



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION **UNEDITED WITH APPROVAL OF REQUESTER**

April 24, 2009

Ms. Julie Robinson
Marketing & Communications Director
NC Sustainable Energy Association
P.O. Box 6465
Raleigh, NC 27628

Re: Permissibility of Providing Free Registration to NCSEA Forum
Application of G.S. 120C-303(a) Gift Ban and G.S. 138A-32(e)(3)(i)
and (ii) Meeting Exceptions
AO-L-09-007

Dear Ms. Robinson:

On January 13, 2009, the State Ethics Commission's ("Commission's") staff received an e-mail from you in which you asked whether the NC Sustainable Energy Association (NCSEA) could provide free registration, including lunch and a networking reception, to all members of the North Carolina General Assembly, particular legislative employees, and members of the Utilities Commission, to attend the NCSEA's Forum. Commission staff provided informal advice on January 30, 2009. By an e-mail dated February 5, 2009, you requested a formal advisory opinion from the Commission.

This opinion was adopted by the Commission at its April 24, 2009, meeting.¹

I. Brief Conclusion.

The Commission has concluded that although the free registration to the NCSEA Forum would be a gift subject to G.S. 120C-303(a)(1) of the Lobbying Law, the G.S. 138A-32(e)(3)(i) educational meeting exception would allow NCSEA to provide free registration to State legislators,

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.

a representative of the Utilities Commission, and certain legislative employees and public servants. In addition, the G.S. 138A-32(e)(3)(ii) exception would allow NCSEA to provide free registration to designated individuals speaking at the meeting.

II. The Facts.

The NCSEA is a non-profit membership organization composed of individuals and businesses interested in sustainable energy. It is a registered Lobbyist Principal. According to its website, "NCSEA works extensively with the NC General Assembly, NC Utilities Commission, NC's state agencies, commissions and councils, local elected officials, and others to promote renewable energy and energy efficiency through education, public policy and economic development." On February 3, 2009, the NCSEA hosted the "Making Energy Work: Building a Sustainable Energy Economy in the Southeast" Forum ("Forum") at the Raleigh Convention Center.

Forum attendees were given the option of attending one of five presentations offered during the morning session and one of five during the afternoon session. Topic presentations included available training for individuals working in the renewable energy sector; energy needs of businesses; making buildings energy efficient; wind, solar, and landfill gas resources; and the financing of sustainable energy projects and companies.

Forum presenters included representatives from the United States Department of Energy, local governmental entities and State universities, various non-profit and for profit companies involved in energy research and energy-related businesses, and individuals providing energy-consulting services. The Forum consisted of a morning Plenary Session presented by the Executive Director of the NCSEA, the Executive Director of the Institute for Advanced Learning and Research, and an employee of the American Council for Energy-Efficient Economy; a luncheon at which the Honorable Joe Hackney, the Honorable Janet Cowell, and the President of ConEdison Solutions spoke; and a Networking Reception at the end of the meeting. A cash bar and light hors d'oeuvres was provided at the Reception.

There were a number of conference sponsors, including the Sierra Club, the United States Environmental Protection Agency, the National Conference of State Legislatures, the North Carolina State Energy Office, and various businesses and non-profits who perform services related to the sustainable energy industry.

NCSEA invited all members of the NC General Assembly, all members of the NC Utilities Commission, employees of the Governor's office, and certain legislative employees, all of whom were provided with complimentary registration. The regular registration fee for the conference was \$150, \$120 was charged for governmental and nonprofit representatives and NCSEA members. Approximately 500 individuals from across the Southeast attended the Forum. In addition to Treasurer Cowell and Speaker Hackney, seven legislators, a Utilities Commission representative, a member of the Governor's staff, and a legislative staff member accepted NCSEA's invitation.

III. Applicable Statutory Provisions.

The Lobbying Law, G.S. Chapter 120C, 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 gift ban listed in G.S. 138A-32(e) applies.

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” Expenses may also be paid for a designated individual’s participation as a speaker at a meeting. G.S. 138A-32(e)(3)(ii). 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.”

G.S. 120C-403(b) generally requires each lobbyist principal to report all reportable expenditures for gifts given under any of the gift ban exceptions of G.S. 138A-32(e)(1) – (9), among others, if the value of the expenditures is greater than \$10 per day per individual legislator, individual public servant, or that individual’s immediate family. G.S. 120C-100(a)(12)a.

A. The Commission’s Educational Meeting Criteria.

The Commission has adopted several non-exclusive factors that will be considered when determining what is an “educational meeting” under G.S. 138A-32(e)(3)(i).² Those factors recognize the extensive benefits that may be received because of this exception (i.e., travel, lodging, meals, and meeting registration costs) and are designed to identify meetings planned for the primary purpose of influencing particular designated individuals or groups of designated individuals with respect to current or future legislative or executive action. Those factors include the following.

- Whether the meeting is related to a specific public duty or responsibility of the covered person.
- Whether the meeting is primarily intended to present information to enhance a person’s general understanding of an issue or to influence current or future legislative or executive action.
- Whether the entity holding the meeting is a lobbyist principal, an educational institution, a governmental entity, and/or an entity that routinely sponsors meetings with educational content. If it is a lobbyist principal, is the same entity also paying for the designated individual’s attendance at the meeting?
- The meeting’s Agenda, considering the following factors.
 - The proportion of meeting sessions held in the absence of a meal or entertainment and the amount of formal meeting content relative to the length of the meeting.
 - Whether a wide range of topics is covered or the meeting has a very limited industry, issue, or client-specific focus.

² In this opinion, the Commission has summarized the educational meeting criteria in order to assist in its application.

- Whether the meeting would take place even if the invited designated individual(s) do not attend.
- Whether the speakers are associated with the lobbyist principal or its lobbyist.
- Whether the speakers are independent experts in the area concerned.
- Whether the location of the meeting is directly related to the meeting's educational content or the location of the attendees or members of the sponsoring organization.

IV. Discussion.

Applying the above-referenced criteria, the Commission has determined that the NCSEA Forum was an "educational" meeting and that therefore it was permissible for NCSEA to provide complimentary registration to members of the General Assembly and a representative of the Utilities Commission, certain legislative staff members, and a representative from the Governor's office. Although the NCSEA, the meeting organizer, provided the free registration and NCSEA representatives also spoke at the meeting, other factors support the educational purpose of the meeting, including the fact that the meeting's topic was related to the public duties of those designated individuals invited, the entire meeting took place on the same day, was located in Raleigh, the location of NCSEA offices and of many of the organizations represented, included a wide variety of speakers and topics, and a large proportion of the events included educational content.

In addition, it was permissible for NCSEA to provide free registration to Treasurer Cowell and Speaker Hackney, both of whom were speakers at the meeting.

The meeting also otherwise met the advance agenda, notice, and attendance requirements of the G.S. 138A-32(e)(3) meeting exception.

V. Conclusion.

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(d1), 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: _____

Robert L. Farmer
Chairman

Formal Advisory Opinions of the State Ethics Commission
Issued Pursuant to the Lobbying Law

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 (a1) 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, are limited to the particular facts presented, and confer limited civil immunity upon a requester who follows the advice given. G.S. 120C-102(a) and (a1).

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. 120C-102(c). 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(d). 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(d1). 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. 102(d1).