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**FORMAL ADVISORY OPINION—EDITED FOR PUBLICATION**

November 14, 2014

Re: The Application of the Lobbying Law’s “Cooling Off” Period to Former Legislative Employee  
AO-L-14-001

Dear Requester:

This is in response to your request for a formal advisory opinion. You have asked whether a former legislative employee is subject to the Lobbying Law’s “cooling off” period, G.S. 120C-304(c).

This formal advisory opinion is based upon the information provided in your request and was adopted by the Commission at its November 14, 2014, meeting.<sup>1</sup>

**I. Facts.**

Your organization has hired a former legislative employee. That employee is considering registering as a lobbyist on behalf of your organization within six months of the employee’s departure from the General Assembly.

**II. Applicable Statutory Provisions.**

G.S. 120C-200(a) requires that a lobbyist register with the Secretary of State before lobbying. The terms “lobbyist” includes an individual who “[i]s employed by a person and a significant part of that employee’s duties include lobbying.” G.S. 120C-100(a)(10)d. The Commission has determined that

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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.

a "significant part" of an employee's job duties include lobbying if during any rolling 30 day period either: (1) five percent or more of an employee's actual duties included direct lobbying; or (2) five percent or more of an employee's actual duties included goodwill lobbying. 30 NCAC 10A .0101.

However, G.S. 120C-304 restricts members of the Council of State, heads of all principal State departments, and legislators from registering as lobbyists while in office or within six months after leaving office.

G.S. 120C-304(c) also provides that "no other employee of any State agency" may register as a lobbyist "to lobby the State agency that previously employed the former employee within six months after voluntary separation ...." "State agency" is defined as "[a]n agency in the executive branch of the government of this State ...." G.S. 138A-3(30k).<sup>2</sup> The legislative power of the State is vested in the North Carolina General Assembly. N.C. Constitution, Article II, Section 1. Employees of the General Assembly who are paid by State funds are "legislative employees." G.S. 120C-100(a)(6).

### **III. Analysis.**

The General Assembly is not an agency in the executive branch of State government. It is in the legislative branch. Therefore, G.S. 120C-304(c) is inapplicable to former legislative employees and your employee may therefore register as a lobbyist in connection with his job duties without waiting six months after the employee's departure from the General Assembly.

### **IV. 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.

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<sup>2</sup> The Lobbying Law provides that except as otherwise defined in the Lobbying Law, definitions set forth in the State Government Ethics Act apply to the Lobbying Law. G.S. 120C-100(b).

**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).