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FORMAL ADVISORY OPINION—EDITED FOR PUBLICATION

November 14, 2014

Re: Use of Photographs Produced With State Resources on Private Website, in E-Mails, and on Social Media Venues
AO-E-14-006

Dear Requester:

This is in response to your request for a formal advisory opinion. You have asked whether the State Government Ethics Act (“Ethics Act”), North Carolina General Statutes (“G.S.”) Chapter 138A, would restrict the use of photographs of a covered person produced with State resources on a private website, in e-mails, and in social media venues.

This formal advisory opinion is based upon the information provided in your request and was adopted by the Commission at its November 14, 2014, meeting.¹

I. Brief Conclusion.

The Commission has determined that the Ethics Act would not restrict the use of photographs of a covered person produced with State resources on a private website, in social media venues, and in e-mails.

II. Facts.

You represent an individual who is considered a covered person under the Ethics Act. You have asked whether you may use several photographs that may have been taken of the covered person on State property and with the use of State equipment, resources, and/or

¹ 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.

personnel in the normal course of conducting State business. You would like to use those images on a private website, in emails, and in social media venues. You point out that those images are readily accessible for use by members of the public.

III. Applicable Statutory Provisions.

G.S. 138A-31(c) prohibits a covered person from using or permitting:

- i. The use of State funds for any advertisement or public service announcement;
- ii. In a newspaper, on radio, television, magazines, or billboards;
- iii. That contains that covered person's name, picture, or voice;
- iv. Except in case of State or national emergency and where the announcement is "reasonably related to the person's official function."

Fund-raising on behalf of public radio or television is exempt from this prohibition. There is an almost identical restriction against the use of "State funds" by "declared candidates" for the Council of State. G.S. 163-278.16A.²

IV. Analysis.

In AO-E-13-004, adopted on August 23, 2013, the Commission interpreted the term "State funds" to include "the use of State personnel, facilities, equipment, or supplies." Accordingly, unless the exception for State and federal emergencies applies, G.S. 138A-31(c) would restrict the use of photographs produced using State resources for the purpose of producing, distributing, or broadcasting advertisements or public service announcements in a newspaper or magazine, on radio or television, or on billboards, if that program or public service announcement includes a covered person's name, picture, or voice.³

Although earlier versions of the bill that ultimately became the Ethics Act also restricted the use of State funds for *Internet* advertisements including a covered person's name, picture, and voice, the version adopted by the General Assembly did not restrict the use of State funds for

² That provision applies beginning December 31st prior to a general election in which a Council of State office will be on the ballot and does not restrict use of State funds for billboard and magazine advertisements.

³ G.S. 14-91, restricts State officers and employees from misapplying or converting State "property and effects" to their own use. State personnel policies similarly restrict the use of "state property" for personal gain.

advertisements publicized on the Internet. (Compare House Bill 1843, 6th Edition, July 19, 2006 with the ratified bill, S.L. 2006-201, July 27, 2006,).

In your request you state that some of the images that you want to use were produced using State property, materials, equipment, and personnel. However, you only intend to use them on the Internet as described. Even if those Internet postings are determined to be “advertisements,” they will not be advertisements distributed in the various mediums prohibited by statute. Thus, subsection 31(a) would not restrict the intended use of the images.

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.

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).