



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION—EDITED FOR PUBLICATION

August 12, 2011

Re: Providing Admission and Complimentary Food and Beverages to Legislators and Public Servants Attending Conference
AO-L-11-001

Dear Requester:

This is in response to your request for a formal advisory opinion. You have requested advice concerning the permissibility of inviting legislators and public servants to an upcoming conference (“the Conference”) sponsored by your company (“the company”) and other Conference sponsors (“co-sponsors”). This formal advisory opinion was adopted by the State Ethics Commission (“Commission”) at its August 12, 2011, meeting.¹

I. Brief Conclusion.

The Commission has determined that the Conference qualifies as an “educational meeting” and that the additional requirements of G.S. 138A-32(e)(3)a.-d. will also be satisfied. Therefore, the company may provide financial support for the Conference and the company and the co-sponsors may provide Conference admission, including food and beverages, to legislators and public servants whose duties pertain to the topics to be discussed at the Conference. The value of permissible food, beverages, and other items of monetary value received by attending public servants and legislators must be reported in accordance with the reporting requirements of G.S. 120C-403(b).

II. The Facts.

You have indicated that all costs of the Conference will be paid by the company. An educational institution and other entities will co-sponsor the Conference and will assist with the planning of the Conference. The company and some of the Conference co-sponsors are registered lobbyist principals. No registration fee will be charged for the Conference and admission will be by invitation only. Food and beverages, including lunch, will be provided to Conference participants.

The Conference will take place on one day. The Conference agenda includes six sessions and includes a coffee break and a lunch break of 25 minutes each. The entire Conference will last

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.

six hours. Scheduled speakers/panel members include current and former public officials, business leaders, and education professionals. In addition to invited legislators and public servants, Conference attendees will include business and non-profit company leaders and educators.

III. Applicable Statutory Provisions.

The Lobbying Law, G.S. Chapter 120C, prohibits a lobbyist, lobbyist principal, or legislative liaison² from knowingly giving gifts (“anything of monetary value”), to a designated individual (legislators, legislative employees, and public servants), unless an exception to the gift ban applies. G.S. 120C-303(a). One of those exceptions, G.S. 138A-32(e)(3), allows a lobbyist principal to pay for “reasonable actual expenditures” incurred by a public servant, legislator, or legislative employee in connection with that individual’s attendance at the various types of meetings delineated.

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, and incidental items of nominal value. The Commission has adopted several non-exclusive factors that are considered when determining what is an “educational meeting” under G.S. 138A-32(e)(3)(i). Those factors are codified in the N.C. Administrative Code under 30 NCAC 07C.0101. In addition, G.S. 138A-32(e)(3)(ii) allows for the payment of expenses for a designated individual to participate as a speaker or a member of a panel at a meeting.

In addition to the specific meeting criteria outlined above, G.S. 138A-32(e)(3)a.-d. 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 in conjunction with or as part of the meeting 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. Also, entertainment provided “must be incidental to the principal agenda of the meeting.”

G.S. 120C-403(b) requires that a lobbyist principal report expenditures for gifts given under the gift ban exceptions of G.S. 138A-32(e) and reportable expenditures for lobbying if the value of those expenditures is greater than \$10 per day per individual legislator, individual public servant, or that individual’s immediate family. G.S. 120C-100(a)(12)a.

IV. Analysis.

Based upon a review of the Conference agenda and information provided about invitees, it appears that the meeting’s content is related to the public duties of legislators and those invited public servants.

In addition, the Conference fits the educational meeting criteria of G.S. 138A-32(e)(3)(i). Although organized by the company, a lobbyist principal, and the co-sponsors, some of which are lobbyist principals, the Conference’s educational purpose is supported by the following factors: it takes place on the same day, includes educational content for all but 50 minutes of the Conference, takes place in an area where many of the organizations that will be represented are located, and includes a wide variety of speakers, several of whom are experts in the topic discussed. In addition,

² State entities are not restricted from giving gifts to designated individuals.

the Conference is not intended to influence legislative or executive action. Finally, the speakers do not represent the company or the co-sponsors and their services or products will not be featured at the Conference.

You have stated that the Conference will be attended by at least 10 individuals, will have a formal agenda, and will be noticed at least 10 days in advance. All sessions will be available to all attendees and there will be no entertainment provided at the meeting. 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 the company and the co-sponsors to host this Conference, along with the University, and provide food, beverages, Conference admission, and other incidental items of nominal value to attending legislators and public servants. It will also be permissible to provide food and beverages and access to all sessions to any designated individual who is participating as a "bona fide" speaker or a member of a panel, in accordance with G.S. 138A-32(e)(3)(ii).

Finally, the value of food and beverages and other items of value provided to attending designated individuals must be reported in accordance with the lobbyist principal reporting requirements of G.S. 120C-403(b).

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.

State Ethics Commission

By:

Robert L. Farmer
Chairman

Formal Advisory Opinions Issued by the State Ethics Commission

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, are limited to the particular facts presented, and confer limited civil immunity upon a requester who follows the advice given. G.S. 120C-102(a) and (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). Otherwise, 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 issued under the Lobbying Law 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).