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**1324 MAIL SERVICE CENTER**  
**RALEIGH, NC 27699-1324**

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**CONFIDENTIAL FORMAL ADVISORY OPINION**

May 9, 2014

Mr. Adam Hartzell  
Executive Director  
The Center for International Understanding  
100 East Six Forks Road, Suite 300  
Raleigh, NC 27609

RE: Paying Expenses of Legislators to Participate in the 2014 "Global Leaders Program  
To Germany: Focus-Advanced Manufacturing, Workforce Training, and Innovation"  
AO-E-14-001

Dear Mr. Hartzell:

This is in response to your April 2, 2014, request for a formal advisory opinion. You have asked whether the State Government Ethics Act ("the Ethics Act"), G.S. Chapter 138A, would allow legislators and public servants to participate in an international study trip to Germany planned for September 6-14, 2014 ("2014 Germany Trip") if their travel costs were be paid by donations from lobbyist principals and interested persons to the Council of The Center for International Understanding ("the Center"). You have also asked whether registered lobbyist principals may make those donations to the Center in accordance with the gift ban of the Lobbying Law, G.S. Chapter 120C.

This formal advisory opinion is based upon the information provided by the Center and was adopted by the State Ethics Commission ("Commission") at its May 9, 2014, meeting.<sup>1</sup>

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

**I. Brief Conclusion.**

The Commission has determined that the 2014 Germany Trip qualifies as an educational meeting related to the public duties of attending legislators and that the additional meeting requirements of G.S. 138A-32(e)(3)a.-d. will be satisfied. Therefore, lobbyist principals may donate funds to the Center in order to pay for the reasonable actual travel expenses of participating legislators and the legislators may accept those expenditures.

In addition, “interested persons” and lobbyist principals may donate funds to pay for the travel expenses of participating public servants, and those public servants may accept those expenditures, if the trip is related to the job duties of the public servant, in the case of lobbyist principal donations, or the expenses would have been otherwise reimbursed by the agency and the public servant receives advance approval from his or her State agency to accept those expenditures, in the case of interested person donations.

**II. The Facts.**

The Center operates within the University of North Carolina’s (“UNC’s”) General Administration. It is not a lobbyist principal. The Center is planning the 2014 Germany Trip in order to allow participants to study economic development in Germany with a focus on advanced manufacturing, workforce development, and applied scientific research. This is the sixth international study trip in the Center’s Global Policy Series.

Approximately 25-30 individuals are expected to participate in the 2014 Germany Trip. Contributions made to the Center by the Moise and Vera Khayrallah Fund of the Triangle Community Foundation and other potential donors will cover the cost of air and ground transportation, meals, and lodging for six to eight legislators. There may be a few public servants, including a representative of the North Carolina Department of Public Instruction, who will also receive outside funding to participate in the Trip. Neither the Fund nor the Foundation are registered lobbyist principals.

The Center is also continuing to seek donations from additional entities to defray the travel costs of attending legislators and public servants. Some of those sponsors may be registered lobbyist principals or businesses that are regulated by the State or do business with the State. However, none of the 2014 Germany Trip sponsors will be involved in the planning or administration of the trip or the selection of attending legislators and public servants.

Other 2014 Germany Trip participants include representatives of the Center, the NC Community College System and Central Carolina, Catawba, and Cleveland Community Colleges, North Carolina State University, the Chatham County Board of County Commissioners, the Chatham and Catawba County Economic Development Corporations, and Aerial BioPharma, LLC. The travel costs of six of those participants will be paid by the North Carolina State University Institute for Emerging Issues. The remaining participants will be charged a program fee of \$5,000 in addition to their air transportation costs.

Participants in the 2014 Germany Trip will visit four cities: Berlin, Stuttgart, Munich, and Kirchdorf to study successful economic development practices.

The Center states that the trip will focus on the following areas of interest:

- Applied scientific research and the specialized engineering of Germany's high-tech manufacturing industry;
- Public-private partnerships in economic development ventures that could be replicated in North Carolina;
- Dual educational training partnerships with vocational schools and high-tech manufacturers in Germany; and
- Strengthening existing German-North Carolina business connections and exploring the possibility of expanding those opportunities.

The 2014 Germany Trip, excluding travel time to and from Germany, consists of 8 to 10 hours of scheduled activities a day during a six-day period beginning on Monday, September 8, 2014, and ending Saturday, September 13, 2014, including meetings, presentations, and site visits.

Scheduled activities include meetings with various business associations, including the German Chamber of Commerce, the Baden-Wurttemberg Regional Economic Development Association, various small to medium-sized "niche" businesses that are part of Germany's Mittelstand; visits to educational institutions such as the Fraunhofer Institute, Baden-Wurttemberg Cooperative State University or the Werner-Siemens School of Vocational Training, and the Technical University of Munich; site visits to various businesses, including Siemens, the BMW Training Facility, Schletter GmbH, a manufacturer of solar mounting systems that maintains its United States headquarters in Shelby, North Carolina, and the Mercedes Benz Museum; and meetings with a variety of government officials at the U.S. Embassy, various regional and national governmental associations, and "DAZ," the German-American Center run by the German government. Upon their return from Kirchdorf to Berlin, participants will stop for a brief tour of the Dachau Concentration Camp.

Prior to the trip, participants will be required to read background materials and attend small group meetings and an orientation workshop on Germany and the role of manufacturing and apprenticeship programs in its economic development. Upon their return from Germany, participants will attend a full-day debriefing session and explore ways in which the knowledge gained can be applied to enhance economic development and educational opportunities in North Carolina.

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

The Lobbying Law prohibits a lobbyist, lobbyist principal, or legislative liaison<sup>2</sup> from giving direct or indirect gifts ("anything of monetary value"), to a designated individual (legislators, legislative employees, and public servants), unless an exception to the gift ban listed in G.S. 138A-32(e) applies.

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<sup>2</sup> State entities, such as the Center, are not restricted from giving gifts to designated individuals.

G.S. 120C-303(a). Legislators and public servants are also restricted from accepting those gifts. G.S. 138A-32(c). The gift ban also restricts a public servant's acceptance of a gift from "interested persons," generally individuals or entities that are doing business with or regulated by a public servant's agency. 30 NCAC 07A.0101.

One of the gift ban exceptions, G.S. 138A-32(e)(3), allows a lobbyist principal, but not an interested person or lobbyist, to pay for "reasonable actual expenditures" incurred by a public servant, legislator, or legislative employee in connection with that individual's attendance at the four types of meetings delineated in that exception. In particular, G.S. 138A-32(e)(3)(i) allows the payment of expenses incurred for attending *an educational meeting* "for purposes primarily related to the public duties and responsibilities of the covered person ...." Permissible expenses include food, beverages, registration, travel, lodging, incidental items of nominal value, and incidental entertainment.

The Commission has adopted the following non-exclusive factors to be considered when determining what is an "educational meeting" under G.S. 138A-32(e)(3)(i):

- 1) Whether the meeting's primary purpose is to promote learning for professional improvement or to influence a particular legislative or official action;
- 2) Whether the meeting's organizer is an independent educational or governmental institution or a Lobbyist Principal.
- 3) The proportion of educational content relative to meals and entertainment provided at the meeting and the proportion of presenters who are outside experts or are independent from the Lobbyist Principal paying for the meeting expenses;
- 4) The relationship between the meeting's location and length to its educational purpose.

30 NCAC 07C.0101

In addition to the specific meeting criteria outlined above, G.S. 138A-32(e)(3) sets forth general requirements applicable to those meetings. They include a requirement that any food, beverages, transportation, or entertainment be provided to all attendees or defined groups of 10 or more attendees and that the meeting: (a) be attended by at least 10 or more participants; (b) have a formal agenda; and (c) be noticed at least 10 days in advance. Moreover, any entertainment provided "must be incidental to the principal agenda of the meeting."

The "reimbursement exception" of the gift ban would also allow an interested person to defray the travel expenses of participating public servants as long as acceptance of those expenses is approved by the agency as expenses that are work-related and therefore would otherwise be reimbursed by the State. G.S. 138A-32(f).

#### **IV. Analysis.**

Based upon a review of the itinerary for the 2014 Germany Trip, it appears that the meeting's content is related to the public duties of invited legislators and may be related to the duties of attending public servants, depending upon their job responsibilities.

Moreover, the 2014 Germany Trip fits the educational meeting criteria of G.S. 138A-32(e)(3)(i). Factors that support the educational purpose of the meeting include the fact that the meeting agenda includes a wide variety of presentations and site visits to governmental, business, and educational institutions, the meeting is not related to a particular legislative or official action, the meeting is scheduled with educational content throughout each day and includes minimal entertainment and meal activities, and the meeting location (e.g. Germany) and length is closely related to its education goals.

You have also stated that there will be at least 10 participants in the 2014 Germany Trip. In addition, the trip has a formal agenda, has been noticed at least 10 days in advance, and incidental entertainment, if any, is being provided to all participants. Moreover, Participants will pay any admission fees associated with their visit to Dachau Concentration Camp. Thus, the meeting also complies with the general meeting requirements imposed by G.S. 138A-32(e)(3)a.-d.

Therefore, it is permissible for registered lobbyist principals to donate funds to the Center for food, beverages, registration, travel, lodging, incidental items of nominal value, and incidental entertainment to attending legislators; and public servants if job-related; and for those individuals to accept those expenditures. Similarly, sponsoring interested persons may pay for the travel expenses of participating public servants as long as they receive advance approval from the appropriate agency official in accordance with the requirements of the reimbursement exception outlined 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. Pursuant to G.S. 120C-102(d1), an unedited copy of this formal advisory opinion will be forwarded to the Secretary of State. The Secretary of State is statutorily obligated to treat the opinion as confidential and not a public record.

## **Formal Advisory Opinions Issued by the State Ethics Commission**

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).

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).