



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

May 25, 2007

RE: Lobbyists Contributing to a Political Action Committee (“PAC”)
AO-L-07-0008

Dear Requester:

The State Ethics Commission is in receipt of your letter requesting guidance on issues arising under the new State Government Ethics Act, Chapter 138A, and the Lobbying Law, Chapter 120C, which became effective January 1, 2007.¹ The Ethics Commission held its first meeting on January 24, 2007, and at that meeting it authorized the Commission’s staff to issue formal written advisory opinions (“formal advisory opinions”) pursuant to G.S. 120C-102 and G.S. 138A-13 upon the receipt of a proper request.

G.S. 120C-102 applies to written requests for a formal written advisory opinion from any person affected by Chapter 120C. G.S. 120C-102 requires that the request for a formal advisory opinion be in writing and relate to real or reasonably anticipated fact settings and circumstances. All opinions are based on the particular facts presented and only have prospective application. G.S. 120C-102(a). Once issued, the Commission’s formal advisory opinion confers limited civil immunity upon the requester if the advice given is followed. Reliance by the requester on the Commission’s issued formal advisory opinion immunizes the requester from investigation by the Commission regarding the specific facts and circumstances addressed in the opinion and from any adverse action by a legislator, legislative employee or public servant’s employing entity regarding the same. The Commission’s formal advisory opinion does not confer immunity from investigations or enforcement by the Secretary of State’s Office or any other investigative or enforcement agency; nor does it confer immunity from 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 ask whether contributions by lobbyists to a Political Action Committee would violate the SGEA. The Lobbying Law (Chapter 120C) governs this question.

¹ The request references the State Government Ethics Act (“SGEA”) as including *both* the Lobbying Law (Chapter 120C) and the Ethics Act (Chapter 138A). They are more precisely referred to by their separate titles. The Lobbying Law controls the present question.

Pursuant to G.S. 120C-302(a) of the new Lobbying Law, no lobbyist may make a contribution as defined in G.S. 163-278.6 to a candidate who is a legislator, a member of the Council of State, or to that candidate's campaign committee as defined under G.S. 163-278.38Z. The definition of legislator and Council of State member under Chapter 120C also includes individuals who have filed a notice of candidacy or a petition requesting to be a candidate for such office with the Board of Elections, or has been certified as a nominee of a political party for a vacancy, or otherwise qualified as a candidate in a manner authorized by law. G.S. 120C-104. Contribution is broadly defined under G.S. 163-278.6 to include, among other things, any conveyance, deposit, distribution, transfer of funds, payment, gift, pledge or subscription of money, or anything of value whatsoever. Under G.S. 120C-302(a), a candidate's campaign committee means any political committee or political action committee organized by, or under the direction or control of, the candidate.

There is no prohibition on lobbyists giving contributions to political committees or political action committees that are not organized by or under the direction or control of the candidate as long as the lobbyist does not specifically earmark his or her contribution to the independent political committee or political action committee to go to a North Carolina General Assembly legislative candidate or Council of State candidate.

In your letter you state the following facts. Your organization is a political action committee ("PAC") and was formed by and is, from time to time, contributed to by individuals with an interest in public policy issues in North Carolina. This PAC intends to make financial contributions to candidates for elected office from time to time and to other entities who may lawfully accept contributions from a State PAC. The decisions as to when and to whom such contributions may be made will not be directed or controlled by any individual. Instead, all of those who have contributed to the PAC will be entitled to and encouraged to participate in such decisions, and such contributions will be made based on the will of these contributors. Other than making contributions to candidates or their committees, the PAC is not and shall not be directly affiliated with any candidate, nor shall it be controlled by or directed by any candidate. Further, the PAC specifically is not and will not be directed or controlled by any lobbyists except to the extent that such lobbyists may be entitled as contributors to have their preferences considered like any other contributor to the PAC.

Under the facts presented in your letter, registered lobbyists would be allowed to make contributions to the PAC and such contributions would not violate either the new Lobbying Law (Chapter 120C) or the new Ethics Act (Chapter 138A).

I suggest that you also contact the Board of Elections regarding whether such contributions are allowed under the Board of Elections statutes, policies and procedures to ensure that the PAC and the lobbyists are in compliance with the Board of Elections laws.