STATE ETHICS COMMISSION
POST OFFICE BOX 27685
RALEIGH, NC 27611
https://ethics.nc.gov

CONFIDENTIAL FORMAL ADVISORY OPINION - EDITED FOR PUBLICATION

August 19, 2026

RE: Contemporaneous Lobbying and Commission-Based Business Development Contract; AO-L-26-001

Dear Requester:

This is in response to your July 13, 2026, request for a formal advisory opinion. You previously sought and received an informal advisory opinion from Commission staff on March 18, 2026. On behalf of your client ("Client"), you inquired whether a proposed flat-fee lobbying compensation structure and separate but related private-sector commission-based business development agreement would comply with the North Carolina Lobbying Law, G.S. Chapter 120C ("Lobbying Law"), specifically the contingency fee prohibition within N.C. Gen. Stat. § 120C-300(a).

You are now seeking a formal advisory opinion about the same. Specifically, you have asked:

1. Does the proposed structure of a flat-fee lobbying agreement plus a separate, commercially triggered business development agreement that is not conditioned on any legislative or executive outcome comply with N.C. Gen. Stat. § 120C-300(a)?

2. If a legislative or executive outcome could indirectly affect the size of the relevant private-sector market, and thereby potentially affect the volume of commercial transactions, does that indirect market effect alone cause the business development compensation to be treated as "dependent upon the result or outcome" of legislative or executive action under N.C. Gen. Stat. § 120C-300(a)?

3. Are the proposed guardrails sufficient to treat the business development services as bona fide private-sector commercial activity, rather than compensation "for lobbying," where the business development agreement excludes efforts to influence State legislative or executive action, State procurement, State RFPs, State purchasing decisions, product specifications, policies, procedures, regulations, rules, approvals, or other executive action?

4. For purposes of Chapter 120C, would private-sector business development communications with private companies, private trade associations, private fleets,

dealers, insurers, or similar private-sector entities fall outside the definition of lobbying, provided those communications are not directed to influencing State legislative or executive action?

This formal advisory opinion is based upon the information you have provided and was adopted by the State Ethics Commission ("Commission") at its August 13, 2026, meeting.[1] The Commission answers your questions cumulatively as follows:

I. **Brief Conclusion**.

The Commission has determined that your client's contemplated flat-fee lobbying arrangement and commission-based business development contract, as described in your formal advisory opinion request, would be compliant with the Lobbying Law.

II. **The Facts**.

Client is registered as a North Carolina lobbyist for Company A, the parent company of Company B, which markets and sells a transportation-related safety product. Company A proposes compensating Client through two separate agreements.

First, Company A would compensate Client for lobbying services through a monthly flat-fee retainer. That compensation would not be contingent on the passage, enactment, defeat, effective date, adoption, approval, or rejection of any legislative or executive action. Although Client's lobbying work may include seeking legislation, rules, or other governmental action that could enhance the market for the transportation safety product sold by Company B, his lobbying compensation would not be directly affected by the success or failure of those efforts.

Second, Client would enter into a separate business development/consulting agreement with Company A, Company B, or an affiliated entity. Under that agreement, Client would provide commercial business development services directed to private sector parties, including introductions, relationship development, outreach, sales support, and related commercial activities. The business development agreement would compensate Client through a commission or royalty based on completed commercial transactions, such as units sold, contracts executed, or revenue received, that are attributable to Client's private-sector business development efforts.

The business development compensation would not be conditioned on any legislative or executive outcome, would not change based on any legislative or executive outcome, and would be payable only based on commercial sales. However, Client and Company A recognize that legislative or executive action could, over time, affect the broader market in which Company A and Company B operate. Client's lobbying efforts could potentially improve the market environment, but any such impact is uncertain and not guaranteed. In all events, Client's business development compensation would be determined by commercial transactions, not governmental outcomes.

[1] Please see the enclosure entitled "Formal Advisory Opinions Issued by the State Ethics Commission" for further information regarding the protections offered to individuals receiving those opinions.

Client would perform both the lobbying role and the business development role. However, the agreements would be separately documented, with distinct scopes, deliverables, invoicing, and recordkeeping. The business development agreement would expressly exclude communications or activities intended to influence State legislative or executive action. Client's commission-based business development work would not include marketing to State agencies, seeking State agency purchases, influencing State procurement, or attempting to influence State officials regarding requests for proposals, purchasing decisions, product specifications, policies, procedures, regulations, rules, approvals, or any other executive action. The commission-based business development work would focus on private-sector marketing and sales.

III. Applicable Statutory Provisions.

The Lobbying Law prohibits a lobbyist from receiving payment for lobbying that is dependent upon the result or outcome of any legislative or executive action. *See* G.S. 120C-300(a). "Lobbying" includes "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," or the development of goodwill with the intention of influencing legislative or executive action. G.S. 120C-100(a)(17). "Executive action" can in some circumstances include efforts to influence State officials to develop a request for proposal or purchase goods outside the context of an RFP. *See* G.S. 120C-100(a)(5).

IV. Analysis.

It is foreseeable that Client's lobbying efforts will include seeking the passage of legislation or rules to enable the sale and distribution of Company B's safety product in North Carolina. However, the proposed flat-fee compensation for those lobbying services will not be affected by the outcome of those lobbying efforts.

Successful lobbying efforts could increase Company B's private-sector market and therefore increase Client's commission-based earnings through increased volume of commercial transactions. But those commission-based earnings will arise from commercial business development services directed to private sector parties, including introductions, relationship development, outreach, sales support, and related commercial activities. The opportunity for Client to earn more through private commercial sales is not "payment for lobbying that is dependent upon the result or outcome of any legislative or executive action."

Moreover, Client will not market to State agencies, seek State agency purchases, influence State procurement, or attempt to influence State officials regarding requests for proposals, purchasing decisions, product specifications, policies, procedures, regulations, rules, approvals, or any other executive action. As such, Client's business development agreement with Company A, Company B, or an affiliate, will not be restricted by the contingency fee lobbying restriction as Client will not be seeking to influence State officials.

V. Closing.

Thank you for contacting the State Ethics Commission. Please do not hesitate to call the Commission's staff if you have any questions about the foregoing formal advisory opinion.

Pursuant to G.S. 120C-102(e1), an unedited copy of this formal advisory opinion will be forwarded to the Secretary of State. The Secretary of State is statutorily obligated to treat the opinion as confidential and not a public record.

State Ethics Commission

By: ______________________
William H. Freeman
Chairman

Formal Advisory Opinions Issued by the State Ethics Commission

Upon the written request of a public servant or legislative employee, G.S. 138A-13(a) of the State Government Ethics Act ("the Ethics Act") authorizes the State Ethics Commission ("Commission") to issue formal advisory opinions on the "meaning and application" of the Ethics Act "and the public servant's or legislative employee's compliance therewith." All opinions have prospective application only, are limited to the particular facts presented, and confer limited civil immunity upon a requester who follows the advice given. G.S. 138A-13(a).

Reliance upon a formal advisory opinion immunizes the public servant or legislative employee making the request from (1) investigation by the Commission, except the alleged violation of criminal law while performing his or her official duties, (2) adverse action by his or her employing entity, or (3) investigation by the Secretary of State. G.S. 138A-13(c).

Once issued by the Commission, formal advisory opinions are published in a redacted format on the Commission's website within 30 days of issuance. G.S. 138A-13(h). Otherwise, requests for advisory opinions, the opinions themselves, and all materials related to the opinions are confidential and are not public records. G.S. 138A-13(i).

Upon the written request of any person, State agency, or governmental unit affected by G.S. Chapter 120C ("the Lobbying Law"), G.S. 120C-102(a) authorizes the State Ethics Commission ("Commission") to issue formal advisory opinions "on the meaning and application" of the Lobbying Law and "that person's, State agency's or any other governmental unit's compliance therewith." All opinions have prospective application only and must relate to real or reasonably anticipated fact settings or circumstances. G.S. 120C-102(a). Formal advisory opinions confer limited civil immunity upon a requester who follows the advice given. G.S. 120C-102(b).

Once issued by the Commission, formal advisory opinions are published in an edited format on the Commission's website within 30 days of issuance. G.S. 120C-102(d). Requests for advisory opinions, the opinions themselves, and all materials related to the opinions are confidential and are not public records. G.S. 120C-102(e). However, the Commission is required to send an unedited copy of each formal advisory opinion to the Secretary of State's Office at the time the formal advisory opinion is issued to the requester, and the Secretary of State is required to treat the formal advisory opinion as confidential and not a matter of public record. G.S. 120C-102(e1). In addition, Commission staff is specifically authorized to share all information and documents related to requests for formal advisory opinions with the Secretary of State's Office. The Secretary of State's Office is required to treat any such information and documents in its possession as confidential and not a matter of public record G.S. 120C-102(e1).