



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION **UNEDITED WITH APPROVAL OF REQUESTER**

August 12, 2011

Ms. Millie Ravenel
Executive Director
The Center for International Understanding
100 East Six Forks Road
Raleigh, NC 27609

RE: Sponsoring Legislator and Public Servant Participation in International Trip –
Global Leaders Program to China
AO-L-11-003

Dear Ms. Ravenel:

This is in response to your May 16, 2011, request for a formal advisory opinion concerning whether registered lobbyist principals may donate funds to the Center for International Understandings (“Center”) in order to pay the trip-related costs of legislators and public servants participating in the “Global Leaders Program to China: Focus-Economic Development” trip planned for November 7-19, 2011 (“2011 China Trip”). 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 2011 China Trip qualifies as an “educational meeting” and that the additional requirements of G.S. 138A-32(e)(3)a.-d. will also be satisfied. Therefore, lobbyist principals may donate funds to the Center in order to pay for reasonable actual travel expenses of those legislators participating in the 2011 China Trip. Any sponsoring lobbyist principal must report its donation on its principal report in accordance with the reporting requirements of G.S. 120C-403(b).

II. The Facts.

The Center operates within the University of North Carolina’s General Administration. It is not a lobbyist principal. The Center works with North Carolina policy leaders and educators to

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.

provide them with the experiences and tools necessary to guide their communities and the State through changes associated with an increasingly interdependent world. The 2011 China Trip is part of the Center's Global Policy Series. That program is designed to inform state policymakers about various international policy issues affecting North Carolina. In 2009 that program sponsored a trip to China in order to focus on economic issues. In 2010 the program sponsored a trip to Europe to examine clean energy and green jobs.

The Chinese People's Association for Friendship with Foreign Countries ("AFFC") will pay for the cost of meals, lodging, and ground/air transportation while in China for attending legislators and two Center employees. The Center will pay the cost of the legislator's air transportation between the United States and China. A North Carolina business has also donated funds to assist the Center in paying those air transportation costs. Neither AFFC nor that business is a registered lobbyist principal. However, the Center is continuing to seek donations from additional entities, some of whom may be registered lobbyist principals, to defray the legislators' air transportation costs. None of these sponsors will be involved in the planning or administration of the trip or the selection of the participants. You have indicated that there may also be public servants who will be participating, but that had not been determined at the time of this opinion's issuance.

Paying participants will be charged a "program fee" of \$5,400, which will cover their travel-related costs, including airfare and other necessary transportation, lodging, meals, and other incidentals connected to the trip.

Participants in the 2011 China Trip will visit three major cities: Beijing, Shanghai, and Shenzhen, to study and examine successful economic practices. Educational goals of the trip are to:

- Understand China's emergence as a global economic power and reasons for its rapid economic development; and their relevance for North Carolina;
- Gather information about North Carolina's connections with China, particularly economic ties, and the potential for North Carolina's economic development; and
- Explore clean energy technology and opportunities for North Carolina's economy.

The 2011 China Trip, excluding travel time to and from China, is a 10-day trip consisting of 8 to 10 hours of scheduled activities per day including meetings, presentations, and site visits. No entertainment is being provided as part of this trip's itinerary and cultural visits are optional at the participant's own expense. In addition, participating legislators and any public servants attending will be required to pay for their lodging, ground transportation, meal, and incidental expenses incurred on Saturday, November 12th, a day with scheduled cultural events.

Scheduled activities include presentations at Tsinghua University, North Carolina's China Office, the Shanghai Academy of Social Science, and Yangshan Port. There will also be site visits to a SAS Institute research & development facility; ENN, a clean energy solutions provider that is collaborating with Duke University to create an "eco-city" in China; Shenzhen, China's first Special Economic Zone; Lenovo; and a Chinese high school. Topics covered in presentations and site visits include reasons for China's strong economic growth, establishing research and development facilities in China, the impact of mergers and joint ventures between North Carolina and Chinese

companies, education's role in China's economic growth, Chinese language instruction, clean energy technology, and the creation of economic development zones.

Prior to the trip, participants must attend workshops and read background materials regarding economic development and clean energy technology within China. Upon their return, participants will attend full-day briefing sessions. In addition, participants will contribute to a final report that includes the trip's findings and implications for North Carolina.

III. Applicable Statutory Provisions.

The Lobbying Law, G.S. Chapter 120C, prohibits a lobbyist, lobbyist principal, or legislative liaison² from knowingly: (a) giving a gift ("anything of monetary value") to a designated individual (legislators, legislative employees, and public servants) or (b) giving a gift to an intermediary "with the intent that a designated individual be an ultimate recipient," 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 principal³ to pay for "reasonable actual expenditures" of 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, incidental items of nominal value, and incidental entertainment. 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 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. Moreover, any entertainment provided "must be incidental to the principal agenda of the meeting."

G.S. 120C-403(b)(5) requires each lobbyist principal to report all "reportable expenditures" for gifts given under any of the meeting exceptions if the value of those expenditures is greater than \$10 per day per individual legislator, legislative employee, or public servant, or immediate family.

IV. Analysis.

Based upon a review of the itinerary for the 2011 China Trip, it appears that the trip's content is related to the public duties of invited legislators. The Commission is unable to make this determination with respect to those public servants who may attend without knowing their identity.

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

³ This exception is inapplicable to gifts from "interested persons" to public servants, which are restricted by G.S. 138A-32(d).

Moreover, the 2011 China Trip fits the educational meeting criteria of G.S. 138A-32(e)(3)(i). Although it may receive funds from lobbyist principals, the Center, which routinely sponsors such trips, has planned the entire trip and selected the legislators participating. In addition, the itinerary includes scheduled educational activities for several hours each day and includes a wide variety of presentations from topic experts and related educational site visits; the trip takes place in China, the location of the governmental, business, and educational institutions examined; and topics addressed are not related to a particular legislative or executive action or intended to influence that action. Finally, none of the presenters are representatives of the lobbyist principals providing funding.

There will be at least 10 participants in the 2011 China Trip. In addition, the trip has a formal agenda, has been noticed at least 10 days in advance, and any incidental entertainment will be provided to all participants. Although the cultural visits on Saturday, November 12, 2011, do not fit within the "incidental entertainment" limitations of the meeting exception, you are requiring that each participating legislator and public servant pay for the expenses of those cultural visits, including meals and lodging for Saturday evening. Thus, the trip 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 in order to pay for food, beverages, registration, travel, lodging, and incidental items of nominal value and incidental entertainment of attending legislators participating in the 2011 China Trip. It is also permissible for those lobbyist principals to donate funds to pay those expenses of public servants if the trip's content is primarily related to their public duties.

Each sponsoring lobbyist principal must report the expenditures it pays on behalf of the attending legislators and public servants on the Principal Expense Report it files with the Secretary of State listing November 2011 expenditures.

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).