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## 2012 ANNUAL LOBBYING NEWSLETTER

Below is a table summarizing the Formal Advisory Opinions on the Lobbying Law issued by the Commission from January 1 – December 30, 2012. The complete opinions, including the detailed statutory analysis, can be accessed by clicking on the AO # link. In addition, previous opinions are also on the Commission’s website and may be accessed by going to [www.ethicscommission.nc.gov/ao/aoLobbying.aspx](http://www.ethicscommission.nc.gov/ao/aoLobbying.aspx). Finally, these summaries are for guidance purposes only. Anyone who has a specific question or who would like to request advice or a formal advisory opinion should contact the State Ethics Commission. Contact information and instructions are provided below.

### SUMMARY OF THE STATE ETHICS COMMISSION’S 2012 LOBBYING LAW FORMAL ADVISORY OPINIONS

CATEGORY	AUTHORITY	AO #	TITLE & SUMMARY
Indirect Gifts	<a href="#">G.S. 120C-303(a); 120C-402; 120C-403; 138A-32(c) – (d)</a>	<a href="#">L-12-002</a>	<p><b>Applicability of Lobbying Law’s Gift Ban and reporting requirements and the Ethics Act’s Gift Ban to an event.</b></p> <p>The Commission determined that the indirect gift ban of the Lobbying Law and the Ethics Act would apply to donations made by event sponsors who are restricted donors if those donors intended that any designated individual be “an ultimate recipient” of a donation. Thus, depending upon the intent of the donor in making in-kind and cash donations in support of the event, those donations could be restricted unless a gift ban exception applies....</p> <p>Also, even if the organization receiving the donations is not subject to the gift ban, complimentary event admission provided by the receiving organization to attending designated individuals may also be subject to the indirect gift ban. Therefore, if a restricted donor makes a contribution with the intent that designated individuals obtain free admission to the event, that contribution and the receipt of complimentary admission would be restricted by the indirect gift ban unless an exception applied.</p> <p>However, the indirect gift ban would not restrict designated individuals from attending the event as long as they purchase tickets on the same terms as members of the general public.</p>

CATEGORY	AUTHORITY	AO #	TITLE & SUMMARY
Gift Ban Exceptions	G.S. <a href="#">138A-32(e)(1)c</a> ; <a href="#">138A-32(e)(10) – (12)</a>	<a href="#">L-12-003</a>	<p><b>Permissibility of Providing Food and Beverage to Organization’s Advisors and Directors.</b></p> <p><b>Providing Food and Beverages at Meetings.</b>  For an organization that is a lobbyist principal to provide food and beverages to designated individuals a gift ban exception must apply. Since public servants and legislators often serve as organization Advisors, and perhaps as Directors, the role of each individual and the circumstances underlying the receipt of food and beverages must be considered in order to apply the gift ban exceptions of the Ethics Act.</p> <p>In the event that public servants and legislators are selected to serve as Directors or Advisors <i>because</i> of their official positions, G.S. 138A-32(e)(10) would <i>not</i> allow the organization to provide food and beverages to those individuals. However, if the public servant or legislator would have been appointed even if he or she did not hold his or her public position, that exception would allow the organization to provide food and beverages <i>unless</i> a reasonable person would conclude that those items were given for lobbying. For example, if a public servant was appointed as a Director or as a member in his or her private business capacity, subsection 32(e)(10) would allow the organization to give food and beverages to that public servant as long as those items were not otherwise given for lobbying.</p> <p>Conversely, G.S. 138A-32(e)(12) would allow the organization to provide food and beverages for immediate consumption to those <i>public servants</i> who are Advisors or Directors as long as the public servant’s service is “primarily related” to his or her official position and at least 10 other individuals are present (other than the public servant’s immediate family) or, alternatively, all officers of your organization are invited to attend. (<i>Note that G.S. 138A-32(e)(12) does not apply to legislators or legislative employees.</i>)</p> <p>The two remaining food and beverage exceptions that may apply do not necessarily turn on whether the individual’s service as a Director or an Advisor is related to his or her public position. But each exception imposes additional criteria that must be satisfied.</p> <p>G.S. 138A-32(e)(11) would allow the organization to provide food and beverages to public servants and legislators serving as Directors, along with related transportation, if those items are available to all Directors in “the same class” as the public servant or legislator (that is, those Directors serving on the Board, a Board committee, or another defined group of</p>

CATEGORY	AUTHORITY	AO #	TITLE & SUMMARY
			<p>Directors). However, subsection 32(e)(11) would <i>not</i> apply to food and beverages and related transportation given to Advisors, since they are not officers or part of the organization’s “governing board” and do not otherwise hold the corporate positions delineated in G.S. 138A-32(e)(11).</p> <p>G.S. 138A-32(e)(1)c. would be the only exception that would allow the organization to provide food and beverages to legislators who are serving as Advisors. That exception would also apply to public servants. However, it would require that the organization:</p> <ul style="list-style-type: none"> <li>a. Invite one of the “specific qualifying group” listed in G.S. 138A-32(e)(1)c, such as 10 public servants, all the members of the House or Senate, all members of a county or municipal legislative delegation, or certain legislative committees, commissions, or caucuses;</li> <li>b. Have at least 10 other persons “associated with” your organization in attendance or invite all employees, Board members, or officers; and</li> <li>c. Send a written invitation at least 24 hours in advance of the meeting noting its date, time, and location that includes a notice that the meeting is permitted under that exception.</li> </ul> <p><b>Reporting Food and Beverages Provided.</b>  If a gift ban is applicable to allow the organization to give food and beverages to these public servants and legislators, the organization is required to report the value of food and beverages on its Principal Expense Report Form if the value is over \$10 per legislator or public servant, per day; <i>except</i> if the organization gives food and beverage under G.S. 138A-32(e)(10), then the threshold is \$200.</p>

Registration, Cooling-Off Period for Former Legislators	<a href="#">G.S. 120C-304(a)(2);</a>	<a href="#">L-12-001</a>	<p><b>Registered Lobbyist Filing Notice of Candidacy and Running for State Legislative Office.</b></p> <p>A registered lobbyist may file a notice of candidacy for a state elected legislative office and continue to lobby while he or she runs for a state legislative office.</p> <p>If elected to office in the 2012 election, the lobbyist will need to cease lobbying and terminate his or her registration as a lobbyist effective on or before December 31, 2012, as the legislative office term will commence on January 1, 2013.</p> <p>If not elected the lobbyist can continue to lobby and can re-register as a lobbyist in 2013 as he or she will not have been “in office” so there will be no “cooling off” period applicable under the Lobbying Law.</p>
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## Administrative Rules – Lobbying

The Commission adopted four rules interpreting the Lobbying Law at its November 9, 2012 meeting.  
The following rules will be effective January 1, 2013.

### 30 NCAC 10A .0101 SIGNIFICANT PART

(a) For purposes of G.S. 120C-100(a)(10)d., a “significant part” of an employee’s job duties include lobbying if during any rolling 30 day period either:

- (1) five percent or more of an employee’s actual duties included direct lobbying; or
- (2) five percent or more of an employee’s actual duties included goodwill lobbying.

(b) In making this determination:

- (1) The amount of time an employee spends engaged in direct lobbying activities and in goodwill lobbying activities shall not be aggregated; and,
- (2) The amount of an employee’s time spent on those activities that are otherwise exempt under G.S. 120C-700 shall be excluded.

(c) Once the amount of time spent by an employee engaged in direct lobbying or in goodwill lobbying during the prior 30 day period equals or exceeds five percent of his or her actual hours worked, the employee must register as a lobbyist within one business day.

(d) Once registered as a lobbyist pursuant to 120C-100(a)(10)(d), all payments for lobbying and lobbying services made to the lobbyist during the prior 30 day period shall be reported in the lobbyist principal’s 120C-403(d) annual lobbying payment report filed with the Secretary of State.

*Authority G.S. 120C-100(a)(10)d.; 120C-101(a).*

### 30 NCAC 10C .0104 DESCRIPTION OF REPORTABLE EXPENDITURE

(a) For purposes of G.S. 120C-401(b)(3), which requires that “a description” of the reportable expenditure be set forth on each report, the following information should be provided where applicable:

- (1) An identification of what was given;
- (2) An identification of the third party recipient of the item, service, monetary contribution, etc., made at the request of or on behalf of a designated individual or a member of his or her immediate family; and,
- (3) An identification, name or title of the event or meeting at which the item was given, and the date(s) of the event or meeting if different from the date of the reportable expenditure.

(b) The information required by G.S. 120C-403(b)(3) is in addition to the requirement in G.S. 120C-401(c) that the report list particular expenditure categories.

*Authority G.S. 120C-101(a); 120C-401(b)(3).*

### **30 NCAC 10C .0105 CONNECTED WITH REPORTABLE EXPENDITURE**

For purposes of G.S. 120C-401(b)(5), the name of the designated individual or member of the designated individual's immediate family "connected with" a reportable expenditure means the designated individual or the immediate family member who:

- (1) Received or benefited from the reportable expenditure, if the designated individual or immediate family member was the ultimate recipient of the expenditure; or,
- (2) Requested the reportable expenditure or on whose behalf the reportable expenditure was made, if a third party other than the designated individual or immediate family member was the ultimate recipient of the expenditure.

*Authority G.S. 120C-101(a); 120C-401(b)(5).*

### **30 NCAC 10C .0302 REPORTABLE EXPENDITURES MADE FOR LOBBYING**

(a) For purposes of G.S. 120C-402(b)(1) and 120C-403(b)(1), when reporting expenditures for events held for lobbying, the entire cost of the event must be reported, not just the "gift" given or provided to the designated individual(s) attending the event. Examples of non-gift reportable expenditures made for lobbying are expenses and charges incurred for items and/or services provided in connection with the lobbying event, such as planning and organizing services, printing services and supplies, facility rental and set-up charges, food supplies and services, name badges, flowers, and other decorations.

(b) Reportable expenditures made for lobbying events shall be reported on the expense report filed with the Secretary of State for the month the lobbying event is held.

*Authority G.S. 120C-101(a); 120C-402(b)(1); 120C-403(b)(3).*

## **IMPORTANT REMINDERS – 2013 LEGISLATIVE SESSION**

An individual must register within one (1) business day of engaging in either direct or goodwill lobbying. Registrations must be renewed and filed with the Secretary of State's Office each calendar year.

The General Assembly is scheduled to convene January 9, 2013, with the 2013 long session commencing on January 22, 2013.

Monthly reports are due once the legislature is in session and the Lobbyist or Lobbyist Principal lobbies the legislature or legislative employees and has reportable expenditures.

**How do I request informal advice or a formal advisory opinion?** 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).