



STATE ETHICS COMMISSION

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICS.COMMISSION.NC.GOV

ROBERT L. FARMER
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

November 13, 2009

RE: Application of Lobbying Law Restriction Against Hiring Contract Lobbyists by State Agencies to a Local Management Entity and Lobbying Law Exemption for Certain Government Officials to LME's Contract Lobbyist
G.S. 120C-500(b) and G.S. 120C-700(3)
AO-L-09-011

Dear Requester:

You requested a formal advisory opinion regarding the application of the Lobbying Law, Chapter 120C of the North Carolina General Statutes ("G.S.") to a local management entity ("LME"), and to you, a contract lobbyist. You sought specific guidance as to whether G.S. 120C-500(b) would restrict an LME from paying a contract lobbyist and whether G.S. 120C-700(3) exempted you from the Lobbying Law requirements. This opinion was adopted by the Commission at its November 13, 2009, meeting.¹

I. Brief Conclusion.

G.S. 120C-500(b) only applies to State agencies or constitutional officers of the State. "State agencies" are limited to governmental units in the executive branch of State government. An LME is either a local political subdivision of the State or a department or program created by one, but it is not a State agency. Accordingly, G.S. 120C-500(b) does not apply to an LME. In either case, it may contract with and pay a private attorney to lobby on its behalf. However, since you are not an elected or appointed government official, government employee, or an appointed county or city attorney, G.S. 120C-700(3) does not exempt you from the requirements of the Lobbying Law.

II. The Facts.

You are a private attorney. You provide a variety of services to your clients for which you are paid. The LME is one of your law clients. The LME also pays you to lobby State

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.

executive and legislative branch officials on its behalf. You are not an employee of the LME, a county, city, or state employee, or a county or city attorney appointed pursuant to G.S. 153A-114 or G.S. 160A-173, respectively.

An LME is an area authority, county program, or consolidated human services agency that is responsible for the management and oversight of the public system of mental health, developmental disabilities, and substance abuse services at the community level. G.S. 122C-3(20b) and G.S. 122C-115.4. An LME functions as a local political subdivision of the State or a department or program of the county in which it is located. G.S. 122C-116.

III. Applicable Statutory Provisions.

A. G.S. 120C-500(b)—State Agencies Restricted from Hiring Contract Lobbyists for Legislative Lobbying.

When the Lobbying Law was initially enacted, subsection 500(b) stated as follows:

No State funds may be used to contract with persons who are not employed by the State to lobby legislators and legislative employees. This subsection shall not apply to counsel employed by any agency, board, department, or division authorized to employ counsel under G.S. 147-17.

In August 2008, the Lobbying Law and the State Government Ethics Act, G.S. Chapter 138A, were amended and definitions of “governmental unit” and “State agency” were added:

Governmental unit -- A political subdivision of the State, and any other entity or organization created by a political subdivision of the State.” G.S. 138A-3(15d).

State agency -- An agency in the executive branch of the government of this State, including the Governor’s Office, a board, a department, a division, and any other unit of government in the executive branch. G.S. 138A-3(30k).

S.L. 2008-213, Sections 44 and 54. Subsection 500(b) of the Lobbying Law was amended as follows:

No State agency or constitutional officer of the State may contract with individuals who are not employed by the State to lobby legislators or legislative employees. This subsection shall not apply to counsel employed by any agency, board, department, or division authorized to employ counsel under G.S. 147-17.

S.L. 2008-213, Section 30. These amendments became effective August 15, 2008. S.L. 2008-213, Section 91.

B. G.S. 120C-700(3)—Governmental Employee Exemption to Lobbying Law.

G.S. 120C-100(a)(10) defines a contract lobbyist as an individual who engages in lobbying and:

(b) Represents another person or governmental unit, but is not directly employed by that person or governmental unit, and receives payment for services....

or

(c) Contracts for economic consideration for the purpose of lobbying.

This provision also states that the term “lobbyist” shall not include individuals who are specifically exempted from the Lobbying Law by G.S. 120C-700. G.S. 120C-700(3) states that except as stated in Article 8, the provisions of this Chapter shall not apply to any of the following:

A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when acting solely in connection with matters pertaining to the office and the public duties, except for a person designated as liaison personnel under G.S. 120C-500. For purposes of this subdivision, an individual appointed as a county or city attorney under Part 7 of Article 5 of Chapter 153A of the General Statutes or Part 6 of Article 7 of Chapter 160A of the General Statutes, respectively, shall be considered an employee of the county or city.

IV. Discussion.

A. Does G.S. 120C-500(b) prohibit an LME from contracting with or employing a private attorney to lobby legislators or legislative employees?

No. G.S. 120C-500(b), as amended, only applies to State agencies or constitutional officers of the State. The added definitions referenced above clarify that under the Lobbying Law a “state agency” is limited to governmental units in the executive branch of State government. This term does not include an LME.

B. Does G.S. 120C-700(3) apply to a private attorney who is not an elected or appointed government official, a government employee, or an appointed county or city attorney acting in connection with his or her office or public duties, who is paid to lobby legislators or legislative employees on behalf of an LME?

No. An individual must be an elected or appointed government official, government employee, or an appointed county or city attorney for G.S. 120C-700(3) to apply. In addition, G.S. 120C-700(3) only applies when the government official or government employee is acting solely in connection with matters pertaining to his or her public office or job duties. Based on the facts presented, you are a contract lobbyist for an LME. You are not a government official or employee or an appointed county or city attorney. Therefore, G.S. 120C-700(3) does not exempt you from the requirements of the Lobbying Law.

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).