



**North Carolina General Assembly  
Legislative Ethics Committee**

January 4, 2016

The Honorable Tim Moore, Speaker  
North Carolina House of Representatives  
16 W. Jones Street, Room 2008  
Raleigh, NC 27601

Re: AO-LEC-15-005 – Concurrent Service as Member and as County or City Attorney

Dear Speaker Moore:

On June 10, 2015, you asked the Legislative Ethics Committee (Committee) to issue a formal advisory opinion addressing the following question:

May I be appointed attorney for a county or city while I continue to hold my elected office as a member of the House, and Speaker of the House? It should be noted that my law firm also has a contract with a political subdivision of this State, a sanitary district, to provide legal services on retainer.

The Committee concludes that the State Government Ethics Act does not prohibit an elected member of the General Assembly from concurrently serving as a county attorney or city attorney. This conclusion is not affected by whether, at the time of the appointment to serve as county or city attorney, the member is serving as Speaker of the House or as President Pro Tempore, or the member's law firm has a contract with a sanitary district to provide legal services on retainer.

Although you are not prohibited by the State Government Ethics Act from concurrently serving as a county or city attorney while also serving as a member of the General Assembly, you should be cognizant of the need to analyze potential conflict of interest issues that may arise under the Act as a consequence of your service as a county or city attorney, including the following specific provisions of the Act:

G.S. 138A-31 prohibits a legislator from knowingly using the legislator's public position in an official action or legislative action that that will result in financial benefit to the legislator, a member of the legislator's extended family, or a business with which the legislator is associated.

G.S. 138A-37(a) provides that a legislator shall not participate in a legislative action if the legislator knows the legislator or a "person with which the legislator is associated" may incur a reasonably foreseeable financial benefit from the action and the legislator concludes that his or her independence of judgment would be

impaired. This requirement is subject to certain exceptions set forth in G.S. 138A-38(a). In addition, when a legislator is "employed or retained by, or is an independent contractor of, a governmental unit, and the legislator is the only member of the house elected from the district where that governmental unit is located," G.S. 138A-38(c) permits the legislator to take legislative action on behalf of that governmental unit notwithstanding G.S. 138A-37, provided the legislator "discloses in writing to the principal clerk the nature of the relationship with the governmental unit prior to, or at the time of, taking the legislative action."

Issues involving conflicts of interest are extremely fact-specific, and therefore must be analyzed on a case by case basis. As such, the conclusions stated in this opinion may not apply to a situation involving a variation in the facts as presented in your request. You can request an advisory opinion from the Committee or from the State Ethics Commission in the event that any conflict of interest issues should arise in the future related to this subject.

By copy of this letter, the Committee is submitting its formal advisory opinion to the State Ethics Commission in accordance with G.S. 120-104(f), which requires the Committee to edit the opinion for publication purposes as necessary to protect your identity. The State Ethics Commission will publish a version of this opinion after the opinion is edited as necessary to protect your identity in accordance with G.S. 138A-13(d).

If you have any questions concerning this matter, please let us know.

Sincerely,



Senator Kathy Harrington  
Senate Co-chair for the Legislative Ethics Committee



Representative Jacqueline Schaffer  
House Co-chair for the Legislative Ethics Committee

cc: State Ethics Commission