



## STATE ETHICS COMMISSION

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### FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

December 17, 2010

Re: Payment for Lobbying and Reimbursement of Actual Travel Expenses  
G.S. 120C-100(a)(9); 120C-100(a)(10)b. and c.; and 120C-100(a)(11k)  
AO-L-10-004

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Dear Requester:

This is in response to your request for a formal advisory opinion from the State Ethics Commission (“Commission”). You ask whether you are required to register as a lobbyist if you communicate with legislators and legislative employees regarding issues and actions affecting a particular Organization (“the Organization”). You have also asked whether the Organization’s provision of an apartment for your use when you are in Raleigh, in lieu of reimbursing you for your hotel expenses, would be considered a “reimbursement” or would be deemed a “payment” to you.

This formal advisory opinion was adopted by the State Ethics Commission (“the Commission”) at its December 17, 2010, meeting.<sup>1</sup>

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

You are not required to register as a lobbyist with the Secretary of State if the Organization reimburses you only for the actual travel expenses for lobbying on its behalf and does not convey any other money, thing of value, or economic benefit to you in return for those services. Actual travel expenses include lodging expenses for lobbying, such as certain expenses associated with leasing an apartment. The method of quantifying those expenses will vary according to whether you, or the Organization, lease the apartment. If incurred for lobbying, such expenses would be reimbursement for actual travel expenses, *not* “payment” for lobbying, and would not cause you or the Organization to be required to register as a lobbyist or a lobbyist principal, respectively.<sup>2</sup>

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<sup>1</sup> Please see the enclosure entitled “Formal Advisory Opinions of the State Ethics Commission” for further information regarding the protections offered to individuals receiving those opinions.

<sup>2</sup> Reimbursement of apartment expenses that are not for lobbying could constitute payment for lobbying, requiring you and the Organization to register.

## **II. Facts.**

The Organization monitors the political climate and actively works with legislators, state and local officials, and regulatory bodies to inform and educate them and to advocate the positions of the Organization on legislative and economic issues. You represent the Organization regarding various legislative issues. The Organization reimburses you for actual travel expenses you incur in connection with your representation of the Organization on those issues, including lodging, meals, and mileage. You do not receive any other payment or compensation from the Organization. You acknowledge that those legislative activities constitute lobbying.

You do not live in Raleigh but plan to be in Raleigh in 2011 to meet with legislators and legislative staff regarding issues that affect the Organization. You will be actively advocating for the Organization's positions on these issues and attempting to influence legislative action. You plan to expressly represent yourself as the Organization's representative when meeting with these individuals. The Organization will reimburse you for your travel expenses but will not make any other payment to you for representing it and advocating on its behalf.

You believe it would be more cost effective for the Organization to lease an apartment for you or to reimburse you for the rent you pay for an apartment in Raleigh, rather than to reimburse you for your actual hotel lodging expenses when you are in Raleigh.

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

### **A. Definition of a Contract Lobbyist.**

Effective January 1, 2011, a contract lobbyist is an individual "who engages in lobbying for payment" and: 1) "represents another person or governmental unit," or 2) "contracts for payment for lobbying." G.S. 120C-100(a)(10)b. and c.<sup>3</sup> "Payment" is defined "as any money, thing of value, or economic benefit conveyed to the lobbyist for lobbying, other than reimbursement for actual travel, administrative expenses, or subsistence." G.S. 120C-100(a)(11k).<sup>4</sup> "Reimburse" generally means to pay back to someone and often implies return of money that has been expended for another's benefit. Merriam-Webster's English Collegiate Dictionary, 11<sup>th</sup> Ed. (2003).

### **B. Definition of Lobbying.**

"Lobbying" is defined to include two types of lobbying: "direct lobbying" and "goodwill lobbying." "Direct lobbying" is "influencing or attempting to influence legislative or executive action, or both, through direct communications or activities with a designated individual or that individual's immediate family." G.S. 120C-100(a)(9)a. "Goodwill lobbying" is "developing

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<sup>3</sup> The definition of a contract lobbyist was amended during the 2010 legislative session. Session Law 2010-169, section 17.(b).

<sup>4</sup> During the 2010 legislation session this section was renamed "Payment" and the definition was amended. Session Law 2010-169, section 17.(d).

goodwill through communications or activities, including the building of relationships, with a designated individual or that individual's immediate family with the intention of influencing current or future legislative or executive action, or both." G.S. 120C-100(a)(9)b. "Designated individuals" include legislators, legislative employees, and public servants. G.S. 120C-100(a)(2). "Public servants" include elected and appointed state officials, and a broad range of state employees. G.S. 138A-3(30).

#### **IV. Discussion.**

Your primary question is whether you must register as a lobbyist to advocate the Organization's positions to legislators and legislative staff. You acknowledge that you will be attempting to influence current and future legislative action when you meet with legislators and legislative employees and inform them of the Organization's positions on these issues. Therefore, you are "lobbying" on behalf of the Organization. Accordingly, your obligation to register as a lobbyist is dependent upon the issue of payment. If you are engaging in lobbying for "payment," you must register as a lobbyist with the Department of the Secretary of State.

If the Organization only reimburses you for the actual travel costs you incur for lobbying on its behalf, and has not and does not convey any other money, thing of value, or economic benefit to you in return for lobbying, you are not required to register as a lobbyist. You have also asked whether the Organization's leasing of an apartment in Raleigh for your use while lobbying on the Organization's behalf, or its reimbursement of your costs of leasing that apartment, would be considered reimbursement for travel expenses and therefore not be considered a "payment" to you for lobbying. Since you have not provided detailed facts about the rental arrangement or payment by the Organization, the Commission has provided you with the following general guidance regarding this issue.

A similar issue was presented to the Florida Ethics Commission (FEC) a number of years ago. In Florida Ethics Advisory Opinion No. 80-41 (1980), the FEC interpreted "compensation" for lobbying to exclude reimbursement for travel expenses, as North Carolina's Lobbying Law does. In a later opinion, the FEC determined that reimbursement of actual incurred travel expenses, including the payment of a reasonable daily rate to a lobbyist who stayed at a private residence while engaged in lobbying activities, was not compensation. However, the FEC acknowledged the importance of reviewing and evaluating all facts as a certain payment could be "a ruse for transferring compensation in the guise of reimbursement of expenses." Florida Ethics Advisory Opinion No. 84-114 (1984).

In order for a payment from the Organization to you to be deemed reimbursement under the Lobbying Law's definition of "payment," that payment must be for actual travel expenses that you have incurred for lobbying on behalf of the Organization. Actual travel expenses include necessary lodging expenses. However, payment by the Organization to you for lodging expenses that are not for lobbying would not qualify as reimbursement for travel expenses under G.S. 120C-100(a)(11k).

Since you do not reside in Raleigh, you may incur lodging related travel expenses for lobbying in Raleigh on behalf of the Organization.<sup>5</sup> Those lodging related travel expenses could include expenses associated with the rental of an apartment.

Who actually leases the apartment will determine the specifics of the rental expenses allowed as lodging-related travel expenses. If the Organization leases the apartment and directly pays the rent to the lessor, the share of the rental expenses that the Organization can attribute to your lodging related travel expenses will be limited to your actual use of the apartment that is for lobbying. If you use the apartment for personal, non-lobbying purposes, you would be required to pay the Organization a per day pro-rata share of the apartment rent, utilities, and other related expenses for each day or night so used. Your failure to pay the Organization for your personal use of the apartment would likely result in the Organization having “paid you for lobbying,” thereby requiring you to register as a lobbyist and the Organization to register as a lobbyist principal.

In the event that you are the lessee of the apartment, the Organization may reimburse you for a per day pro-rata share of your actual rent, utilities, and other related expenses for each night the lodging was for lobbying. Such payment would be deemed reimbursement for actual travel expenses and would not be deemed “payment” for lobbying,<sup>6</sup> and would not cause you or the Organization to be required to register as a lobbyist or a lobbyist principal, respectively.<sup>7</sup>

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<sup>5</sup> If you resided in Raleigh, you would not incur lodging-related travel expenses while engaging in lobbying activities there. Therefore, the Organization’s payment for any apartment expenses would not qualify as reimbursement for actual travel expenses.

<sup>6</sup> Any rental payment in excess of this limited pro-rata amount could constitute payment for lobbying requiring you and the Organization to register.

<sup>7</sup> Both of these apartment rental approaches require case by case validation and self imposed “checks and balances” to ensure against certain payments being used as a “ruse for transferring compensation in the guise of reimbursement of expenses.”

**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).