



## STATE ETHICS COMMISSION

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### FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

September 12, 2007<sup>1</sup>

Re: Article 3 Gift Ban – Applicable Exemption Under G.S.138A-32(e)(10)  
AO-L-07-0006

Dear Requester:

You sent the State Ethics Commission (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 yet been appointed. Therefore, an informal written advisory 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 Commission has authorized its 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 adopted my informal written advisory opinion as a formal advisory opinion. This final formal advisory opinion supersedes all prior formal or informal opinions on this matter.

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<sup>1</sup> Note: This formal advisory opinion was initially issued as an informal written advisory opinion in December of 2006; approved by the Commission as a formal advisory opinion on February 22, 2007; revised on September 12, 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 you stated that you were a lobbyist and you were flying out of state to attend an event. You planned to rent a vehicle while you are there. A member of the North Carolina General Assembly, who is also a former classmate of yours and a personal friend, was also planning on attending the event. You asked if you gave this legislator a ride from the airport to the hotel in your rental vehicle, if payment of some amount for the ride would be required. You also asked if you gave this legislator a ride, if you would have to report the value of the ride to the Secretary of State's Office.

As we discussed during our telephone conversation, under the new Lobbying Law, a lobbyist is prohibited from giving a gift to a legislator unless it meets one of the gift ban exceptions. G.S. 120C-303(a). There is no "nominal" or small-gift exception to the gift ban. A gift is basically anything of monetary value given or received without valuable consideration by or from a lobbyist or lobbyist principal, except for a few listed limited exceptions. G.S. 138A-3(15).<sup>2</sup> Accordingly, pursuant to the statute, you would be giving your legislator friend a gift when you gave the ride in your rental vehicle. With this in mind, the ride from the airport to the hotel had to meet a gift ban exception for you to be able to give it and for the legislator to be able to accept it.

G.S. 138A-32(e) lists a number of specific gift ban exceptions. One of these listed gift ban exceptions applies to gifts given for fraternal or personal reasons and not given for the purpose of lobbying. G.S. 138A-32(e)(10). This gift ban exemption states:

Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to the person's public service or position and made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying.<sup>3</sup>

Based on your fraternal and personal relationship with this legislator, which is not related to the legislator's public service or position, and the fact that you were giving the ride based on this relationship, and not for the purpose of lobbying, the G.S. 138A-32(e)(10) gift ban exception applied. Therefore, you could give and the legislator could accept the ride without paying for it. However, you still needed to report the value of the ride on the lobbyist reports that you filed with the Secretary of State's Office covering the time period that you gave the ride. G.S. 120C-402.

The Lobbying Law requires you to report, among other things, the fair market value or face value, if shown, of all gifts given under the G.S. 138A-32(e)(10) gift ban exception G.S. 120C-401(b)

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<sup>2</sup> On August 9, 2007, House Bill 1111 (Session Law 2007-348) was signed into law. Section 21 of HB 1111 amended G.S. 138A-3(15) and clarified that the definition of gift included anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, *legislative liaison personnel or a person described under G.S. 138A-32(d)(1), (2), or (3)*. The italicized phrase is the new language added to this part of Section 21. Section 21 of HB 1111 will go into effect on October 1, 2007.

<sup>3</sup> HB 1111 also amended G.S. 138A-32(e)(10), but such amendment would not alter the result of this opinion. See section 40 of HB 1111, retroactively effective January 1, 2007.

and 402(b)(4).<sup>4</sup> There are a number of ways you could determine the fair market value of the ride to the hotel, including, but not limited to, using the cost of the airport shuttle to the hotel, the amount of a cab fare to the hotel, or the IRS mileage rate for the number of miles from the airport to the hotel. Determining the fair market value of the ride would be your decision based on the applicable facts.

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<sup>4</sup> At the time this opinion was initially issued, the reporting threshold for 138A-32(e)(10) independent relationship exceptions was from the first penny (\$.01) for lobbyists. However, HB 1111 also amended 120C-402(b)(4) to increase the reporting threshold for these reportable expenditures to gifts with a value of more than ten dollars (\$10.00). *See* section 41.(b) of HB 1111, retroactively effective January 1, 2007. Depending upon the value of the ride in this situation, this may impact the requester's reporting obligation. If the value of the ride was ten dollars or less, it would *not* have to be reported.