



## STATE ETHICS COMMISSION

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

May 11, 2012

Re: Applicability of the Lobbying Law's Gift Ban and Reporting Requirements and  
the Ethics Act's Gift Ban to an Event  
AO-L-12-002

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Dear Requester:

This is in response to your request for a formal advisory opinion. You have requested advice concerning whether it would be permissible, under the State Government Ethics Act ("the Ethics Act") and Lobbying Law, for certain individuals and entities to sponsor an event hosted by your organization and to provide free admission to certain legislators, public servants, or legislative employees ("designated individuals") attending that event. This formal advisory opinion was adopted by the State Ethics Commission ("the Commission") at its May 11, 2012, meeting.<sup>1</sup>

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

The Commission has determined that the indirect gift ban of the Lobbying Law and the Ethics Act would apply to donations made by event sponsors who are restricted donors if those donors intended that any designated individual be "an ultimate recipient" of a donation. Thus, depending upon the intent of the donor in making in-kind and cash donations in support of the event, those donations could be restricted unless a gift ban exception applies. If allowed, those donations may also be reportable as gifts or "reportable expenditures" for lobbying.

Although your organization is not subject to the gift ban, complimentary event admission provided by your organization to attending designated individuals may also be subject to the indirect gift ban. Therefore, if a restricted donor makes a contribution with the intent that those officials obtain free admission to the event, that contribution and the receipt of complimentary admission would be restricted by the indirect gift ban unless an exception applied. However, 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.

indirect gift ban would not restrict designated individuals from attending the event as long as they purchase tickets on the same terms as members of the general public.

## **II. Facts.**

Your organization is not a registered lobbyist principal. It is hosting an event at which food, beverages, and entertainment will be provided. An admission fee will be charged for that event and admission will be available to the general public. The event will raise money for your organization's charitable activities. The organization would like to offer certain designated individuals and their spouses free admission to the event.

In addition to selling event tickets to the general public, your organization will accept donations from individual and business sponsors. In return for those donations, sponsors are given free admission to the event. In addition, sponsors are recognized in the event invitation and/or program.

## **III. Applicable Statutory Provisions and Commission Interpretations.**

The Lobbying Law, G.S. Chapter 120C, restricts registered lobbyists and lobbyist principals from "knowingly" giving gifts to designated individuals, unless a gift ban exception applies. G.S. 120C-303. The gift ban also restricts gifts given to an intermediary if the lobbyist or lobbyist principal gave the gift "with the intent" that a designated individual be "an ultimate recipient." The Ethics Act also restricts the knowing acceptance of such gifts by designated individuals and a public servant's acceptance of gifts from those persons described in G.S. 138A-32(d), absent an exception.

"Gift" is defined as "anything of monetary value given or received without valuable consideration." That term excludes those things for which a designated individual paid "fair market value, or face value if shown." G.S. 138A-3(15)a.

The gift ban exceptions allow the giving and receiving of a number of different items of value, although they are most commonly applied to the receipt of food and beverages in large group settings. In particular, G.S. 138A-32(e)(1)c. allows the receipt of food and beverage at gatherings to which at least 10 public servants are invited, or another "qualifying group," and which are attended by at least 10 individuals associated with the sponsor(s) of the event. However, entertainment is generally not allowed under the gift ban exceptions, unless provided by under the meeting exception, G.S. 138A-32(e)(3).

### **A. The Indirect Gift Ban Pre-Amendment.**

Prior to changes made in 2010, the indirect gift ban of the Lobbying Law provided that, unless permitted by an exception to the gift ban, no lobbyist or lobbyist principal may:

- (1) Knowingly give a gift to a designated individual; or

- (2) Knowingly give a gift with the intent that **a designated individual be *the* ultimate recipient.**

G.S. 120C-303(a) (emphasis supplied). Similarly, the gift ban of the Ethics Act restricted the knowing receipt of a gift obtained indirectly from a registered lobbyist or lobbyist principal that “intended for ***the* ultimate recipient of the gift to be a public servant, legislator, or legislative employee ....**” G.S. 138A-32(c) (emphasis supplied).

In previous interpretations of the indirect gift ban, the Commission concluded that contributions to an entity that are intended to benefit a particular designated individual or which would disproportionately benefit a group of designated individuals may be restricted by the indirect gift ban. However, the Commission determined that contributions made for the **general** purpose of supporting an event would likely not be restricted by the gift ban.

#### **B. 2010 Amendments to the Indirect Gift Ban.**

S.L. 2010-169 amended the indirect gift ban, effective December 1, 2010. The revised indirect gift ban language provides that unless permitted by an exception to the gift ban, no lobbyist or lobbyist principal may:

- (1) Knowingly give a gift to a designated individual; or
- (2) “Knowingly give a gift with the intent that **a designated individual be an ultimate recipient.**”

G.S. 120C-303(a). Thus, the restriction against gifts given with the intent that a designated individual be “**the** ultimate recipient” was changed to a restriction against gifts given with the intent that a designated individual be “**an** ultimate recipient.”

S.L. 2010-169 similarly revised G.S. 138A-32(d1), the restriction against indirect gifts from “interested persons,” to prohibit public servants from accepting gifts from those persons if it was intended that “an” ultimate recipient of the gift be a public servant.

Understanding the effect of the change in the article modifying the noun “recipient” from “the” to “an” requires that the Commission consider the grammatical significance of those words.

“The” is a “definite article,” signaling a reference to a specific noun. Thus, the phrase “the book” means a specific book. Lynch, Paul, Allen Brizee, and Elizabeth Angeli. “Using Articles.” *The Purdue Owl*. Purdue U Writing Lab, 4 Mar. 2011. Web. 13 Apr. 2012. In turn, a requirement that a donor intend that a designated individual be “the” ultimate recipient of a gift means an intent to benefit a particular designated individual or group of designated individuals.

“An/a” is an indefinite article and is used to modify non-specific or non-particular nouns. Thus, the phrase “a book” means any book. Lynch, Brizee, and Angeli, “Using Articles.” In turn,

the requirement that a donor intend that a designated individual be “an” ultimate recipient” means an intent to benefit **any** designated individual or group of designated individuals.

Accordingly, the change in the statutory language from “the” to “an” is significant in this context. The Commission must therefore reconsider earlier interpretations of the indirect gift ban.

#### IV. Analysis.

##### A. The Indirect Gift Ban’s Application to Sponsor Donations.

The Commission’s past interpretations of the indirect gift ban were based upon the particularized intent required by the use of the article “the” and the application of that term to require a specific intent by a restricted donor to benefit a certain designated individual or group of designated individuals.

The Commission’s earlier analysis does not apply to the indirect gifts provision as it is currently worded. Significantly, the new non-specific reference to a designated individual as “an” intended recipient of the gift would require that a lobbyist or lobbyist principal intend that **any designated individual** be an ultimate recipient of a gift. That would be the case, for instance, if the donor gave a gift to an intermediary with the intent that any designated individual would be one, of many, recipients of a gift. Specifically, the indirect gift ban now restricts a contribution if the donor “knowingly” gives a gift with the intent that “an [any] ultimate recipient” would be a designated individual.

In the case of this event, if lobbyists or lobbyist principals make contributions to your organization for the **general** purpose of making that event or particular activities possible, it may be reasonable to conclude that the donor intended that at least one designated individual benefit or be “an ultimate recipient” of that contribution due to the nature of the event and its attendance by designated individuals. However, this would depend upon the particular circumstances of the contribution. Moreover, a gift ban exception may allow that contribution.

Moreover, although your organization is not a registered lobbyist principal and does not meet the definition of an “interested person” under the Ethics Act, the giving of free admission to the event to designated individuals may be restricted, and those individuals could be restricted from accepting free admission. This would be the case, for instance, if a restricted donor gave a donation with the intention that any designated individual attend the event without charge.

If, on the other hand, the facts and circumstances show that, in making the contribution, the donor intended to support your organization’s charitable activities and/or sought to promote its business through being listed on the program and/or invitation, those contributions may not be subject to the indirect gift ban.

In addition, if a lobbyist or lobbyist principal directly gave a designated individual free admission to the event, this would be considered a gift subject to the direct gift ban of G.S.

120C-303(a). And, a designated individual's receipt of those tickets could similarly be restricted by G.S. 138A-32(d). Thus, this gift would be prohibited unless an exception applied. If entertainment is provided at the event, the G.S. 138A-32(e)(1)c. exception applicable to food and beverages for immediate consumption would not apply.

However, designated individuals would not be restricted from attending the event as long as they pay for the tickets on the same terms as all others attending, because those tickets would not be a gift.

**B. Reporting Requirements of the Lobbying Law.**

Article 4 of G.S. Chapter 120C requires that all "reportable expenditures made for lobbying" and reportable expenditures for gifts given under various gift ban exceptions be reported by lobbyists and lobbyist principals.

In the event that contributions are made by lobbyists or lobbyist principals to the entity and are determined to be subject to the indirect gift ban, they would be restricted by that ban unless an exception applied. Donations that are allowed under a gift ban exception would be reportable under G.S. 120C-403(b)(5) and 120C-402(b)(4). In addition, even if a donation is not deemed a gift, under some circumstances a donation to a particular event could be reportable if made for lobbying. G.S. 120C-403(b)(1) and 120C-402(b)(1).

Since the reporting obligations of each donor would vary according to the individual facts of the donation, the Commission recommends that you urge those donors to consult Commission staff regarding those matters. Staff advice should be sought by those donors as soon as it is reasonably possible.

**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 of the State Ethics Commission**  
**Issued Pursuant to the Lobbying Law**

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 and must relate to real or reasonably anticipated fact settings or circumstances. G.S. 120C-102(a). Formal advisory opinions confer limited civil immunity upon a requester who follows the advice given. G.S. 120C-102(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). 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 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).

LOBBYING FORMAL ADVISORY OPINION ATTACHMENT