



# North Carolina General Assembly Legislative Ethics Committee

## PUBLISHED EDITED ADVISORY OPINION OF THE LEGISLATIVE ETHICS COMMITTEE

**AO-E-07-0012**

### **Legislator Teaching at a UNC School and Conflicts of Interest – G.S. 138A-37(a)**

Approved by the Legislative Ethics Committee October 16, 2007

#### **Question:**

May a legislator take a position teaching at a constituent institution of The University of North Carolina? Would acceptance of the position limit the legislator's actions with regards to the institution?

#### **Opinion:**

Although G.S. 138A-37(a) does not restrict a legislator's private business or employment pursuits, it may restrict the legislator's participation in a "legislative action," as defined in G.S. 120C-100(5). Specifically, a legislator must decline to participate in a legislative action if:

- (1) The "legislator, a member of the legislator's extended family, the legislator's client, a business with which the legislator is associated, or a nonprofit corporation or organization with which the legislator is associated has an economic interest in or may reasonably and foreseeably benefit from the action,"; and
- (2) 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.

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." The Legislative Ethics Committee has determined that State entities, such as the constituent institutions of the University of North Carolina or its various academic departments, are

not included within the definition of “business with which associated.” Moreover, under the recent amendments to G.S. 138A-3(24), “any board, entity, or other organization created by this State or by any political subdivision of this State” are explicitly not considered “nonprofit corporations or organizations with which associated.”

G.S. 138A-37(a) also restricts a legislator’s participation in a legislative action from which a client may reasonably and foreseeably benefit. Therefore, the question is whether the constituent institution of The University of North Carolina could be considered a “client” of the legislator. That term is undefined, but the Committee would broadly construe it to include a contractual relationship with an individual or entity to provide professional services. The term “client,” as commonly defined, would exclude an individual’s employer. The legislator would teach the course as an employee of the institution. Thus, the institution could be viewed as a “client” of the legislator in this context.

Thus, an association with the institution would not constitute an “economic interest” under G.S. 138A-37(a). Nor would that association constitute a “client” relationship. The legislator would therefore not be restricted in participating in a legislative action because of his or her employment by the institution.

**Legislative Ethics Committee Note of Subsequent Legislative Action:**

**See Sec. 84 of S.L. 2008-213 which repeals G.S. 138A-3(11) which had previously defined "economic interest", amends the conflict of interest analysis process for legislators, and now includes employment by the State or one of its political subdivisions in this analysis.**