



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

August 12, 2011

Re: The Application of the Lobbying Law's "Cooling Off" Period to Former Legislators and the Local Government Liaison Equivalent Exemption
AO-L-11-005

Dear Requester:

This is in response to your request for a formal advisory opinion. You have requested advice concerning the permissibility of becoming employed by a county government and registering as a local government liaison equivalent ("local government liaison") upon the effective date of your resignation from the General Assembly. You have also asked for clarification of the time period during which you will be subject to the Lobbying Law's lobbyist registration restriction (the "cooling off period"). 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 if you become a county employee following the effective date of your resignation, you may register as a local government liaison. Moreover, you may register as a lobbyist upon the sine die adjournment of the General Assembly, as long as the adjournment occurs at least six months following the effective date of your resignation.

II. The Facts.

You are a member of the North Carolina General Assembly. You may resign from that office during your term. You are considering a number of professional opportunities after you leave office, including working as a paid contract lobbyist for various clients or becoming an

¹ Please see the enclosure entitled "Formal Advisory Opinions Issued by the State Ethics Commission" for further information regarding the protections afforded to individuals receiving those opinions. In AO-E-07-0013, the Commission determined that its opinions applying the cooling off period to current or former legislators are not subject to further consideration by the Legislative Ethics Committee. (10/3/07)

employee of a county government. As a county employee, you may be required to register as a local government liaison depending upon your job duties.

The 2011-2012 biennium of the North Carolina General Assembly convened on January 26, 2011. On July 28, 2011, the General Assembly adjourned the 2011 Regular Session to reconvene on September 12, 2011. Resolution 2011-10. It is expected that upon its adjournment in September, the 2011-2012 biennium of the General Assembly will reconvene its "Short Session" in May 2012. Typically, the Short Session ends in July-August 2012 upon the adjournment sine die of the 2011-2012 biennium. However, the date of the adjournment sine die is uncertain.

III. Applicable Statutory Provisions.

The Lobbying Law requires that a "lobbyist" file a registration statement for each principal the lobbyist represents within one business day of engaging in any "lobbying," unless exempted from that requirement. G.S. 120C-200(a). G.S. 120C-304(a) restricts a legislator or former legislator from registering as a lobbyist while in office or before the later of:

- (a) the adjournment sine die of the regular session in which the legislator served,² or
- (b) "six months after leaving office."

A legislator who registers as a lobbyist during the cooling off period or engages in lobbying without registering may be guilty of a Class 1 misdemeanor, may be restricted from acting as a lobbyist for a period of two years, and may be subject to a civil fine of \$5,000 per violation. G.S. 120C-602.

"Lobbying" includes attempting to influence legislative or executive action through "direct communications or activities" with a legislator, legislative employee, or public servant, or their immediate family; or developing goodwill with those individuals with the intention of influencing current or future legislative or executive action. G.S. 120C-100(a)(9). "Lobbyist" is defined by G.S. 120C-100(a)(10) as an individual who "engages in lobbying" and:

- (a) "represents another person or governmental unit, and receives payment"
- (b) contracts for "economic consideration" for lobbying; or
- (c) is an employee of a "person" and a "significant part" of that employee's actual duties include lobbying.

G.S. 120C-501(a) provides that with the exception of Article 5's requirements, the Lobbying Law "shall not apply to liaison personnel." "Liaison personnel" are defined as "State

² G.S. 120C-304(a)(2) restricts a former legislator from registering "before the later of the close of session as set forth in G.S. 120C-100(a)(4)b.1 in which the legislator served or six months after leaving office." G.S. 120C-100(a)(4)b.1 provides that the General Assembly is in regular session until it "adjourns sine die."

employees ... or officers” whose “principal duties, in practice or as set forth in that individual’s job description, include lobbying legislators or legislative employees.” G.S. 120C-100(a)(8).³ In AO-E-07-0013, the Commission determined that the cooling off period was inapplicable to a former legislator’s registration as a State liaison personnel.

G.S. 120C-502(b), by reference to 120C-501(a), similarly exempts local government liaisons from the Lobbying Law, with the exception of Article 5. Local government liaisons are defined as an *employee* of a local government whose “principal duties” include lobbying for legislative action. G.S. 120C-502(a).

IV. Analysis.

A. Registration as a Local Government Liaison.

Since local government liaisons are only subject to Article 5 of the Lobbying Law,⁴ upon registration as a local government liaison you would be exempt from the cooling off period. Therefore, the cooling off period would not prohibit you from becoming employed by a county government and registering as a local government liaison immediately upon the effective date of your resignation.

B. Registration as a Contract or Employee Lobbyist.

The cooling off period would, however, restrict you from registering as a “lobbyist.” This would include registering as a non-employee contract lobbyist on behalf of a person or governmental unit (including a county government). It would further restrict you from registering as a lobbyist in connection with your *employment* by a “person” (a term which excludes state or local governments) if a “significant part” of your duties include lobbying.

That cooling off period would extend until the date of sine die adjournment or six months from your resignation or retirement from the General Assembly, *whichever is later*. Thus, if you leave office in 2011, that six month period would extend into 2012. Since sine die adjournment of the 2011-2012 biennium of the General Assembly would likely occur later than the expiration of the six month period following your resignation, you would not be permitted to register as a lobbyist until the day after sine die adjournment. Alternatively, if your resignation is not effective until the day after sine die adjournment, you would not be permitted to register as a lobbyist until the expiration of the six month period following your resignation, since the expiration of that period would occur later than sine die adjournment.

³ State and local government employees who are not “designated” as liaison personnel are also exempted from the Lobbying Law, including the lobbyist registration requirements, when acting solely in connection with their job duties. G.S. 120C-700(3).

⁴ Except for the registration and reporting requirements and gift ban.

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).