



North Carolina General Assembly Legislative Ethics Committee

PUBLISHED EDITED ADVISORY OPINION OF THE LEGISLATIVE ETHICS COMMITTEE

AO-E-07-0010

Donations to a Charitable Organization Organized by Members of the General Assembly – G.S. 138A-32

Approved by the Legislative Ethics Committee December 11, 2007

Question:

A legislator asked the following questions regarding a charitable 501(c)(3) organization ("Organization") that was organized by members of the General Assembly:

1. Can lobbyists serve on the board of directors of the Organization?
2. Should legislators serve on the board of directors of the Organization? What is the limitation regarding fundraising activity the legislator can be involved in as a member of that board?
3. If lobbyists serve on the Organization's board, what is the limitation regarding fundraising and interaction with legislators and contributing financially to this event?

The Organization is a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code. The Organization was created by an association of North Carolina legislators, with the purpose of raising funds to provide college scholarships. The current board of directors of the Organization consists of eight legislators and two lobbyists.

In past years, the Organization received its funding from a variety of sources, including a number of North Carolina businesses (including registered North Carolina lobbyist principals), registered North Carolina lobbyists, political action committees, and various candidate campaign committees. The Organization has hired consultants to organize and advertise the Organization's annual conference and to solicit contributions to the Organization.

In addition to other initiatives, the Organization annually awards college scholarships to students attending colleges and universities in North Carolina. Those scholarship recipients are honored at the Organization's annual conference. The conference has also included meetings and workshops on a variety of issues of concern to the community.

The conference ends with a banquet at which the scholarship recipients were recognized and community service awards were bestowed. There has been a registration fee for attending past conferences. In addition, several North Carolina companies have contributed to the conference at various funding levels and have sponsored tables at the awards banquet. Advertisements for the conference program have also been sold to local businesses. In past years, the Organization has paid for the cost of registration and meals for some legislators and legislative employees.

In addition to funding college scholarships, the Organization has paid for legislators who are members of the General Assembly to attend the annual conventions.

Opinion:

1. May lobbyists serve on the Organization's board?

The Legislative Ethics Committee does not have jurisdiction to issue advisory opinions concerning the conduct of lobbyists.

The State Ethics Commission said that there is no prohibition in either Chapter 138A or Chapter 120C of the General Statutes against a lobbyist serving on the board of a private nonprofit association. The Commission opined that the result does not change if legislators are also serving on the board. Article 3 of Chapter 120C places limitations on certain activities of lobbyists and lobbyist principals, but none of the prohibitions limit a lobbyist's service on a nonprofit board.

2. May a member of the General Assembly serve on the Organization's board?

There is no prohibition against a legislator serving on the board of directors of a nonprofit corporation, even if lobbyists also serve on that board.

However, by serving on the Organization's board, a legislator would have an economic interest in the Organization and may therefore be restricted from taking certain legislative actions that would benefit the Organization. G.S. 138A-3(11) defines "economic interest" as "matters" involving "a business with which associated or a nonprofit corporation or organization with which associated." "Nonprofit association with which associated" includes organizations operating in the State, including those operating primarily for "charitable" or "educational purposes" and of which a legislator or any member of the legislator's immediate family is a "director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year." G.S. 138A-3(24).

Since a legislator serving on the Organization's board is considered, by definition, to have an economic interest in the Organization, G.S. 138A-37 may restrict the legislator from taking legislative action concerning the Organization. Specifically, G.S. 138A-37(a) prohibits a legislator's participation in a "legislative action," if

the “legislator concludes that an actual economic interest” exists and that the interest “would impair the legislator’s independence of judgment.” In reaching this conclusion, G.S. 138A-37(a) requires that the legislator consider: (a) whether “the legislator’s judgment would be substantially influenced by the interest,” and (b) “the need for the legislator’s contribution” to the matter.

3. May a legislator solicit and accept donations to the Organization from lobbyists and lobbyist principals?

A. Neither the State Government Ethics Act, Chapter 138A of the General Statutes, nor the Legislative Ethics Act, Article 14 of Chapter 120 of the General Statutes, specifically prohibits legislators from soliciting and accepting donations to the Organization from lobbyists or lobbyist principals. However, the following provisions of Article 4 of the State Government Ethics Act, Chapter 138A of the General Statutes, may apply under the particular circumstances discussed below.

1. G.S. 138A-31(b) prohibits a legislator from using his or her legislative title in nongovernmental advertising that advances the private interests of the legislator or others. However, that provision specifically exempts charitable solicitations on behalf of a nonprofit that qualifies as a 501(c)(3) organization. Therefore, since the Organization is organized as a 501(c)(3), it would be permissible for the legislator to use his or her legislative title in charitable solicitations on behalf of the Organization.
2. G.S. 138A-32(a) prohibits a covered person (which includes legislators) from directly or indirectly soliciting anything of value to benefit the legislator or another “person” (such as the Organization) in return for being influenced in the legislator’s official responsibilities. This provision, therefore, would prohibit a legislator from soliciting donations to the Organization from anyone, including lobbyists and lobbyist principals, or indirectly soliciting those donations, in return for taking a particular legislative action. However, the solicitation of a donation, alone, would not be a violation of this provision. There would have to be a demonstrable connection between the solicitation and being influenced in the discharge of the legislator’s official responsibilities as a legislator in order for this prohibition to apply.
3. G.S. 138A-32(c) prohibits legislators, legislative employees, and public servants from “knowingly” accepting gifts, defined as “anything of monetary value,” from lobbyists, lobbyist’s principals, or liaison personnel, directly or indirectly, unless an exception applies. G.S. 120C-303 prohibits lobbyists and lobbyist principals, and G.S. 120C-501 prohibits liaison personnel, from “directly or indirectly” giving

legislators, legislative employees, and public servants gifts, unless an exception applies.

Recent amendments have clarified what constitutes direct and indirect gifts. G.S. 138A-32(c) now states:

- "(c) No public servant, legislator, or legislative employee shall knowingly accept a gift from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes. No public servant, legislator, or legislative employee shall accept a gift from a third party knowing all of the following:
- (1) The third party obtained the gift from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes.
 - (2) The lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes intended for the ultimate recipient of the gift to be a public servant, legislator, or legislative employee as provided in G.S. 120C-303."

Based on the information provided, it appears that donations are made to the Organization, not to the individual legislators who are members of the Organization's board. However, under certain circumstances, these donations to the Organization could be an indirect gift to a legislator, legislative employee, or public servant.

In applying the definition of an indirect gift to contributions made by lobbyists and lobbyist principals to the Organization, if a legislator is the ultimate recipient of that donation to the Organization, and the legislator knows that the gift was funded by a lobbyist or a lobbyist principal with the intent that the legislator be the ultimate recipient, the legislator would be prohibited from accepting the gift from the Organization, unless an exception to the gift ban applied.

B. In addition to the issues related to direct and indirect gifts discussed above, under its duty to advise legislators on suggested standards of conduct under Chapter 120 of the General Statutes, the Committee suggests that there are circumstances where a legislator's solicitation and acceptance of a donation to the Organization from a lobbyist or lobbyist's principal could be inappropriate and could be perceived as an improper use of one's legislative position for the private benefit of either the legislator or another, namely the Organization.

For example, it would be inappropriate for a legislator who serves on the board of a 501(c)(3) organization that is controlled by the legislator or a group of

legislators, such as the Organization, to solicit or accept donations on behalf of the 501(c)(3) organization from lobbyists or lobbyist's principals. It would also be inappropriate for a legislator serving on the board or executive committee of a 501(c)(3) organization, such as the Organization, where either the board or the executive committee is controlled by the legislator or a group of legislators, to participate as a member of the board or executive committee in any action that authorizes the solicitation or acceptance of donations by the 501(c)(3) organization from lobbyists or lobbyist's principals.

With regards to the Organization, because 80% of the Organization's board members are currently legislators, legislators are in control of the Organization. Therefore, it would be inappropriate for legislators on the Organization board to: (1) solicit or accept donations on behalf of the Organization from lobbyists or lobbyist's principals, or (2) participate as a member of the Organization's board in any action that authorizes the solicitation or acceptance of donations by the Organization from lobbyists or lobbyist's principals.

The State Government Ethics Act, Chapter 138A, the Lobbying Act, Chapter 120C, and the Legislative Ethics Act, Article 14 of Chapter 120 of the General Statutes do not prohibit legislators from serving on the Organization's board. But, legislators may not accept gifts from the Organization that would constitute indirect gifts from lobbyists or lobbyist's principals, unless an exception to the gift ban applies. In addition, legislators should not solicit or accept contributions from lobbyists and lobbyist principals on behalf of the Organization with whom a legislator is associated, if the legislator, or a group of legislators, is in control of the Organization. Nor should a legislator participate as a member of the board or executive committee of the Organization in any action that authorizes the solicitation or acceptance of contributions by the Organization from lobbyists or lobbyist's principals, if the Organization's Board or executive committee is controlled by a legislator or a group of legislators.

Under North Carolina law, some charitable nonprofit organizations organized pursuant to Section 501(c)(3) of the Internal Revenue Code may be considered, under certain circumstances, a political committee under Chapter 163 of the General Statutes – Election Laws. Accordingly, it is possible that the provisions of this opinion could be construed to address conduct otherwise regulated under Chapter 163 of the General Statutes. For the reason this question is not before the Committee, this advisory opinion does not address whether it is appropriate for a legislator to solicit or accept, or take action as a member of the organization or the executive committee of the organization to authorize the solicitation or acceptance of, donations from lobbyists or lobbyist's principals to a charitable nonprofit organization organized pursuant to Section 501(c)(3) of the Internal Revenue Code, such as the Organization, that is also a political committee under Chapter 163 of the General Statutes, if the organization or the executive committee of the organization is controlled by a legislator or a group of legislators.