



**North Carolina General Assembly
Legislative Ethics Committee**

April 6, 2017

Senator Brent Jackson
North Carolina Senate
16 W. Jones Street, Room 2022
Raleigh, NC 27601

Re: AO-LEC-16-001: Acceptance of Expanded Gas Products Service Grant

Dear Senator Jackson:

On December 2, 2016, you asked for a formal advisory opinion from the Legislative Ethics Committee (Committee) regarding your farm's application for an Expanded Gas Products Service to Agriculture Fund Grant administered by the North Carolina Department of Commerce (Department). On December 20, 2016, with permission from the chairs of the Committee, you met with Committee staff and clarified your two questions. Those questions are considered separately.

1. May your farming operation, Jackson's Farming Company of Autryville, accept a grant if it should be awarded under the program criteria established by the Department?

YES.

Based on the facts presented, there is not a specific statute, advisory opinion, principle and guideline, or other guidance that would prohibit acceptance of the grant. The Committee notes the following considerations:

Conflicts of Interest-

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

Further, G.S. 138A-37(a) provides that a legislator should not knowingly participate in a legislative action if the legislator knows that the legislator or a "person with which the legislator is associated" would "reasonably and foreseeably benefit" from the legislative action and the legislator concludes that his or her independence of judgment would be impaired, unless an exception exists in G.S. 138A-38.

The conflict of interest standards must be considered prior to taking legislative or official action. However, if there is no legislative or official action, then the statutory conflict of

interest standards do not apply. A legislative action may include a research request, drafting request, committee action, votes, and veto overrides, if any. G.S. 138A-3(20); G.S. 120C-100(a)(5). Simply put, a legislative action includes everything it takes for a bill to become law.

Because the application to receive a grant from an executive branch agency on the same basis as other citizens and the acceptance of that grant do not fit within the definitions of legislative or official action, the conflict of interest standards do not apply.

Avoiding the Use of Title When Applying for the Grant-

The Committee finds that it is inappropriate to use the legislator's public position in applying for a grant on behalf of the legislator or others.

2. Should a grant be awarded to Jackson's Farming Company of Autryville, and should the Department seek legislation in the future to amend the statutory provisions governing the Program, may you participate in that legislation?

IT DEPENDS.

In the event the company owned by you accepts the grant, you would need to consider recusing yourself from legislative action involving the program in accordance with the standards set forth in G.S. 138A-31(a) and G.S. 138A-37(a) in light of the specific legislative action at hand.

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). Please keep in mind that formal advisory opinions do not confer immunity from criminal investigation or prosecution. G.S. 120-104(c); G.S. 138A-13(b1). Requests for advisory opinions, the opinions themselves, and all materials related to the opinions are confidential and are not public records. G.S. 120-104(g). This advisory opinion supplements existing statutes, advisory opinions, principles and guidelines, and other guidance.

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

Sincerely,

A handwritten signature in black ink, appearing to be "Michael Lee", written in a cursive style.

Senator Michael Lee
Senate Co-chair for the Legislative Ethics Committee

A handwritten signature in black ink, appearing to be "John Faircloth", written in a cursive style.

Representative John Faircloth
House Co-chair for the Legislative Ethics Committee

cc: State Ethics Commission