



STATE ETHICS COMMISSION

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PERRY Y. NEWSON
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FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

May 18, 2007¹

Re: Article 7 Exemption: Designated Individuals Acting in Their Official Capacity
AO-L-07-0002²

Dear Requester:

You requested a formal written advisory opinion (“formal advisory opinion”) on whether you must register as a “lobbyist” pursuant to Chapter 120C of the North Carolina General Statutes (“G.S.”), the Lobbying Law. The Ethics Commission has authorized its staff to issue formal advisory opinions pursuant to G.S. 120C-102 and G.S. 138A-13 upon the receipt of a proper request. All opinions are based on the particular facts presented. Once issued, these formal advisory opinions confer limited civil immunity upon the requester if the advice given is followed. Reliance upon a requested formal advisory opinion on a specific matter immunizes the requester from (1) investigations by the Commission and (2) any adverse action by the requester’s employing entity. Formal advisory opinions do not confer immunity from the Secretary of State’s office or from any criminal investigation or prosecution. Requests for advisory opinions, the opinions themselves, and all materials related thereto are confidential and not a matter of public record, although the Commission is required to publish redacted formal advisory opinions annually. G.S. 120C-102(d).

In your letter you state the following facts. You are employed by the State of North Carolina. Part of your responsibilities and duties include advocating for legislative and executive action through direct communications with legislators, legislative employees, and other public servants. All of these advocacy responsibilities and duties relate solely to matters pertaining to your employment.

While your request and my earlier opinion speak in terms of your potential registration as a “lobbyist,” the correct term is really “liaison personnel.” The end result is the same. Chapter 120C requires all agencies and constitutional officers of the State to designate “liaison personnel” to lobby for legislative action, and forbids the use of State funds to hire outside, non-State employees to engage in legislative lobbying. G.S. 138A-500(a) & (b). Thus, the real question was whether you are required to register as a “liaison personnel” in order to engage in legislative lobbying.

¹ Note: This formal advisory opinion was initially issued on February 6, 2007; approved by the Commission on February 22, 2007; modified on May 11, 2007, solely to correct certain terminology (“lobbyist” to “liaison personnel”); and reissued as modified on May 18, 2007.

² Note: This opinion deals with the same substantive issue as AO-L-07-0004.

Under these facts, you do not need to register as a liaison personnel. You are a covered “public servant” under the State Government Ethics Act (“SGEA” or “the Act”), Chapter 138A. You are also a “designated individual” under Chapter 120C, the Lobbying Law. Except for certain gift and scholarship reporting purposes, designated individuals are exempt from the Lobbying Law while they are acting in their official capacities. G.S. 120C-700(6). Therefore, as long as you are acting in your official capacity when you advocate for legislative or executive action, you are exempt from the general requirements of Chapter 120C and do not need to register as a liaison personnel.³ You may also be exempt pursuant to G.S. 120C-700(3) as a State employee appearing solely in connection with matters pertaining to your office and public duties.

³ If you, as a designated individual, accept reportable expenditures made for the purpose of lobbying, or “scholarships” as defined in G.S. 120C-800(g), either you or the donor may need to report those items with the Secretary of State’s office. *See* G.S. 120C-800.