



## 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**

February 11, 2011

Mr. Michael D. Robertson  
Commissioner  
North Carolina Division of Motor Vehicles  
3101 Mail Service Center  
Raleigh, NC 27699-3101

Re: June 2011 American Association of Motor Vehicle Administrators Conference  
G.S. 138A-32(c) and (d); 138A-32(e)(1); 138A-32(e)(3); 138A-32(e)(12); 138A-  
32(f); 120C-303(e)  
AO-E-11-001

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Dear Commissioner Robertson:

This is in response to your request for a formal advisory opinion as to the permissibility, under the gift ban restrictions of the State Government Ethics Act ("the Ethics Act"), of employees of the North Carolina Division of Motor Vehicles ("NCDMV") soliciting and accepting contributions to the American Association of Motor Vehicle Administrators ("the Association") from various organizations and vendors. Those contributions will be used to defray certain costs of the Association's upcoming annual conference.

This opinion was adopted by the State Ethics Commission at its February 11, 2011, meeting.<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.**

As more fully set forth below, it would be permissible for NCDMV employees to solicit and accept contributions for the Association's upcoming annual conference. Depending upon the nature of those contributions and the circumstances underlying their receipt, the gift ban of the Ethics Act may apply to contributions of which a public servant or other individuals subject to the Ethics Act are an ultimate recipient, requiring the consideration of applicable gift ban exceptions. In addition, contributions which are made by registered lobbyists and lobbyist principals and requested by public servants may need to be reported.

**II. Facts.**

The Association represents United States and Canadian agencies that administer and enforce motor vehicle laws. In addition to developing model programs for motor vehicle administration, law enforcement, and highway safety, the Association sponsors educational events for its member agencies and their employees. The NCDMV is a member of the Association. You are currently the President of Region II and a member of the Association's Board of Directors.

The Association is scheduled to hold its annual conference in Charlotte June 9-12, 2011 ("2011 Annual Meeting"). The Association commonly solicits and accepts donations from various entities to assist with the cost of its conferences. It is expected that the Association will seek such donations in connection with the 2011 Annual Meeting. As the host of the conference, the NCDMV is responsible for assisting the Association with fund raising for the meeting.

You state that several NCDMV employees plan to attend the 2011 Annual Meeting. Some of those attending employees, including you, are public servants covered by the Ethics Act, and are therefore subject to the Act's gift ban. NCDMV employees will also arrange meals, snacks, and hospitality rooms and distribute various trinkets to conference attendees. NCDMV employees will assist with the solicitation of contributions, but most of those contributions will be made by the donor directly to the Association. Those contributions will be used to assist with the costs of the 2011 Annual Meeting. Finally, NCDMV employees will seek in-kind contributions of State-funded promotional items from various State agencies.

**III. Applicable Statutory Provisions.**

**A. The Ethics Act's Gift Ban.**

The gift ban restricts the receipt of items of value by public servants from certain restricted donors unless an exception applies. The gift ban applies both to gifts given directly to public servants by restricted donors and those given to intermediaries, including state entities, if the donor intends that an ultimate recipient of the gift be a public servant. What follows is an overview of the gift 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.” Therefore, if NCDMV employees covered by the Ethics Act are involved in the solicitation of contributions to support the Annual Meeting, subsection 32(a) would apply. However, that provision would not restrict those solicitations unless the solicitation or receipt of items of value was in return for an official action by the NCDMV employee. Therefore, public servants involved in the 2011 Annual Meeting fundraising activities should ensure that they do not solicit or accept contributions in return for being influenced in their official actions.

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” directly from a registered lobbyist or lobbyist principal. “Gift” is defined as “anything of monetary value.” G.S. 138A-3(15). However, that definition excludes certain items, including contractual arrangements and loans made in the normal course of business, scholarships, political contributions, and listed expressions of condolence. Items for which public servants have paid market value are also excluded from the definition of “gift.”

Public servants are also prohibited from knowingly accepting a gift given by a registered lobbyist or lobbyist principal to an intermediary (including a State entity) with the knowledge that the registered lobbyist or lobbyist principal intended that a public servant, legislator, or legislative employee be an “ultimate recipient” of the gift. G.S. 138A-32(c)(2).

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 through a third party, from a person or entity 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 person”), unless an exception applies. G.S. 138A-32(d) and (d1) and 30 NCAC 07.

Thus, the gift ban would apply to donations to NCDMV or other intermediaries if (1) those donations were from a “restricted donor,” which includes a registered lobbyist, lobbyist principal, or interested person, and (2) that donor intended that an ultimate recipient of the gift be a NCDMV employee covered by the Ethics Act.

In addition, Governor Perdue’s Executive Order No. 24 extended G.S. 133-32 to all employees of Cabinet agencies and the Office of the Governor. That provision restricts the direct receipt of gifts or favors by those employees from certain contractors working or seeking to work with the employee’s agency.

**B. The Gift Ban Exceptions.**

If the Ethics Act's gift ban applies under any of the circumstances outlined above, there are a number of exceptions to the ban that allow a public servant's receipt of food and beverages and other items of value related to the public servant's attendance at a conference. If any of those exceptions apply, the public servant may accept the gift. Executive Order No. 24, through reference to G.S. 133-32, incorporates the Ethics Act's gift ban exceptions, along with additional exceptions that are specific to G.S. 133-32. A discussion of the Ethics Act's exceptions that allow receipt of food and beverages and conference related expenses, and the criteria for meeting those exceptions, follows.

**1. Gifts to a Public Servant Association.**

Pursuant to G.S. 120C-303(e), gifts made by registered lobbyists and lobbyist principals to certain "nonpartisan state, regional, national, or international organizations" are permitted under the Ethics Act's gift ban. This includes organizations of which a public servant's agency or the public servant is a member in connection with his or her public position. Thus, contributions given to the Association to support a conference or event to be attended by a public servant would be permissible under this provision, regardless of the nature of the gift.

However, G.S. 120C-303(e) is inapplicable to gifts from an "interested person." Therefore, if a gift is given to the Association with the intent of benefiting a public servant, or directly to a public servant, another gift ban exception must apply.

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

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)(1)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)(1)c. This provision also includes certain notice requirements.



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

G.S. 138A-32(e)(12) 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)(1)c. exception, discussed above. However, it does not require that the entire board be invited and does not impose specific notice requirements.

Thus, under the subsection 32(e)(12) exception, the covered NCDMV employees (and those covered by the Executive Order) may accept food or beverage that is related to the public servant’s official position and where at least ten additional individuals are in attendance or the sponsor of the event invites certain groups of individuals, including all of their shareholders, employees, etc. to the event. And the public servant would be limited to the receipt of food and beverages. However, this exception would not allow the receipt of other conference related expenses.

**4. 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, the “gift” (a) 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.

Thus, under this exception, covered NCDMV employees 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, they must receive the appropriate agency approval before accepting those items.

**5. G.S. 138A-32(e)(3) Meeting Exception.**

G.S. 138A-32(e)(3) allows the receipt of food, beverages, registration, travel, lodging, other incidental items of nominal value, and entertainment, in connection with the public servant’s attendance at an educational meeting; a meeting at which the public servant speaks or is a member of a panel; or a meeting of those organizations of which the public servant’s agency is a member or the public servant is a member in connection with his or her official position, if the public servant serves on the board or committee of that organization.

However, the meeting exception only applies to expenses provided by a lobbyist principal. Meeting related expenses paid by an interested person do not qualify for this exception. The exception requires that the meeting be attended by at least 10 individuals, have a formal agenda, and that notice be given at least 10 days in advance. The exception also requires that any

food, beverage, transportation, or entertainment be given to at least 10 attendees and that any entertainment provided is incidental to the meeting's principal agenda.

#### **IV. Responses to Specific Questions.**

What follows are responses to the questions posed in your request:

1. May NCDMV employees solicit various organizations and vendors to donate services and funds to the Association?

Yes. There is no restriction in the Ethics Act against solicitation of those donations as long as those solicitations are not made in return for the public servant being influenced. If the solicitation results in contributions from lobbyists or lobbyist principals and are made for the specific purpose of supporting the 2011 Annual Meeting, those contributions would be permissible under G.S. 120C-303(e) if made by a registered lobbyist or lobbyist principal directly to the Association. However, if those contributions are solicited by a NCDMV employee who is a public servant and are given by a registered lobbyist or lobbyist principal "for lobbying," that donor may need to report the contribution pursuant to G.S. 120C-402(b)(1) or 120C-403(b)(1).

2. May NCDMV employees "possess and distribute" trinkets and gifts of minimal value that will be available to conference attendees?

NCDMV employees may distribute those items. Whether NCDMV employees covered by the Ethics Act may keep such items for their personal use would depend upon the source of the items. If the source is a State agency, there would be no restriction upon a public servant's acceptance of the trinkets. If the source is another entity, it would depend upon whether it was a restricted donor and whether an exception applied.

3. May NCDMV employees attend conference meals open to all attendees? You note that NCDMV employees will not accept meals paid for by vendors.

Yes. Assuming that the conference meals are paid for by conference registration fees, those meals would not be a gift. In the event the conference meals are paid for out of contributions made to the Association by lobbyists and lobbyist principals, the acceptance of those meals would not be restricted. If those conference meals are sponsored by a particular restricted donor or a group of restricted donors, one of the food and beverage exceptions noted above may apply.

4. May NCDMV employees act as hosts at meals, breaks, and hospitality rooms?

The Ethics Act does not restrict public servants from serving as hosts at conference activities.

5. May NCDMV employees make and return phone calls to vendors in connection with their solicitation of donations to the Association?

Yes. Please see response to Question 1, above.

**V. Closing.**

Thank you for contacting the State Ethics Commission. Please do not hesitate to call the Commission's staff if you have any questions about the foregoing formal advisory opinion.

State Ethics Commission

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

cc: Katherine White, General Counsel and Ethics Liaison

**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).