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ANNUAL LOBBYING NEWSLETTER

SUMMARY OF 2008 LOBBYING ADVISORY OPINIONS

This newsletter contains summaries of the formal lobbying advisory opinions issued by the Commission from January 1 – December 31, 2008. The first section of the newsletter contains summaries of opinions involving Gifts & Gift Ban Exceptions. The next section contains summaries of opinions related to Reporting Requirements. Also, *Attachment A* contains a list of key definitions.

Please note, these are summaries. Full redacted opinions are available on the Commission's website at <http://www.ethicscommission.nc.gov/opinionsLobbying.htm>. Also, please be aware that technical and substantive changes were made by the General Assembly to both the State Government Ethics Act (G.S. Chapter 138A) and the Lobbying Law (G.S. Chapter 120C). Some of those changes also had retroactive effective dates. Therefore, these opinions may no longer be applicable under the current law. A newsletter detailing these legislative amendments can be found on the Commission's website at <http://www.ethicscommission.nc.gov/2008legislativeChanges.htm>. Finally, these summaries are for guidance purposes only. Anyone who has a specific question or who would like to request a formal advisory opinion should contact the State Ethics Commission at ethics.commission@doa.nc.gov.

GIFTS & GIFT BAN EXCEPTIONS

AO #	ISSUE	GIFT BAN EXCEPTION	REPORTING	DATE ISSUED	PAGE
AO-L-08-001	Donations to Non-Partisan Organizations	G.S. 120C-303(d) & (e)	G.S. 120C-400(a) & (b); -401(b1) & (b)(4); -402(b); -403(b)	02/27/09	2
AO-L-08-005	Educational Meeting Exception: Legislative Leaders' Conference	G.S. 138A-32(e)(3)(i); SEC educational mtg. criteria	G.S. 120C-401(b); -403(b)	11/14/08	4

AO-L-08-006	Educational Meeting Exception: International Study Trip	G.S. 138A- 32(e)(3)(i); SEC educational mtg. criteria	G.S. 120C-401(b); - 403(b); -800(a); - 800(e)(5)	11/14/08	5
AO-L-08-008	Gift Ban & Reporting: Junior League of Raleigh Inaugural Events	G.S. 138A-32(e) (generally)	G.S. 120C-401(b) -- -403(b)(1); -800(a)	11/14/08	7

GENERAL GIFT BAN: Unless permitted by an exception,

- **G.S. 120C-303(a)** provides that no lobbyist or lobbyist principal may: “(1) Knowingly give a gift to a designated individual;” or “(2) Knowingly give a gift with the intent that a designated individual be the ultimate recipient.”
- **G.S. 120C-500(d)** provides that the general gift ban applies to liaison personnel as to gifts given to legislators.
- **G.S. 138A-32(c)** provides that designated individuals are prohibited from accepting a gift from a registered lobbyist or lobbyist principal either: (1) directly; or, (2) indirectly if the lobbyist or lobbyist principal intended for the ultimate recipient of the gift to be a designated individual. Legislators are also prohibited from accepting gifts from liaison personnel.
- **G.S. 138A-32(d) & (d1)** provide that no public servant may directly or indirectly accept gifts from “interested persons,” i.e., persons who are (1) doing or seeking to do business with public servant’s employing entity (e.g., State agency, board, commission, etc.); (2) engaged in activities regulated by that entity; or (3) have financial interests that may be substantially affected by the public servant acting in an official capacity.

**I. DONATIONS TO NON-PARTISAN ORGANIZATION & REPORTING REQUIREMENTS
(AO-L-08-001; ISSUED 02/27/08)**

Note. AO-L-08-0001 was affected by 2008 legislative amendments, particularly the Commission’s conclusion that State entities were excluded from the definition of “third party.” Therefore, any questions about the applicability of the opinions under the amended law should be addressed to the Ethics Commission staff at ethics.commission@doa.nc.gov or by calling (919) 715-2071.

Facts. North Carolina is a member of a non-partisan organization and its affiliated organization. One of the regular functions of the affiliated organization is hosting an annual conference. Annual conferences are hosted on a rotating basis by the affiliated organization’s member states. North Carolina is hosting an upcoming conference and assumes numerous duties as host state. These responsibilities have been delegated by the State to the Host Committee. The Host Committee is made up solely of designated individuals.

One of the tasks includes fundraising for the annual conference. North Carolina is seeking private contributions to assist with funding this conference. Fundraising will include soliciting both cash and in-kind contributions from various entities, including lobbyists and lobbyist principals. The contributions will be solicited by designated individuals.

Relevant Statutes. G.S. 120C-303(d) & (e); G.S. 120C-400(a) & (b1); -401(b)(4); -402(b); -403(b).

A. Donations (“Gifts”) of Cash & In-Kind Contributions

1. **May a lobbyist and/or lobbyist principal make cash contributions to the nonpartisan organization through designated individuals for the purpose of the conference?**

Yes. G.S. 120C-303 (d) and (e) specifically provide that gifts made to a nonpartisan organization or an affiliated organization of which the General Assembly or the public servant's agency is a member, or a legislator, legislative employee, or public servant is a member by virtue of that individual's public position does not violate the general ban on direct and indirect gifts from lobbyists and lobbyist principals to designated individuals. Therefore, cash contributions given by lobbyists or lobbyist principals directly to the nonpartisan organization, not designated or earmarked for a particular event or specific group of individuals, are not subject to the general gift ban.

2. **May a lobbyist and/or lobbyist principal make in-kind contributions to the State through designated individuals for the purpose of the conference?**

Yes. Although gifts given to a *third party* with the intent that a designated individual be the ultimate recipient are prohibited by the gift ban, the SEC interprets the term *third party* to exclude State entities. Therefore, if a gift is given to and accepted by the State and a designated individual ultimately derives a benefit, such gifts are not subject to the indirect gift ban of G.S. 120C-303(a)(2). However, any such contributions must be made directly to the State and accounted for in accordance with established procedures.

B. Reporting Requirements for Cash & In-Kind Contributions.

1. **If designated individuals solicit cash contributions to the nonpartisan organization from lobbyists and/or lobbyist principals for the purpose of the conference, are the lobbyists and/or lobbyist principals required to report the cash contributions?**

Yes. G.S. 120C-400 requires the reporting of reportable expenditures made for the purpose of lobbying. Cash contributions (greater than ten dollars) solicited by designated individuals are made "at the request of" designated individuals and thus are "reportable expenditures." Such contributions are also "made for the purpose of lobbying." Therefore, these contributions must be reported.

2. **If designated individuals solicit in-kind contributions to the State from lobbyists and/or lobbyist principals for the purpose of the conference, are the lobbyists and/or lobbyist principals required to report the in-kind contributions?**

Probably not. G.S. 120C-400(b) provides that the reporting requirements do not apply to reportable expenditures made directly to a State agency that maintains an accounting of the reportable expenditure that is a public record. Thus, in-kind contributions to the State are reportable expenditures made directly to a State agency and are therefore likely excluded from the general reporting requirements.

3. **If the lobbyists and/or lobbyist principals are required to report contributions, are they required to report the designated individual who solicited or received the contribution?**

No. G.S. 120C-401(b)(4) requires the names of "payees," "beneficiaries," and designated individuals "connected with" the reportable expenditure to be reported. However, in this situation, both the "payee" and the "beneficiary" of the cash contribution is the nonpartisan organization.

Also, in this unique situation, members of the Host Committee, including designated individuals soliciting the cash contributions, are merely conduits for the transfer of contributions to the State; therefore, they are not “connected with” the reportable expenditure as contemplated by G.S. 120C-401(b).

Furthermore, G.S. 120C-401(b1) states that when more than 15 designated individuals benefit from a reportable expenditure, no names need to be reported. Here, if more than 15 designated individuals will “benefit” from the reportable expenditure (cash contribution), which will certainly be the case for this conference, their names do not have to be reported. However, the approximate number of designated individuals benefitting and the basis for their selection would need to be reported.

II. “EDUCATIONAL MEETING” EXCEPTION – LEGISLATIVE LEADERS’ CONFERENCE (AO-L-08-005; ISSUED 11/14/08)

Facts. A non-profit organization has given a grant to an educational institution to host, plan, and coordinate a legislative leaders’ conference. The non-profit organization is the sole monetary sponsor for the conference. The non-profit organization is not a lobbyist principal. However, the non-profit organization is established and funded by a lobbyist principal. The non-profit’s operating expenses are derived from income generated by the lobbyist principal’s initial funding, and the non-profit organization is operated and controlled by a board of directors made up solely of officers and employees of the lobbyist principal.

The conference is being held outside of North Carolina on the campus of the hosting educational institution. The non-profit organization worked with the educational institution in planning the agenda. The non-profit organization had sole control over the selection of legislators invited to the conference. The purpose of the conference is to convene legislative leaders from several states to discuss strategies to address a particular policy concern.

Relevant Statutes. G.S. 138A-32(e)(3)(i); G.S. 120C-401(b); -403(b).

Can the non-profit organization, established by the lobbyist principal, pay various travel expenses for certain legislators to participate in a conference for legislative leaders being hosted by an educational institution, (i.e., does the conference satisfy the “educational meeting” exception to the gift ban)?

Yes. G.S. 120C-303 prohibits a lobbyist or lobbyist principal from giving a gift, directly or indirectly, to a designated individual unless an exception applies. Here, although the non-profit organization is not a registered lobbyist principal, because the non-profit organization is funded and controlled exclusively by the lobbyist principal company, the activities of the non-profit organization are attributable to the lobbyist principal. Therefore, in order for the non-profit organization to pay travel expenses for legislators, a gift ban exception must apply.

G.S. 138A-32(e)(3)(i) permits lobbyist principals to pay certain expenses associated with an educational meeting. The State Ethics Commission has adopted criteria to determine what constitutes an “educational meeting.” (*See Attachment B*). In applying the State Ethics Commission’s criteria, the meeting qualifies as an “educational meeting” and the non-profit organization established by the lobbyist principal may pay for these expenses. Such expenditures are reportable expenditures made for the purpose of lobbying and must be reported on the lobbyist principal’s report.

Specifically, G.S. 138A-32(e)(3)(i) permits a lobbyist principal to pay for “reasonable actual expenditures” of a public servant, legislator, or legislative employee incurred in connection with their attendance at an educational meeting “for purposes related primarily to the public duties and responsibilities” of that individual. Only certain expenditures may be paid for by the lobbyist principal, and certain conditions must be met. (*See* G.S. 138A-32(e)(3)a. – e.)) In applying its education meeting criteria, the Commission’s determined that:

- The purpose and content of the meeting are related to the public duties of legislators in making policy decisions.
- The primary purpose of the conference appears to be to educate rather than to advocate or curry favor for the lobbyist principal. Although the lobbyist principal plans to support the introduction of legislation and expects to lobby in this area of public policy, the conference’s formal agenda does not include a discussion of specific legislative proposals or the lobbyist principal’s products. Also, none of the conference speakers work for the lobbyist principal.
- The non-profit organization is established and funded by the lobbyist principal and routinely sponsors educational meetings pertaining to issues that will be discussed at the conference.
- The lobbyist principal paying for the legislators’ attendance at the conference is also the sponsor of the conference through the non-profit organization.
- The conference consists of 9.25 hours of education. There are two receptions and dinners without any educational content. The agenda covers a number of topics on this public policy. All speakers have been invited based on their knowledge and expertise.
- The participants would not be able to obtain a comparable degree of educational information through other means that would not require travel.
- The length of the conference is reasonable based on the purpose of the conference.
- Any personal gain obtained through attendance at the conference is minimal and does not outweigh the public benefit gained by the educational value.

III. “EDUCATIONAL MEETING” EXCEPTION – INTERNATIONAL STUDY TRIP (AO-L-08-006; ISSUED 11/14/08)

Facts. A lobbyist principal and non-lobbyist principal are hosting an international study trip for policymakers. Participants are invited based on their positions, both public and private. The non-lobbyist principal is a State entity. The lobbyist principal and non-lobbyist principal have sponsored previous international study trips. The participants include designated individuals (eight legislators and three public servants). The country visited was chosen because of its success in developing a skilled workforce and integrating economic development plans into its educational system resulting in its transformation from an economically distressed to an economically successful country. The country also has strong ties with North Carolina-based businesses and institutions. The purpose of the trip is to examine how education and technology have helped rebuild the country’s economy; to gain an understanding of the role played by technology; and, to identify best practices that would assist North Carolina in developing a more highly-skilled workforce.

Most of the funding for this trip, including the funds for the travel-related costs of the majority of the invited legislators and public servants, is given to the hosting lobbyist principal and non-lobbyist principal through grants from a private foundation and other organizations, including some lobbyist principals. The trip’s hosts are solely responsible for planning, administering, and coordinating the trip.

Relevant Statutes. G.S. 138A-32(e)(3)(i). G.S. 120C-303(a); -401(b); -403(b); -800(a); -800(e)(5).

Does the international study trip satisfy the “educational meeting” exception to the gift ban, and if so, are the lobbyist principal and “non-lobbyist principal” allowed to pay the travel-related expenses of the trip?

Yes to both. G.S. 138A-32(e)(3)(i) permits lobbyist principals to pay certain expenses associated with an educational meeting. The State Ethics Commission has also adopted criteria to determine what constitutes an “educational meeting.” (*See Attachment B*). In applying State Ethics Commission’s criteria, the international study trip qualifies as an “educational meeting.” Therefore, the lobbyist principal may pay the statutorily allowed travel-related expenses of the trip. Such expenditures are considered reportable expenditures made for the purpose of lobbying and must be reported to the Secretary of State by a sponsor that is also a lobbyist principal.

A. Applicability to Lobbyist Principal. G.S. 138A-32(e)(3)(i) permits a lobbyist principal to pay for “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 related primarily to the public duties and responsibilities” of that individual. Only certain expenditures may be paid for by the lobbyist principal, and certain conditions must be met. (*See* G.S. 138A-32(e)(3)a. – e.) Furthermore, the State Ethics Commission has adopted several non-exclusive factors that will be considered in determining what constitutes an “educational meeting.” (*See Attachment B*). In applying these factors, the Commission determined that:

- The content and purpose of the study trip is related to the legislators’ duties. Also, the invited public servants all have responsibilities connected to these areas.
- The primary purpose of the conference appears educational, but there is an unavoidable opportunity to influence the participants who are considered policymakers. The hosting lobbyist principal had legislative initiatives before the 2007-08 General Assembly. The lobbyist principal also plans to seek funding for certain programs again in 2009.
- The hosting lobbyist principal is a North Carolina corporation whose membership consists of elected officials and others who have policy-making responsibilities.
- The hosting lobbyist principal and non-lobbyist principal are paying for all travel-related expenses for policymakers. A private foundation gave a grant to the hosting lobbyist principal to fund the trip. This foundation has no other involvement. Also, other organizations and companies have given money earmarked to provide scholarships for additional policymakers.
- A majority of the agenda consists of educational activities.
- The participants would not be able to obtain a comparable degree of educational information through means other than participating in the trip.
- The length of the trip is reasonable based on the purpose of the trip.
- Any personal gain obtained through attendance on the trip would not outweigh the public benefit gained by the educational value.

B. Applicability to “Non-Lobbyist Principal.” The hosting non-lobbyist principal is a State entity, is a 501(c)(3) entity when applying for grants, and is not a lobbyist principal. Therefore, the gift ban does not apply to the hosting non-lobbyist principal.

Therefore, since hosting non-lobbyist principal is not a lobbyist principal, it does not have to meet a gift ban exemption to pay for a legislator or public servant’s study trip costs. In addition, because the hosting non-lobbyist principal is a State entity it does not need to report to the Secretary of State what it gives to each legislator or public servant. (G.S. 120C-800(e)(5)).

However, if other sponsors who are not lobbyist principals give donations or grants to the hosting lobbyist principal and non-lobbyist principal for the purpose of lobbying, direct or goodwill, a legislator or public servant, they may need to report such to the Secretary of State. (See G.S. 120C-800(a)).

IV. APPLICABILITY OF THE GIFT BAN & REPORTING REQUIREMENTS TO THE 2009 JUNIOR LEAGUE INAUGURAL BALL WEEKEND. *(In accordance with G.S. 120C-102(d), the Junior League of Raleigh authorized the publication of an unedited version of this opinion.)*
(AO-L-08-008; ISSUED 11/14/08)

Facts. The Junior League of Raleigh (“JLR”) is a non-profit organization created for charitable and educational purposes. The JLR is not a registered lobbyist principal. Nor, according to the JLR, is it an “interested person” - it does not do business or seek to do business with the Governor or Council of State agencies, is not regulated by those agencies, and is not impacted financially by those agencies’ official actions.

Every four years, the JLR hosts inaugural events, including an inaugural ball, to honor the newly elected Governor. The primary purpose of the events is to raise money for the JLR and its charitable causes. The general public may purchase tickets to the various events; however, the Governor’s reception may be limited to sponsors donating at least \$5,000. The JLR gives the Council of State and their spouses tickets to all events. In addition, the in-coming Governor is given a group of tickets to the events. The majority of past attendees have been members of the business community who are not designated individuals. Attendees receive entry to the event, along with food, beverages, and entertainment.

In addition to selling tickets, the JLR also solicits individual and business sponsors. Some of the sponsors may be lobbyists or lobbyist principals. Sponsorships can be purchased through money or in-kind contributions for the events generally and/or for a particular event. In return for donations, sponsors are given tickets to the events. The number of tickets varies according to the sponsorship level. Sponsors contributing a certain amount are recognized in the invitation or programs. The proceeds from sponsorships are used to off-set the cost of the events, but most of the donations are used to support the JLR’s charitable causes.

Relevant Statutes. G.S. 138A-32(e) (generally). G.S. 120C-400; -401; -402; -403(b)(1); -800(a).

How do the gift ban and reporting requirements apply to donations to the JLR from lobbyists and/or lobbyist principals?

A. Applicability of Gift Ban.

- **General Contributions to Inaugural Ball Events.** General contributions from a lobbyist, lobbyist principal, or liaison personnel to the JLR to sponsor inaugural events would not appear to be restricted by the G.S. 120C-303(a) gift ban since it is unlikely that those contributions are being given with the specific intent of benefitting a particular designated individual(s). Therefore, in most cases, such donations from lobbyists, lobbyists principals, or liaison personnel would not be restricted by the gift ban.
- **“Earmarked” Donations.** The indirect gift ban may apply if a lobbyist or lobbyist principal earmarked a donation to benefit particular designated individuals or sponsor an event that disproportionately benefitted designated individuals. Here, there would be a greater likelihood that the donation was intended to benefit those individuals. In this case, the

applicability of a gift ban exception would depend upon the specific facts underlying each situation.

- **Tickets Given by Lobbyists or Lobbyist Principals.** If a lobbyist or lobbyist principal directly gives an event ticket to a designated individual, this would be a gift and subject to the direct gift ban of G.S. 120C-303(a) and G.S. 138A-32(c). Therefore, the gift is prohibited unless an exception applies.

B. Applicability of Reporting Requirements. Lobbyists and lobbyist principals must report all “reportable expenditures made for the purpose of lobbying” and reportable expenditures for gifts given under a gift ban exception. “Lobbying” includes both direct and “goodwill” lobbying. However, lobbying does not include “communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.” “Reportable expenditures” is broadly defined in G.S. 120C-100(a)(12). (*See Attachment A*).

- **General Contributions to Inaugural Ball Events.** Donations made for the general purpose of sponsoring inaugural events would most likely not be “reportable expenditures” pursuant to Chapter 120C. Since the general purpose of such contributions is to support the community and advertise a particular business, such donations would generally not be viewed as being made “for the purpose of lobbying.” Also, these donations would not be reportable since they are not considered gifts under G.S. 120C-303(a).
- **“Earmarked” Donations.** As stated above, an earmarked donation may be a “gift” and therefore a gift ban exception must apply. If a gift ban exception does apply, the gift must be reported. Even if the donation was not deemed a gift, under some circumstances a donation to a particular event could be reportable as given “for the purpose of lobbying.” In these instances, the lobbyist or lobbyist principal must report that gift in accordance with G.S. 120C-401 and G.S. 120C-403.
- **Tickets Given by Lobbyists or Lobbyist Principals.** If a gift ban exception applies, the gift must be reported.

How do the gift ban and reporting requirements apply to tickets given by the JLR to the Governor and Council of State members?

The JLR is not a lobbyist principal and therefore is not subject to the gift ban. Furthermore, the JLR has indicated that it is not an “interested person” as to the Governor or Council of State agencies; therefore, the gift ban restrictions of G.S. 138A-32(d) do not apply. However, such tickets may be reportable under G.S. 120C-800(a) if they are given for the purpose of lobbying and exceed \$200 in value per calendar quarter.

REPORTING REQUIREMENTS

AO #	ISSUE	REPORTING G.S.	DATE ISSUED	PAGE
AO-L-08-002 & -003	Reporting Lobbyists' Compensation by Lobbyist Principals	G.S. 120C-401(b); -403(b)(3)	03/17/08	9
AO-L-08-006	Estimates of Payment for Services to Lobbyists; Recordkeeping	G.S. 120C-403(b)(3)	11/14/08	10

I. REPORTING OF LOBBYISTS' COMPENSATION BY LOBBYIST PRINCIPALS. (AO-L-08-002 & AO-L-003; Issued 03/17/08)

Note. AO-L-08-002 and AO-L-003 were adopted prior to 2008 legislative amendments. Therefore, any questions about the applicability of the opinions under the amended law should be addressed to the Ethics Commission staff at ethics.commission@doa.nc.gov or by calling (919) 715-2071.

Facts. Many lobbyists who are employed by lobbyist principals are not employed to lobby on a full-time basis. Although lobbyists, these employees perform other duties for the lobbyist principal that are not "lobbying." Also, a lobbyist principal may hire a contract lobbyist employed by another firm (e.g., a law firm) to both lobby on behalf of the lobbyist principal as well as provide other professional services unrelated to lobbying.

Relevant Statutes. G.S. 120C-401(b); -403(b)(3).

- 1. When a lobbyist principal has an employee who is a lobbyist for the principal but performs other duties in addition to lobbying, is the lobbyist principal required to report the entire amount of compensation it paid to the lobbyist-employee?**

No. G.S. 120C-403(b)(3) requires lobbyist principals to report only the percentage of the lobbyist-employee's compensation that is related to lobbying. (G.S. 120C-403(b)(3)). "Compensation" is defined as "any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another." (G.S. 138A-3(6); G.S. 120C-100(b)).

- 2. When a lobbyist principal contracts for lobbying services from a firm which also provides other services for the lobbyist principal which are unrelated to lobbying, is the lobbyist principal required to report all payments to the firm?**

No. G.S. 120C-403(b) requires that lobbyist principals report (1) reportable expenditures related to lobbying; (2) solicitation of others with an aggregate cost of over \$3,000; (3) compensation for lobbying paid to all lobbyists during the quarter; (4) reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report; 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 \$200.00. There is no requirement for the lobbyist principal to report payments to the firm employing the lobbyist which do not fall within those categories. Therefore, if the lobbyist is also paid for services other than lobbying, only the compensation related to lobbying must be reported.

- 3. Are expenses incurred by a lobbyist in the course of lobbying that are reimbursed by the lobbyist principal required to be reported? If so, under what category must such reimbursable expenses be reported?**

Yes. The facts of each situation will determine the category. A lobbyist principal is required to report reimbursements it paid to a lobbyist for direct expenses the lobbyist incurred in the course of performing his or her lobbying duties and responsibilities. The facts of each situation will determine what category the lobbyist principal uses in making this report.

4. Is the State Ethics Commission responsible for interpreting or applying rules pertaining to lobbying that are adopted by the Secretary of State's Office?

No. The State Ethics Commission is not responsible for interpreting or applying rules pertaining to lobbying adopted by the Secretary of State's Office. Questions about those rules should be directed to the Secretary of State's Office.

**II. REPORTING REQUIREMENTS – ESTIMATES OF PAYMENTS ATTRIBUTABLE TO LOBBYING
(AO-L-08-006; ISSUED 11/14/08)**

Facts. Lobbyist principals are obligated to file quarterly reports of any "payment for services" made to each lobbyist. Some lobbyists also perform non-lobbying activities. With respect to payments made to individuals who also engage in these non-lobbying activities, the lobbyist principal is required to allocate the amount of payments attributable to lobbying activities.

G.S. 120C-403(b)(3) was amended by Sec 29(a) of S.L. 2008-213 to provide that lobbyist principals' reports must contain the "payment for services" paid to all lobbyists during the quarter. That provision further provides that if the lobbyist is a "full-time employee of the principal, or is paid by means of an annual fee or retainer, the principal shall estimate the portion of the salary, fee, or retainer that is reasonably allocated for the purpose of lobbying. A lobbyist principal may rely upon a statement by the lobbyist estimating the portion of the salary, fee, or retainer that is reasonably allocated for the purpose of lobbying." This amendment was effective retroactively to January 1, 2007.

Relevant Statute. G.S. 120C-403(b)(3).

- 1. Does G.S. 120C-403, as amended by Sec. 29(a) of S.L. 2008-213, require a**
 - a. Lobbyist principal to obtain and retain detailed underlying invoices of billing records from its registered lobbyists in order to estimate the portion of the lobbyist's salary, fee, or retainer that is reasonably allocated for the purpose of lobbying; and/or,**
 - b. Lobbyist to maintain and keep detailed underlying invoices or billing records of time in order to estimate the portion of the lobbyist's salary, fee, or retainer that is reasonably allocated for the purpose of lobbying?**

No to both. However, such an estimate should be verifiable in some manner in the event the amount is questioned, and the lobbyist should be prepared to substantiate that the estimate is a reasonable allocation.

- 2. Do the reporting requirements of the Lobbying Law require the production of attorney billing records to substantiate a percentage estimate or dollar estimate of the portion of the lobbyist's salary, fee, or retainer that is reasonably allocated for the purpose of lobbying?**

No. While such records would be one of several reliable methods for verifying allocations, production of those billing records is not the only means of verification.

3. **If no written records are required or available, may a lobbyist principal rely on an oral representation or statement from the lobbyist stating the portion of the lobbyist's salary, fee, or retainer allocated for the purpose of lobbying as a reasonable allocation?**

Yes. G.S. 120C-403 does not state that the lobbyist's estimate must be in writing in order for the lobbyist principal to rely upon the statement. However, the underlying facts should make the reliance upon an oral representation or statement reasonable.

4. **In response to a request by a State agency, does the Lobbying Law (Chapter 120C) require a lobbyist or lobbyist principal to provide access to or provide copies of all documents, correspondence, notes, records, invoices, billing records of time, internal memoranda, or work product to the State agency?**

Not addressed. Chapter 120C does not address how a lobbyist or lobbyist principal should respond to a State agency's request for access to or copies of documentation.

§ 120C-100. Definitions.

- (a) As used in this Article, the following terms mean:
- (1) Commission. – The State Ethics Commission under Chapter 138A of the General Statutes.
 - (2) Designated individual. – A legislator, legislative employee, or public servant.
 - (3) Executive action. – The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:
 - a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.
 - b. A public servant's communication with a person, or another person on that person's behalf, with respect to any of the following:
 1. Applying for a permit, license, determination of eligibility, or certification.
 2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.
 3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.
 4. Ratemaking.
 - c. Internal administrative functions, including those functions exempted from the definition of "rule" in G.S. 150B-2(8a).
 - d. Ministerial functions.
 - e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting, or submitted as written comment, on a proposed executive action in response to a request for public comment, provided the identity of the person on whose behalf the comments are made is disclosed as part of the public participation, and no reportable expenditure is made.
 - (4) In session. – One of the following:
 - a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:
 1. Adjourns sine die.
 2. Recesses or adjourns for more than 10 days.
 - b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:
 1. Adjourns sine die.
 2. Recesses or adjourns for more than 10 days.
 - (5) Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official

capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

- (6) Legislative employee. – Employees and officers of the General Assembly, consultants and counsel to committees of either house of the General Assembly or of legislative commissions, who are paid by State funds, but not including legislators, members of the Council of State, nonsupervisory employees of the Administrative Division's Facility Maintenance and Food Services staff, or pages.
- (7) Legislator. – As defined in G.S. 138A-3 and G.S. 120C-104.
- (8) Liaison personnel. – Any State employee, counsel employed under G.S. 147-17, or officer whose principal duties, in practice or as set forth in that individual's job description, include lobbying legislators or legislative employees.

- (9) Lobbying. – Any of the following:

- a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.
- b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that designated individual's immediate family with the intention of influencing current or future legislative or executive action, or both.

The term "lobbying" does not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

- (10) Lobbyist. – An individual who engages in lobbying and meets any of the following criteria:
 - a. Repealed by Session Laws 2007-348, s. 8(a), effective October 10, 2007.
 - b. Represents another person or governmental unit, but is not directly employed by that person or governmental unit, and receives payment for services. For the purposes of this sub-subdivision, the term "payment for services" shall not include reimbursement of actual travel and subsistence.
 - c. Contracts for economic consideration for the purpose of lobbying.
 - d. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)a. of this section or if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)b. of this section.

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 of this Chapter.

- (11) Lobbyist principal and principal. – The person or governmental unit on whose behalf the lobbyist lobbies. In the case where a lobbyist is compensated by a

law firm, consulting firm, or other entity retained by a person or governmental unit for lobbying, the principal is the person or governmental unit whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist principal is the association or other organization, not the individual members of the association or other organization.

The term "lobbyist principal" shall not include those designating registered liaison personnel under Article 5 of this Chapter.

- (11a) through (11j) Reserved for future codification purposes.
- (11k) Payment for services. – Any money, thing of value, or economic benefit paid to a lobbyist for the purpose of lobbying other than reimbursement of actual travel, administrative expenses, or subsistence.
- (12) Reportable expenditure. – Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:
 - a. 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.
 - b. A contract, agreement, promise, or other obligation whether or not legally enforceable.
- (13) Solicitation of others. – A solicitation of members of the public to communicate directly with or contact one or more designated individuals for the purpose of influencing or attempting to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the following methods:
 - a. A broadcast, cable, or satellite transmission.
 - b. An e-mail communication or a Web site posting.
 - c. A communication delivered by print media as defined in G.S. 163-278.38Z.
 - d. A letter or other written communication delivered by mail or by comparable delivery service.
 - e. Telephone.
 - f. A communication at a conference, meeting, or similar event.

The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices.

(b) Except as otherwise defined in this section, the definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter. (1933, c. 11, s. 1; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2001-424, s. 6.10(b); 2005-456, s. 1.; 2006-201, s. 18; 2007-347, s. 6(b); 2007-348, ss. 7, 8(a), (b); 2008-213, ss. 4-8, 90.)

Educational Meeting Exception

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.

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 does not qualify as an education 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;

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- is seeking, or seeding 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?

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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?