the requester authorized the publication of an unedited version of this opinion.)

Issued: April 24, 2009

**Facts.** NCSEA is a registered lobbyist principal. NCSEA is hosting the “Making Energy Work: Building a Sustainable Energy Economy in the Southeast” Forum and is inviting legislators, legislative employees, and public servants to attend free of charge. Registration fees are charged for other participants. One legislator and one public servant will also speak at the meeting. Food and beverages are being provided during the Forum. The Forum has a formal agenda, is giving at least 10 days advance notice, and 10 or more participants are attending.

*May NCSEA provide free registration, lunch, and a reception, to all members of the General Assembly, certain legislative employees and certain public servants?*

**Opinion. Yes.** NCSEA may provide the free registration and food and beverage at its Forum so long as the educational or speaker/panel member criteria are met. Specifically:

- **Educational Meeting Exception & Criteria.** For a meeting to be considered “educational” the person must attend for purposes related primarily to his or her public duties. The Commission determined that the Forum meets the educational meeting exception, including the Commission’s criteria. The meeting’s topic was related to the public duties of the legislators, legislative employees, and public servants who are invited, the entire meeting is taking place on the same day in Raleigh (the location of NCSEA and other organizations represented), includes a wide variety of speakers and topics, and a large proportion of the events include educational content. Therefore, NCSEA, as a lobbyist principal, may provide the food, beverage, and registration to legislators, legislative employees, and public servants.
- **Speaker or Panel Member Exception.** For a legislator, legislative employee, or public servant to be considered a speaker or panel member, he or she must be a “bona fide speaker or panel member.” Here, a legislator and public servant spoke at the Forum. Therefore, NCSEA, as a lobbyist principal, may also provide the food, beverage, and registration to the legislator and public servant who spoke.

- B. [L-09-009](#) **Application of the Educational Meeting Gift Ban Exception to a Rural North Carolina Study Tour.** [G.S. 138A-32\(c\)](#); [138A-32\(e\)\(3\)\(i\)](#)

Issued: August 14, 2009

**Facts.** The lobbyist principal engages in community development business and is conducting a Tour for the purpose of enhancing participants’ understanding of various NC communities. The lobbyist principal is providing the funding for most of the travel costs and food and beverage. Legislators, legislative employees, and public servants are participating in the Tour. Transportation is by bus, and the participants are visiting various sites, some of which receive assistance from the lobbyist principal. The Tour has a formal agenda, there will be at least 10 days advance notice, and 10 or more participants are attending.

*May the Center provide transportation, food, beverage, and lodging to legislators, legislative employees, and public servants who participate in the Tour?*



**Opinion. Yes.** The lobbyist principal may provide transportation, food and beverages, and lodging for the Tour. Specifically, the Commission determined that the educational meeting requirements of [G.S. 138A-32\(e\)\(3\)\(i\)](#) and the Commission's educational criteria ([L-07-003](#)) were met because:

- The lobbyist principal's focus is related to the public duties of the participants and also receives public funding. The Tour provided legislators with an opportunity to assess the value of the Center's work.
- A large portion of the daily events included educational content with relatively little leisure time or entertainment.
- Lodging was provided in communities that are not considered tourist destinations and the location was directly related to the Tour's content.
- The educational focus of the Tour went beyond the services provided by the lobbyist principal.
- The Tour included a wide variety of speakers and topics.

C. [L-09-012](#) **Application of the Educational Meeting Gift Ban Exception to International Trip Sponsored by Lobbyist Principals and Others.** [G.S. 120C-303\(a\) and \(b\)](#); [G.S. 138A-32\(e\)\(3\)\(i\)](#) *(In accordance with [G.S. 120C-102\(d\)](#), the requester authorized the publication of an unedited version of this opinion.)*

Issued: November 13, 2009

**Facts.** The Public School Forum of NC, Inc. ("the Forum") is a registered lobbyist principal. The Center for International Understanding ("the Center") operates within the University of North Carolina's General Administration and is not a lobbyist principal. Funding for the trip comes, in part, in the form of grants to the Forum from the Burroughs Welcome Fund, a private foundation which is not a lobbyist principal. Other sponsors, some of which are lobbyist principals, give funds to the Forum for the study trip. The Burroughs Welcome Fund and other sponsors have no involvement in the planning or administration of the trip or the selection of participants. Participants include legislators and public servants whose expenses will be paid by the Forum and the Center.

The primary purpose of the Singapore study trip is to connect and educate North Carolina policymakers on the merging of educational and economic development planning. The study trip is six days of approximately 10 to 12 hour days including educational time, most meals, travel to and from the locations within Singapore, and entertainment. Educational sessions include information on the education system, history, culture, system for developing workforce projections, and relationship between education, the workforce, and economic development. Locations include classroom visits and tours of educational institutions. An outing to Sentosa Island, an Imperial River Cruise, and cultural visits are also planned.

The study trip has a formal agenda, notice was given at least 10 days in advance, and the study trip has at least 10 or more participants.

1. *May the Forum and the Center provide transportation, lodging, meals, and incidental items of nominal value to the participating legislators and public servants?*

**Opinion. Yes.** Based on the facts above, the Singapore study trip qualifies as an "educational meeting for purposes primarily related to the duties and responsibilities" of the

participating legislators and public servants. In addition, the study trip also meets the Commission's educational meeting criteria.

2. *Do an outing to Sentosa Island, an Imperial River Cruise, and cultural visits qualify as "incidental entertainment" under the educational meeting exception and Commission's educational meeting criteria?*

**Opinion. No.** These events do not fit within the incidental entertainment limitations and are not incidental to the principal agenda of the trip. Accordingly, the educational meeting exception will not apply to the study 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.

**D. [L-10-002](#) Sponsoring Legislator and Public Servant Participation in International Trip. [G.S. 120C-303\(a\)\(2\)](#); [138A-32\(c\) and \(d1\)](#); [138A-32\(e\)\(3\)](#); [138A-32\(f\)](#)**

Issued: May 14, 2010

**Facts:** The Center is a public service program of the University of North Carolina ("UNC") that operates within UNC's General Administration. It is not a lobbyist principal. The Center is sponsoring certain legislators' and public servants' participation in an international trip. The purpose of the trip is to send legislators and public servants whose public duties concern energy and environmental issues and policies to several European countries to study and examine those countries' successful environmental and energy policies and practices.

Most of the funds for the trip will be given to the Center as grants from private foundations which are also not lobbyist principals. However, the Center is seeking additional funding from other organizations and companies, some of which are lobbyist principals. Neither the foundations nor the other organizations will be involved in the planning or administration of the trip.

The Center is funding the travel-related costs for the legislators and public servants. These costs include travel, lodging, most meals, and transportation costs to and from meeting sites. The trip is eight days consisting primarily of educational time. The majority of the late afternoons and evenings are "free time" that trip participants may spend as they wish at their own expense. No entertainment is being provided.

*May lobbyist principals and other organizations and companies donate funds to the UNC Center for International Understanding ("Center") to fund trip-related costs of legislators' and public servants' participation in the "Energy Sustainability and Green Jobs" trip?*

**Opinion:**

- **Funds Received from Lobbyist Principals for Expenses of Legislators & Public Servants. Yes.** Based on the facts above, the Energy Sustainability and Green Jobs study trip qualifies as an "educational meeting for purposes primarily related to the duties and responsibilities" of the participating legislators and public servants. In addition, the study trip also meets the Commission's educational meeting criteria.
- **Funds Received from Other Organizations & Companies for Expenses of Public Servants. Maybe.** Unless an exception applies, [G.S. 138A-32\(d\) and \(d1\)](#) prohibit public servants from accepting gifts directly or indirectly from persons who are doing or seeking to do business with or are engaged in activities that are regulated by the public servant's employing entity (agency or board), or that otherwise have financial interests



that may be substantially and materially affected by the public servant (i.e., “interested persons”). The “interested person” gift ban does not apply to legislators.

In the event any of these organizations and companies are “interested persons” that donate funds for the purpose of paying for the expenses of attending public servants, the educational meeting exception would be inapplicable, since this exception applies only to gifts from lobbyist principals. However, [G.S. 138A-32\(f\)](#) allows public servants to accept a “gift” that represents an “expense appropriate for reimbursement” by the State agency so long as the “gift” is the type of expense that would otherwise meet the agency’s expense reimbursement policies and the public servant receives approval in advance. The Commission recommends that public servants receive this approval in writing.

### III. GIFTS TO THE STATE.

**Relevant Law.** [G.S. 138A-32\(e\)\(5\)](#) permits lobbyists, lobbyist principals, liaison personnel, and interested persons to give a gift for use by or benefit of the State.

**A. [L-09-004](#) Lobbyists’ and Lobbyist Principals’ In-Kind Contributions to a State Governmental Entity for a Meeting of a Regional Affiliate of a National Nonpartisan Organization — Gift to the State Exception. [G.S. 138A-32\(e\)\(5\)](#); [120C-303\(b\)](#)**

Issued: February 13, 2009

**Facts.** A State governmental entity is a member of a regional affiliate of a nonpartisan organization. The nonpartisan organization is recognized by NC statute as a governmental agency. The State governmental entity is the host state for and is required to plan the annual conference.

*Are in-kind contributions made by registered lobbyists and lobbyist principals directly to the State governmental entity for the purpose of supporting the conference considered a gift to the State?*

**Opinion. Yes.** In determining whether a gift is for use by or for the benefit of the State, the intended purpose, function, and authority of the State entity and whether the gift can be utilized in a manner consistent with the intended purpose, function, and authority of the State should be considered. Therefore, given the unique status of the nonpartisan organization as a governmental agency, along with the State entity’s obligation to host the regional affiliate’s annual conference, in-kind contributions by lobbyists and lobbyist principals are most likely considered gifts for the benefit of the State.

**B. [L-09-008](#) Reporting of Lobbyists’ and Lobbyist Principals’ In-Kind Contributions for the 2009 Southern Legislative Conference Annual Meeting. (In accordance with [G.S. 120C-102\(d\)](#), the requester authorized the publication of an unedited version of this opinion.) [G.S. 138A-32\(e\)\(15\)](#); [120C-402\(b\)](#); [120C-403\(b\)](#); [120C-401\(b1\)](#) and (b2)**

Issued: August 14, 2009

**Facts.** Lobbyists and lobbyist principals are making in-kind contributions to support the Annual Meeting hosted by a State entity which will be attended by legislators and legislative employees. (Note: The Commission previously determined that the in-kind contributions met the gift to the State exception. See [L-09-004](#).)

1. *Is a lobbyist or lobbyist principal required to report in-kind contributions?*

**Opinion. Yes.**

- In-kind contributions to support the Annual Meeting made with the intent that legislators and/or legislative employees be the ultimate recipient are indirect gifts. Therefore, if the value exceeds \$10 per legislator or legislative employee per day, they must be reported as gifts.
- If in-kind contributions were not made with the intent that legislators or legislative employees be the ultimate recipients, in this instance, they would be made “for the purpose of lobbying,” including goodwill lobbying. Therefore, if the value exceeds \$10 per legislator or legislative employee per day, they must be reported.
- Where the lobbyist or lobbyist principal is uncertain as to the value received by legislators or legislative employees, the contribution should be reported by identifying the general nature of the contribution along with its total value.

2. *Does the name of each individual requesting or benefiting from the in-kind contribution need to be included in the report?*

**Opinion. Probably not.** However, the response depends on the circumstances surrounding the contribution.

- Names of legislators and legislative employees do not need to be reported if more than 15 benefit or request the expenditure or if the identity of those benefitting are unknown to the lobbyist or lobbyist principal; however, a description of the group and the basis for their selection and an approximate number should be reported.

#### IV. INDIRECT GIFTS.

**Note:** *Effective December 1, 2010, the General Assembly amended the indirect gift ban to restrict gifts knowingly given by lobbyists and lobbyist principals “with the intent that a designated individual be an ultimate recipient” (was, “the ultimate recipient”). Therefore, portions of these advisory opinions may no longer reflect current law.*

A. [L-09-004](#) **Lobbyists’ and Lobbyist Principals’ In-Kind Contributions to a State Governmental Entity for a Meeting of a Regional Affiliate of a National Nonpartisan Organization — Gift to the State Exception.** [G.S. 138A-32\(e\)\(5\); 120C-303\(b\)](#)

Issued: February 13, 2009

*See III.A. above.*

B. [L-09-012](#) **Application of the Educational Meeting Gift Ban Exception to International Trip Sponsored by Lobbyist Principals and Others.** [G.S. 120C-303\(a\) and \(b\); G.S. 138A-32\(e\)\(3\)\(i\)](#)

Issued: November 13, 2009

*See II.C. above.*

C. [L-10-002](#) **Sponsoring Legislator and Public Servant Participation in International Trip.** [G.S. 120C-303\(a\)\(2\); 138A-32\(c\) and \(d1\); 138A-32\(e\)\(3\); 138A-32\(f\)](#)

Issued: May 14, 2010

See II.D. above.

## **LOBBYING LAW INTERPRETATIONS**

### **I. “ASSOCIATION”**

**Relevant Law.** The Lobbying Law requires “lobbyists” and “lobbyist principals” to register with and report to the Secretary of State’s Office. A “lobbyist principal” is the person or governmental unit on whose behalf the lobbyist lobbies. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist principal is the association or other organization, not the individual members of the association or other organization.” ([G.S. 120C-100\(a\)\(11\)](#) ). “Person” is defined as “any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together.” ([G.S. 138A-3\(27\)](#) & [G.S. 120C-100\(b\)](#)).

**Note:** *Effective January 1, 2011, the Lobbying Law was clarified to provide that a lobbyist is someone who engages in lobbying “for payment” and meets certain criteria and further clarifies that a “lobbyist principal” is the person on whose behalf the lobbyist lobbies and “who makes payment for the lobbying.”*

[L-09-006](#) **Association Employing/Retaining Lobbyist is Lobbyist Principal, Not the Individual Members of the Association.** [G.S. 120C-100\(a\)\(11\)](#); [120C-206](#); [120C-207](#)

Issued: April 24, 2009

**Facts.** Several entities in all or parts of NC joined together and created the Group. The member entities, along with the Group, are nonprofit corporations. The Group is funded solely by dues paid by the members. The Group retains a lobbyist to lobby on behalf of the Group and its member entities and represent their related interests. The lobbyist is paid with dues from the member entities.

*Is the Group included in the definition of “lobbyist principal” (and therefore subject to the Lobbying Law)?*

**Opinion. Yes.** As an unincorporated nonprofit association under Chapter 59B of the NC General Statutes, the Group is an “association” as that term is used in the definition of lobbyist principal. The Group is the lobbyist principal and not each member of the Group.

### **II. “EXECUTIVE ACTION”**

**Relevant Law.** [G.S. 120C-100\(a\)\(9\)](#) defines “lobbying” to include “influencing or attempting to influence ... executive action .. through direct communication or activities with a (public servant) or that ... individual’s immediate family (or) developing goodwill through communications or activities, including the building of relationships, with a (public servant) or the ... individual’s immediate family with the intention of influencing current or future ... executive action.”

[G.S. 120C-100\(a\)\(3\)](#) defines “executive action” as “the preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal (RFP), procedure, regulation, or rule by a public servant purporting to act in an official capacity.” Certain activities are excluded from the definition of “executive action,” including comments made in connection with an open meeting; contested case proceedings; communications concerning permits, licenses, or eligibility; making an inquiry concerning benefits, payments, penalties, etc.; inquiring about or responding to a request for proposal; and ratemaking.

A contract lobbyist is an individual who engages in lobbying and represents another person or governmental unit but is not directly employed by that person or governmental unit and receives payment for services or contracts for economic consideration for the purpose of lobbying. ([G.S. 120C-100\(a\)\(10\)](#)).

[L-09-005](#)      **Executive Action and Executive Lobbying.** [G.S. 120C-100\(a\)\(3\) and \(a\)\(9\)](#); [120C-100\(a\)\(10\)](#); [120C-200](#); [120C-201](#); [120C-206](#); [120C-207](#)

Issued:            April 24, 2009

**Facts.** The requester is a practicing attorney who provides a variety of services to clients and is paid for those services. Services include contacting or meeting with State officials and employees, many of whom are public servants. These contacts and meetings include inquiries about a penalty or asserting a claim, introducing a client to the individual in charge of a State project in order to facilitate a discussion between the client and the decision-maker regarding the client's product, or contacting State officials and employees regarding the status of an award once the bids are submitted or concerning the potential renewal of a contract.

*Do any of these activities constitute lobbying for executive action and are therefore subject to the lobbying law?*

**Opinion. Yes as to some.** Those activities that constitute lobbying for executive action are subject to the registration and reporting requirements of the lobbying law.

▪ **Not Executive Action.**

- Contacting a public servant on behalf of a client solely to inquire about a penalty or assert a claim.
- Contacting a public servant on behalf of a client to inquire about or respond to an RFP.

▪ **Executive Action.**

- Meeting with or contacting a public servant responsible for awarding a State contract or in charge of a project to introduce a client and discuss the client's product.
- Contacting a public servant and attempting to influence the award or renewal of a contract.

### III. REGISTRATION

**Relevant Law.** [G.S. 120C-100\(a\)\(9\)](#) defines "Lobbying" to include both influencing or attempting to influence legislative or executive action through direct communications or activities with a legislator, legislative employee, or public servant, or that person's immediate family (direct lobbying) and developing goodwill, including the building of relationships, with those individuals with the intent of influencing current or future legislative or executive action (goodwill lobbying). [G.S. 120C-100\(a\)\(1\)](#) defines "Lobbyists" to include individuals who engage in lobbying for payment. "Payment" includes any money, thing of value, or economic benefit conveyed to the lobbyist for lobbying, *other than reimbursement for actual travel, administrative expenses, or subsistence* (emphasis added). ([G.S. 120C-100\(a\)\(11k\)](#)). Lobbyists must register with the Secretary of State. ([G.S. 120C-200](#)).

L-10-004      **Payment for Lobbying and Reimbursement of Actual Travel Expenses:  
Apartment Lease.** [G.S. 120C-100\(a\)\(9\)](#); [120C-100\(a\)\(10\)b. and c.](#); and [120C-100\(a\)\(11k\)](#)

Issued:            December 17, 2010

**Facts.** The organization monitors the political climate and actively works with legislators, State and local officials, and regulatory bodies to inform and educate them and to advocate the positions of the organization on legislative and economic issues. The individual represents the organization regarding legislative issues and is reimbursed by the organization for actual travel expenses incurred in connection with representing the organization, including lodging, meals, and mileage. The individual does not receive any other payment or compensation from the organization.

In 2011, the individual will travel to Raleigh to meet with legislators and legislative staff and will be actively advocating on the organization's issues and attempting to influence legislative action. The organization will reimburse the individual for travel expenses but will not make any other payment. The organization is considering leasing an apartment for the individual or reimbursing the individual for the rent, rather than reimbursing for actual hotel expenses.

1. *Is an individual required to register as a lobbyist if the individual communicates with legislators and legislative employees regarding issues and actions affecting a particular organization?*

**Opinion. No.** The individual is not required to register as a lobbyist if the organization reimburses only for the actual travel expenses for lobbying and does not convey any other money, thing of value, or economic benefit in return for those services. Actual travel expenses include lodging, and lodging includes certain expenses associated with leasing an apartment.

The individual is "lobbying" on behalf of the organization. Therefore, the obligation to register is dependent upon the issue of payment. If the organization only reimburses the individual for actual travel costs and does not convey any other "payment" for lobbying, the individual is not required to register as a lobbyist.

2. *Does the organization's provision of an apartment for an individual's use while in Raleigh, in lieu of reimbursing the individual for hotel expenses, constitute "reimbursement" or would it be deemed a "payment"?*

**Opinion: "Actual travel" could include lodging related travel expenses associated with the apartment rental.** Who actually leases the apartment will determine the specifics of the rental expenses allowed as lodging-related travel expenses. If the organization leases the apartment, the share of the rental expenses that the organization can attribute to the individual's lodging-related travel expenses will be limited to the individual's actual use of the apartment related to lobbying duties. The individual would be required to reimburse the organization on a per day pro-rata basis for any use of the apartment for personal, non-lobbying purposes. Failure to reimburse the organization for personal, non-lobbying use would likely result in the organization having paid the individual for lobbying and require the individual to register as a lobbyist and the organization to register as a lobbyist principal.

If the individual leases the apartment, the organization may reimburse the individual for a per day, pro-rata share of actual rent, utilities, and other related expenses for each night the lodging was for lobbying. Such payment would be reimbursement for actual travel expenses and not "payment" for lobbying and would not require the individual or the organization to register.

#### IV. PROHIBITION ON STATE AGENCIES HIRING CONTRACT LOBBYISTS & APPLICABILITY OF EXEMPTION FOR CITY/COUNTY ATTORNEYS

**Relevant Law.** [G.S. 120C-500\(b\)](#) prohibits a State agency from contracting with individuals who are not State employees to lobby. This prohibition does not apply to counsel employed by a State agency authorized to hire counsel. A “State agency” is an agency in the executive branch of government. [G.S. 138A-3\(30k\)](#) and [G.S. 120C-100\(b\)](#).

[G.S. 120C-700\(3\)](#) provides that the lobbying law does not apply to elected or appointed officials or employees of federal, State, or local government when acting solely in connection with matters pertaining to their office and public duties. This exemption also applies to individuals who are appointed as county or city attorneys.

**[L-09-011](#) Restriction Against State Agency Using State Funds for Contract Lobbyist/Liaison Personnel Inapplicable to Local Management Entity; LME’s Contract Lobbyist Not Exempt from Lobbying Law.** [G.S.120C-100\(a\)\(10\)](#); [120C-500\(b\)](#); [120C-700\(3\)](#)

Issued: November 13, 2009

**Facts.** An LME is an area authority, county program, or consolidated human services agency responsible for the management and oversight of the public mental health system at the community level. An LME functions as a local political subdivision of the State or a department or program of the county in which it is located. The LME contracts with a private attorney paid by the LME. The LME also pays the attorney to lobby executive and legislative officials on its behalf.

1. *Is the LME prohibited from contracting with or employing a private attorney to lobby legislators or legislative employees?*

**Opinion. No.** This prohibition only applies to State agencies and constitutional officers. It does not apply to an LME.

2. *Does the exemption for employees and city and county attorneys in [G.S. 120C-700\(3\)](#) apply to a private attorney who is not an elected or appointed government official or employee or an appointed city or county attorney?*

**Opinion. No.** An individual must be an elected or appointed government official, a government employee, or a city or county attorney in order for this exemption to apply. As the contract attorney for the LME, the attorney is not a government official or employee or city or county attorney. Therefore, [G.S. 120C-700\(3\)](#) does not exempt the attorney from the lobbying law.

#### V. “FOR THE PURPOSE OF LOBBYING” & REPORTING OF PAYMENTS FOR LOBBYING & LOBBYING SERVICES (COMPENSATION)

**Relevant Law.** [G.S. 120C-100\(a\)\(9\)](#) defines lobbying as “influencing or attempting to influence legislative or executive action, or both through direct communication or activities with a (legislator, legislative employee, or public servant) or that ... individual’s immediate family (or) developing goodwill through communications or activities, including the building of relationships, with a (legislator, legislative employee, or public servant) or the ... individual’s immediate family with the intention of influencing current or future legislative or executive action.”



Prior to January 1, 2011, [G.S. 120C-403\(b\)\(3\)](#) required lobbyist principals to report “payment for services” paid to lobbyists. “Payment for services” was defined in [G.S. 120C-100\(a\)\(11k\)](#) as “any money, thing of value, or economic benefit paid to a lobbyist *for the purpose of lobbying* other than reimbursement of actual travel, administrative expenses, or subsistence.”

**Note:** *Effective January 1, 2011, the law was amended to delete the phrase “the purpose of” and clarify which activities directly connected with lobbying must be reported. Also effective January 1, 2011, the Lobbying Law was clarified to provide that a lobbyist is someone who engages in lobbying “for payment” and meets certain criteria and further clarifies that a “lobbyist principal” is the person on whose behalf the lobbyist lobbies and “who makes payment for the lobbying.” Therefore, portions of these opinions no longer reflect current law.*

**A. [L-09-010](#) Lobbyist Principal Reporting of “Payment for Services” — Establishing the “But For” Test. [G.S. 120C-100\(a\)\(11k\)](#) and [120C-403\(b\)\(3\)](#)**

Issued: September 18, 2009

**Facts.** The requester is an attorney in a law firm and a registered lobbyist representing several lobbyist principals. The attorney provides professional services to the lobbyist principals, including developing governmental affairs strategy, advising on governmental affairs and trends in NC, reviewing and monitoring legislation in the NC legislature, advising on courses of action, and advocating or opposing legislation.

**Commission’s Interpretation of “For the Purpose of Lobbying.”** The Commission applied the “but for” test to determine whether services provided by a lobbyist are “for the purpose of lobbying.” If the lobbyist would not be providing those services “but for” being engaged in lobbying, those services are “for the purpose of lobbying” and must be reported by the lobbyist principal.

1. *Would the following types of communication be considered lobbying activities?*

- *An unanticipated communication, interaction, or activity with a legislator, legislative employee, or public servant or that individual’s immediate family member.*
- *An intentional communication, interaction, or activity with a legislator, legislative employee, or public servant or that individual’s immediate family member.*

**Opinion.** **Yes, if** the principal has current or future legislative or executive action that involves or will involve the legislator, legislative employee, or public servant, the specific facts of the situation will determine if the payment is “for the purpose of lobbying.”

2. *Does payment to the lobbyist for the following types of services qualify as payment for services for the purpose of lobbying?*

- *Research, preparation, strategy development, bill review, and drafting services.*
- *Discussion, preparation, planning and other activities with the principal or others who are not legislators, legislative employees, public servants, or their immediate family.*
- *An activity or service conducted or provided in the legislative buildings, e.g., observing committee meetings and legislative sessions, waiting for meetings to begin, requesting information from or providing information to legislative staff, and walking between legislative buildings.*

- *An activity or service conducted or provided to facilitate a meeting, communication, or activity with a legislator, legislative employee, or public servant or that individual's immediate family.*

**Opinion.** Yes *if* the service or activity relates to direct or goodwill lobbying activities, i.e., the lobbyist would not be providing these services “but for” his or her lobbying duties, the payment is “for the purpose of lobbying.”

**B. [L-10-001](#) Determining What Services are For the Purpose of Lobbying — Application of the “But For” Test of [L-09-010](#), [G.S. 120C-100\(a\)\(11k\)](#) and [120C-403\(b\)\(3\)](#)**

Issued: February 12, 2010

**Facts.** The Principal has a process to facilitate the formation of policies and goals to be used for legislative and regulatory purposes. These policies and goals are developed with input from staff members who may be lobbyists. This input includes, but is not limited to, providing certain non-lobbying services.

**Specific Questions & Opinions.** *Are certain services provided by the Principal's lobbyists services “for the purpose of lobbying,” requiring that the Principal report that portion of each lobbyist's salary that is reasonably allocated to these services?*

**Note:** The opinions below were based on the application of the Commission's “but for” test contained in [L-09-010](#).

1. *Developing the structure of the Principal's committees and identifying and recommending individuals for appointment?*

**Probably not.** These appear to be internal functions and appear to be unrelated to communications or activities designed to influence legislative or executive action.

2. *Assisting the Principal with increasing its clientele.*

**Probably not.** These services appear to be unrelated to communications or activities designed to influence legislative or executive action.

3. *Interacting with the Principal's officials, board members, or committees.*

**Possibly,** depending upon whether the interactions are related to communications or activities with a legislator, legislative employee, or public servant designed to influence a particular current or future legislative or executive action.

4. *Researching and developing the Principal's positions on issues.*

**Possibly.** In the event the time spent researching and developing the Principal's “positions” is related to communications or activities designed to influence a particular current or future legislative or executive action and would not have occurred if the Principal were not engaged in those lobbying communications or activities, the services are “for the purpose of lobbying,” and the Principal is required to report that portion of the lobbyist's salary reasonably allocated to those activities.

5. *Making presentations to the Principal's officials, board members, or committees.*

**Possibly**, depending upon the nature of the presentation.

6. *Providing general administrative support to the Principal's officials, board members, or committees.*

**Probably not.** These services appear to be unrelated to communications or activities designed to influence a particular legislative or executive action.

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## **QUESTIONS**

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**For questions regarding these formal advisory opinions or to request advice or a formal advisory opinion, please contact the State Ethics Commission at:  
(919) 715-2071 or  
[ethics.commission@doa.nc.gov](mailto:ethics.commission@doa.nc.gov).**

**All requests for advice and formal advisory opinions are confidential.**