



## STATE ETHICS COMMISSION

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

May 10, 2013

Re: Lobbyist Giving Event Tickets to Designated Individual with Whom Lobbyist  
Has Personal Relationship  
AO-L-13-002

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Dear Requester:

This is in response to your January 11, 2013 request for a formal opinion from the State Ethics Commission ("Commission"). You requested advice as to the impact and application of the State Ethics Act, Chapter 138A of the North Carolina General Statutes (N.C.G.S.), and the Lobbying Law, N.C.G.S. Chapter 120C, to gift giving by one of your organization's lobbyists to a designated individual with whom the lobbyist has a personal relationship. The advice you sought pertained to the giving of tickets to inaugural events being held in early 2013. The staff provided you with informal advice at the time. Acknowledging that the Commission only provides prospective advice, you asked that it issue a formal opinion based on tickets for this type of event being purchased and given in the future under similar circumstances. This formal advisory opinion was adopted by the Commission at its May 10, 2013, meeting.<sup>1</sup>

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

Event tickets purchased by a non-lobbyist principal and a lobbyist principal that are then given to the principal's lobbyist to be given at the lobbyist's discretion to a guest of the lobbyist's choice will be gifts attributed to the lobbyist when the tickets are given to a designated individual. A lobbyist may give event tickets to a designated individual who they are dating and have been dating prior to the individual becoming a designated individual when the tickets are not given to lobby the designated individual. The 138A-32(e)(10) gift ban exception of the Ethics Act allows gifts that are given or received as a part of a personal relationship where the relationship is not related to the designated individual's public service or position and the gifts are made under circumstances that a reasonable person would conclude that the gifts were not given to lobby. The lobbyist will be required to report the fair market value of the event tickets on the expenditure report the lobbyist files with the Secretary of State for the time period during which the event takes place. The gift ban exception of N.C.G.S. 138A-32(e)(10) will apply to future gifts from the lobbyist to the designated individual that are given due to their ongoing

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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.

personal relationship and not given to lobby the designated individual. However, pursuant to the reporting requirements of the Lobbying Law, the lobbyist will be required to report all gifts with a fair market value greater than ten dollars (\$10.00).

## **II. The Facts.**

In mid 2012, a lobbyist with your organization and a non-designated individual began a personal relationship. In early 2013, this individual became a designated individual under the Lobbying Law. N.C.G.S. 120C-100 (a)(2).

At the end of 2012, your organization, a lobbyist principal, paid \$2,000 to purchase four tickets to an inaugural event. On the same date, an entity, which is not a lobbyist principal, paid \$3,000.00 for four tickets to other inaugural events. The non-lobbyist principal gave its tickets to your organization and your organization distributed all of the tickets to its employees. Neither your lobbyist principal organization nor the non-lobbyist principal entity instructed the employees on who should be given a ticket. In addition, neither your organization nor the non-lobbyist principal entity intended for a designated individual to receive a ticket. The lobbyist received two tickets for each of the inaugural events; one for the lobbyist and one for a guest of their choosing. The lobbyist invited a designated individual to these inaugural events as their date.

Your lobbyist principal organization and the non-lobbyist principal entity anticipate that they will purchase tickets for other events in the future and give some of the tickets to your organization's employees. Often employees are given two tickets, one for the employee and another for the guest of the employee's choosing. The lobbyist continues to date this designated individual and intends to give this individual a ticket to attend some of these events. Accordingly, your organization and the lobbyist seek guidance regarding the giving of event tickets under such circumstances.

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

The Lobbying Law defines a "designated individual" as a legislator, legislative employee or public servant. N.C.G.S. 120C-100(a)(2). A gift is defined as anything of monetary value given or received without valuable consideration with a few listed statutory exceptions. N.C.G.S. 138A-3(15). Pursuant to 120C-303(a), a lobbyist or lobbyist principal is restricted from (1) knowingly giving a gift to a designated individual and (2) knowingly giving a gift with the intent that a designated individual be an ultimate recipient, unless a gift ban exception applies. Similarly, N.C.G.S. 138A-32(c) prohibits a designated individual from knowingly accepting gifts from a lobbyist or a lobbyist principal. N.C.G.S. 138A-32(e)(10) permits the giving and acceptance of gifts given as part of a business, civic, religious, fraternal, personal or commercial relationship that is "not related to the person's public service or position." The N.C.G.S. 138A-32(e)(10) exception also requires that the gift be given "under circumstances that a reasonable person would conclude that the gift was not given to lobby."

"Reportable expenditure" as defined in the Lobbying Law includes any gift of value greater than ten dollars (\$10.00) "directly or indirectly made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member ...."

N.C.G.S. 120C-100(a)(12)a. Lobbyists and lobbyist principals are generally required to report expenditures for gifts over ten dollars in value. N.C.G.S. 120C-402(b)(4) and -403(b)(5), respectively. Specifically, a lobbyist is required to report all gifts given under N.C.G.S. 138A-32(e)(10) with a fair market value greater than ten dollars. N.C.G.S. 120C-402(b)(4). A gift given to a designated individual is deemed to have been given on the date it is received by the designated individual. Commission Rule 30 NCAC 10C .0102 (b).

#### **IV. Application of the Ethics Act and Lobbying Law to Your Questions.**

You have sought advice regarding several questions related to the giving of event tickets to a designated individual. You ask who would be the giver of the tickets under the facts you presented and whether the tickets could be given or would be impermissible gifts. N.C.G.S. 120C-303 prohibits a lobbyist or lobbyist principal from giving a gift, directly or indirectly, to a designated individual unless a gift ban exception applies.

The facts you presented establish that the event tickets would be purchased by your organization, a lobbyist principal, and a non-lobbyist principal entity, and then the tickets would be given to your organization's employees, including a lobbyist. The lobbyist would be given two tickets, one for the lobbyist, and one for a guest of his or her choice. Pursuant to your facts, neither your lobbyist principal organization nor the non-lobbyist principal entity would instruct the lobbyist on who should be given a ticket. In addition, neither your organization nor the non-lobbyist principal entity would be giving or intending for a designated individual to be given a ticket. Accordingly, the lobbyist would not be told to whom tickets should be given.

Based on these facts, if the lobbyist invites a designated individual to an event and provides the individual with one of the tickets, it will be solely the lobbyist's decision, and the ticket, a thing of value, will be a gift attributed to the lobbyist and not to your lobbyist principal organization or the non-lobbyist principal entity. Pursuant to Commission Rule 30 NCAC 10C .0102 (b), the gift of the ticket will be deemed to have been given on the date of the event, the date the designated individual receives the gift.

N.C.G.S. 120C-303(a)(1) prohibits a lobbyist from knowingly giving a gift to a designated individual unless a gift ban exception applies. Therefore, whether the lobbyist is allowed to give these tickets to the designated individual depends on whether a gift ban exception applies. N.C.G.S. 138A-32(e)(10) permits the giving and acceptance of gifts given as part of a personal relationship that is "not related to the person's public service or position." The N.C.G.S. 138A-32(e)(10) exception also requires that the gift be given "under circumstances that a reasonable person would conclude that the gift was not given to lobby."

The presented facts are that the lobbyist and the designated individual were dating prior to the individual becoming a designated individual. This establishes that the lobbyist and designated individual's personal relationship is not related to the designated individual's public service or position.<sup>2</sup> The fact that a dating relationship commonly involves attending this type of event together, a reasonable person would conclude that the lobbyist did not give these tickets to

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<sup>2</sup> Note, this does not preclude "post-public position" relationships from meeting the first prong of the N.C.G.S. 138A-32(e)(10) gift ban exception.

this designated individual to lobby the individual. As long as the lobbyist and the designated individual continue their personal relationship and the circumstances of the ticket-giving show that it is not to lobby the designated individual, the lobbyist will be allowed to give event tickets to this designated individual under the N.C.G.S. 138A-32(e)(10) gift ban exception.

You have also asked whether the tickets will need to be reported as a reportable expenditure and if so, who will have the reporting responsibility. Pursuant to N.C.G.S. 120C-100(a)(12), a gift with a fair market value over ten dollars is a reportable expenditure. N.C.G.S. 120C-402(b)(4) requires a lobbyist to report all gifts given under N.C.G.S. 138A-32(e)(10) with a fair market value greater than ten dollars. Based on the facts that the lobbyist will be giving the tickets to a designated individual and the tickets will have a value greater than ten dollars the lobbyist will be required to report the gift of the tickets. The lobbyist will need to report the gift on the expenditure report that the lobbyist files with the Secretary of State for the time period during which the event takes place.

Finally, with regards to your request for guidance on future expenditures that might arise in the course of their relationship, the gift ban exception of N.C.G.S. 138A-32(e)(10) will apply to future gifts from this lobbyist to this designated individual that are given due to their ongoing personal relationship and given under circumstances that a reasonable person would conclude the giving was not to lobby the designated individual. With this in mind, please be advised that even if the lobbyist's gifts are permissible under N.C.G.S. 138A-32(e)(10) gift ban exception, the lobbyist will be required to report all gifts given to the designated individual if the gift has a fair market value greater than ten dollars (\$10.00).