



## STATE ETHICS COMMISSION

1324 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1324  
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER  
CHAIRMAN

PERRY Y. NEWSON  
EXECUTIVE DIRECTOR

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

May 14, 2010

Mr. Robert A. Collier, Jr.  
Chairman  
North Carolina Board of Transportation  
1501 Mail Service Center  
Raleigh, NC 27699-1501

Re: Donation of Meeting Related Expenses to NCBOT  
G.S. 138A-32(c) and (d); G.S. 138A-32(e); G.S. 138A-32(f)  
AO-E-10-001

Dear Chairman Collier:

By letter dated January 22, 2010, you requested a formal advisory opinion from the State Ethics Commission ("the Commission") and an informal staff opinion in the interim. Specifically, you seek guidance as to the permissibility, under the gifts ban restrictions of the State Government Ethics Act ("the Ethics Act"), of the North Carolina Board of Transportation ("the Board") accepting donations from private businesses and local governmental entities to defray certain costs of holding Board meetings in various North Carolina localities.

On March 24, 2010, Commission staff issued an informal advisory opinion. At its May 14, 2010, meeting, the State Ethics Commission adopted and formalized the following advisory opinion.<sup>1</sup>

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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.

**I. Brief Conclusion.**

It would be permissible for the Board to accept items from private sources in order to defray the costs of holding Board meetings in locations throughout North Carolina. However, if those items are contributed by certain restricted donors and benefit a Board member directly, or are given to a third party with the intent that a Board member be the ultimate recipient, the Ethics Act's gifts ban may apply.

If the gifts ban is applicable, the donation may not be accepted unless a gifts ban exception would allow the gift. There are numerous exceptions to the Ethics Act's gifts ban that would allow receipt of food and beverages by Board members. Moreover, the "reimbursement exception" would allow those members to accept transportation and lodging expenses in addition to meals, as long as the members are approved to receive those expenses and they are of the type that would typically be reimbursed by the Department of Transportation. Finally, some of the items contributed may meet the "gift to the State" exception.

**II. Facts.**

The Board is considering holding several meetings a year outside of Raleigh. In the past, the Board has held such meetings and in connection with those meetings, local businesses and governmental entities would purchase lunch for DOT members, provide a meeting location, and periodically sponsor an evening reception to which local community leaders would be invited. However, those meetings took place prior to the adoption of the Ethics Act. You have asked that the Commission outline those restrictions on the donation of such items in light of the fact that members of the Board are "public servants" who are subject to the gifts ban of the Ethics Act.

**III. Applicable Statutory Provisions and Discussion.**

The following provisions, contained in the gifts ban of the State Government Ethics Act, are applicable to your questions. All of these restrictions would apply only to those individuals who are covered by the Ethics Act, such as the members of the Board.

**A. The Gifts Ban.**

**1. "Quid Pro Quo" Solicitations and Gifts from any Donor Prohibited.**

G.S. 138A-32(a) prohibits covered persons from soliciting or accepting anything of value "in return for being influenced" in their "official responsibilities." You have not indicated that the Board would be directly involved in the solicitation or acceptance of contributions in connection with the Board meetings. However, if members of the Board or other covered persons are involved in those solicitations, the solicitation or acceptance of those contributions would not violate subsection 32(a). In order for the G.S. 138A-

32(a) restriction to apply, there would have to be a direct connection between the solicitation and an official action by the Board member. Presumably, neither the Board members nor those Department of Transportation staff members covered by the Ethics Act would agree to take official action in return for meeting related contributions.

**2. Gifts From Lobbyists or Lobbyist Principals to Public Servants Restricted Unless an Exception Applies.**

Unless an exception applies, G.S. 138A-32(c) prohibits public servants from knowingly accepting a gift (defined as “anything of monetary value”) from a registered lobbyist or lobbyist principal. A list of registered lobbyists and lobbyist principals is provided on the Secretary of State’s website. Public servants are also prohibited from accepting gifts given by a lobbyist or lobbyist principal to a third party (including a State entity) with the knowledge that the donor intended that a public servant be the “ultimate recipient” of the gift.

**3. Gifts From Interested Persons to Public Servants Restricted Unless an Exception Applies.**

Public servants are also restricted from knowingly accepting gifts, either directly or indirectly, from a “person” that is seeking to do business with, is regulated by, or which has financial interests that may be affected by the public servant’s agency (“interested persons”). G.S. 138A-32(d) and (d1). “Person” is broadly defined to include any “individual, firm, partnership, committee, association, corporation, business,” and any other “organization or group of persons acting together.” However, the term “person” specifically excludes State agencies and boards and political subdivisions of the State, such as counties or municipalities. Thus, unless a local governmental entity is a registered lobbyist principal, a public servant would not be restricted from accepting a gift from a local government.

**4. Application of the Gifts Ban to Direct and Indirect Donations to State Agencies.**

Generally speaking, the gifts ban does not prohibit public servants from accepting donations on behalf of State agencies or other organizations. Thus, public servants may solicit and accept donations given to support the operations of a State agency, including a State Board. In addition, the gifts ban is inapplicable when donations are given directly to State agencies for any purpose deemed appropriate by those agencies.

On the other hand, the gifts ban may apply if a lobbyist, lobbyist principal, or interested person (“restricted donor”) gives a gift to a State entity or another third party with the specific intent that a public servant be the ultimate recipient and the public servant knows that the gift was intended to benefit him or her.

Thus, the gifts ban would apply to contributions to the Board generally, or to members of the Board specifically, if those contributions (1) were from a restricted donor and (2) the donor intended that the Board members or other individuals subject to the Ethics Act be the ultimate recipient. This would include meals and receptions.

The provision of meeting space to the Board would not fall within the gifts ban because the donation of meeting space does not, generally speaking, provide a personal benefit to the Board members. However, there could be some circumstances where the provision of meeting space at a resort or other similar destination would constitute a gift to those public servants attending. This determination would be a fact-based inquiry and the result would vary according to the locale provided.

**B. The Gifts Ban Exceptions.**

If the Ethics Act's gifts ban applies, there are a number of exceptions to the ban that allow a public servant's receipt of food and beverages. If any of those exceptions apply, the public servant may accept the gift. A discussion of the exceptions that allow receipt of food and beverages, and the criteria for meeting those exceptions, follows.

**1. G.S. 138A-32(e)(1) Food and Beverage Exceptions.**

G.S. 138A-32(e)(1) allows a public servant to accept food or beverages for immediate consumption in connection with the following three types of events.

- An open meeting of a public body as long as the meeting is noticed in accordance with the Public Meetings Act. G.S. 138A-32(e)(1)a.
- A "gathering" that is attended by at least 10 or more individuals and that is open to the general public as long as a sign or other communication noting that the gathering is open to the general public is displayed at the gathering. G.S. 138A-32(e)(2)b.
- A "gathering" to which various groups of covered individuals are invited, including all members of a State Board or at least 10 public servants, and 10 individuals associated with the sponsor attend or all shareholders, employees, etc. of the sponsor are invited. G.S. 138A-32(e)(2)c. This provision also includes certain notice requirements.

**2. G.S. 138A-32(e)(12) Public Servant Food and Beverage Exception.**

G.S. 138A-32(e)(12) also allows a public servant to accept food or beverages for immediate consumption in connection with a gathering if the public servant is invited to attend for "purposes primarily related to the public servant's public service or position"

and 10 individuals attend the gathering or all shareholders, employees, etc. of the sponsor are invited. This exception is similar to the G.S. 138A-32(e)(2)c. exception, discussed above. However, the (e)(12) exception does not require that the entire board be invited or that 10 persons associated with the sponsor attend and does not impose specific notice requirements.

Thus, under the subsection 32(e)(12) exception, the individual members of the Board may accept food or beverage from restricted donors in connection with the luncheons and dinners you reference. However, the luncheon or dinner must have at least 10 individuals in attendance or the sponsor of the event must invite certain groups of individuals, including all of their shareholders, employees, etc. to the event.

**3. G.S. 138A-32(f) Reimbursement Exception.**

G.S. 138A-32(f) 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.

Thus, under this exception, the Board members may accept from restricted donors food, lodging, transportation, and other expenses that could otherwise be reimbursed by the State, in accordance with applicable policies. However, the Board members must receive approval from the appropriate agency official before accepting those items.

**4. G.S. 138A-32(e)(5) “Gift to the State” Exception.**

This exception would apply to allow a gift of which a public servant is the ultimate recipient if that gift is “accepted on behalf of the State for use by the State or for the benefit of the State.” The Commission has previously interpreted this exception to allow the receipt of gifts that are consistent with a State agency’s purpose, function, and authority. The “gift to the state” exception may apply to the provision of meeting space or related administrative expenses that could be viewed as, in some manner, providing a personal benefit to a public servant. AO-L-09-004 (finding that in-kind contributions made to a state entity to support an annual conference is for the benefit of the State, where State agency is responsible for hosting the conference and the organization holding conference is recognized as a North Carolina governmental agency).

**C. Gifts Reporting Obligations.**

In general, permissible “gifts” provided by registered lobbyists or lobbyist principals to public servants must be reported to the extent they exceed the \$10 reporting threshold of the Lobbying Law, G.S. Chapter 120C.

Moreover, even if the donor of the gift is not a registered lobbyist or lobbyist principal, there are limited circumstances where the donor or the Board members themselves would be required to report those gifts under G.S. 120C-800, the miscellaneous reporting requirements of the Lobbying Law. However, the reporting requirements apply only if the total value of those gifts received by a public servant during a calendar quarter from a “person or group of persons acting together” exceeds \$200 and other specific conditions are met.

**IV. Closing.**

Thank you for contacting the State Ethics Commission. Please do not hesitate to contact the Commission’s staff if you have any questions about the foregoing formal advisory opinion. Pursuant to G.S. 138A-13(d), an edited version of this formal advisory opinion will be published within 30 days of issuance.

State Ethics Commission

By: \_\_\_\_\_  
Robert L. Farmer  
Chairman

**Formal Advisory Opinions Issued by the State Ethics Commission**  
**Pursuant to the Ethics Act**

Upon the written request of a public servant or legislative employee, G.S. 138A-13(a) of the State Government Ethics Act (“the Ethics Act”) authorizes the State Ethics Commission (“Commission”) to issue formal advisory opinions on the “meaning and application” of the Ethics Act “and the public servant’s or legislative employee’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. 138A-13(a) and (a2).

Reliance upon a formal advisory opinion immunizes the public servant or legislative employee making the request from (1) investigation by the Commission, except the alleged violation of criminal law while performing his or her official duties, (2) adverse action by his or her employing entity, or (3) investigation by the Secretary of State. G.S. 138A-13(a2).

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. 138A-13(d). Otherwise, requests for advisory opinions, the opinions themselves, and all materials related to the opinions are confidential and are not public records. G.S. 138A-13(e).