



# N.C. ETHICS COMMISSION

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## ANNUAL ADVISORY OPINION NEWSLETTER

Below is a table summarizing 2015 Formal Advisory Opinions issued by the State Ethics Commission interpreting the Ethics Act and Lobbying Law. The complete opinions are available on the Commission's web site under Advisory Opinions: <http://www.ethicscommission.nc.gov/ao/default.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 2015 FORMAL ETHICS ADVISORY OPINIONS

CATEGORY	AUTHORITY	AO #	TITLE & SUMMARY
Statements of Economic Interest	G.S. 138A-24(a)(3); G.S. 138A-26; G.S. 138A-27	E-15-001	<p><b>The Interpretation of Criminal Penalty Provisions for Concealing or Failing to Disclose Information and Providing False Information on a Statement of Economic Interest</b></p> <p>The Commission was asked to distinguish the criminal penalty provisions for SEI omissions (a misdemeanor) and misstatements (a felony) and provide guidance regarding the SEI definition of "income."</p> <p>The Commission determined that the penalty for SEI omissions applies to a filer's failure to list required information on an SEI. The Commission notes that the filing of a "No Change" form for a year in which a filer had a new source of income over the \$5,000 threshold would be an SEI omission.</p> <p>The Commission also determined that the penalty for SEI misstatements applies to a filer's disclosure of incorrect information on an SEI.</p> <p>The Commission further determined that the requirement that a filer identify the source of any "income" over \$5,000 obligates the filer to report the source of gross income over that threshold.</p>
Applying the Ethics Act's "State Board" Criteria	G.S. 138A-3(1c); 30 NCAC 02.0101	E-15-002	<p><b>Ethics Act Coverage of Newly-Created Committees</b></p> <p>The Commission was asked whether two new committees created by a State official would be covered by the Ethics Act, obligating committee members file a Statement of Economic Interest. Applying its State Board coverage criteria, the Commission</p>

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			<p>concluded that the committees were not covered by the Ethics Act for two primary reasons:</p> <ul style="list-style-type: none"> <li>• They were not created by statute or executive order; and</li> <li>• They will perform in an advisory role only.</li> </ul>
<b>Issuance of Advisory Opinions to Judicial Officers</b>	G.S. 138A-13(a); G.S. 138A-13(a2); G.S. 138A-13(f); G.S. 138A-3(19)	E-15-003	<p><b>Commission Authority to Issue Advisory Opinions to Judicial Officers</b></p> <p>A judicial officer asked that the Commission issue a formal advisory opinion concerning compliance with certain requirements set forth in Article 4 of the Ethics Act.</p> <p>The formal advisory opinion reviews the Commission’s statutory authority to issue an opinion to judicial officers and concludes that the Commission and its staff may only issue informal and formal opinions in response to judicial officer requests concerning Article 3, the Statement of Economic Interest provisions. Thus, the Commission did not have the authority to issue a formal advisory opinion interpreting a judicial officer’s obligations under Article 4 of the Ethics Act.</p>
<b>Gifts and Gift Ban Exceptions</b>	G.S. 138A-32(c); G.S. 120C-303(a); G.S. 138A-32(e)(3)(i)	E-15-004	<p><b>Paying Expenses of Legislators to Participate in 2016 Global Leaders Program to Tokyo and Singapore.</b></p> <p>The Center for International Understanding asked whether it would be permissible for lobbyist principals to pay the trip-related costs of legislators and public servants participating in its 2016 Global Leaders Program.</p> <p>The formal advisory opinion concludes that the 2016 Global Leaders Program meets the educational meeting criteria adopted by the Commission and that therefore lobbyist principals may pay for the reasonable actual travel expenses of participating legislators and those legislators may accept those expenses.</p>

**SUMMARY OF THE STATE ETHICS COMMISSION’S  
2015 LOBBYING LAW FORMAL ADVISORY OPINIONS**

CATEGORY	AUTHORITY	AO #	TITLE & SUMMARY
<b>Applicability of the Gift Ban</b>	G.S. 120C-303(a)(1); 120C-402; 120C-403; 120C-200; 120C-100(a)(10)	L-15-001	<p><b>Consensual Sexual Favors or Sexual Acts In the Context of the Lobbying Law’s Gift Ban and Registration and Reporting Requirements</b></p> <p>The North Carolina Department of the Secretary of State asked whether consensual “sexual favors or sexual acts” between a lobbyist and a designated individual constitute a gift or “thing of value” that would trigger the gift ban and reporting requirements of the Lobbying Law and whether those activities fall within the</p>

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			<p>definition of “goodwill lobbying” and thus trigger the Lobbying Law’s lobbyist registration requirement.</p> <p>The formal advisory opinion concludes that consensual sexual acts are not gifts as that term is defined in the Ethics Act and are not reportable expenditures under the Lobbying Law. In addition, those activities would not trigger a registration requirement under the circumstances described.</p>
<p><b>The Gift Ban’s Educational Meeting Exception</b></p>	<p>G.S. 138A-32(c); 138A-32(e)(3)(i); 138A-32(f); 120C-303(e); 120C-403(b)(5)</p>	<p>L-15-002</p>	<p><b>Providing Complimentary Admission to Public Servants and Judicial Officers Attending the NCSA’s 2015 Spring Meeting</b></p> <p>The North Carolina Sheriff’s Association asked whether the educational meeting exception to the Ethics Act’s gift ban, G.S. 138A-32(e)(3)(i), would allow it to provide complimentary admission to its 2015 Spring Meeting to various public servants and judicial officers.</p> <p>The formal advisory opinion concludes that the educational meeting exception would allow the NCSA to provide complimentary admission and associated food and beverages to public servants if attending the meeting is related to the public servants’ public duties.</p> <p>The Lobbying Law’s gift ban does not apply to gifts to judicial officers.</p>
<p><b>Reasonable Actual Expenses To Attend Meetings, Including Educational Meetings</b></p>	<p>G.S. 138A-32(c); 138A-32(e)(3)(i); 138A-32(f); 120C-303(e); 120C-403(b)(5)</p>	<p>L-15-003</p>	<p><b>Providing Complimentary Admission to Public Servants and Judicial Officers Attending the NCSA’s 2015 Annual Training Conference</b></p> <p>The North Carolina Sheriff’s Association asked whether the educational meeting exception to the Ethics Act’s gift ban, G.S. 138A-32(e)(3)(i), would allow it to provide complimentary admission to its 2015 Annual Training Conference to various public servants and judicial officers.</p> <p>The formal opinion concludes that the educational meeting exception would allow the NCSA to provide complimentary admission and associated food and beverages to public servants if attending the meeting is related to the public servants’ public duties.</p> <p>The Lobbying Law’s gift ban does not apply to gifts to judicial officers.</p>

## HOW TO REQUEST INFORMAL ADVICE OR A FORMAL ADVISORY OPINION ON THE ETHICS ACT OR ON THE 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 can be requested?** Requests for advice must be related to specific questions involving the meaning and application of the Ethics Act and/or 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) 814-3600 or by e-mail at [ethics.commission@doa.nc.gov](mailto:ethics.commission@doa.nc.gov).

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