



North Carolina General Assembly Legislative Ethics Committee

November 17, 2014

PUBLISHED EDITED ADVISORY OPINION OF THE LEGISLATIVE ETHICS COMMITTEE

Re: AO-LEC-14-001 – Legislator Solicitation of Funds for Certain Tax-Exempt
Organizations

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FACTS:

While serving as a member of the General Assembly, you would like to solicit funds for a tax-exempt organization that does not employ a lobbyist or lobbyist principal and is formed under Section 501(c)(4), 501(c)(5), 501(c)(6), or 527 of the Internal Revenue Code of 1986. This request relates to tax-exempt organizations, including business leagues, social welfare organizations, labor unions, and political organizations that support policies you favor and that sponsor communications supporting candidates who support their policies. You will not be serving as a director, officer, employee, lobbyist, or independent contractor of the tax-exempt organization.

Your fundraising activities would include solicitations of funds to enable the organizations to engage in grassroots lobbying, issue advocacy, or to support candidates other than you. None of the funds that you solicited would be used to support you, but the organization might use other funds to support your election.

You indicated that you will not accept food, beverages, or anything else of value from the tax-exempt organization unless an exception to the gift ban applies.

QUESTION:

May a member of the North Carolina General Assembly solicit funds for a tax-exempt organization that does not employ a lobbyist or lobbyist principal and is formed under Section 501(c)(4), 501(c)(5), 501(c)(6), or 527 of the Internal Revenue Code of 1986?

ANSWER:

Yes, so long as the legislator complies with ethics laws and provisions.

At the outset, we note that the Committee does not have jurisdiction over issues of independent expenditures and electioneering. Those matters would fall within the jurisdiction of the North Carolina State Board of Elections.

The Committee has addressed whether a legislator may solicit funds on behalf of a 501(c)(3) organization. AO-E-07-0003 and AO-E-07-0010. The Committee's previous advice would generally apply to other tax-exempt organizations (501(c)(4)s, 501(c)(5)s, 501(c)(6)s, or 527s that do not employ a lobbyist) with some caveats as noted below:

1. *Soliciting Donations in Exchange for Being Influenced in a Legislator's Responsibilities*- G.S. 138A-32(a) prohibits legislators from directly or indirectly soliciting anything of value to benefit the legislator or another "person" (such as one of the non-profit entities raised in the question) in return for being influenced in the legislator's official responsibilities. The solicitation of a donation, alone, would not be a violation of this provision. There would have to be a demonstrable connection between the solicitation and being influenced in the discharge of the legislator's official responsibilities for the solicitation to be prohibited.

2. *Soliciting and Accepting Donations*- The State Government Ethics Act (Chapter 138A) and the Legislative Ethics Act (Art. 14 of Chapter 120) do not prohibit legislators from soliciting or accepting donations for tax-exempt organizations when the legislator is not using his or her public position in the solicitation. Even though you may solicit funds for these entities under certain circumstances, you are generally prohibited from using your State-supplied office or State equipment, facilities, materials, or personnel for campaign purposes. Ethical Principle and Guideline 7. Finally, G.S. 138A-32(b) prohibits a legislator from soliciting for a charitable purpose any thing of monetary value from any subordinate State employee. This prohibition does not apply to generic written solicitations to all members of a class of subordinates. *Id.*

3. *Use of Legislative Title*- G.S. 138A-31(b) prohibits a legislator from using his or her legislative title in nongovernmental advertising that advances the private interest of the legislator or others. One of the exceptions specifically allows the use of the title "in a charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3)." G.S. 138A-31(b)(5). It is important to note that the exception that allows use of title for 501(c)(3)s does not apply to other tax-exempt organizations. Therefore, you would not be permitted to use your legislative title to solicit on behalf of 501(c)(4)s, 501(c)(5)s, 501(c)(6)s, or 527s unless another exception to the statute applied. Those other exceptions are:

- Political advertising.
- News stories and articles.
- The inclusion of the public position in a directory or a biographical listing.

- The inclusion of the public position in an agenda or other document related to a meeting, conference, or similar event when the disclosure could reasonably be considered material by an individual attending the event.
- The disclosure of the position to an existing or prospective customer, supplier, or client when the disclosure could reasonably be considered material by the customer, supplier, or client.

G.S. 138A-31(b)(1),(2),(3),(4), and (6).

4. *Legislator Control of a 501(c)(3)*- The Committee has provided more restrictive advice where an organization is controlled by legislators (AO-E-07-0010):

- It would be inappropriate for a legislator who serves on the Board of a 501(c)(3) that is controlled by the legislator or group of legislators to solicit or accept donations on behalf of the 501(c)(3) from lobbyists or lobbyist principals.
- It would be inappropriate for a legislator serving on the board or executive committee of a 501(c)(3) whose board or committee is controlled by the legislator or group of legislators, to participate as a member of the board or executive committee, in any action that authorizes solicitations or acceptance of donations from lobbyists or lobbyist principals.

Because you indicated that no legislators are serving on the Board or executive committee, this more restrictive advice would not apply to the entities at issue here.

5. *Gift Ban*- Finally, there is one item in the opinion request that the Committee would like to clarify--the gift ban. You mentioned that you will not accept food, beverages, or anything else of value from the organization unless an exception to the gift ban applies.

G.S. 138A-32(c) prohibits legislators from knowingly accepting gifts, defined as "anything of monetary value," from lobbyists, lobbyist principals, or liaison personnel, directly or indirectly, unless an exception applies. Based on the facts you provided, the gift ban would not apply if no gifts are being given to the legislator by lobbyists, lobbyist principals, or liaison personnel. You also should be aware of the prohibition against indirect gifts. For contributions made by lobbyists, lobbyist principals, or liaison personnel to the organization, if a legislator is the ultimate recipient of that donation to the organization, and the legislator knows that the gift was funded by a lobbyist, lobbyist principal, or liaison personnel with the intent that the legislator be the ultimate recipient, the legislator would be prohibited from accepting the gift from the organization unless an exception to the gift ban applied. G.S. 138A-32(c).