



North Carolina General Assembly Legislative Ethics Committee

PUBLISHED EDITED ADVISORY OPINION OF THE LEGISLATIVE ETHICS COMMITTEE

MS
**Re: AO-LEC-13-002 Application of Ethics Laws to Legislator's Employment
at a Private Company**

Question: Does the State Government Ethics Act, G.S. Chapter 138A ("Ethics Act"), the Legislative Ethics Act, Part 1 of G.S. Chapter 120, Article 14, or the Lobbying Law, G.S. Chapter 120C, restrict a legislator from performing his or her job duties at a private company?

Opinion: No.

Although the Ethics Act does not restrict a legislator's private business or personal pursuits, it may restrict a legislator's participation in certain "legislative" or "official" actions that could financially benefit the legislator, the legislator's family members, or his or her employer or business; or result in a financial loss to a business competitor. "Legislative action" is defined to include various actions taken with respect to a "bill, resolution, amendment, motion, report, nomination, appointment, or other matter ... by a legislator ... acting or purporting to act in an official capacity." G.S. 120C-100(a)(5). "Official action" is broadly defined to include "any decision ... made or contemplated in any proceeding, application, submission, request for ruling or other determination, contract, claim, controversy, investigation, charge, or rule making." G.S. 138A-3(25).

Specifically, G.S. 138A-31(a) restricts a legislator from using his or her public position in an official or legislative action that would provide a "financial benefit" to the legislator, a member of the legislator's extended family, or a "business with which the legislator is associated" where that benefit would influence the legislator.

G.S. 138A-37(a) similarly restricts a legislator from taking legislative action which would provide a "reasonably foreseeable" financial benefit to the legislator or a "person with which associated" if that benefit would impair the legislator's independence of judgment. "Person with which associated" includes a legislator's employer. However, there are a number of situations in which a legislator may take legislative or official action notwithstanding a conflict of interest, including

those actions that would provide a similar benefit or detriment to all members of a profession, occupation, or general class. G.S. 138A-38(a)(1).

In fulfilling job duties, the legislator will be acting solely in the legislator's private capacity. Therefore, neither G.S. 138A-31(a) nor G.S. 138A-37(a) would restrict the employment activities described. However, since G.S. 138A-31(a) and 138A-37(a) conflict of interest inquiries are very fact-specific, the legislator should seek advice if there are questions about the permissibility of taking a particular official or legislative action in the legislative capacity if that action would provide a reasonably foreseeable financial benefit to the legislator's employer or a detriment to a competitor.

Legislators are also restricted from disclosing confidential information obtained as a result of their legislative positions if that information would result in a financial gain to the legislator, an associated business, or any other person. G.S. 120-87. This provision would therefore restrict the use of confidential information obtained in the legislative position to benefit the legislator or the legislator's employer.

Finally, G.S. 138A-31(b) would restrict the use of the legislative title in connection with the "advertisement" of the employer or its services. That term is defined in 30 NCAC 08 .0101. However, the legislator may include his or her title in a biographical listing included on the Company's website or in informational materials provided by the Company and which includes other relevant work experience in addition to General Assembly service.

The gift ban of the Ethics Act generally restricts legislators from knowingly accepting direct or indirect "gifts" from registered lobbyists and lobbyist principals unless a gift ban exception applies. G.S. 138A-32(c). The Lobbying Law, G.S. Chapter 120C, similarly restricts a lobbyist or a lobbyist principal from knowingly giving a gift directly to a legislator, or giving a gift to an intermediary "with the intent that a designated individual be an ultimate recipient," unless an exception applies. G.S. 120C-303(a)(2).

The term "gift" is defined to include "anything of monetary value given or received without valuable consideration" G.S. 138A-3(15). There are a number of items that are excluded from the definition of gift, including "contractual arrangements or commercial relationships or arrangements made in the normal course of business and not made for the purpose of lobbying." Thus, the gift ban would not restrict receipt of employment benefits that are provided in the normal course of business and under circumstances that are not for lobbying. That would include salary and other employment benefits, as long as those items are consistent with the salaries and benefits customarily given to other similarly-situated employees in the normal course of employment.