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## 2013 ETHICS NEWSLETTER

Below is a table summarizing 2013 Formal Advisory Opinions issued by the State Ethics Commission interpreting the Ethics Act. The complete opinions, including detailed statutory analysis, are available on the Commission's web site under Advisory Opinions: <http://www.ethicscommission.nc.gov/ao/aoEthics.aspx>. Although all advice issued by the Commission or its staff is confidential, requesters may waive confidentiality and authorize the release of unedited advisory opinions. G.S. 138A-13(e) and 120C-102(d).

These summaries are for general information and guidance purposes only. Anyone who has a specific question or who would like to request advice or a formal advisory opinion regarding their particular situation should contact the State Ethics Commission. Contact information and instructions are provided below.

### SUMMARY OF THE STATE ETHICS COMMISSION'S 2013 FORMAL ETHICS ADVISORY OPINIONS

CATEGORY	AUTHORITY	AO #	TITLE & SUMMARY
Gifts & gift ban exceptions; indirect gifts; educational meeting exception; international study trip	G.S. 138A-32(c) and (d); 138A-32(e); 138A-32(e)(3); 120C-303(a).	E-13-001	<p><b>Applicability of the Gift Ban to Participation by Legislators and Public Servants in an International Study Trip to China.</b></p> <p>The Center for International Understanding was planning a trip to China to study economic development, focusing on the pharmaceutical and medical devices industries. The trip's itinerary included visits to a variety of businesses and governmental and educational institutions. Although the Center is not directly subject to the gift ban of the Lobbying Law, private companies which are registered lobbyist principals or entities that are doing business with or are regulated by State agencies ("interested persons") could be asked to sponsor the trip, thus triggering indirect gift issues. The indirect gift ban would restrict those companies from funding the travel expenses of legislators and public servants unless a gift ban exception, such as the education meeting exception, applied.</p> <p>Applying its educational meeting criteria to the specific details of this trip, the Commission determined that the trip qualified as an educational meeting relating to the public duties of attending legislators, but that more information was required to determine if the trip qualified as an educational meeting as to public servants.</p>

CATEGORY	AUTHORITY	AO #	TITLE & SUMMARY
<p>Use of public position for private gain; nongovernmental advertising; use of “State funds” for advertisements or PSAs; promotion of federally-funded programs; the meaning of “State funds”</p>	<p>G.S. 138A-31; 138A-31(b); 138A-31(c).</p>	<p>E-13-002</p>	<p><b>Use of Name, Picture, or Voice in Radio, Television, or Internet Advertisements Promoting Services Funded by Various Federal Grant Programs.</b></p> <p>A public servant whose agency’s current role includes the administration of various programs supported by federal grant funds, asked whether it would be permissible to appear in an advertising campaign to educate affected citizens about the availability of consumer services provided by these programs. The advertisements would be paid for by federal grant funds which are held in State bank accounts for the agency’s use in administering those programs.</p> <p>This opinion required the application of G.S. 138A-31(c), restricting the use of “state funds” for advertisements or public service announcements that include a covered person’s name, picture, or voice. It raised the question of whether federal grant funds maintained in State accounts are “state funds,” thereby restricting the use of those funds for such advertisements.</p> <p>The Commission concluded that federal grant funds held in State bank accounts are also subject to this restriction and that the public servant could therefore not appear in television and radio advertisements paid for with those grant funds. However, since G.S. 138A-31(c) does not apply to internet advertisements, the public servant would not be restricted from appearing in internet advertisements paid for with federal grant funds.</p>
<p>Public servant participation in official actions; conflicts of interest; “official action”; “proceeding”; “financial benefit”; “person with which associated.”</p>	<p>G.S. 138A-36; 138A-36(c);</p>	<p>E-13-003</p>	<p><b>Conflicts of Interest Associated with Continued Service on NC State Bar Disciplinary Hearing Commission and Law Partner’s Position as President-Elect of NC State Bar</b></p> <p>A member of the North Carolina State Bar’s Disciplinary Hearing Commission (“the DHC”) asked whether he could continue to serve and take official action in light of his law partner’s position as President-Elect of the North Carolina State Bar (“the State Bar”). The DHC is an independent judicial body that conducts trials of complaints against lawyers. State Bar officers, including the President, are not involved in and do not have decision-making authority in DHC proceedings.</p> <p>Since the President-Elect/law partner is not a “business with which associated” and the DHC member is not an employee of the State Bar, neither situation would trigger the G.S. 138A-36(a) conflicts analysis.</p> <p>In addition, even though the DHC member has a “personal” and/or “financial” relationship with the President-Elect/law partner, the President does not have a role in DHC proceedings and is not a “participant” triggering the 138A-36(c) conflicts standards. The member would therefore not be restricted from participating in DHC proceedings as long as his partner or other members of his law firm are not directly involved. And, although</p>

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			<p>the State Bar is a “participant” in the DHC proceedings, the DHC member does not have a “personal” or “financial” relationship with the State Bar as a result of his membership in that organization.</p> <p>Based on the foregoing, the Commission determined that the Ethics Act would not restrict the requester from continuing to serve as a member of the DHC and taking official action on disciplinary matters brought before the DHC because his law partner is the President-Elect of the State Bar.</p>
<p>Use of public position for private gain; nongovernmental advertising; use of “State funds” for advertisements or PSAs; the meaning of “State funds” in the Ethics Act</p>	<p>G.S. 138A-31; 138A-31(b); 138A-31(c). \; 163-278.16A.</p>	<p>E-13-004</p>	<p><b>Use of State Facilities, Personnel, Equipment and Supplies to Produce and Distribute Television and Radio Programs – the Meaning of “State Funds” in the Ethics Act</b></p> <p>A public servant asked whether the Ethics Act would prohibit the use of State facilities, equipment and supplies, and personnel to produce and distribute certain television and radio programs and public service announcements to various public and commercial television networks and radio stations. Those programs and public service announcements would feature the public servant.</p> <p>This opinion requires the application of G.S. 138A-31(c), restricting the use of “State funds” for advertisements or public service announcements that include a covered person’s name, picture, or voice. It raises the question of whether the restriction against using “State funds” should be applied to also restrict the use of State personnel and other resources.</p> <p>Based upon principles of statutory interpretation and the presumed intent of this provision to restrict State officials from using State resources to promote personal or political interests, the Commission concluded that the term “State funds” includes the use of State personnel, facilities, equipment, or supplies in connection with the production or distribution of the proposed radio and television programs or public service announcements. Therefore the public servant was restricted from appearing in advertisements that were produced and/or distributed using State resources.</p>
<p>Gifts &amp; gift ban exceptions; indirect gifts; educational meeting exception; international study trip</p>	<p>G.S. 138A-32; 138A-32(e); 138A-32(e)(3); 120C-303(a).</p>	<p>E-13-005</p>	<p><b>Applicability of the Gift Ban to Participation by Legislators in an International Study Trip to India.</b></p> <p>The Center for International Understanding was planning a trip to India to study economic development with a focus on the information technology and import/export service sectors. It asked whether lobbyist principals could pay the trip-related costs of legislators participating in this study trip, thus triggering application of the educational meeting exception to the Ethics Act’s gift ban.</p> <p>Applying its educational meeting criteria to the specific details of</p>

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			this trip, the Commission determined that the trip qualifies as an educational meeting relating to the public duties of attending legislators and lobbyist principals could therefore pay for the reasonable actual travel expenditures of participating legislators.
Gifts & gift ban exceptions; indirect gifts; “ultimate recipient”; gifts to State agencies.	G.S. 138A-32; 138A-32(c); 138A-32(c)(2); 120C-303(a).	E-13-006	<p><b>Acceptance of Resource Materials (Technical Standards) from a Lobbyist Principal.</b></p> <p>DENR’s Division of Energy, Mineral, &amp; Land Resources asked whether it would be permissible for the Division’s staff and members of the Mining &amp; Energy Commission (MEC) to accept a copy of various technical standards from a lobbyist principal to be used in connection with the development of proposed rules. The technical standards were not being provided for the personal use of MEC members or staff. This opinion requires consideration of whether the indirect gift ban applies.</p> <p>The Commission concluded that the indirect gift ban would not apply to the Division’s receipt of those technical standards; thus they could be given and accepted under these circumstances.</p>

## HOW TO REQUEST INFORMAL ADVICE OR A FORMAL ADVISORY OPINION ON THE ETHICS ACT

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

**What can be requested?** Requests for advice must be related to specific questions involving the meaning and application of the Lobbying Law and must relate to real or reasonably anticipated fact settings or circumstances. All requests must also be prospective.

### 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 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. A request for a formal advisory opinion must be in writing.

**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 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) 715-2071 or by e-mail at [ethics.commission@doa.nc.gov](mailto:ethics.commission@doa.nc.gov).