



ROBERT L. FARMER
CHAIRMAN

1324 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1324
(919) 807-4620 FAX (919) 807-4619

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

Volume 10, Issue 2

Lobbying Newsletter

December 2007

"WHEREAS, THE PEOPLE OF NORTH CAROLINA ENTRUST PUBLIC POWER TO ELECTED AND APPOINTED OFFICIALS FOR THE PURPOSE OF FURTHERING THE PUBLIC, NOT PRIVATE OR PERSONAL, INTEREST..."
STATE GOVERNMENT ETHICS ACT, PREAMBLE

Lobbying Newsletter

The Lobbying Law, Chapter 120C of the North Carolina General Statutes, requires that the Ethics Commission publish a lobbying newsletter at least annually which contains summaries of advisory opinions, policies, procedures, and interpretive bulletins as issued from time to time by the Commission. It must be distributed to all designated individuals (legislators, legislative employees, and public servants), lobbyists, and lobbyists' principals and may be published electronically.

This is the Commission's first such lobbying newsletter. It contains edited summaries of advisory opinions issued by the Commission through December 31, 2007. The Commission has not yet issued any formal policies, procedures, or interpretive bulletins.

The advisory opinion summaries in this newsletter have been modified to remove any potentially identifying information about the requesters. Thus, they are necessarily vague and nonspecific in some respects. They are also *summaries* of the opinions, not the more complete edited or "redacted" versions found on the Commission's web site:

<http://www.ethicscommission.nc.gov/opinions.htm>.

The edited versions should be consulted for a more complete discussion of the relevant issues involved. Nevertheless, our hope is that these advisory opinion summaries will provide general information and guidance to those facing similar situations and at least give prospective requesters an idea of the type of information Commission staff will need in order to respond to specific requests.

To request an advisory opinion, please contact the Commission's staff at (919) 807-4620.

Perry Y. Newson, Executive Director

Advisory Opinions in General

Advisory opinions are an integral part of the conflict of interest identification and avoidance process. They are provided for in the State Government Ethics Act (Chapter 138A), the Lobbying Law (Chapter 120C), and the Legislative Ethics Act (Chapter 120). They allow requesters to receive prospective advice about real situations they face in their public service, and formal opinions provide the requester with limited immunity if they follow the advice given.

The Ethics Commission will publish formal advisory opinions at least once a year. They will be edited as necessary to protect the requesters' identities. They will be listed in three distinct categories generally according to the nature of the individual requesters: legislators (Legislative Ethics Committee opinions), public servants (ethics opinions), and lobbyists and lobbyists' principals (lobbying opinions).

"Ethics" opinions will generally be those requested by a public servant and involving Chapter 138A. "Lobbying" opinions will generally be those requested by lobbyists, lobbyists' principals, and other persons affected by the Lobbying Law. "Legislative Ethics Committee" opinions address questions and issues raised by legislators and are covered by a combination of Chapter 138A and Chapter 120. Overall, there is a tremendous overlap of and interrelationship between all three of these acts, particularly with regard to the issue of "gifts."

The Ethics Commission is the final authority for advisory opinions issued to public servants, lobbyists, and lobbyists' principals. For legislators, however, the Commission issues "recommended advisory opinions" which the Legislative Ethics Committee then adopts, modifies, or overrules. Once the Legislative Ethics Committee finalizes and edits the legislative opinions, the Committee submits them to the Ethics Commission for publication. The Commission may only publish the Committee's formal advisory opinions.

Advisory Opinion Basics

Advisory opinions are a key part of three separate but related systems intended to give those people impacted by the new ethics and lobbying laws prospective guidance about real or reasonably anticipated situations they face in their public service: (1) the State Government Ethics Act (Chapter 138A), (2) the Lobbying Law (Chapter 120C), and (3) the Legislative Ethics Act (Chapter 120). Each of these systems has its unique characteristics, but they all have the following aspects in common.

Written Requests. Requests for *formal* advisory opinions must be in writing. E-mail constitutes a sufficient written request. However, Commission staff frequently gives informal advice in response to verbal requests, most commonly telephone calls. The big difference between the two means of providing advice is immunity.

Immunity. Formal advisory opinions provide requesters with limited immunity if they follow the advice given. Informal opinions do not. Good faith reliance upon a requested formal advisory opinion on a specific matter immunizes the requester from investigations by the Commission, any adverse action by the requester's employing entity, if applicable, and investigation by the North Carolina Secretary of State for opinions issued after August 9, 2007. Opinions do not confer immunity from any criminal investigation or prosecution.

Prospective Application. All advisory opinions are intended to give prospective guidance about real or reasonably anticipated fact settings or circumstances. In other words, advisory opinions look "forward." They are not intended to give after-the-fact determinations about past conduct and may not be used as *de facto* complaints.

Confidentiality. Requests for advisory opinions, the opinions themselves, and all materials related thereto are confidential and not a matter of public record, although the Commission is required to publish edited opinions annually. Furthermore, Commission staff may share all information related to formal advisory opinion requests pertaining to Chapter 120C (the Lobbying Law) with staff of the Office of the Secretary of State and all information related to formal advisory opinion requests pertaining to legislators with staff to the Legislative Ethics Committee, all of whom must treat such information as confidential and not a matter of public record. Finally, the Commission must forward an unedited copy of formal lobbying opinions to the Secretary of State at the time such opinion is issued.

Publication. All formal opinions, including those issued by the Legislative Ethics Committee, must be published in edited form to protect the identities of the individual requesters. Opinions can and will be published electronically.

Fact-Specific. All advisory opinions, both formal and informal, are based upon the particular facts presented and issues raised in the specific request for an opinion. As such, the scope of each opinion is limited to the request made and should only serve as a definitive answer to the particular requester. Published edited formal opinions may, however, serve as a general guide to other individuals similarly situated.

The Commission has authorized its staff to issue formal written advisory opinions pursuant to sections 120C-102 and 138A-13 of the North Carolina General Statutes upon the receipt of a proper request. To request an advisory opinion, please contact Commission staff at (919) 807-4620.

Advisory Opinion Statutory Provisions

The Lobbying Law – Chapter 120C

§ 120C-102. Advisory opinions

(a) At the request of any person affected by this Chapter, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and that person's compliance therewith. The request shall be in writing and relate to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Good faith reliance upon a requested written advisory opinion on a specific matter shall immunize the designated individual, lobbyist, lobbyist's principal, or other person requesting that written advisory opinion from all of the following:

- (1) Investigation by the Commission.
- (2) Any adverse action by the employing entity.
- (3) Investigation by the Secretary of State.

(b) Staff to the Commission may issue advisory opinions under procedures adopted by the Commission.

(c) The Commission shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsection (c) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record. Staff to the Commission may share all information related to requests made under subsection (a) of this section with staff of the Office of the Secretary of State, and staff of the Office of the Secretary of State shall treat that information as confidential and not a public record. The Commission shall forward an unedited copy of each advisory opinion under this section to the Secretary of State at the time the advisory opinion is issued to the requestor, and the Secretary of State shall treat that unedited advisory opinion as confidential and not a public record.

(e) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of an advisory opinion."

The Legislative Ethics Act – Chapter 120

§ 120-104. Advisory opinions.

(a) At the request of any member of the General Assembly, the Committee shall render formal advisory opinions on specific questions involving legislative ethics.

(b) The Committee shall receive and review recommended advisory opinions issued to legislators, except the Lieutenant Governor, by the State Ethics Commission under G.S. 138A-13. The opinion shall not be considered a formal advisory opinion until the advisory opinion is adopted by the Committee. The Committee may modify or overrule the recommended advisory opinions issued to legislators by the State Ethics Commission, and the final action on the opinion by the Committee shall control.

(c) A legislator who acts in reliance on a formal advisory opinion issued by the Committee under this section shall be entitled to the immunity granted under G.S. 138A-13(b).

(d) Staff to the Committee may issue informal, nonbinding advisory opinions under procedures adopted by the Committee.

(e) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators, except the Lieutenant Governor, and these interpretations are binding on all legislators upon publication.

(f) The Committee shall submit its formal advisory opinions to the State Ethics Commission, and the State Ethics Commission shall publish the Committee's opinions under G.S. 138A-13(d). The Committee shall edit for publication purposes as necessary to protect the identities of the individuals requesting opinions prior to submission to the State Ethics Commission. The Committee may distribute the edited formal advisory opinion to members of the General Assembly prior to publication by the State Ethics Commission.

(g) Except as provided under subsection (f) of this section, requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission are confidential and not matters of public record.

(h) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of an advisory opinion.

The Ethics Law – Chapter 138A

§ 138A-13. Advisory opinions.

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a person who is a public servant or legislative employee, legal counsel for any public servant, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's or legislative employee's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. On its own motion, the Commission may render advisory opinions on specific questions involving the meaning and application of this Chapter. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant or legislative employee, on that matter, from all of the following:

- (1) Investigation by the Commission, except for an inquiry under G.S. 138A-12(b)(3).
- (2) Any adverse action by the employing entity.
- (3) Investigation by the Secretary of State.

(b) At the request of a legislator, the Commission shall render recommended advisory opinions on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Until action is taken by the Committee under G.S. 120-104, reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from all of the following:

- (1) Investigation by the Committee or Commission, except for an inquiry under G.S. 138A-12(b)(3).
- (2) Any adverse action by the house of which the legislator is a member.
- (3) Investigation by the Secretary of State.

Any advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee, together with a copy of the request. Except for the Lieutenant Governor, the immunity granted under this subsection shall not apply after the time the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(c) Staff to the Commission may issue advisory opinions under procedures adopted by the Commission.

(d) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions. When the Commission issues a recommended opinion to a legislator under subsection (b) of this section, the Commission shall publish only the formal advisory opinion of the Committee upon its submission to the Commission.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions, and advisory opinions issued under this section, are confidential and not public records. Staff to the Commission may share all information related to requests made under subsection (b) of this section with staff to the Committee, and staff to the Committee shall treat that information as confidential and not a public record.

(f) This section shall not apply to judicial officers.

(g) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of an advisory opinion.

ADVISORY OPINION SUMMARIES

LOBBYING OPINIONS – CHAPTER 120C

AO-L-07-0001

Legislative Breakfast & Gift Ban Exceptions – “Public Events” & “Educational Meetings.”

G.S.138A-32(e)(1); 138A-3(29); and 138A-32(e)(3)(i)

October 29, 2007

A lobbyist asked whether under the new ethics and lobbying laws a lobbyist principal association (“association”) could sponsor a legislative breakfast for incoming freshman legislators. The lobbyist stated that all freshman legislators would be invited and 10 to 12 members of the association would be present along with some of the association’s staff members, including registered lobbyists. The purpose of the meeting was to provide an overview of issues of interest to the association, the role of the association with regard to those issues, and to discuss related legislative issues in general and potential 2007 legislation in particular.

N.C.G.S. § 120C-303(a) and § 138A-32(c) prohibit a lobbyist principal association from providing this gift of food and beverages at the “freshman” legislative reception, unless the event meets an exception to the gift ban pursuant to N.C.G.S. § 138A-32(e). In reviewing the § 138A-32(e) gift ban exceptions, the association’s “freshman” legislative breakfast did not fit under one of the gift ban exceptions.

N.C.G.S. § 138A-32(e)(1) pertains to food and beverages for immediate consumption provided at a “public event.” In reviewing the subsections for this section that applied to legislators and applying the facts provided, the exception did not fit. Foremost, this legislative breakfast was not open to the general public, and all of the members of the North Carolina General Assembly (“GA”) were not invited. Therefore, this legislative breakfast did not meet the definition of public event under N.C.G.S. § 138A-3(29)a.1.

Moreover, the newly elected freshman legislators are currently not a recognized legislative caucus, delegation, or standing committee; therefore, the association’s “freshman” legislative breakfast did not meet the first requirement of public event in N.C.G.S § 138A-3(29)a.2. Accordingly, the association’s planned “freshman” legislative breakfast did not meet either of the definitions of public event for legislators.¹

Another possible gift ban exception in this situation involves “educational meetings.” There is a gift ban exception under N.C.G.S. § 138A-32(e)(3)(i) for certain “reasonable actual expenditures,” including food

¹ For future reference note that section 24 of House Bill 1111 (Session Law 2007-348) amended the definition of “public event” under N.C.G.S. § 138A-3(29) and eliminated the two separate subsections, one for legislators and legislative employees, and another for public servants. Pursuant to section 24 of HB 1111, there are now five definitions of “public event” under N.C.G.S. § 138A-3(29), and if the sponsoring person and their/its event meet all of the requirements of any one of these five definitions, the event is a public event for legislators, legislative employees, and public servants. Section 24 of HB 1111 became effective on August 9, 2007. The freshman legislative breakfast under consideration here would still not qualify as a “public event” under any of the five definitions of “public event” created by section 24 of HB 1111.

and beverage expenditures, of a legislator incurred at an “educational meeting” if certain requirements are met. The statute does not define “educational meeting,” and at the time this advisory opinion was issued, it was unclear how the Commission would define that term. The Commission did address this issue at its February 22, 2007, meeting and adopted some non-exclusive factors to be used as criteria for determining what is an “educational meeting” under N.C.G.S. § 138A-32(e)(3)(i) (“Criteria”).² See Attachment A below.

Whether a particular meeting, conference, or other event will be considered an educational meeting is a fact-specific, case-by-case determination. Since specific facts are critical to this determination, and the initial request letter did not provide sufficient details about the proposed event, Commission staff was unable to determine if it would have qualified under the § 138A-32(e)(3)(i) gift ban exception. See the educational meeting Criteria referenced above. For example, staff would need to know the identity of the speaker(s) and the general nature of each speaker’s presentation, as well as the overall agenda for the entire breakfast meeting. Also, staff would need to know more about the association’s legislative agenda and any plans it had for the introduction or support of specific legislation.

However, if legislative issues, questions, and/or legislative agendas were going to be a significant part of this particular breakfast meeting, the meeting would probably not be considered an educational meeting under the new laws. The requester stated that both potential 2007 legislative issues and general legislative issues were going to be discussed at the legislative breakfast, but did not provide the amount of time that was going to be spent on these legislative issues. This information would be an important factor along with the other factors addressed in the above-referenced Criteria. See attached. Without such information, staff could not make a determination as to whether the association’s legislative breakfast met the educational meeting exception under N.C.G.S. § 138A-32(e)(3)(i).

Based upon the forgoing analysis, the association in question could not provide the freshman legislators this breakfast at no charge. Note that if each legislator paid fair market value for his or her breakfast, the association’s breakfast would not have been a gift and the freshman legislators could have accepted the free meal. See N.C.G.S. § 138A-3(15)a.

Attachment A -- Educational Meeting Criteria:
Criteria for Determining an “Educational Meeting” Under §138A-32(e)(3)(i)

While there is an exception to the gifts ban for expenditures associated with “educational meetings,” the statute does not define that key term. So the Commission and its staff are left with the task of determining **what is “an educational meeting.”**

Without a statutory definition, and until the Commission attempts to define “educational meeting” through formal or informal rulemaking, our best option is to apply various non-exclusive factors or criteria to the specific situations with which we are presented. Determining what is or is not an “educational meeting” involves applying these non-exclusive factors or criteria on a fact-specific, case-by-case basis. To aid that fact-specific determination, the Commission has adopted the following criteria. Again, the list is non-exclusive, and the Commission may modify it as necessary in the future.

Remember that an “educational meeting” must be for purposes primarily related to the public duties and responsibilities of the public servant, legislator, or legislative employee.

² Attached to this advisory opinion is a copy of these non-exclusive factors titled “Criteria for Determining an ‘Educational Meeting’ under N.C.G.S. § 138A-32(e)(3)(i).” The Commission has applied these Criteria in another advisory opinion issued in response to another requester. [See AO-L-07-0012.]

In applying these factors, the focus of the Commission will be on the intent of the donor and the recipient's knowledge of that intent. The determination as to whether a meeting is "educational" will vary according to the facts and circumstances of each meeting.

I. Is the educational content of the meeting related to a specific public duty or responsibility of the public servant, legislator, or legislative employee?

If so, what specific duty or responsibility?

- for legislators and legislative employees, this will be interpreted very broadly;
- for public servants, less so because of the scope of their public duties.

If the content of the meeting is not primarily related to a specific duty or responsibility of a public servant, legislator, or legislative employee, then it probably does not qualify as an educational meeting under this section.

II. Is the primary purpose of the meeting educational?

A. If the meeting's *primary* purpose is to *influence* a public servant, legislator, or legislative employee with respect to executive or legislative action (rather than educate them on a legitimate subject), the meeting is not "educational." A meeting primarily intended to promote learning for self-improvement relative to the public duties of a person is "educational," not a meeting intended to curry favor concretely.

Meetings intended to influence rather than educate may include meetings that are directly related to an upcoming official vote, recommendation, or other action that the public servant, legislator, or legislative employee may take, such as the discussion of a legislative or executive agenda or specific concerns with respect to a matter that would require legislative or executive action to remedy.

In determining the purpose of the meeting, the Commission will consider whether the entity holding the meeting:

- has legislation pending before the General Assembly or intends to request legislative action;
- is seeking, or seeking to impact, North Carolina legislative or executive action at the time of the meeting;
- can be impacted by the actions or decisions of the public servant, legislator, or legislative employee; or
- if the facts demonstrate that the entity's purpose in holding the meeting is to advocate on behalf of legislative or executive action.

B. What is the nature of the entity holding the meeting?

- Is the entity a State agency or governmental entity?
- Is the entity an educational institution?
- Is the entity an organization that routinely sponsors meetings with educational content?
- Is the entity holding the meeting a Lobbyist Principal?

C. Is the Lobbyist Principal paying for the meeting also sponsoring the meeting?

- Is the source of the funding (gift) the same as the source of the education (as opposed to a Lobbyist Principal paying to send a public servant, legislator, or legislative employee to *another* entity's meeting)?

D. What is the complete agenda of the meeting?

- What proportion of the individual events scheduled at the meeting have a speaker, roundtable discussion, or other educational content that is directly related to the public duties of the public servant, legislator, or legislative employee?

- What proportion of those sessions is held in the absence of a meal or entertainment?
 - What proportion of the meeting agenda includes meals or entertainment with formal educational content?
 - Does the agenda cover a wide range of topics or have a very limited, industry-specific focus?
 - Would the meeting take place regardless of whether the invited public servant, legislator, or legislative employee attends?
 - Who are the speakers?
 - Are they associated with the Lobbyist Principal or its Lobbyist?
 - Are they outside experts in their field?
- E. Is the location of the meeting directly related to the meeting’s educational content?
- Is there a reason for holding the meeting in a location other than where the attendees live or work?
 - Is it necessary to the meeting’s educational purpose that an individual travel in connection with the meeting?
 - Is the meeting sponsored by a state, national, or international organization for the benefit of its state, national, or international membership?
 - Is the location of the meeting otherwise integral to the educational content of the meeting?
 - Would an individual be capable of obtaining a comparable degree of educational information through other means that would not require travel?
- F. Is the length of the educational meeting reasonably necessary to fulfilling the educational purpose of the trip?
- G. What degree of personal benefit does the individual gain from attendance at the meeting?
- Does the personal benefit outweigh the public benefit gained by the educational value of the meeting?
- H. Are there *other factors* that would support the conclusion that the meeting is educational?

AO-L-07-0002³

Designated Individuals Acting in Their Official Capacity Do Not Need to Register as “Liaison Personnel.”
 G.S. 120C-700
 May 18, 2007

A “public servant” requested a formal advisory opinion on whether he or she had to register as a “lobbyist” pursuant to North Carolina General Statutes (“N.C.G.S.”) Chapter 120C, the new Lobbying Law. Public servants are also “designated individuals” under the Lobbying Law.⁴

Part of the public servant/designated individual’s responsibilities and duties include advocating for legislative and executive action through direct communications with legislators, legislative employees, and other public servants. All of these advocacy responsibilities and duties relate solely to matters pertaining to the public servant/designated individual’s government employment and his or her official position.

³ Note: This opinion deals with the same substantive issue as AO-L-07-0004.

⁴ “Designated individuals” include legislators, legislative employees, and public servants. N.C.G.S. § 120C-100(a)(2). “Public servants” are defined in N.C.G.S. § 138A-3(30).

Under these facts, the public servant/designated individual did not need to register as a liaison personnel.⁵ Except for certain gift and scholarship reporting purposes, designated individuals are exempt from the lobbying law while they are acting in their official capacities. N.C.G.S. §120C-700 (6). Therefore, as long as the public servant/designated individual is acting in his or her official capacity when advocating for legislative or executive action, that person is exempt from the general requirements of Chapter 120C and does not need to register as a liaison personnel.⁶ A public servant/designated individual may also be exempt pursuant to N.C.G.S. §120C-700 (3) as a State employee appearing solely in connection with matters pertaining to his or her office and public duties.

AO-L-07-0003

“Educational Meeting” and “Public Event” Gift Ban Exceptions.

G.S.138A-32(e)(1); 138A-3(29); and 138A-32(e)(3)(i)

November 28, 2007

A lobbyist requested guidance on determining and developing criteria for an “educational dinner” being coordinated for a group of legislators and a presumed lobbyist principal company. The lobbyist also asked who could pay for this dinner for these legislators based on the new Lobbying Law (Chapter 120C) and the new State Government Ethics Act (Chapter 138A).

Initially, the lobbyist asked the Commission to develop criteria to follow for this “meeting.” This part of the request was not a request for an advisory opinion under the law. Lobbyists and lobbyist principals, not the Commission or its staff, must determine how particular events will be planned, organized, and conducted. Once that is done, Commission staff will apply the applicable legal standards to the particular facts presented.

The remainder of the request was relatively vague and nonspecific, making it hard to give definitive answers. For example, the request did not specifically state whether the potential corporate participant was a lobbyist principal or whether the requester was that entity’s official lobbyist. Nor did the request state who was going to pay for this dinner event or for each of the legislator’s meals. Therefore, certain assumptions were made for purposes of issuing this opinion. For example, it was assumed that the potential corporate participant was a lobbyist principal and the requester was its lobbyist. In addition, it was assumed that the lobbyist principal was the “person” that was planning on paying for this dinner event and for each legislator’s meal.

⁵ While the original request and an earlier opinion spoke in terms of potential registration as a “lobbyist,” the correct term is really “liaison personnel.” The end result is the same. Chapter 120C requires all agencies and constitutional officers of the State to designate “liaison personnel” to lobby for legislative action and forbids the use of State funds to hire outside, non-State employees to engage in legislative lobbying. N.C.G.S. § 120C-500(a) & (b).

⁶ If a designated individual accepts reportable expenditures made for the purpose of lobbying, or “scholarships” as defined in N.C.G.S. §120C-800 (g), either the designated individual or the donor may need to report those items with the Secretary of State’s office. *See* N.C.G.S. §120C-800.

Based on these assumptions, this gift of food and beverage at this “legislative” dinner event was prohibited under N.C.G.S. § 120C-303(a) and § 138A-32(c), unless it met an exception to the gift ban pursuant to N.C.G.S. § 138A-32(e).

The initial request referred to this event as an “educational” dinner for a designated group of legislators. Therefore, one possible exception to the general gift ban is the “educational meeting” exception of § 138A-32(e)(3)(i). This gift ban exception covers certain “reasonable actual expenditures,” including food and beverage expenditures, of a legislator incurred at an “educational” meeting if certain requirements are met. The statute does not define “educational meeting,” and at the time this advisory opinion was issued, it was unclear how the Commission would define that term. The Commission did address this issue at its February 22, 2007, meeting and adopted some non-exclusive factors to be used as criteria for determining what is an “educational meeting” under N.C.G.S. § 138A-32(e)(3)(i) (“Criteria”).⁷ *See* attached.

Whether a particular meeting, conference, or other event will be considered an educational meeting is a fact-specific, case-by-case determination. Since specific facts are critical to this determination, and the initial request letter did not provide sufficient details about the proposed legislative dinner, Commission staff was unable to determine if it would have qualified under the § 138A-32(e)(3)(i) gift ban exception. *See* the educational meeting Criteria referenced above.

However, another exception may have applied – the “public event” exception of § 138A-32(e)(1). N.C.G.S. § 138A-32(e)(1) pertains to food and beverage for immediate consumption provided at a “public event.” Public event is defined in N.C.G.S. § 138A-3(29).⁸ Prior to the passage of House Bill 1111 (Session Law 2007-348) on August 9, 2007, the definition of “public event” had two separate subsections, one for legislators and legislative employees, and another for public servants. If both legislators and public servants were invited to a prospective public event, all requirements of *both* subsections had to be met in order satisfy this exception, including who must be invited to the organized gathering.

N.C.G.S. § 138A-3(29)a.2 had a two-pronged test.⁹ The first prong is that the “person” (person is broadly defined under N.C.G.S. § 138A-3(27) and includes business entities and associations) sponsoring the event must invite either the entire membership of the House of Representatives or of the Senate, or the entire membership of one of the statutorily-listed legislative subgroups, which include legislative committees and standing subcommittees. The committee or standing subcommittee referenced in N.C.G.S. § 138A-3(29)a.2

⁷ Attached to this advisory opinion is a copy of these non-exclusive factors titled “Criteria for Determining an ‘Educational Meeting’ under N.C.G.S. § 138A-32(e)(3)(i).” The Commission has applied these Criteria in another advisory opinion issued in response to another requester. [*See* AO-L-07-0012.]

⁸ Section 24 of House Bill 1111 (Session Law 2007-348) amended the definition of “public event” under N.C.G.S. § 138A-3(29) and eliminated the two separate subsections (one for legislators/legislative employees and one for public servants). Pursuant to the new legislative changes, there are now five definitions of “public event” under N.C.G.S. § 138A-3(29), and if the sponsoring person and their/its event meet all of the requirements of any one of these five definitions, the event is a public event for all covered attendees (legislators, legislative employees, and public servants). Thus it is no longer necessary to meet both sets of requirements.

⁹ The amended definition of “public event” (section 24 of HB 1111) resulted in N.C.G.S. § 138A-3(29) a.2 being renumbered as N.C.G.S. § 138A-3(29)b. The two-pronged test contained in § 138A-3(29)a.2 remains under § 138A-3(29)b.

must be an existing and recognized committee or standing subcommittee established pursuant to the rules of the Senate or House.¹⁰

Commission staff has determined that invitations under the Ethics Act and the Lobbying Law must be in writing (e-mails are included as a written invitation), be sent out at least ten (10) days in advance of the event, state the date, time and location of the event, identify the event, and list the names of the sponsors of the event. Thus, the sponsoring lobbyists, lobbyist principals, and “interested persons”¹¹ must be identified and known prior to the event occurring.

After meeting this first invitation prong, a second prong must also be met. This second prong of N.C.G.S. § 138A-3(29)a.2¹² can be met in three ways, depending upon who/what is determined to be the “person” holding the organized gathering. The three ways are as follows:

- (I) at least 10 individuals associated with the person actually attend, other than the legislator or their immediate family; or
- (II) all shareholders, employees, board members, officers, members, or subscribers of the person located in North Carolina are notified and invited to attend; or
- (III) the person is a governmental body and the gathering is subject to the open meetings law.

The lobbyist here planned to invite a designated group of legislators, who were members of a specific Senate or House committee, to this dinner. At the time this formal advisory opinion was issued, the specific standing committees referenced in the request had been established by rule in both the Senate and the House; however, no legislators had been formally appointed to them. Once members were appointed to these committees, the lobbyist principal’s dinner event invitation to the entire membership of either standing committee would have resulted in the dinner event meeting one of the initial requirements of N.C.G.S. § 138A-3(29)a.2. In addition to meeting an initial requirement stated in § 138A-3(29)a.2, the lobbyist principal also had to meet either subsection (I) or subsection (II) of § 138A-3(29)a.2¹³ for the gift ban exemption for food and beverage for immediate consumption at a public event to apply to legislators.

¹⁰ Recognized standing committees and subcommittees of the 2007 General Assembly are those established in accordance with Senate Rule 32 and House Rule 26 of the 2007 General Assembly, and by resolution of the Senate or House. When the General Assembly adjourns the 2008 Regular Session of the General Assembly *sine die*, these committees will no longer exist.

¹¹ “Interested person” is a non-statutory term used by Commission staff to describe those persons set out in § 138A-32(d), as amended by sections 36 and 37 of HB 1111, and as expanded by the definition of “person” in 138A-3(27), as amended by section 23 of HB 1111. An “interested person” is a person who (1) is doing or seeking to do business of any kind with the employing entity of the public servant who is being offered or given the gift; (2) is engaged in activities that are regulated or controlled by the employing entity of the public servant being offered or given the gift; **or** (3) has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the public servant who is offered or given the gift. A public servant can only accept a gift, directly or indirectly, from an “interested person” if the gift meets a gift ban exemption listed in 138-32(e).

¹² N.C.G.S. § 138A-3(29)a.2 is now N.C.G.S. § 138A-3(29)b.

¹³ Since the lobbyist principal is not a governmental body, subsection III of N.C.G.S. § 138A-3(29)a.2 (now renumbered as § 138A-3(29)b.3) would not be applicable.

The request letter did not state specifically who the lobbyist principal was planning on inviting in addition to the designated group of legislators; however, several questions seemed to be based on the requirements stated in subsections (I) and (II) of N.C.G.S. § 138A-3(29)a.2. Specifically, it was asked whether an employee of the person, in this case the lobbyist principal, would be deemed to be associated with the person. Yes, an employee of the lobbyist principal here would be an individual associated with the lobbyist principal for the purposes of meeting the requirement of the gift ban exemption under § 138A-3(29)a.2.I.¹⁴

It was also asked whether members of advocacy groups would qualify as “individuals associated with the person.” Whether an individual is “associated with the person” will often be determined by the Commission on a case-by-case basis depending upon the facts of the connection with the person to which the gift ban applies. The request letter did not contain the necessary details for the Commission to make a determination as to whether members of an unnamed and unidentified advocacy group would be deemed to be “individuals associated with” the lobbyist principal. Accordingly, the Commission could not determine whether the attendance of at least 10 members of an advocacy group at this lobbyist principal’s legislative dinner would meet the subsection (I) requirements.

The final question appeared to be asking whether the invitation of all of the lobbyist principal’s employees located in North Carolina would satisfy the requirement of the gift ban exemption under § 138A-3(29)a.2.II.¹⁵ Assuming that the lobbyist principal had invited all of the appointed members of the Senate or House standing committee as discussed above, thus meeting the first prong of N.C.G.S. § 138A-3(29)a.2, then if the lobbyist principal formally notified and invited all of its employees located in North Carolina to this legislative dinner, the proposed legislative dinner would have met the § 138A-3(29)a.2.II gift ban exemption and the lobbyist principal could have provided food and beverages for immediate consumption to the invited legislators.

In the future, all requesters should provide the Commission with the actual or reasonably anticipated details of planned events, such as who is actually being invited, rather than giving hypothetical invitees. N.C.G.S. § 120C-102 requires as much, and providing these details will assist the Commission in answering questions in a more direct and thorough manner while expediting the Commission’s response time. In addition, the limited civil immunity granted by the Commission from investigation by the Commission is exclusively tied to the specific facts and circumstance addressed and answered by the Commission in the written advisory opinion. Therefore, any questions or issues raised that the Commission could not address, including those that lacked sufficient detail, are not covered by this written advisory opinion.

Attachment A -- Educational Meeting Criteria: see AO-L-07-0001 above.

¹⁴ N.C.G.S. § 138A-3(29)a.2.I is now renumbered as § 138A-3(29)b.1.

¹⁵ N.C.G.S. § 138A-3(29)a.2.II is now renumbered as § 138A-3(29)b.2.

AO-L-07-0004¹⁶

Designated Individuals Acting in Their Official Capacity Do Not Need to Register as “Liaison Personnel.”
G.S. 120C-700
May 18, 2007

A “public servant” requested a formal advisory opinion on whether he or she had to register as a “lobbyist” pursuant to North Carolina General Statutes (“N.C.G.S.”) Chapter 120C, the new Lobbying Law. Public servants are also “designated individuals” under the Lobbying Law.¹⁷

Part of the public servant/designated individual’s responsibilities and duties include advocating for legislative and executive action through direct communications with legislators, legislative employees, and other public servants. All of these advocacy responsibilities and duties relate solely to matters pertaining to the public servant/designated individual’s government employment and his or her official position.

Under these facts, the public servant/designated individual did not need to register as a liaison personnel.¹⁸ Except for certain gift and scholarship reporting purposes, designated individuals are exempt from the lobbying law while they are acting in their official capacities. N.C.G.S. §120C-700 (6). Therefore, as long as the public servant/designated individual is acting in his or her official capacity when advocating for legislative or executive action, that person is exempt from the general requirements of Chapter 120C and does not need to register as a liaison personnel.¹⁹ A public servant/designated individual may also be exempt pursuant to N.C.G.S. §120C-700 (3) as a State employee appearing solely in connection with matters pertaining to his or her office and public duties.

AO-L-07-0005

Legislative Reception, Indirect Gifts, & the “Public Event” Gift Ban Exception.
G.S. 138A-32(e)(1)
October 3, 2007

A North Carolina organization (“Organization”) asked for an opinion concerning the hosting and sponsorship of a legislative reception for all newly-elected members of the North Carolina General Assembly (“GA”). While the hosting Organization is not a lobbyist principal, many lobbyist principals are helping sponsor the legislative reception. Specifically, this legislative reception would be sponsored by approximately 60 different sponsors, many of which were lobbyist principals. All members of the GA were

¹⁶ Note: This opinion deals with the same substantive issue as AO-L-07-0002.

¹⁷ “Designated individuals” include legislators, legislative employees, and public servants. N.C.G.S. § 120C-100(a)(2). “Public servants” are defined in N.C.G.S. § 138A-3(30).

¹⁸ While the original request and an earlier opinion spoke in terms of potential registration as a “lobbyist,” the correct term is really “liaison personnel.” The end result is the same. Chapter 120C requires all agencies and constitutional officers of the State to designate “liaison personnel” to lobby for legislative action and forbids the use of State funds to hire outside, non-State employees to engage in legislative lobbying. N.C.G.S. § 120C-500(a) & (b).

¹⁹ If a designated individual accepts reportable expenditures made for the purpose of lobbying, or “scholarships” as defined in N.C.G.S. §120C-800 (g), either the designated individual or the donor may need to report those items with the Secretary of State’s office. *See* N.C.G.S. §120C-800.

invited along with all Council of State members, all Supreme Court justices and Court of Appeals judges, the Governor and his Cabinet, and all North Carolina members of the United States Congress. Although the legislative reception was technically “open to the general public,” there would be a substantial charge to the public to attend this reception.

The hosting Organization asked the following questions: (1) who is actually giving the food and beverages at this legislative reception when sponsors give the money to the Organization specifically for the purpose of paying for the reception and the Organization then directly contracts with and pays for catering the reception; (2) if the food and beverages are determined to be given by the sponsors, including lobbyist principals, does this legislative reception meet an exception to the gift ban; and (3) if the food and beverages can be given, who must report the expenditures to the Secretary of State’s Office?

Based on the fact that the sponsors were specifically giving the money to the Organization to pay for the legislative reception, the sponsors were indirectly giving the gifts of food and beverages to the legislators and public servants. Since some of the sponsors were lobbyist principals, this gift of food and beverages was prohibited under N.C.G.S. § § 120C-303(a) and 138A-32(c), unless it met an exception to the gift ban pursuant to N.C.G.S. § 138A-32(e). Based upon the specific facts provided by the requester, it was determined that the §138A-32(e)(1) exception for food and beverages consumed at a “public event” may be applicable if this legislative reception met all of the requirements to be a public event for both legislators and public servants.

“Public event” is defined in N.C.G.S. § 138A-3(29). Prior to the passage of House Bill 1111 on August 9, 2007, the definition of “public event” had two separate subsections -- one for legislators/legislative employees and one for public servants. If both legislators and public servants were invited to a prospective public event, all requirements of *both* subsections had to be met in order satisfy this exception, including who must be invited to the organized gathering.²⁰

Although it was initially stated that the legislative reception was “open to the general public,” in fact there would be a substantial charge per person to attend this reception, while legislators and public servants would be admitted free of charge. The issue of whether an event that has a charge to attend is truly “open to the general public” has not been addressed by the Ethics Commission. However, this legislative reception may not have been “open to the general public” making the then-existing § 138A-3(29)a.1. public event definition for legislators and the then-existing § 138A-3(29)b.1. public event definition for public servants inapplicable. Charging the general public to attend a legislative reception may also make the post-HB 1111 and current definitions of public event as defined in § 138A-3(29)a. and § 138A-3(29)c. inapplicable. However, that issue did not need to be addressed at this time because this particular legislative reception may have met some of the other definitions of public event contained in § 138A-3(29) for legislators and public servants, both pre-HB 1111 and post-HB 1111, based upon who was being notified and invited to attend.

N.C.G.S. §138A-3(29)a.2.II. applied when the event was an organized gathering of a person

²⁰ Section 24 of House Bill 1111 amended the definition of “public event” under N.C.G.S. § 138A-3(29) and eliminated the two separate subsections (one for legislators/legislative employees and one for public servants). Pursuant to the new legislative changes, there are now five definitions of “public event” under N.C.G.S. § 138A-3(29), and if the sponsoring person and their/its event meet all of the requirements of any one of these five definitions, the event is a public event for all covered attendees (legislators, legislative employees, and public servants). Thus it is no longer necessary to meet both sets of requirements.

(person is broadly defined under N.C.G.S. §138A-3(27) and includes business entities, associations, and organizations) to which the entire GA was invited and to which all shareholders, employees, board members, officers, members **or** subscribers of the person located in North Carolina were notified and invited to attend. Accordingly, since all members of the GA were invited, if each sponsor formally notified and invited all of its board members **or** all of its officers who were located in North Carolina to this legislative reception, the proposed legislative reception would have met the 138A-3(29)a.2. definition of “public event” and the lobbyist principals would have been allowed to give legislators food and beverages for immediate consumption at this reception per the § 138A-32(e)(1) gift ban exemption.

A similar public event provision pertained to public servants. The §138A-3(29)b.3. public event exemption applied when the event was an organized gathering of a person to which at least 10 public servants were invited and to which all shareholders, employees, board members, officers, members **or** subscribers of the person located in a specific North Carolina office or county were notified and invited to attend. Since more than 10 public servants were invited, if each sponsor formally notified and invited all of its board members **or** all of its officers who were located in a specific North Carolina office or county to this legislative reception, the proposed legislative reception would have met the 138A-3(29)b.3. definition of “public event” and the lobbyist principals would have been allowed to give legislators food and beverages for immediate consumption at this reception.

After the passage of HB 1111 on August 9, 2007, if a person and their event meet all of the requirements of any **one** of the five definitions of “public event” contained in § 138A-3(29), the person may give the gift of food and beverages for immediate consumption under the gift ban exemption of 138A-32(e)(1) to legislators, legislative employees, and public servants. The person(s) sponsoring the event no longer needs to meet the requirements of two separate subsections or two different definitions of “public event” in order to give to different types of designated individuals (legislators, legislative employees, and public servants) under this gift ban exception.

The hosting Organization also asked who should report the expenditures for the food and beverages given to the legislators and public servants at this reception. N.C.G.S. § 120C-403(b)(5) requires each lobbyist principal to report, among other things, all reportable expenditures made for the purpose of lobbying, all reportable expenditures for gifts given under any of the gift ban exemptions of N.C.G.S. § 138A-32(e) (1) – (9), -(e)(11), -(e)(12),²¹ and all gifts given under the gift ban exemption of N.C.G.S. § 138A-32(e)(10) with a value of more than \$200. The lobbyist principal reports are to be filed with the Secretary of State’s Office quarterly when the GA is not in session and monthly when the GA is in session. N.C.G.S. § 120C-403(a) and (c).

Accordingly, the sponsors who are lobbyist principals are required to report the food and beverages expenditures on their lobbyist principal reports they each file with the Secretary of State’s Office if the value of the expenditure is greater than \$10 per day per individual legislator, individual public servant, or that individual’s immediate family. N.C.G.S. §§ 120C-403(b)(5) and 120C-100(a)(12)a. The sponsors who are not lobbyist principals, such as the hosting Organization, need to report expenditures made for the purpose of lobbying if the reportable expenditures given per individual legislator, individual public servant, or that person’s immediate family equal a total cumulative value of over \$200 in a calendar quarter. N.C.G.S. § 120C-800 (a).

²¹ House Bill 1111 also added two new gift ban exceptions under N.C.G.S. § 138A-32(e). *See* Section 41 of HB 1111. These gift ban exemptions of -(e)(11) and -(e)(12) are retroactive to January 1, 2007. *See* Section 44 of HB 1111.

AO-L-07-0006

Lobbyist Giving Legislator a Free Ride; Gift Ban Exceptions – Personal Relationship Exception; Reporting.
G.S.138A-32(e)(10); 120C-401(b); 120C-402(b)
September 12, 2007

A lobbyist requested an opinion as to whether he or she could provide a ride in a rental car to a “designated individual”²² while both persons were traveling out-of-state on a personal, non-public service related trip. Specifically, the lobbyist was flying out-of-state to attend a sporting event and planned to rent a car for local transportation. A designated individual, who is also a former college classmate and personal friend of the lobbyist, was also planning on attending this sporting event. The lobbyist asked whether giving this designated individual a ride from the airport to the hotel in the rental vehicle was allowed under the new Ethics and Lobbying laws and if so what reporting obligations would apply.

Under the new Lobbying Law, a lobbyist is prohibited from giving a gift to a designated individual unless the gift meets one of the gift ban exceptions. N.C.G.S. § 120C-303(a). There is no “nominal” or small-gift exception to the general gift ban. A gift is defined as anything of monetary value given or received without valuable consideration by or from a lobbyist or lobbyist principal, with certain exceptions. N.C.G.S. § 138A-3(15).²³

Accordingly, pursuant to the statute, a free ride in a rental vehicle would constitute a “gift” if not paid for. A free ride from the airport to the hotel would have to meet a gift ban exception for the lobbyist to be able to give it and for the designated individual to be able to accept it.

N.C.G.S. § 138A-32(e) lists a number of specific gift ban exceptions. One of these listed gift ban exceptions applies to gifts given for fraternal or personal reasons and not given for the purpose of lobbying. N.C.G.S. § 138A-32(e)(10). This gift ban exemption excludes,

Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to the person’s public service or position and made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying.

Based on the lobbyist’s fraternal and personal relationship with this designated individual, which is not related to the designated individual’s public service and position, and the fact that the lobbyist was giving the ride based on this relationship and not for the purpose of lobbying, the 138A-32(e)(10) gift ban exception applied to this situation. Therefore, the lobbyist could give and the designated individual could accept the ride without paying for it. However, the lobbyist would need to report the value of the ride on the lobbyist reports that are filed with the Secretary of State’s Office covering the time period that the ride was given. N.C.G.S. § 120C-402.

²² “Designated individuals” include legislators, legislative employees, and public servants. N.C.G.S. § 120C-100(a)(2). The designated individual here is a legislator.

²³ On August 9, 2007, House Bill 1111 was signed into law. Section 21 of HB 1111 amended N.C.G.S. § 138A-3(15) and clarified that the definition of gift included anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, *legislative liaison personnel or a person described under N.C.G.S. § 138A-32(d)(1), (2), or (3)* (changes in italics). Section 21 of HB 1111 is effective October 1, 2007.

The Lobbying Law requires lobbyists to report, among other things, the fair market value or face value, if shown, of all gifts given under the N.C.G.S. § 138A-32(e)(10) gift ban exception. N.C.G.S. § 120C-401(b) and 402(b)(4).²⁴ There are a number of ways one could determine the fair market value of the ride to the hotel, including, but not limited to, using the cost of the airport shuttle to the hotel, the amount of a cab fare to the hotel, or the IRS mileage rate for the number of miles from the airport to the hotel. Determining the fair market value of the ride would be the lobbyist's decision based on the applicable facts.

AO-L-07-0007

Gift to a Non-Covered Spouse of a Public Servant – “Indirect” Gifts & Reporting Requirements.
G.S. 138A-32(c) & (d); 120C-100(a)(12), -400, -402, -403
July 12, 2007

Legal counsel for a lobbyist principal organization (“the Organization”) requested a formal advisory opinion on whether the Organization could pay travel and meal expenses for the spouse of a public servant associated with the spouse's speaking engagement at an Organization conference and if so whether the Organization would have to report the value of such expenditures to the Secretary of State's office. The spouse is not covered under the State Government Ethics Act, Chapter 138A of the North Carolina General Statutes (“N.C.G.S.”).

The Organization has hired a lobbyist and is therefore a lobbyist principal pursuant to N.C.G.S. Chapter 120C, the Lobbying Law. The Organization is hosting a conference. It has invited the spouse of a covered public servant to be a featured speaker at this conference. As a result, the Organization would like to pay or reimburse this person's travel expenses (possibly including airfare) and meals in conjunction with this speaking engagement. The Organization will not provide him or her with any honorarium or other monetary payment.

Under these facts, the Organization may provide, and the spouse may accept, travel and meals in conjunction with the speaking engagement. As stated above, the Organization is a lobbyist principal. N.C.G.S. § 120C-100 (a) (11). As a general rule, lobbyist principals may not give, either directly or indirectly, gifts to “designated individuals,” unless an exception applies. N.C.G.S. § 120C-303(a). Designated individuals include “public servants.” N.C.G.S. § 120C-100(a)(2). Public servants include a broad group of public officials. N.C.G.S. § 138A-3 (30) a. On the other hand, public servants cannot accept gifts from lobbyist principals unless an exception applies. N.C.G.S. § 138A-32(c).

Even though several exceptions to the general gift ban may apply in this situation, they do not need to be discussed as the spouse is not a covered public servant under the ethics or lobbying laws, and neither law directly extends the general gift ban to spouses. However, the gift ban does apply to *indirect* as well as direct gifts. Thus, the Organization and the covered public servant must be mindful of any gifts given to the public servant's spouse that a reasonable person would attribute to the covered public servant.

²⁴ At the time this opinion was initially issued, the reporting threshold for 138A-32(e)(10) independent relationship exceptions was from the first penny (\$.01) for lobbyists. However, HB 1111 also amended 120C-402(b)(4) to increase the reporting threshold for these reportable expenditures to gifts with a value of more than ten dollars (\$10.00). *See* section 41.(b) of HB 1111, retroactively effective January 1, 2007. Depending upon the value of the ride in this situation, this may impact the requester's reporting obligation. If the value of the ride was \$10 dollars or less, it would *not* have to be reported.

That is not the case here. Reimbursement of the spouse's travel expenses and meals involved here cannot reasonably be construed to benefit the public servant. The greater risk in that regard would likely be tangible items of significant monetary value or gifts that would benefit the public servant, either solely or along with his or her spouse.

The much more difficult question has to do with whether this "gift" to the covered person's spouse needs to be reported. No it does not. Independent gifts such as these that are not for the purpose of lobbying, including "goodwill lobbying," do *not* need to be reported to the Secretary of State's office pursuant to the Lobbying Law.

As stated, the Organization is a lobbyist principal and therefore subject to all applicable provisions of the Lobbying Law, including the obligation to report all "reportable expenditures made for the purpose of lobbying." N.C.G.S. §120C-400 and Article 4 as a whole. A "reportable expenditure" includes,

Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars (\$10.00) per designated individual per single calendar day.

N.C.G.S. §120C-100(a)(12). Note that the definition of reportable expenditure encompasses much more than just "gifts" and does *not* say that these things have to be "for the purpose of lobbying." More significantly for present purposes, it also includes any of these "things of value" that are given, directly or indirectly, to the designated individual "or that individual's immediate family member." So under normal circumstances, reportable expenditures include gifts to immediate family members.

Section 120C-403 sets out the reporting requirements for lobbyist principals, and includes,

- (1) All reportable expenditures made for the purpose of lobbying [and]

* * * * *

- (5) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9) and all gifts given under G.S. 138A-32(e)(10) with a value of more than two hundred dollars (\$200.00).

N.C.G.S. §120C-403(b)(1) & (5).²⁵ Thus, lobbyist principals must report the vast array of "reportable expenditures" listed in §120C-100(a)(12) *if* they are "made for the purpose of lobbying," and comprehensive reporting in this situation makes perfect sense – virtually anything given for the purpose of lobbying should be reported. On the other hand, only one part of the spectrum of reportable expenditures must be reported under subsection -403(b)(5): *gifts* given under the 138A-32(e) exceptions.

"Gifts given under" the 138A-32(e) exceptions are, by definition, gifts given *to* certain delineated people (public servants, legislators, and legislative employees) *by* certain delineated people (lobbyists, lobbyist principals, or "interested persons"²⁶). Thus, the gifts provisions of 138A-32(c), (d), & (e) do not apply to the

²⁵ This is almost identical to the reporting obligations of lobbyists as set forth in N.C.G.S. §120C-402, with the exception of the \$200 reporting threshold for §138A-32(e)(10) gifts given by lobbyist principals.

²⁶ Section 138A-32(d) prohibits public servants from accepting gifts from persons whom the public servant knows or has reason to know (1) are doing or seeking to do business with the public servant's employing entity; (2) are engaged in activities that are regulated or controlled by the public servant's employing entity; or (3) have financial interests that may be substantially and materially affected by performance of the public

giving of gifts to spouses or other family members, unless an indirect gift to the designated individual is implicated. *See* discussion above.

In this case, any gifts to the non-covered spouse are in his/her own right, and he/she is not a covered person under the Ethics Law. As stated above, reimbursement of the travel expenses and meals involved here cannot reasonably be construed to benefit the covered public servant. Nor would a reasonable person conclude that the gift was for the purpose of lobbying. Consequently, the Organization does *not* need to report these items to the Secretary of State's office pursuant to N.C.G.S. §120C-403.²⁷

In conclusion, the Organization may provide, and the non-covered spouse may accept, travel and meals in conjunction with the speaking engagement, and the Organization does not have to report the value of these gifts to the Secretary of State's office.

AO-L-07-0008

Lobbyists Contributing to a Political Action Committee ("PAC").

G.S. 120C-302

May 25, 2007

A member of a Political Action Committee ("PAC") asked whether lobbyists could continue to make contributions to the PAC in light of the new State Government Ethics Act (Chapter 138A) and the Lobbying Law (Chapter 120C). The Lobbying Law controls the present question.

The PAC was formed by individuals with a particular interest in certain public policy issues in North Carolina. Those same individuals contribute to the PAC from time to time. The PAC intends to make financial contributions to candidates for elected office from time to time and to other entities who may lawfully accept contributions from a State PAC. The decisions as to when and to whom such contributions may be made will not be directed or controlled by any individual. Instead, all of those who have contributed to the PAC will be entitled and encouraged to participate in such decisions, and such contributions will be made based on the will of these contributors. Other than making contributions to candidates or their committees, the PAC is not and shall not be directly affiliated with any candidate, nor shall it be controlled by or directed by any candidate. Further, the PAC specifically is not and will not be directed or controlled by any lobbyists except to the extent that such lobbyists may be entitled as contributors to have their preferences considered like any other contributor to the PAC.

Pursuant to N.C.G.S. § 120C-302(a) of the new Lobbying Law, no lobbyist may make a contribution as defined in N.C.G.S. § 163-278.6 to a candidate who is a legislator or a member of the Council of State or to that candidate's campaign committee as defined under N.C.G.S. § 163-278.38Z. The definition of legislator and Council of State member under Chapter 120C also includes individuals who have filed a notice of candidacy or a petition requesting to be a candidate for such office with the Board of Elections or has been certified as a nominee of a political party for a vacancy, or otherwise qualified as a candidate in a manner

servant's official duties. Commission staff calls these people "interested persons," but that is not a statutory term.

²⁷ It should be noted that this is a very fact-specific determination. It involves a non-covered person receiving gifts that are not for the purpose of lobbying (including "goodwill lobbying") and which cannot be deemed an indirect gift to the covered-person spouse.

authorized by law. N.C.G.S. § 120C-104. Contribution is broadly defined under N.C.G.S. § 163-278.6 to include, among other things, any conveyance, deposit, distribution, transfer of funds, payment, gift, pledge or subscription of money, or anything of value whatsoever. Under N.C.G.S. § 120C-302(a), a candidate's campaign committee means any political committee or political action committee organized by, or under the direction or control of, the candidate.

There is no prohibition on lobbyists giving contributions to political committees or political action committees that are not organized by or under the direction or control of the candidate as long as the lobbyist does not specifically earmark his or her contribution to the independent political committee or political action committee to go to a North Carolina General Assembly legislative candidate or Council of State candidate.

Under the facts presented, registered lobbyists would be allowed to make contributions to the PAC and such contributions would not violate the Ethics Act.

The Board of Elections should also be contacted regarding whether such contributions are allowed under the Board of Elections statutes, policies, and procedures.

AO-L-07-0009

City's Reception for Local Legislative Delegation – Gifts & Exceptions; "Public Event" Exception; Local Government Officials Performing Official Duties Exempt from Lobbying Law.

G.S. 138A-32; 138A-32(e)(1); 138A-3(29)

June 7, 2007

A city attorney requested an advisory opinion on several questions, including whether a city in North Carolina ("City") could host and pay for a reception for the City's legislative delegation and whether certain City officials, including the Mayor, City Manager, and City Attorney, were exempt from the new Lobbying Law, Chapter 120C of the North Carolina General Statutes ("N.C.G.S."), when acting solely in connection with their official duties.

The City, a municipal corporation, through its elected Mayor, appointed City Manager, and appointed City Attorney, wants to host and pay for a reception for the City's municipal legislative delegation. There are no outside sponsors funding this event. It is anticipated that as to covered persons under the State Government Ethics Act (Chapter 138A) and the Lobbying Law (Chapter 120C), only legislators would be invited. Beverages and light food would be provided for immediate consumption. Participation of the Mayor, City Manager, and City Attorney would be solely in connection with their public duties, and each is a duly elected or appointed official. The City has not hired an outside lobbyist, does not have an internal lobbyist on staff, and is not a registered lobbyist principal under the Lobbying Law.

Based upon these facts, the City may host its legislative reception, and its duly elected or appointed officials and employees (including the Mayor, City Manager, and City Attorney) are exempt from the requirements of the Lobbying Law, except for certain limited reporting requirements set out in Article 8 of Chapter 120C.²⁸

²⁸ If a designated individual (e.g., a legislator) accepts a reportable expenditure made for the purpose of lobbying, with a total value of over two hundred dollars per calendar quarter, from a "person" exempted or not otherwise covered by Chapter 120C, the "person" making the reportable expenditure must report it to the

Legislative Reception

Unless a specific exception applies, lobbyists, lobbyist principals, and liaison personnel cannot give gifts to legislators, and legislators cannot accept them. N.C.G.S. §120C-303 & §138A-32.²⁹ The City is neither a lobbyist nor a lobbyist principal, and there are no lobbyist/lobbyist principal sponsors of this event. Likewise, local units of government are exempt from the liaison personnel requirement of Article 5 of the Lobbying Law. N.C.G.S. 120C-500(a). Therefore, the gifts restrictions of § 120C-303 & § 138A-32 do not apply in this situation, and the City may give, and legislators may accept, food and drinks at the planned legislative reception.

As a result of the foregoing, the City does not need to rely upon the food and beverages for immediate consumption at a “public event” exception of N.C.G.S. § 138A-32(e)(1) and § 138A-3(29). If so, the exception would apply to an organized gathering to which a municipal legislative delegation is invited provided the other requirements of § 138A-3(29)a.2 are met, one of which is that at least 10 individuals associated with the “person” (here, the City) actually attend the event. Another possible § 138A-3(29)a.2 exception is if the entire municipal legislative delegation is invited and “the person is a governmental body and the gathering is subject to the open meetings law.” N.C.G.S. § 138A-3(29)a.2.III. Again, the City does not need to rely upon these exceptions for the reasons discussed above.

Local Government Officials Performing Official Duties

In addition, the Mayor, City Manager, and City Attorney’s participation would solely be in connection with their public duties, and each is a duly elected or appointed official. These municipal officials fall under the general exemption of N.C.G.S. § 120C-700(3).

Except as otherwise provided in Article 8 of the Lobbying Law (miscellaneous reporting provisions for persons exempt or not otherwise covered by the Law), the provisions of Chapter 120C shall not be construed to apply to,

A duly elected or appointed official or employee of ... a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties....

N.C.G.S. §120C-700(3).

The first question then is whether the City’s Mayor, Manager, and Attorney are “duly elected or appointed officials or employees.” The Mayor is obviously duly elected and covered by this provision. The City Manager and City Attorney are duly appointed by the city council. *See, e.g.*, N.C.G.S. §160A-147 (appointment of city manager); §160A-173 (appointment of city attorney); *see also* §153A-114 (appointment of county attorneys). Both city and county managers and attorneys are “officials” for purposes of this provision of the Ethics Act. *See, e.g.*, §128-1.2. This would include both “in-house” attorneys (those hired

Secretary of State’s office. *See* N.C.G.S. §120C-800(a). Other requirements apply for out-of-state reportable expenditures.

²⁹ Again, *only legislators* will be invited to the reception -- no “public servants” as defined in the Ethics Act. *See* N.C.G.S. §138A-3(30). [Note: This opinion was issued prior to the passage of House Bill 1111 (Session Law 2007-348) which amended the definition of “person” to expressly exclude political subdivisions of the State, among others. HB 1111, section 23, amending 138-3(27).

by the City as employees) and any outside counsel hired as an independent contractor, as long as all other requirements of this provision are met (see below).³⁰

The second requirement is that these officials and employees must be appearing “*solely* in connection with matters pertaining to the office and public duties” (emphasis added). Thus, if local government officials or employees engage in independent lobbying activities not associated with or connected to their public office and duties, they may fall within the coverage of the Lobbying Law and be required to register, report, and fulfill all other necessary requirements of Chapter 120C.

Thus, the § 120C-700(3) exemption applies to the City Mayor, City Manager, and City Attorney, as well as any other similarly-situated elected or appointed local government officials. As a general matter, local elected and appointed officials and employees are exempted from most provisions of the Lobbying Law as long as they are performing their official duties, and subject to the possible reporting requirements mentioned above.

AO-L-07-0010

Lobbyists’ and Lobbyist Principals’ Sponsorship of Events Held In Conjunction With Legislative Conferences; “Public Event” Gift Ban Exception.

G. S. 138A-32(e)(1); 138A-3(29)

November 28, 2007

A lobbyist for a lobbyist principal requested an opinion regarding one or more lobbyist principals and/or lobbyists sponsoring events at which food and beverages would be provided to legislators and legislative employees. Usually these events occur in conjunction with legislative conferences that the legislators are attending, but they are not actually part of the formal agendas of these conferences.

In the past, the requester lobbyist principal has handled all of the arrangements for these events. In particular, it has made the reservations and paid for the meals and beverages and then sought reimbursement or contributions from other entities, many of which are lobbyist principals, which wish to participate in the funding of these events. The initial request asked about application of the new Lobbying Law (Chapter 120C) to three separate events being held in conjunction with three separate legislative conferences.

More specifically, the requester lobbyist principal and at least 20 other sponsors planned to host each of the specific events. There would be more than 20 individuals associated with the group of sponsoring lobbyist principals and lobbyists in attendance at each separate event. All members of the North Carolina General Assembly and at least 10 legislative employees were being invited to each of these events. The requester lobbyist principal and the other hosting sponsors planned to only give food and beverages for immediate consumption to all of the legislators and legislative employees who attended the events.

The new Lobbying Law applies to lobbyists, lobbyist principals, and legislative liaison personnel and generally prohibits them from giving “gifts,” directly or indirectly, to designated individuals (legislators, legislative employees, and public servants), unless an exception applies. The new State Government Ethics

³⁰ While not at issue in this opinion, this same analysis would likely apply to the other types of local government employees and officials listed in §128-1.2: acting city and county managers, interim city and county managers, finance officers, clerks, and deputy clerks. This is not an exclusive list.

Act prohibits the same designated individuals from knowingly accepting a “gift,” directly or indirectly, from a lobbyist, lobbyist principal, or legislative liaison personnel, unless an exception applies. N.C.G.S. § 138A-32(c). Both laws use the same gift ban exceptions, which are listed in N.C.G.S. § 138A-32(e).

Because the requester here and many of the other sponsors of these events are lobbyists or lobbyist principals, for these companies and individuals to be able to participate in the funding of the events in question, including providing free meals and beverages to legislators and legislative employees, a gift ban exception under N.C.G.S. § 138A-32(e) must be met.

Based on the facts presented here, there is an applicable gift ban exception that would allow the requesting lobbyist principal and the other lobbyist/lobbyist principal sponsors to give food and beverages to the legislators and legislative employees at these specific events. N.C.G.S. § 138A-32(e)(1) allows lobbyists and lobbyist principals to give food and beverages for immediate consumption at a “public event.” Public event is defined in N.C.G.S. § 138A-3(29). Prior to the passage of House Bill 1111 (Session Law 2007-348) on August 9, 2007, the definition of “public event” had two separate subsections, one for legislators and legislative employees, and another for public servants. If both legislators and public servants were invited to a prospective public event, all requirements of *both* subsections had to be met in order satisfy this exception, including who must be invited to the organized gathering.³¹ N.C.G.S. § 138A-3(29)a.1 applied to events which were open to the general public. The events in question here are not open to the general public; therefore, N.C.G.S. § 138A-3(29)a.1 was not applicable.

However, these three specific events met the definition of “public event” for legislators under N.C.G.S. § 138A-3(29)a.2. N.C.G.S. § 138A-3(29)a.2 had a two-pronged test.³² The first prong is that the “person” sponsoring the event must invite either the entire membership of the House of Representatives or of the Senate, or the entire membership of one of the statutorily-listed legislative subgroups. Since the entire General Assembly was invited, the first prong of N.C.G.S. § 138A-3(29)a.2 was met.

Commission staff has determined that invitations under the Ethics Act and the Lobbying Law must be in writing (e-mails are included as a written invitation), be sent out at least ten (10) days in advance of the event, state the date, time and location of the event, identify the event, and list the names of the sponsors of the event. Thus, the sponsoring lobbyist principals and lobbyists must be identified and known prior to the event occurring.

³¹ Section 24 of House Bill 1111 (Session Law 2007-348) amended the definition of “public event” under N.C.G.S. § 138A-3(29) and eliminated the two separate subsections (one for legislators/legislative employees and one for public servants). Pursuant to the new legislative changes, there are now five definitions of “public event” under N.C.G.S. § 138A-3(29), and if the sponsoring person and their/its event meet all of the requirements of any one of these five definitions, the event is a public event for all covered attendees (legislators, legislative employees, and public servants). Thus it is no longer necessary to meet both sets of requirements.

³² The amended definition of “public event” (section 24 of HB 1111) renumbered § 138A-3(29)a.2 as § 138A-3(29)b. The two-pronged test contained in § 138A-3(29)a.2 remains under new § 138A-3(29)b.

After meeting this first invitation prong, a second prong must also be met. This second prong of N.C.G.S. § 138A-3(29)a.2³³ can be met in three ways, depending upon who/what is determined to be the “person” holding the organized gathering. The three ways are as follows:

- (I) at least 10 individuals associated with the person actually attend, other than the legislator or their immediate family; or
- (II) all shareholders, employees, board members, officers, members, or subscribers of the person located in North Carolina are notified and invited to attend; or
- (III) the person is a governmental body and the gathering is subject to the open meetings law.

Under Chapter 138A, “person” is broadly defined to include an individual, any business entity, committee, association, or any “group of persons acting together.” N.C.G.S. § 138A-3(27). The requesting lobbyist principal here and the other hosting lobbyists and lobbyist principals were acting as a group when sponsoring each of these events.

As stated above, one of the ways to meet the second prong of § 138A-3(29)a.2 is for at least 10 individuals associated with the “person” (here the lobbyists and lobbyist principals sponsoring the particular event) to actually attend that event. The initial request stated that more than 20 individuals associated with the group of lobbyists and lobbyist principals (the “person”) sponsoring each particular event would actually attend each event.

The determination of who/what is the “person” holding the organized gathering becomes more complicated when the event is being sponsored/funded by a number of lobbyist principals and lobbyists, rather than just one. The Commission has decided that for the purposes of meeting subsection I of § 138A-3(29)a.2,³⁴ the “person” referenced in subsection I is the “group” of lobbyists and lobbyist principals sponsoring the event (“group of persons acting together”).

Therefore, for the events in question here, each sponsoring lobbyist and lobbyist principal did not have to have 10 individuals associated with them individually actually attend the event to meet subsection I. Rather, the group of lobbyists and lobbyist principals sponsoring each event was the “person” and, therefore, the group only had to have a total of 10 individuals associated with the group of sponsoring lobbyists and lobbyist principals actually attend the event in question.³⁵

³³ N.C.G.S. § 138A-3(29)a.2 is now § 138A-3(29)b.

³⁴ Subsection I of N.C.G.S. § 138A-3(29)a.2 is now renumbered as subsection 1 of § 138A-3(29)b.

³⁵ For example, if five lobbyist principals co-sponsor an event, each sponsoring lobbyist or lobbyist principal can have two people actually attend the event for a total of 10 attendees. Alternatively, all 10 actual attendees could be associated with just one of the sponsoring lobbyists or lobbyist principals. Any other combination of numbers from the group of sponsoring lobbyists and lobbyist principals (the “person”) would also suffice as long as at least 10 individuals associated with the group of sponsoring lobbyists and lobbyist principals actually attend the particular event.

Based upon the particular facts presented here, the second prong of § 138A-3(29)a.2 was met, as long as the sponsoring lobbyists and lobbyist principals were identified prior to the particular event being held.³⁶ This is necessary to establish that at least 10 individuals associated with the “person” (the group of sponsoring lobbyists and lobbyist principals) hosting a particular event actually attend that event. Therefore, the requesting lobbyist principal here and the other lobbyists and lobbyist principals co-sponsoring each of the events in question could give legislators and legislative employees food and beverages for immediate consumption at these events under the “public event” gift ban exception of § 138A-32(e)(1).³⁷

All of the events in question were for the purpose of lobbying.³⁸ This made the entire cost of each event a reportable expenditure for the purpose of lobbying. Therefore, the entire cost of each event needed to be reported to the Secretary of State’s Office. Each sponsoring lobbyist and lobbyist principal was required to report the total amount that they gave to sponsor each event and also determine the fair market value of the food and beverages gift given to the legislators and their immediate family member(s). The food and beverages provided to each legislator and their immediate family members were § 138A-32(e)(1) gifts that needed to be reported if the fair market value exceeded \$10.00 per calendar day per legislator or immediate family member. N.C.G.S. §120C-402(b)(4) and § 403(b)(5). The food and beverage component needed to be reported on a per-legislator basis with the receiving family member(s) listed separately. N.C.G.S. § 120C-401(b). The remaining amount of a sponsor’s sponsorship money needed to be reported under the proper category of reportable expenditures per N.C.G.S. § 120C-401(c).

³⁶ Note that if the sponsoring lobbyist principals cannot meet subsection I, then they must meet subsection II of N.C.G.S. § 138A-3(29)a.2. The “group” analysis used above for subsection I cannot be used by the sponsoring lobbyist principals here to meet subsection II of § 138A-3(29)a.2, based upon the language of subsection II and the fact that this group of sponsoring lobbyist principals consists of separate entities with separate shareholders, employees, officers, etc. Accordingly, to meet the second prong of § 138A-3(29)a.2 through subsection II, *each* sponsoring lobbyist principal would need to notify and invite all of their shareholders, employees, board members, officers, members or subscribers located in North Carolina. Pursuant to section 24 of HB 1111, subsection II of § 138a-3(29)a.2 has been renumbered as subsection 2 of § 138A-3(29)b.

³⁷ Note that section 38 of HB 1111 amended G.S. 138A-32(e)(3) so that as of October 1, 2007, the 138A-32(e)(3)(iii) gift ban exception applies to reasonable and actual expenditures for food, beverages, transportation, and incidental entertainment provided to a legislator or legislative employee *either* as part of the meeting of a non-partisan state, regional, national or international legislative organization of which the General Assembly, the legislator, or the legislative employee is a member *or* at an event held *in conjunction with* a meeting of such a non-partisan state, regional, national or international legislative organization if all of the other requirements and conditions contained in 138A-32(e)(3) are met.

³⁸ Under N.C.G.S. § 120C, the definition of “lobbying” includes both “direct” lobbying and “goodwill” lobbying. Direct lobbying is influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person’s immediate family. N.C.G.S. § 120C-100(a)(9)a. Goodwill lobbying is the developing of goodwill through communications or activities, including the building of relationships, with a designated individual or that person’s immediate family with the intention of influencing current or future legislative or executive action, or both. N.C.G.S. § 120C-100(a)(9)b.

AO-L-07-0011

Members of State Board Lobbying Members of Congress; “Liaison Personnel.”
G.S. 120C-500(a), (b), and (c)
October 3, 2007

A Licensing Board (“the Board”) asked whether, pursuant to the new Lobbying Law (Chapter 120C) and the new State Government Ethics Act (Chapter 138A), its members could lobby North Carolina members of the United States Congress and members of the North Carolina General Assembly. Specifically, Board members inquired whether they could lobby North Carolina members of the United States Congress with regard to issues related to their Board and its professional organization.

Both the Ethics Act and the Lobbying Law apply to North Carolina legislators who are members of, or candidates for, the North Carolina General Assembly. N.C.G.S. §§ 138A-3(22) and 120C-104. The Ethics Act and the Lobbying Law do not apply to North Carolina members of the United States Congress. Accordingly, any requirements or prohibitions under these state laws do not pertain to lobbying members of the United States Congress. Therefore, unless prohibited by federal or other law, the Board’s members may lobby North Carolina members of the United States Congress.

Since the Board is a state board with non-advisory authority, it and all of its voting members (including ex-officio members) are covered under the Ethics Act and the Lobby Law. Accordingly, the requirements and prohibitions of these laws do apply when the Board wants to lobby members of the North Carolina General Assembly. Prior to August 9, 2007, the Lobbying Law required all covered state boards to designate at least one, but not more than two, liaison personnel to conduct the board’s lobbying of members of the North Carolina General Assembly for legislative action. N.C.G.S. § 120C-500(a) and (c). As of August 9, 2007, if a state board does not have staff, it does not have to designate liaison personnel to lobby for legislative action.³⁹ However, if the board designates liaison personnel, the designated liaison personnel must register and report with the Secretary of State’s Office pursuant to N.C.G.S. § 120C-402 and comply with the sections of the Ethics Act and Lobby Law that are applicable to liaison personnel. *See* N.C.G.S. § 120C-501(b), -(c), -(d), and -(e).

In addition, prior to the signing of House Bill 1110 on August 9, 2007, no state funds could be used by covered state boards, to contract with persons who were not State employees to lobby legislators or legislative employees. N.C.G.S. § 120C-500(b).⁴⁰ Section 6.(a) of HB 1110 amended § 120C-500(b) to allow state funds to be used to pay counsel employed under N.C.G.S. § 147-17 to lobby legislators and legislative employees for legislative action.

³⁹ *See* Section 6.(a) of House Bill 1110 (Session Law 2007-347).

⁴⁰ *See* Section 6.(a) of House Bill 1110 and N.C.G.S. § 147-17. Section 147-17 provides for the employment of legal counsel by State departments, agencies, etc., under certain circumstances.

AO-L-07-0012

International Study Trip & the “Educational Meeting” Gift Ban Exception.

G.S. 120C-303(a) and (b), and 138A-32(e)(3)

October 29, 2007

A lobbyist principal organization and a non-lobbyist principal organization inquired whether they could pay various travel and related expenses for certain legislators and public servants, considered to be “policymakers” in areas related to the trip, to participate in an international study. Specific questions included (1) whether the organizations’ international study trip qualified as an “educational meeting” under the State Government Ethics Act (Chapter 138A) and the Lobbying Law (Chapter 120C) and (2) whether the organizations are allowed to pay the travel-related expenses of this international study trip, which includes travel, lodging, and food expenses, and other incidental expenses of nominal value connected to this trip, for these legislators and public servants.

I. Overview of the Facts

One sponsoring organization is a lobbyist principal. The other is not. All of the money for this international study trip, including the money for the travel-related costs of the invited legislators and public servants determined to be “policymakers,” is given to the lobbyist principal organization in the form of grants from two different private philanthropic foundations, neither of which is a lobbyist principal. The money is given by these two private foundations to be used for this international study trip with no conditions or requirements attached. The two foundations have no involvement in the planning, administration, or coordination of the trip. The two foundations make no decisions regarding the trip and have no input as to the selection of the participants.

The two sponsoring organizations plan, administer and coordinate the entire trip. They determine and select the individuals who will be invited to participate in this trip and only pay for the travel-related costs of the participants who have been determined to be “policymakers.” The other invited participants must pay for their own travel-related costs of this trip. The only invited participants who have been determined to be “policymakers” are North Carolina legislators and public servants as defined under N.C.G.S. § 138A-3(30). Legislators and these public servants are “designated individuals” under the Lobbying Law. N.C.G.S. § 120C-100(a).

The two sponsoring organizations have sponsored previous international study trips, and the participants for all of these previous trips have been invited based on their positions, both public and private. The participants for the current trip are also being invited based on their positions. Accordingly, many of the participants being invited on this trip have been on previous international trips sponsored by these organizations. The “policymakers” identified and invited on this trip consist of both legislators and public servants.

The purposes of this international trip are to study another country’s governmental institutions and systems, with an emphasis on examining particular areas, including math and science, and to examine how the country has merged its governmental institutions and systems with the economic development of the country, and the benefits of such merger. This study and examination will be conducted and accomplished by visiting governmental institutions and systems, and private businesses and companies; and meeting and discussing with leaders and employees of governmental institutions and systems, business and company representatives, and members of the general public who use these governmental institutions and systems and/or who may be affected by these governmental institutions and systems merging and integrating with the

economic development of the country. This study process will also include examining the country's approach to identifying leaders in particular areas of its governmental institutions and systems, and the methods it uses to teach and train these identified leaders. The destination was chosen as the subject of this trip for five major reasons:

- (1) its educated population are top performers in math and science;
- (2) it is a world leader in using technology as an educational and economic tool;
- (3) its governmental institutions and entities succeed with very diverse populations;
- (4) it has a "grow your own leadership" approach; and
- (5) it considers education a foundation block in building stronger governmental institutions, entities, and businesses, and has an integrated approach to planning for education and economic development.

The itinerary for this international study trip, excluding travel time to and from the ultimate destination, spans six days. These six days consist of 73.5 hours of non-sleeping time. Of these 73.5 hours, 40.5 hours are scheduled for educational time, 6.5 hours of travel time from one educational event to another and back to the hotel, and 26.5 hours for non-educational time, such as free time, cultural site visits, museum visits and tours. All of the participants, including the approximately 20 paying participants, may elect to stay the final weekend of the trip. However, if any of the legislators, public servants, or any other participant who may be covered under the Lobbying Law elects to remain in the destination city after the international study trip has formally concluded, they will be responsible for all of their own expenses, including hotel, food, transportation, entertainment and any other expenses they may incur prior to returning to North Carolina.

II. Applicable Law

The Lobbying Law applies to lobbyists, lobbyist principals, and legislative liaison personnel, as these terms are defined in Chapter 120C. The Lobbying Law prohibits, among other things, a lobbyist, lobbyist principal, or legislative liaison personnel from giving gifts (including anything of monetary value), directly or indirectly, to a designated individual (legislators, legislative employees, and public servants) unless an exception to the general gift ban applies. *See* N.C.G.S. § 138A-32(e) for a list of the exceptions. Because one of the sponsoring organizations is a lobbyist principal, for it to be able to pay for the travel-related expenses of this international study trip for legislators or public servants, a gift ban exception under N.C.G.S. § 138A-32(e) must be met. The other sponsoring organization is *not* a lobbyist principal; therefore, the gift ban contained in N.C.G.S. § 120C-303 is not applicable and the non-lobbyist principal sponsoring organization *may* give gifts to designated individuals, including legislators and public servants.

N.C.G.S. § 138A-32(e)(3)(i) permits a lobbyist principal to pay for the "reasonable actual expenditures" of a public servant, legislator, or legislative employee incurred in connection with the individual's attendance at an educational meeting "for purposes primarily related to the public duties and responsibilities of the covered person" Any food, beverages, transportation, or entertainment must be provided to all attendees or defined groups of 10 or more attendees, and the meeting must (a) be attended by at least 10 or more participants; (b) have a formal agenda; and (c) be noticed at least 10 days in advance. Any entertainment provided at the meeting "must be incidental to the principal agenda of the meeting." The educational meeting exception allows a public servant, legislator, or legislative employee to accept "reasonable actual expenditures" for food, beverages, registration, travel, lodging, other incidental items of nominal value, and incidental entertainment in connection with their attendance at the educational meeting.

N.C.G.S. § 120C-403(b)(5) requires each lobbyist principal to report, among other things, all reportable expenditures made for the purpose of lobbying, all reportable expenditures for gifts given under any of the

gift ban exceptions of N.C.G.S. § 138A-32(e) (1) – (9), -(e)(11), -(e)(12),⁴¹ and all gifts given under the gift ban exception of N.C.G.S. § 138A-32(e)(10) with a value of more than \$200. The lobbyist principal reports are to be filed with the Secretary of State’s Office quarterly when the General Assembly (“GA”) is not in session and monthly when the GA is in session. N.C.G.S. § 120C-403(a) and (c).

Accordingly, a sponsor that *is* a lobbyist principal and that is providing a gift allowed under the gift ban exception of N.C.G.S. § 138A-32(e)(3) is required to report on its lobbyist principal report “reasonable actual expenditures” for food, beverages, registration, travel, lodging, other incidental items of nominal value, and incidental entertainment in connection with the designated individuals’ attendance at the educational meeting if the value of the expenditures is greater than \$10 per day per individual legislator, individual public servant, or that individual’s immediate family. N.C.G.S. § 120C-403(b)(5) and § 120C-100(a)(12)a.

A sponsor that is *not* a lobbyist principal and that is providing a gift allowed under the gift ban exception of N.C.G.S. § 138A-32(e)(3) is required to report reportable expenditures made for the purpose of lobbying, including gifts, if (1) the reportable expenditures given per individual legislator, individual public servant or that person’s immediate family equal a total cumulative value of over \$200 in a calendar quarter; (2) the sponsor is located in North Carolina or the designated individual is in North Carolina when he/she receives the reportable expenditures; and (3) the reportable expenditures are not excluded from Article 8 of Chapter 120C by subsection (e) of N.C.G.S. §120C-800. *See* N.C.G.S. §120C-800.

III. Application of the Commission’s Educational Meeting Criteria

The Ethics Commission has adopted seven non-exclusive criteria to be applied when determining what constitutes an “educational meeting” under N.C.G.S. § 138A-32(e)(3)(i) (“Educational Meeting Criteria” or “Criteria”).⁴² These Criteria are for guidance purposes only, and no one factor is controlling. The determination as to whether a particular meeting, conference, or event is an “educational meeting” under N.C.G.S. § 138A-32(e)(3)(i) is for the Commission to determine based upon the specific facts presented regarding the event. The Commission’s application of these Criteria to the international study trip presently under consideration follows.⁴³

A. What is the meeting’s *primary* purpose? Is the primary purpose to influence or curry favor with a public servant, legislator, or legislative employee with respect to executive or legislative action? Or, is the meeting primarily intended to present information to enhance a person’s understanding of a subject matter or for the purpose of self-improvement?

⁴¹ House Bill 1111 (Session Law 2007-348) added two new gift ban exceptions: 138A-32(e)(11) and -(12). *See* Section 41 of HB 1111. These new gift ban exceptions are retroactive to January 1, 2007. *See* Section 44 of HB 1111.

⁴² [Note: *See* AO-L-07-0001 and AO-L-07-0003 and Attachment A thereto.]

⁴³ Because the participating legislators and public servants were only invited because they were “policymakers” in the relevant areas, the educational content of the meeting related to their specific duties and responsibilities and satisfied the first educational meeting test: Is the educational content of the meeting related to a specific public duty or responsibility of the public servant, legislator, or legislative employee? *See* “Criteria for Determining an ‘Educational Meeting’ Under §138A(e)(3)(i).” Consequently, this opinion begins with the “primary purpose” analysis.

Meetings intended to influence rather than educate may include meetings that are directly related to an upcoming official vote, recommendation, or other legislative or executive action. In determining the purpose of the meeting, the Commission will consider whether the entity holding the meeting

- has legislation pending before the General Assembly or intends to request legislative action;
- is seeking to introduce legislation or impact executive action at the time of the meeting;
- will be impacted by upcoming actions or decisions of the public servant, legislator, or legislative employee; or
- is holding the meeting for the purpose of advocating on behalf of legislative or executive action.

The lobbyist principal sponsoring organization here proposed several legislative initiatives during the 2007 General Assembly session. One included an education-related pilot project that the organization had drafted and resulted in both funding and operating responsibility for the organization. Another sought funding for a program the organization administers. Thus, although the international study trip's primary purpose is not to influence legislative or executive action, or to advocate on behalf of legislative or executive action, the organization's position and priorities on both legislative and executive issues and actions are likely to be discussed during the international study trip. So the trip appears to have a dual purpose: both to educate and influence those participants whom the sponsoring organization considers key "policymakers."

B. What is the nature of the entity holding the meeting?

- Is the entity a State agency or governmental entity?
- Is the entity an educational institution?
- Is the entity an organization that routinely sponsors meetings with educational content?
- Is the entity holding the meeting a lobbyist principal?

The lobbyist principal is a North Carolina corporation with its membership consisting of elected officials, both in the legislative and executive branches of North Carolina government, and others who also have the power to affect and make public policy regarding particular issues and areas. The non-lobbyist principal is an entity of the state with 501(c)(3) status when applying for grants. The non-lobbyist principal does not have a lobbyist and is not a lobbyist principal. Accordingly, the gift ban does not apply to the non-lobbyist principal.

C. Is the lobbyist principal which is paying for the person's attendance at the meeting also sponsoring the meeting?

The lobbyist principal, along with the non-lobbyist principal, is sponsoring the international study trip, but only the lobbyist principal is paying for the travel-related costs, including airfare and other necessary transportation, lodging, meals, and other incidental items of nominal value connected to the study trip, of the participants that it considers "policymakers," which are legislators and public servants. Note that the lobbyist principal is not paying the travel-related costs of the participants that it does not consider "policymakers." These participants will pay a "registration fee" which will cover their airfare, other transportation, lodging, meals, and other incidental items of nominal value connected to the study trip.

D. What is the agenda for the meeting?

- Other than the speech or roundtable discussion in which the public servant, legislator, or legislative employee is participating, what proportion of the individual events scheduled at the meeting have a speaker, roundtable discussion, or other educational content?
- What proportion of those sessions is held in the absence of a meal or entertainment?
- What proportion of the meeting agenda includes meals or entertainment with formal educational content?
- Does the agenda cover a wide range of topics or have a very limited, industry or client-specific focus?
- Would the meeting take place regardless of whether the invited designated individual(s) attends?
- Who are the speakers?
 - Are they associated with the lobbyist principal or its lobbyist?
 - Are they independent experts in their field?

The “meeting” here is a six-day international study trip consisting of approximately 12- to 13-hour days, including educational time, personal time, lunch, dinner, and travel time. The itinerary includes time spent on the purposes and goals of the study trip, travel to and from the various governmental entities, institutions, and systems, private businesses and companies, and other necessary locations, and personal time for the participants. The educational time includes: presentations on the history and culture of the country they are studying; a political overview of the country; the relationship of the governmental entities, institutions and systems with the country’s economic policies; visits to various governmental entities, institutions, and systems with accompanying presentations, tours, discussions, and observation time; visits to various companies and businesses with accompanying presentations and discussion with management and employees; discussions with business professionals, educators, and members of the general public who use and/or may be affected by these governmental entities, institutions, and systems, and the merger and integration of such with private businesses and companies for the economic development of the country. The personal participant time includes guided tours of the country, optional cultural activities and visits, and overall free time. Breakfast, lunch and dinner are included every day. The speakers are not associated with the lobbyist principal and many may be deemed experts in their fields, whether that is in governmental issues, public policy issues, education, business, economics or the link and interconnection of the country’s governmental public policy issues and the economics of the country. A focus of the lobbyist principal is to have legislators and public servant policymakers participate in this trip, and that is why the lobbyist principal pays for the trip-related costs and expenses of these “policymakers.” The lobbyist principal has acknowledged that this international study trip probably would not take place if these “policymakers” did not attend; however, a number of other individuals are expected to participate with each of them paying for the trip.

E. Is the location of the meeting directly related to the meeting’s educational content?

- Is there a reason for holding the meeting in a location other than where the attendees live or work?
- Is it necessary to the meeting’s educational purpose that an individual travel in connection with the meeting?
- Is the meeting sponsored by a state, national, or international organization for the benefit of its state, national, or international membership?
- Is the location of the meeting otherwise integral to the educational content of the meeting?

- Would an individual be capable of obtaining a comparable degree of educational information through other means that would not require travel?

The lobbyist principal and the non-lobbyist principal's international study trip is being held in another country. This country was selected as the location for this trip for five major reasons, all related to the country's governmental institutions and systems, with an emphasis on examining particular areas, including math and science, and to examine how the country has merged its governmental institutions and systems with the economic development of the country, and the benefits of such merger. Holding the trip in this country is necessary for the lobbyist principal and the non-lobbyist principal to meet the educational goals they have set for this trip. Being in this country is integral to the educational content of the trip. For example, the trip includes: visits and tours of this country's governmental entities, institutions, and systems, and of private businesses and corporations; meetings and discussions with the leaders and employees of various governmental entities, institutions and systems of this country, business representatives, and professionals, experts in various fields, educators, and members of the general public who use and/or may be affected by the interaction and integration of these governmental entities, institutions, and systems, and their public policy issues with private businesses and corporations. An individual would not be capable of obtaining a comparable degree of educational information through other means.

F. Is the length of the educational meeting reasonably necessary to fulfilling the educational purpose of the trip?

The international study trip, including travel time to and from the country, will commence Friday and end a week later on either Saturday or Sunday, depending on what day the participant decides to depart for North Carolina. The formal itinerary for the trip commences on Sunday and ends the following Friday. The majority of all of the days, except the travel days and the day they arrive in the country, is spent on presentations, tours, visits and other activities related to the educational goals and purpose of this trip. The length of the trip is not unreasonable in relationship to the educational goals and purpose of this trip, and the travel time necessary due to the distance between North Carolina and the country.

G. What degree of personal benefit does the individual gain from attendance at the meeting?

- Does the personal benefit outweigh the public benefit gained by the educational value of the meeting?

This "meeting" involves an out-of-the-country trip to a country that many people may wish to visit, but which is not considered a common vacation destination. A majority of every day of this trip is being held in various settings and locations with educational presentations, tours and discussions. It has significant educational value. Therefore, the personal benefit in attending this international study trip would not outweigh the public benefit gained by the educational value.

H. Are there other factors that would support the conclusion that the meeting is educational?

No other factors that would support the conclusion that the meeting is educational were identified.

IV. Conclusion

Based on the facts presented and the forgoing analysis, the Commission determined that the international study trip satisfies the Commission's educational meeting criteria and is an educational meeting pursuant to

N.C.G.S. § 138A-32(e)(i). The facts presented also established that (a) any food, beverages, transportation, or entertainment that is being provided as part of this trip is being provided to all trip participants; (b) the trip has an established formal agenda; and (c) notice of the trip has already been provided to interested individuals, including both the paying participants and the “educational policymaker” participants, thereby meeting the requirement of at least 10 days advance notice. It is also the Commission’s understanding, based on the facts that were provided, that any entertainment provided during this trip will be “incidental to the principal agenda of the meeting.”

Based on all of the foregoing conditions being met, this international study trip will meet the education gift ban exception listed under N.C.G.S. § 138A-32(e)(i) and the lobbyist principal sponsor will be allowed to pay for the “reasonable actual expenditures” of the legislators and public servants for food, beverages, registration, travel, lodging, incidental items of nominal value, and incidental entertainment in connection with their participation in this international study trip.

The lobbyist principal sponsor will need to report all of the “reasonable actual expenditures” it pays in connection with the designated individuals’ participation in this international study trip on its lobbyist principal report that it files with the Secretary of State’s Office. The lobbyist principal sponsor will need to report these expenditures on the principal report that it files with the Secretary of State’s Office for the first quarter of 2008. N.C.G.S. § 120C-403(a) and (c).

It is the Commission’s understanding that the non-lobbyist principal sponsor is *not* paying for any of the expenditures of the designated individuals who are participating in this international study trip. Accordingly, the non-lobbyist principal sponsor is not giving anything of monetary value to the designated individuals and, therefore, it has nothing to report.

“ETHICS” OPINIONS – CHAPTER 138A

The Ethics Commission is the final authority for advisory opinions issued to public servants, lobbyists, and lobbyist principals. For legislators, however, the Commission issues “recommended advisory opinions” pursuant to section 138A-13(b), which the Legislative Ethics Committee then adopts, modifies, or overrules according to section 120-104(b). Once the Legislative Ethics Committee finalizes the legislative opinion and edits it for publication, the Committee submits the final opinion to the Ethics Commission for publication. The Commission may only publish the Committee’s formal advisory opinions.

Because of the recommendation and publication process for legislative opinions, there will be gaps in the numbering system for the Commission’s “ethics” advisory opinions. For example, the first published “ethics” advisory opinion is AO-E-07-0005.

AO-E-07-0005

Statement of Economic Interest Disclosure Requirements

G.S. 138A-22 and 138A-24

March 7, 2007

Legal counsel requested a formal advisory opinion concerning the Statement of Economic Interest (“SEI”) filing requirements. Responses to the specific questions asked, as numbered by the request, follow.

- (1) Since this advisory opinion is being sent in advance of the SEI filing deadline, the question regarding whether the requester will be required to file an SEI in the event a response is not received by the SEI filing deadline is moot.
- (2) G.S. 138A-22(a) requires that “public servants” file Statements of Economic Interest, “except for public servants included under G.S. 138A-3(30)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars (\$60,000). . . .” An individual that falls within one of the referenced categories and whose annual compensation is less than \$60,000, are therefore not subject to the SEI filing requirements of G.S. Chapter 138A.
- (3) G.S. 138A-24(a)(2)f. requires disclosure of “nonpublicly owned companies” in which a public servant, spouse, or members of the public servant’s immediate family have financial interests valued at \$10,000 or more. G.S. 138A-24(a)(2)i. also requires that the individual describe any “material business dealings, contracts, or other involvement” which the nonpublicly owned company, or other companies in which that company owns securities or equity interests over \$10,000, has with the State, or if the company is “regulated by” the State, if known. “Regulatory relationship” is not defined in the Act. If business entities are subject to certain routine filing requirements administered by an agency, that authority, alone, would not constitute a “regulatory relationship” with the State. G.S. 138A-24(a)2.i. requires a description of the referenced relationships with the State “if known.” This would require the exercise of due diligence by reviewing information readily available, not extensive investigation or research.

(4) What follows is requested guidance on the extent to which certain relationships represent “memberships or affiliations” as used in G.S. 138A-24(a)(7).⁴⁴

- A “membership” in an alumni association or other organization that the public servant did not affirmatively join or in which the public servant does not actively participate would probably not qualify as a “membership or affiliation.” However, the specific circumstances of that relationship would have to be provided in order to obtain specific guidance.
- An individual’s current status as a charitable donor may qualify as a “membership or affiliation,” but more specific information must be provided before this question can be answered. However, a charity’s solicitation of donations from an individual would not be considered a “membership or affiliation.”
- An individual’s possession of a Harris Teeter VIC membership need not be disclosed in response to question 14 on the 2007 SEI.
- Generally, an individual’s membership in a trade association with which his or her employing entity “may have jurisdiction” should be disclosed in response to question 14. If there are particular organizations about which individual public servants have questions, they can contact the Ethics Commission with that information.

If individuals have specific questions concerning whether information should be disclosed on an SEI, they should contact the Ethics Commission.

AO-E-07-0013

No “Cooling Off” Period for Legislators Serving as Liaison Personnel
G.S. 120C-100(a)(10), -304, -501(a)
October 2, 2007

Legal counsel requested a formal advisory opinion on the question of whether a State legislator is required to wait six months before serving as a liaison personnel (also called a legislative liaison) under Chapter 120C of the North Carolina General Statutes (“N.C.G.S.”), the Lobbying Law.

The specific question was as follows: under N.C.G.S. § 120C-304, may a former legislator serve as liaison personnel (legislative liaison) for a public entity immediately upon leaving public office? Put differently, does § 120C-304 require a former legislator to wait six (6) months after leaving public office before he or she may be employed as a legislative liaison?

A former legislator may go to work as a legislative liaison without waiting the six (6) months required by N.C.G.S. § 120C-304(a). The six-month “cooling off” period does *not* apply to such liaison personnel.

As a general rule, legislators or former legislators may not register as *lobbyists* under Chapter 120C either (1) while in office or (2) before the later of the close of session as set forth in N.C.G.S. § 120C-

⁴⁴ Section 34 of Session Law 2007-348 (House Bill 1111) amended G.S. 138A-24(a)(7), effective August 9, 2007. As amended, G.S. 138A-24(a)(7) now requires disclosure of such organizations in which a public servant or his or her immediate family is a “director, officer, or governing board member.”

100(a)(4)b.1⁴⁵ or six months after leaving office. N.C.G.S. § 120C-304(a), as amended by section 13.(a) of House Bill 1111 (Session Law 2007-348). This six-month waiting period expressly applies to legislators or former legislators acting as lobbyists and is commonly referred to as a “cooling off” period.

Recently-enacted House Bill 1111 (Session Law 2007-348) amended the definition of “lobbyist,” but did not change the express exclusion from that term for liaison personnel:

The term “lobbyist” shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 or this Chapter.

N.C.G.S. § 120C-100(a)(10), as amended by sections 8.(a) and 8.(b) of House Bill 1111 (Session Law 2007-348). “Liaison personnel” is defined as any State employee, counsel employed under G.S. 147-17,⁴⁶ or officer whose principal duties, in practice or as set forth in that person’s job description, include lobbying designated individuals.⁴⁷ N.C.G.S. § 120C-100(a)(8), as amended by section 6.(b) of House Bill 1110 (Session Law 2007-347).

Liaison personnel are governed by Article 5 of Chapter 120C. Section 120C-501(a) provides that, “Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.” Liaison personnel must register as such with the Secretary of State’s office, file reports with the same, and comply with the general gift ban with respect to legislators and legislative employees. *See* N.C.G.S. § 120C-501(b), -(c), and -(d). Nor may the University’s liaison personnel give athletic tickets to designated individuals for the purpose of lobbying. N.C.G.S. § 120C-501(e). But other than those specific requirements and prohibitions, Chapter 120C does not apply to liaison personnel. N.C.G.S. § 120C-501(a). This would include the six-month “cooling off” period of § 120C-304(a).

Therefore, for the reasons set forth above, including the express exclusion of liaison personnel from the definition of lobbyist, and the fact that the “cooling off” period only applies to legislators or former legislators acting as lobbyists, a former legislator may immediately go to work as a liaison personnel without waiting six months.

End 2007 Formal Opinions

⁴⁵ N.C.G.S. § 120C-100(a)(4)b.1 defines “regular session” as the time the General Assembly convenes beginning from the date set by law or resolution until it adjourns sine die. This sub-section was amended by section 13.(a) of House Bill 1111 (Session Law 2007-348).

⁴⁶ Section 147-17 provides for the employment of legal counsel by State departments, agencies, etc., under certain circumstances and upon meeting certain conditions, including approval by the Governor.

⁴⁷ “Designated individual” is a defined term and includes legislators, legislative employees, and public servants. N.C.G.S. § 120C-100(a)(2).