



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

August 14, 2009

Re: Educational Tour and the Educational Meeting Exception
Interpretation of G.S. 138A-32(c) and 138A-32(e)(3)(i)
AO-L-09-009

Dear Requester:

This formal advisory opinion addresses whether it is permissible for your organization to provide transportation, lodging, and meals in connection with a tour of businesses and communities (“Tour”). This opinion was adopted by the State Ethics Commission (“the Commission”) at its August 14, 2009, meeting.¹

I. Brief Conclusion.

The Commission has concluded that the transportation, lodging, and meals provided in connection with the Tour would be a gift subject to G.S. 120C-303(a)(1) of the Lobbying Law. However, pursuant to the G.S. 138A-32(e)(3)(i) educational meeting exception, it was permissible to provide those items to State legislators, legislative employees, and public servants.

II. The Facts.

The Center, a non-profit corporation, engages in the community development business. The Center is a NC-registered lobbyist principal.

The stated purpose of the Tour was to enhance the participants’ understanding of various North Carolina communities. The money for the Tour, including the money for the travel-related costs, lodging, and meals, was provided by the Center, except for two events.

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 number of individuals participated in at least a portion of the Tour, including legislators, public servants, legislative employees, and representatives from universities and colleges, local governments, various businesses, and the Center. Some of those participants only received meals in connection with the Tour. Others received transportation and lodging in addition to meals. Overall, the transportation, meals, and lodging provided were modest.

The Tour began at the Center's offices. A bus transported the participants to various North Carolina communities. During the drive, participants were provided with an orientation for the Tour. Once at their destination, the participants visited a hospital and a University. The University provided lunch. Following the lunch, the participants visited a locally owned company. The participants then toured another community and were served dinner. The participants then departed for another community where they attended a reception. After the reception, the participants went to their hotel.

The following day the bus departed in the early morning for a tour of various business centers. The Tour continued to an agricultural center, where participants learned of an ongoing study co-sponsored by the Center. It continued to a community that has recently had to overcome significant hardships, and met with the Mayor over lunch. The afternoon involved a guided tour and discussion of local agricultural businesses and trends. The Tour continued with a visit to another community participating in the Center's program and a discussion of issues facing the commercial fishing industry. The participants then traveled to another community to spend the night.

Early the next morning, the Tour continued to a local business that received support from the Center, where participants heard a presentation on that business. The Tour then passed through two communities that the Center had assisted in the financing of a particular project, and stopped in another community for lunch. The participants then visited several other facilities, including an industrial park and research facility, before returning to the Center's offices.

III. Applicable Statutory Provisions.

The Lobbying Law, G.S. Chapter 120C, prohibits, among other things, a lobbyist, a 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" 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 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). Those factors are extensively discussed in AO-L-08-006, which concerned a similar “rolling” educational meeting, and are summarized in AO-L-09-07.²

G.S. 120C-403(b)(5) generally requires that lobbyist principals 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, public servant, or legislative employee. G.S. 120C-100(a)(12)a.

IV. Discussion.

Applying the above-referenced criteria, the Commission has determined that the Tour was an “educational” meeting and that therefore it was permissible for the Center to invite legislators, public servants, and legislative employees to participate and for the Center to provide transportation, meals and lodging in connection with that participation. The following factors support the educational purpose of the meeting:

- The Center’s focus is related to the public duties of the legislators, public servants, and legislative employees invited because it provided them with an understanding of the communities and businesses visited. In addition, the Center receives public funding and this Tour provided legislators with an opportunity to assess the value of the work provided by the Center.
- A large proportion of the events included educational content. The Tour activities commenced before 9:00 a.m. on each day and ended by approximately 5 p.m. Aside from relatively brief breaks for lunch and dinner each day and a reception on the second day, there was relatively little leisure time or entertainment provided to the participants.
- Lodging was provided in communities that are not considered tourist destinations.
- Although approximately fifty percent of the businesses and communities visited on the Tour had received assistance from the Center or were engaged in joint projects with the Center, the educational focus of the Tour went beyond services provided by the Center.
- The location of the Tour related directly to its content. Given the wide variety of sites visited and the opportunity provided to view and walk through the various communities visited, the location of the Tour greatly enhanced its educational value.
- The Tour included a wide variety of speakers and topics.

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

² <http://www.ethicscommission.nc.gov/documents/L-08-006-final-121008.pdf>;
http://www.ethicscommission.nc.gov/documents/AO_L_09_007.pdf.

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 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(a1).

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(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. 120C-102(d1).