



## STATE ETHICS COMMISSION

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### **FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION**

August 12, 2011

Re: Donation of Products, Informational Materials, “Branded Items,” and Funding to a State Agency’s Public Outreach Efforts and the Reporting of Those Donations  
AO-L-11-004

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Dear Requester:

This is in response to your request for a formal advisory opinion. You have requested advice concerning the permissibility of your company’s (“the company’s”) donation of certain items and funding to a State agency and participation in public outreach events hosted by the State agency. You have also asked whether the company would be required to report those donations. This formal advisory opinion was adopted by the State Ethics Commission (“Commission”) at its August 12, 2011, meeting.<sup>1</sup>

#### **I. Brief Conclusion.**

It would be permissible for the company to donate various items and funding to a State agency and otherwise participate in public outreach events hosted by the State agency. However, the company may not donate items with the intent that a public servant, legislator, or legislative employee (“designated individual”) be an ultimate recipient, unless a gift ban exception applies.

Those donations would be reportable, depending upon their value, if they are (a) deemed to be a gift to a designated individual or (b) if the donations are made for lobbying and (i) are made at the request of a designated individual or his or her immediate family or (ii) are a gift to a member of a designated individual’s immediate family. Otherwise, the company would not be required to report those donations.

#### **II. The Facts.**

The company has business interests that are aligned with the public outreach program of a State agency. The company is a registered lobbyist principal. It is interested in supporting the

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<sup>1</sup> 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.

public outreach activities of the State agency. Periodically, the State agency schedules events where participants are offered educational materials, products or equipment, and other items of value.

Given their common interests, the company wants to participate in public outreach events held by the State agency, provide informational materials and company logo items for distribution at those events, some of which will be co-sponsored by the company, and provide monetary donations and administrative support in connection with those events and activities. You state that none of the items donated by the company will be intended for receipt by designated individuals or employees of the State agency.

You further indicate that the company's support of this program is not intended to influence legislative or executive action, but rather is intended to promote the State agency's public outreach efforts. In addition, you have stated that the company independently developed an interest in supporting the State agency and that the company was not asked by any designated individual or other State officials to make donations or otherwise support that program.

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

The Lobbying Law's gift ban restricts lobbyists and lobbyist principals from knowingly giving gifts directly to designated individuals (public servants, legislators, or legislative employees), unless an exception applies. G.S. 120C-303(a)(1). Moreover, that gift ban restricts lobbyists and lobbyist principals from knowingly giving gifts to intermediaries with the intent that a designated individual "be *an* ultimate recipient" of the gift, unless an exception applies. 120C-303(a)(2). Similar prohibitions apply to restrict direct or indirect gifts from "interested persons" to public servants.<sup>2</sup> Thus, under certain circumstances, a donation to an intermediary, including a State agency, in connection with the sponsorship of a meeting or other activity may be restricted by the gift ban if the donor intended that a designated individual be an ultimate recipient of that donation.

G.S. 120C-403(b)(5) requires that lobbyist principals report those "reportable expenditures" for gifts to designated individuals that are allowed pursuant to an exception to the gift ban. Those gifts are reportable if the value of the gift exceeds \$10 per designated individual and immediate family, per day.<sup>3</sup>

In addition, G.S. 120C-403(b)(1) requires that a lobbyist principal report reportable expenditures "for lobbying." This includes gifts to a member of a designated individual's immediate family and non-gift expenditures over the \$10 reporting threshold that were made "at the request of" a designated individual or a member of his or her immediate family. However, G.S. 120C-400(b) specifically exempts expenditures of cash, a cash equivalent, and fixed assets

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<sup>2</sup> G.S. 138A-32(d) and (d1). "Interested persons" include those who are doing or seeking to do business with or are regulated by the public servant's employing entity or who have financial interests that may be substantially and materially affected by the public servant's official actions.

<sup>3</sup> Except that gifts given under G.S. 138A-32(e)(10) must be reported if their value is over \$200. G.S. 120C-403(b)(5).

if made directly to a State agency that “maintains an accounting” of that expenditure that is a public record from this reporting requirement.

**IV. Responses to Specific Questions.**

What follows are responses to the questions posed in your request, which are based upon the facts presented by you and summarized above. The Commission notes that this opinion specifically interprets the Lobbying Law, G.S. Chapter 120C and provisions of the State Government Ethics Act, G.S. Chapter 138A. The Commission does not have authority to interpret other state laws, rules, or Executive Orders.

- (1) In developing and maintaining the desired partnership between the company and the State agency, a proposal which the company initiated, **are the following proposed activities permissible under** the North Carolina State Ethics Act and/or all other relevant state ethics laws? Emphasis supplied.
  - (a) Donation by the company of items and equipment to the State agency for distribution to its consumer constituency.

**Yes, unless subject to the indirect gifts ban and no exception applies.** The Commission assumes that the term “consumer constituency” is meant to refer to those North Carolina residents who receive educational materials, certain products and equipment, and other items of value from the State agency’s public outreach program.

There is no general restriction in the Lobbying Law against a lobbyist principal providing financial support and resources to assist a State agency in carrying out State functions, such as the events and activities sponsored by the State agency. However, the company would be restricted by the indirect gift ban from providing certain products and equipment to the agency if the company provided that item with the intention that a designated individual be an ultimate recipient and no gift ban exception applied.

Based upon the information you have provided, it appears that the company does not intend that such donated items would be received by a public servant, legislator, or legislative employee. Therefore, the indirect gift ban would not apply to donations of certain products or equipment. And, even if the indirect gift ban applied, the G.S. 138A-32(e)(6) exception to the gift ban may allow a designated individual’s receipt of such items if they are generally made available to the general public or other State employees.

- (b) Donation of branded equipment, such as tents, to the State agency for use by the State agency in carrying out its mission, including conducting activities and events.

**Yes.** If these “branded” items would be given to the State agency for use in connection with the agency’s public outreach events, there would be no gift to event participants, including participating designated individuals. With respect to “branded” company items distributed to event participants, see the discussion in (1)(a) above.

- (c) Donation of funds to the State agency in sponsorship of its events or activities, including advertising and other promotions.

**Yes.** See discussion in (1)(a) above.

- (d) Donation of the use of labor, services, equipment, and other resources to the State agency or its consumer constituency, some of whom may work for the State agency or other agencies.

**Yes, unless subject to the indirect gifts ban and no exception applies.** See discussion in (1)(a) above.

- (e) Donation of branded items, such as clothing and umbrellas, for use by the State agency, its consumer constituency or its coalition partners, some of whom may work for the State agency or other agencies.

**Yes, unless subject to the indirect gifts ban and no exception applies.** The company would not be restricted from providing branded umbrellas or clothing for distribution to event participants unless the Lobbyist Principal provides such items with the intention that a designated individual be an ultimate recipient of those items. And even if that were the case, those items may fall within the G.S. 138A-32(e)(6) exception depending upon the circumstances.

- (f) Donation of educational materials for distribution by the company or the State agency to its consumer constituency.

**Yes, unless subject to the indirect gift ban and no exception applies.** The company would not be restricted from providing educational materials directly or through the State agency for receipt by event participants unless the Company provides such items with the intention that designated individuals be an ultimate recipient of those items. And even if that were the case, those items may fall within the G.S. 138A-32(e)(2) or (e)(6) exceptions.

- (2) For each permissible donation of activity, which, if any, are required to be reported under the North Carolina Ethics Act and/or any other relevant state ethics laws?

**Generally none of the donations would be reportable by the company under the Lobbying Law.** However, if any donation has monetary value greater than \$10 and was given by the company directly to a designated individual or to the State agency

or another intermediary with the intention that a designated individual be an ultimate recipient, that donation would be a gift subject to the gift ban. If those donations are determined to be gifts allowed under a gift ban exception, they would be reportable pursuant to G.S. 120C-403(b)(5).

In addition, even if those donations to the State agency are not subject to the direct or indirect gift ban, if a donation was solicited from the company by a public servant or other designated individual and was given "for lobbying," the company would need to report the donation under G.S. 120C-403(b)(1) if it exceeded \$10 in value. However, you have indicated that your intended donations to the State agency are entirely of the company's own initiative and were not requested by any State employees, including a public servant or designated individual. Moreover, you have stated that the company's donations were motivated by the company's interest in the services provided by the State agency and were not made for lobbying purposes. Under those circumstances, the donations would not be reportable under G.S. 120C-403(b)(1).

Finally, if the lobbyist principal gives an item valued at over \$10 per day to a member of a designated individual's immediate family for lobbying, that gift would have to be reported in accordance with G.S. 120C-403(b)(1).

**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).