



## STATE ETHICS COMMISSION

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### **FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION**

April 24, 2009

RE: Interpretation of “Association” in G.S. 120C-100(a)(11)  
AO-L-09-006

Dear Requester:

This formal advisory opinion addresses the question of whether your group (“Group”) is included in the Lobbying Law’s definition of “lobbyist principal.” This advisory opinion was adopted by the State Ethics Commission (“the Commission”) at its April 24, 2009, meeting.<sup>1</sup>

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

Based on the facts presented, which are summarized below, the Commission has determined that as an unincorporated nonprofit association as defined by Chapter 59B of the North Carolina General Statutes (“G.S.”), your Group qualifies as an “association” pursuant to the definition of lobbyist principal stated in G.S. 120C-100(a)(11). Therefore, when your Group retains a lobbyist to lobby on its behalf and the related interests of its members, the Group is the lobbyist principal under the Lobbying Law, not each member of the Group.

#### **II. The Facts.**

Several entities chartered by a national organization with jurisdiction in all, or parts, of the State of North Carolina (“member entities”) created your Group. Each of the member entities were, and continue to be, a nonprofit corporation. All of the member entities are “members” of your Group. At the time your Group was created, rules and practices of your Group were established by the member entities.

The Group’s rules and practices include a written document: (1) containing a Mission Statement, a Purpose Statement, and a list of the member entities; (2) establishing the amount of each member entity’s yearly dues and the office of treasurer as the custodian of the Group’s funds; (3) establishing that an Annual Meeting of the Group will be held each year and be attended by 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.

Chair and CEO of each member entity; (4) establishing that the Group would maintain a state calendar of all meetings and events of state wide importance to the members; and (5) establishing legislative monitors and advocates. The Group also established a steering committee consisting of four chairs and CEOs from its member entities.

Your Group is funded solely by the dues paid by its member entities. The Group currently retains a lobbyist to lobby on its behalf and on behalf of its member entities and otherwise represent their related interests. The lobbyist is paid with dues paid by the member entities. Your Group is currently registered with the Secretary of State as a lobbyist principal.

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

#### **A. The Lobbying Law's Definition of Lobbyist Principal.**

G.S. 120C-100(a)(11) defines "lobbyist principal" as:

The person or governmental unit on whose behalf the lobbyist lobbies....In the case of a lobbyist employed or retained by an association or other organization, the lobbyist principal is the association or other organization, not the individual members of the association or other organization.

"Person" is not defined in G.S. Chapter 120C, but is defined in G.S. Chapter 138A, the State Government Ethics Act.<sup>2</sup> Under the Ethics Act, "person" is broadly defined as:

Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together.

G.S. 138A-3(27).

#### **B. Interpretation of Term "Association."**

The term "association" is not defined in G.S. Chapter 120C or in G.S. Chapter 138A. Therefore, we must look to other sources for guidance on what this term was intended to include as used in G.S. 120C-100(a)(11).

Unincorporated nonprofit associations are recognized statutorily as independent legal entities and specifically recognized by G.S. Chapter 59B, the Uniform Unincorporated Nonprofit Association Act.<sup>3</sup> That Act defines a "nonprofit association" as:

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<sup>2</sup> When a term is not defined in G.S. Chapter 120C, but is defined in G.S. Chapter 138A, the definition contained in the Ethics Act applies. G.S. 120C-100(b).

<sup>3</sup> An example of other statutorily recognized associations are "cooperative associations," established and defined by Article 16 of G.S. Chapter 54.

an unincorporated organization, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose.

G.S. 59B-2(2).

“Member” is defined as:

a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

G.S. 59B-2(1). “Person” includes: individuals or any legal or commercial entity. G.S. 59B-2(3).

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

Although the lobbyist for your Group may, from time-to-time, represent the related interests of the member entities and the Group, the definition of lobbyist principal specifically provides that where a lobbyist is “employed or retained by an association ..., the lobbyist principal is the association ..., not the individual members of the association ....”

The Commission has determined that, based on the facts presented and the applicable statutory provisions, your Group, as an unincorporated nonprofit association, is an “association” as that term is used in the definition of “lobbyist principal.” Therefore, when your Group retains a lobbyist to lobby on its behalf and the related interests of its member entities, the Group is the lobbyist principal, and not its members. Therefore, your Group is required to register and report with the Secretary of State’s Office pursuant to G.S. 120C-206 and G.S. 120C-403. In addition, all of the restrictions and prohibitions applicable to a lobbyist principal, including the gift ban, are applicable to your Group.

**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, are limited to the particular facts presented, and confer limited civil immunity upon a requester who follows the advice given. G.S. 120C-102(a) and (a1).

Once issued by the Commission, formal advisory opinions are published in a redacted 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. 102(d1).