



## STATE ETHICS COMMISSION

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

May 14, 2010

Ms. Millie Ravenel  
Executive Director  
The Center for International Understanding  
100 East Six Forks Road  
Raleigh, NC 27609

RE: Sponsoring Legislator and Public Servant Participation in International Trip  
G.S. 138A-32(e)(3) and G.S. 138A-32(f)  
AO-L-10-002

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Dear Ms. Ravenel:

By letter dated February 22, 2010, you requested a formal advisory opinion from the State Ethics Commission ("Commission") as to whether lobbyist principals may donate funds to the Center for International Understanding's ("Center") in order to pay for the trip-related costs of legislators' and public servants' participation in the "Energy Sustainability and Green Jobs" trip planned for November 6-15, 2010 ("2010 Energy Trip"). This formal advisory opinion addresses whether the 2010 Energy Trip qualifies as an educational meeting under the gift ban exception of G.S. 138A-32(e)(3)(i) or is otherwise subject to the G.S. 138A-32(f) "reimbursement" exception of the State Government Ethics Act ("the Ethics Act").

This formal advisory opinion was adopted by the Commission at its May 14, 2010, meeting.<sup>1</sup>

#### **I. Brief Conclusion.**

Based on the information presented, the Commission has concluded that lobbyist principals may donate funds to the Center in order to pay for the trip-related expenses of attending legislators and public servants whose public duties and responsibilities pertain to North Carolina energy and environmental policies and practices. This conclusion is based upon the Commission's determination that the 2010 Energy Trip qualifies as an educational meeting. Thus, as long as the

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<sup>1</sup> 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.

other requirements listed in G.S. 138A-32(e)(3)a.-d. have been satisfied, a lobbyist principal may pay for the reasonable actual expenditures of travel, lodging, meals, and other incidental items of nominal value that are provided in connection with the 2010 Energy Trip to participating legislators or public servants. In addition, the G.S. 138A-32(f) "reimbursement exception" may also allow the donation of those expenses to participating public servants.

Any sponsoring lobbyist principal must report all expenditures made on behalf of the attending legislators and public servants on its principal report filed with the Secretary of State that covers the month of November 2010.

## **II. The Facts.**

The Center is a public service program of the University of North Carolina ("UNC") that operates within UNC's General Administration. It is not a lobbyist principal. The Center works primarily with North Carolina policy leaders and educators to provide them with the experiences and tools necessary to guide their communities and the State through changes associated with an increasingly interdependent world.

Most of the funds for the 2010 Energy Trip, including those paying for the travel-related costs of some of the invited legislators and public servants, will be given to the Center in the form of grants from private philanthropic foundations, which are not lobbyist principals, such as the Z. Smith Reynolds Foundation and the Foundation for Carolinas. However, the Center is also seeking funds from other organizations and companies, some which are lobbyist principals, so additional legislators and public servants may participate in this international study trip. These Foundations and additional sponsors will not be involved in the planning or administration of the trip or the selection of the participants.

This study trip was designed to send legislators and public servants whose public duties concern energy and environmental issues and policies to Germany, Belgium, and France to study and examine those countries' successful environmental and energy policies and practices, and the comprehensive energy policy for all countries within the European Union. These three countries were chosen because each is a world leader in energy practices and technology. Each of these countries has a strong commitment to alternative and renewable energy and the reduction of dependency on fossil fuels, and applies varying approaches to reach its energy and environmental goals. Educational goals of the trip are to:

- Broaden the vision and expand the frame of reference of North Carolina energy and environmental policymakers and other statewide energy experts of what is possible from an energy policy perspective and in practical application by exposing them to energy approaches not routinely used in the United States or North Carolina;
- Gather information about the progress and challenges of sustainable energy policies and practices in the European Union;
- Gather information about Germany's wind utilization, solar thermal installations, and bio-fuels production;
- Gather information about France's nuclear energy policies, including the management of nuclear waste and the public's acceptance of nuclear energy;

- Provide North Carolina's energy and environmental policymakers, and other energy experts, with hands-on experience and practical knowledge of how to approach the pressing issues surrounding green jobs creation and energy sustainability;
- Meet with energy and environmental experts from these European Union countries to discuss, develop, and analyze methods and models to expand renewable energy and promote energy efficiency.
- Better understand the role of economic policies and incentives in promoting environmental and energy goals.

The Center recognizes that energy sustainability and green jobs are critical to North Carolina's economic strength and environmental health. Based on this principal, the overall purpose of the 2010 Energy Trip is to expose and educate North Carolina policymakers on a variety of successful international environmental and energy policies and practices of, and economic opportunities in, countries that are world leaders in energy practices and energy technology. To this end, the Center plans to invite legislators and public servants who have an energy and environmental focus, including legislators that serve on the House or Senate Energy Committees and Public Utilities Committees, and representatives from the Governor's Policy Office, the Department of Commerce, and the Energy Policy Council. In addition, experts in the energy field, energy business leaders, and others, will be invited to participate.

The Center will pay for the travel-related costs of their participating staff members, invited legislators, and the invited public servants representing the Governor's Policy Office, the Department of Commerce, and the Energy Policy Council. As stated above, some of those travel expenses may be indirectly paid for by lobbyist principals. The other invited participants must pay a "registration fee" of \$5,000 which will cover their travel-related costs, including airfare and other necessary transportation, lodging, meals, and other incidentals connected to the study trip. Approximately 28 participants are expected, with 13 being paying participants and 15 being non-paying participants, including 12 policymakers and 3 staff members.

The 2010 Energy Trip, excluding travel time to and from Europe, is an eight-day trip consisting of 10 hour days. The formal agenda for the meeting provided by the Center includes educational time; breakfast, the majority of lunches, and approximately half of the dinners; travel from Germany to Brussels and from Brussels to France; and travel to and from the various meeting sites and energy sites in each country. The majority of the late afternoons and evenings are "free time" that the trip participants spend as they wish at their own expense. No entertainment is being provided as part of this trip's itinerary and all cultural visits are optional at the participant's own expense. In addition, legislators and public servants are required to pay for their lodging and meal expenses in France for Saturday, November 13<sup>th</sup>, a day with no educational time planned.

Educational time includes an overview of the comprehensive energy policy for all countries within the European Union and of the multi-national Cohesion Policy which provides support for "green jobs" and for the "green economy," with an emphasis on the policies of Germany, Belgium and France; gathering information, discussing, and evaluating (a) Germany's wind utilization, solar thermal installations, and bio-fuels production, and its policies to provide incentives to encourage innovation and ease the change to renewable energy resources, (b) France's management of nuclear waste and how it generated public acceptance of nuclear energy, and (c) Belgium's fostering of trade associations and non-government organizations that influence energy policies, research, and

innovation; visits with officials of Germany's and France's Ministries of Environment, Energy, and Economics; presentations by and discussions with renewable energy experts, nuclear energy and waste experts, suppliers and associations; and site visits to government operated and privately owned energy manufacturing operations and vocational institutions providing study in the field of renewable energy, with an emphasis upon energy efficiency, incentives to promote energy goals, and "green economic" policies and "green-collar" jobs.

Prior to the trip, participants must attend educational workshops and read background briefing materials regarding the comprehensive energy policy for all countries within the European Union, focusing on the energy policies of Germany, Belgium, and France. Upon their return to North Carolina, the participants will assist the Center with the drafting of a final report that includes findings and the implications for North Carolina's energy and green economic policies and practices which will be presented to the General Assembly and other interested persons.

### **III. Applicable Statutory Provisions.**

G.S. 120C-303(a) prohibits a lobbyist, lobbyist principal, or legislative liaison personnel from giving gifts (including anything of monetary value), 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. That provision also restricts a lobbyist, lobbyist principal, or legislative liaison personnel from giving a gift to a third party with the intent that a designated individual be the ultimate recipient.

Designated individuals, in turn, are restricted from accepting gifts from lobbyists and lobbyist principals, either directly or from a third party, if they know that the gift was given with the intention that the designated individual be the ultimate recipient, unless an exception applies. Public servants are also restricted from accepting gifts, either directly or through a third party, from persons who are seeking to do business with or are engaged in activities that are regulated by the public servant's employing entity, or that otherwise have financial interests that may be substantially and materially affected by the public servant ("interested persons"), unless an exception applies. G.S. 138A-32(d).

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 designated individual ...." Expenses may also be paid for a designated individual's participation as a speaker at a meeting. G.S. 138A-32(e)(3)(ii). That exception also requires that any food, beverages, transportation, or entertainment provided at the meeting must be provided to all attendees or defined groups of 10 or more attendees. In addition, 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).<sup>2</sup> 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.
  - 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.**

To the extent the Center receives funds from lobbyist principals and those principals intend that those funds will be utilized to pay for the travel expenses of legislators and public servants, those donations will be subject to the indirect gifts ban of G.S. 120C-303(a)(2). Therefore, a gifts ban exception must apply in order for those donations to be given. Moreover, in the event the Center receives funds from interested persons to pay for the travel expenses of public servants, those donations will also be restricted absent an exception.

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

Based on the information submitted and applying the facts presented to the above referenced criteria, the Commission has determined that the Center's 2010 Energy Trip qualifies as an educational meeting. This determination is dependent upon each non-paying designated individual paying for his or her free time expenditures and cultural visits, including entrance fees, transportation to and from these sites, and the cost of lodging and meals in France for Saturday, November 13, 2010. Thus, if the Trip is attended by at least 10 or more participants, the advance agenda and notice requirements of G.S. 138A-32(e)(3) have been met, and, if food, beverage, or transportation included on the meeting agenda is provided to at least 10 of those individuals attending, the Trip will satisfy the educational meeting exception. Accordingly, lobbyist principals may pay for other reasonable actual expenditures incurred by North Carolina legislators and public servants in connection with their participation in this study trip. However, each legislator and public servant must pay for the costs he or she incurs for free time expenditures and cultural visits, including the cost of meals and lodging while in France on November 13, 2010.

In the event interested persons donate funds for the purpose of paying for the expenses of attending public servants, the meeting exception would be inapplicable, since it applies only to gifts from lobbyist principals. The only other exception that would apply is G.S. 138A-32(f), which provides that public servants may accept a "gift" that represents an "expense appropriate for reimbursement" by the State agency employing a public servant. Under this provision (a) the "gift" must be consistent with those types of expenses that would otherwise meet the agency's expense reimbursement policies and (b) the public servant must receive approval from the employing entity to receive such items of value. The Commission recommends that the public servant receive that approval in writing.

Each sponsoring lobbyist principal must report the expenditures it pays on behalf of the attending legislators and public servants on its principal report it files with the Secretary of State for November 2010.

**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 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).