



North Carolina General Assembly Legislative Ethics Committee

PUBLISHED EDITED ADVISORY OPINION OF THE LEGISLATIVE ETHICS COMMITTEE

AO-E-07-0003

Participation in Legislative Actions Concerning a Nonprofit and Acceptance of Meals – G.S. 138A-32 and 138A-37

Approved by the Legislative Ethics Committee May 10, 2007

Question:

A legislator asked the following questions regarding service on the Board of Directors of a 501 (c)(3) nonprofit that is also a Lobbyist Principal:

1. May the legislator serve on the board of a nonprofit organization?
2. May the legislator participate in legislative action that would benefit the organization, including the introduction of appropriation bills to fund a program of the organization or a bill that would support a policy position of the organization?
3. May the legislator accept meals served at the Board meetings?

Opinion:

G.S. 138A-37(a) prohibits a legislator's participation in a "legislative action," as defined in G.S. 120C-100(5), if: (1) the "legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated" has an "economic interest in" the action, and (2) the "legislator concludes that an actual economic interest" exists and that the interest "would impair the legislator's independence of judgment." In reaching this conclusion, G.S. 138A-37(a) requires that the legislator consider: (a) whether "the legislator's judgment would be substantially influenced by the interest," and (b) "the need for the legislator's contribution" to the matter.

G.S. 138A-3(11) defines "economic interest" as "matters" involving "a business with which associated or a nonprofit corporation or organization with which associated." This includes organizations operating in the State primarily for "educational purposes" and "of which the person or any member of the person's immediate family is a director, officer,

governing board member, employee, or independent contractor as of December 31 of the preceding year.” G.S. 138A-3(24).

In accordance with the provisions of G.S. 138A-37(a), as a member of the Board of Directors of an organization, a legislator is considered to have an “economic interest” in that organization. Therefore, although the legislator is not prevented from serving on the organization's Board, the legislator is prohibited from participating in a legislative act that would benefit the organization if the legislator's association with that organization would impair the independence of the legislator's judgment. This is an individualized determination to be made by each legislator, and requires that the legislator consider the degree to which his or her independent judgment would be influenced by an association with a nonprofit and the need for the legislator’s contribution to the legislative action.

G.S. 138A-37 does not provide specific guidance to legislators in making this determination. Although G.S. 138A-38 specifically permits legislative actions under certain listed circumstances, none appear to apply to the questions posed. However, in determining whether the legislator's independent judgment would be substantially influenced, a legislator should consider the following guidelines.

- Introducing or voting on a bill or amendment or advocating on behalf of a bill that would directly benefit only the organization with which the legislator associated, such as an appropriations bill funding the organization directly, would appear to present a conflict of interest between the legislator's association with the nonprofit and the legislator's public duties.
- Legislative action that would not only benefit the organization directly, but would also benefit a related class of businesses, such as an appropriations bill that funds numerous other organizations and/or agencies, would decrease the chances that the legislator's judgment would be substantially influenced by the legislator's association with the nonprofit.
- Legislative action that would not directly benefit the nonprofit, but would directly benefit a broad policy that the nonprofit supports, would lessen the degree to which the legislator's association and the legislator's public duties would conflict.

In each case, the legislator must balance his or her relationship to the organization, the degree to which the organization would benefit from the legislative action, and the benefit to other organizations or individuals.

The legislator asked whether engaging in the following legislative activities would constitute a conflict of interest. Although the legislator must make the ultimate determination concerning the degree to which the legislator's service on the organization's

Board would influence the legislator's actions, below is guidance on how to analyze these questions.

- Introducing or voting on a separate appropriations bill that funds a State program administered by the organization: Any legislative activity on an individual appropriations bill funding a program administered by the organization could present a conflict or the appearance of a conflict of interest between a legislator's public duties and the legislator's association with the organization, and the legislator should therefore consider declining to participate in any such legislative action. This conclusion is based upon the fact that the General Statutes specifically authorize the organization's use of funds appropriated to this program for costs associated with the program's administration. The organization could therefore receive a direct benefit from that appropriation. However, it would be permissible for a legislator to vote on a final appropriations bill that includes an appropriation to the program. This conclusion is based on the fact that the general appropriations bill would benefit numerous interests in addition to those of the organization, thereby lessening the degree of influence that the legislator's connection to the organization would have on the exercise of the legislator's public duties.
- Introducing, advocating on behalf of, and voting on a bill that supports broad policy positions supported by the organization: This activity would be permissible under the Act. This conclusion is based upon the fact that the organization does not receive a direct financial or statutory benefit from the bill and the bill concerns broad policies that would benefit a broad range of entities.

G.S. 138A-32(c) prohibits legislators and public servants ("covered persons") from accepting gifts (including anything of monetary value), directly or indirectly, from a "lobbyist" or a "lobbyist principal," as those terms are defined in G.S. 120C-100. The organization is a lobbyist principal. Therefore, the legislator and other covered persons may not accept meals or beverages from the organization unless an exception applies.

G.S. 138A-32(e) lists a number of exceptions to the gifts ban. The "public event" exception in G.S. 138A-32(e)(1) allows legislators and public servants to accept "food and beverages for immediate consumption in connection with public events." A "public event" is defined in G.S. 138A-3(29). It includes an organized gathering to which certain defined categories or groups of legislators or public servants are invited. To the extent both categories of covered persons are invited, the "public event" definition has to be satisfied for each one. Because a defined group of legislators is not invited to the meals, it would be unlikely that the organization dinners and luncheons would constitute a public event, and therefore this exception would not allow a legislator to accept the meals.

Another possible exception can be found in G.S. 138A-32(e)(10), which permits acceptance of gifts given as part of a business or civic relationship that is “not related to the person’s public service or position.” In the event that a legislator's service on the organization's Board relates to the legislator's General Assembly membership (i.e., you would not otherwise have been appointed to this Board), this exception would not apply. However, if the legislator's service is unrelated to your General Assembly membership, the legislator may accept the meals provided at the organization's meetings. However, to the extent that the value of those meals totals more than \$200 in any reporting period, the organization would be required to list the meals on its lobbyist principal’s report filed with the Secretary of State’s office. G.S. 120C-403(b)(5).

Legislative Ethics Committee Note of Subsequent Legislative Action:

See S.L. 2007-348, Sec. 41(a) that adds G.S. 138A-32(e)(11) as an additional exception to the gift ban from lobbyist principals.