



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

October 3, 2007¹

Re: Sponsorship by Non-Lobbyist Principals and Lobbyist Principals of Legislative Reception;
Article 3 Gift Ban – Applicable Exemption Under G.S. 138A-32(e)(1) – “Public Event”
AO-L-07-0005

Dear Requester:

You sent the State Ethics Commission an e-mail requesting guidance on specific issues arising under the new Lobbying Law (Chapter 120C) and the new State Government Ethics Act (Chapter 138A), which became effective January 1, 2007. At the time of your request, the full Ethics Commission had not been appointed. Therefore an informal written opinion was issued to you. At that time you requested that once the full Commission was appointed, a formal written advisory opinion (“formal advisory opinion”) be issued to you regarding the situation on which my informal written advisory opinion was issued.

The State Ethics Commission has authorized the staff to issue formal advisory opinions pursuant to G.S. 138A-13 and 120C-102, 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. Formal advisory opinions issued do not confer immunity 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).

At its February 22, 2007, meeting, the Commission reviewed the informal written advisory opinion I issued to you in January 2007. On February 22, 2007, the Commission adopted my informal written advisory opinion as a formal advisory opinion.

¹ Note: This formal advisory opinion was initially issued as an informal written advisory opinion in January of 2007; approved by the Commission as a formal advisory opinion on February 22, 2007; revised on October 3, 2007, to incorporate recent amendments to relevant parts of the Ethics Act and Lobbying Law; and approved as revised on November 9, 2007.

In your e-mail and in our follow-up discussion, you stated the following facts. A North Carolina organization (“Organization”) was planning to host a legislative reception honoring all of the newly elected members of the North Carolina General Assembly (“General Assembly”). The Organization was not a lobbyist principal. However, this legislative reception would be sponsored by approximately 60 different sponsors, many of which were lobbyist principals. All members of the General Assembly were invited along with all Council of State members, all Supreme Court justices and Court of Appeals judges, the Governor and his cabinet, and all North Carolina members of the United States Congress. Your e-mail stated that this reception was open to the general public. Subsequently you clarified that although the Organization considered this event open to the general public, there would be a substantial charge to members of the public to attend this reception.

Your questions were: (1) who is actually giving the food and beverages at this legislative reception when sponsors give the money to the Organization specifically for the purpose of paying for this legislative reception for the legislators and public servants, and the Organization then directly contracts with and pays for the catering of the reception; (2) if the food and beverages are determined to be given by the sponsors, including lobbyist principals, does this legislative breakfast meet an exemption to the gift ban; and (3) if the food and beverages can be given, who must report the expenditures to the Secretary of State’s Office?

Based on the fact that the sponsors were specifically giving the money to the Organization to pay for the legislative reception, the sponsors were indirectly giving the gifts of food and beverages to the legislators and public servants. Since some of the sponsors were lobbyist principals, this gift of food and beverages was prohibited under G.S. 120C-303(a) and 138A-32(c), unless it met an exemption to the gift ban pursuant to G.S. 138A-32(e). Based on the facts you provided in your e-mail and during our telephone conversation, I determined that the G.S. 138A-32(e)(1) exemption for food and beverages consumed at a “public event” may be applicable if the Organization’s legislative reception met all of the requirements to be a public event for *both* legislators *and* public servants.

“Public event” is defined in G.S. 138A-3(29). Prior to the passage of House Bill 1111 (Session Law 2007-348) on August 9, 2007, the definition of “public event” had two separate subsections, one for legislators and legislative employees, and one for public servants. Each of these subsections stated requirements that had to be met, including who must be invited to the organized gathering, to qualify as a public event for each of these types of covered individuals.² Your e-mail stated that this legislative reception was open to the general public. However, during our telephone conversation you stated that a member of the general public would have to pay a substantial amount to attend this legislative reception while legislators and public servants would be admitted free of charge. As we discussed, whether an event that has a charge to attend is really “open to the general public” is unclear. This is an issue that needs to be addressed by the Ethics Commission. Accordingly, this legislative reception may not have been “open to the general public” making the then-existing G.S. 138A-

² Section 24 of HB 1111 amended the definition of “public event” under G.S. 138A-3(29) and eliminated the two separate subsections, one for legislators and legislative employees, and one for public servants. Pursuant to Section 24 of HB 1111, there are now five definitions of “public event” under G.S. 138A-3(29), and if the sponsoring person and their/its event meet all of the requirements of any one of these five definitions, the event is a public event for legislators, legislative employees, and public servants.

3(29)a.1. public event definition for legislators and the then-existing G.S. 138A-3(29)b.1. public event definition for public servants inapplicable. Charging the general public to attend a legislative reception may also make the post-HB 1111 and current definitions of public event as defined in G.S. 138A-3(29)a. and in G.S. 138A-3(29)c. inapplicable. However, that issue did not need to be addressed in my advisory opinion because this legislative reception may have met some of the other definitions of public event contained in G.S. 138A-3(29) for legislators and public servants, both pre-HB 1111 and post-HB 1111, based on who was being notified and invited to attend.

G.S. 138A-3(29)a.2.II. applied when the event was an organized gathering of a person (person is broadly defined under G.S. 138A-3(27) and includes business entities, associations, and organizations) to which the entire General Assembly was invited and to which all shareholders, employees, board members, officers, members *or* subscribers of the person located in North Carolina were notified and invited to attend. Accordingly, since all members of the General Assembly were invited, if each sponsoring lobbyist principal formally notified and invited all of its board members *or* all of its officers who were located in North Carolina to this legislative reception, the proposed legislative reception would have met the G.S. 138A-3(29)a.2. definition of “public event” and the lobbyist principals would have been allowed to give legislators food and beverages for immediate consumption at this reception per the G.S. 138A-32(e)(1) gift ban exemption.

A similar public event provision pertained to public servants. The G.S. 138A-3(29)b.3. public event exemption applied when the event was an organized gathering of a person to which at least 10 public servants were invited and to which all shareholders, employees, board members, officers, members *or* subscribers of the person located in a specific North Carolina office or county were notified and invited to attend. Since more than 10 public servants were invited, if each sponsoring lobbyist principal formally notified and invited all of its board members *or* all of its officers who were located in a specific North Carolina office or county to this legislative reception, the proposed legislative reception would have met the G.S. 138A-3(29)b.3. definition of “public event” and the lobbyist principals would have been allowed to give legislators food and beverages for immediate consumption at this reception per the G.S. 138A-32(e)(1) gift ban exemption.

After the passage of HB 1111 on August 9, 2007, if a person and their/its event meet all of the requirements of any *one* of the five definitions of “public event” contained in G.S. 138A-3(29), as amended by Section 24 of HB 1111, the sponsoring person(s) may give the gift of food and beverages for immediate consumption under the gift ban exemption of 138A-32(e)(1) to legislators, legislative employees, and public servants. The sponsoring person(s) no longer needs to meet the requirements of two separate subsections or two different definitions of “public event” to give to different types of designated individuals (“DI”) (legislators, legislative employees, and public servants) under this gift ban exemption. *See* Section 24 of HB 1111.

You also asked who should report the expenditures for the food and beverages given to the legislators and public servants at this reception. G.S. 120C-403(b)(5) requires each lobbyist principal to report, among other things, all reportable expenditures made for the purpose of lobbying, all reportable expenditures for gifts given under any of the gift ban exemptions of G.S. 138A-32(e) (1) –

(9), -(e)(11), -(e)(12),³ and all gifts given under the gift ban exemption of G.S. 138A-32(e)(10) with a value of more than \$200. The lobbyist principal reports are to be filed with the Secretary of State's Office quarterly when the General Assembly is not in session and monthly when the General Assembly is in session. G.S. 120C-403(a) and (c). Accordingly, the sponsors who are lobbyist principals are required to report the food and beverage expenditures on their lobbyist principal reports they each file with the Secretary of State's Office if the value of the expenditure is greater than \$10 per day per individual legislator, individual public servant, or that individual's immediate family. G.S. 120C-403(b)(5) and 120C-100(a)(12)a. The sponsors who are not lobbyist principals, such as the Organization, need to report expenditures made for the purpose of lobbying if the reportable expenditures given per individual legislator, individual public servant, or that person's immediate family equal a total cumulative value of over \$200 in a calendar quarter. G.S. 120C-800(a).

³ With the passage of HB 1111 on August 9, 2007, two new gift ban exemptions listed as (11) and (12) were created under G.S. 138A-32(e). See Section 41 of HB 1111. These gift ban exemptions of -(e)(11) and -(e)(12) are retroactive to January 1, 2007. See Section 44 of HB 1111.