



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

June 7, 2007

Re: City's Reception for Local Legislative Delegation – Gifts & Exceptions;
Article 7 Exemption: Local Government Officials Performing Official Duties
AO-L-07-0009

Dear Requester:

You requested an advisory opinion on several questions, including whether a city in North Carolina ("City") could host and pay for a reception for the City's legislative delegation and whether certain City officials, including the Mayor, City Manager, and City Attorney, were exempt from the new Lobbying Law, Chapter 120C of the North Carolina General Statutes ("G.S."), when acting solely in connection with their official duties. State Ethics Commission ("the Commission") staff provided you with timely verbal answers to your questions. This is the corresponding formal written advisory opinion ("formal advisory opinion") which provides limited immunity as set forth below.

The 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 investigations by the Commission and any adverse action by the legislator, legislative employee, or public servant'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 e-mail and letter you state the following facts. The City, a municipal corporation, through its elected Mayor, appointed City Manager, and appointed City Attorney, wants to host and pay for a reception for the City's municipal legislative delegation. There are no outside sponsors funding this event. It is anticipated that as to covered persons under the State Government Ethics Act (Chapter 138A) and the Lobbying Law (Chapter 120C), only legislators would be invited. Beverages and light food would be provided for immediate consumption. Participation of the Mayor, City Manager, and City Attorney would be solely in connection with their public duties, and each is a duly elected or appointed official. The City has not hired an outside lobbyist, does not have an internal lobbyist on staff, and is not a registered lobbyist principal under the Lobbying Law.

Based upon these facts, the City may host its legislative reception, and its duly elected or appointed officials and employees (including the Mayor, City Manager, and City Attorney) are exempt from the requirements of the Lobbying Law, except for certain limited reporting requirements set out in Article 8 of Chapter 120C.¹

Legislative Reception

Unless a specific exception applies, lobbyists, lobbyist principals, and liaison personnel cannot give gifts to legislators, and legislators cannot accept them. G.S. 120C-303 & G.S. 138A-32.² The City is neither a lobbyist nor a lobbyist principal, and there are no lobbyist/lobbyist principal sponsors of this event. Likewise, local units of government are exempt from the liaison personnel requirement of Article 5 of the Lobbying Law. G.S. 120C-500(a). Therefore, the gifts restrictions of G.S. 120C-303 & G.S. 138A-32 do not apply in this situation, and the City may give, and legislators may accept, food and drinks at the planned legislative reception.

As a result of the foregoing, you do not need to rely upon the food and beverages for immediate consumption at a “public event” exception of G.S. 138A-32(e)(1) and G.S. 138A-3(29). If you did, you are correct that the exception would apply to an organized gathering to which a municipal legislative delegation is invited provided the other requirements of G.S. 138A-3(29)a.2 are met, one of which is that at least 10 individuals associated with the “person” (here, the City) actually attend the event. You also correctly note another possible G.S. 138A-3(29)a.2 exception if the entire municipal legislative delegation is invited and “the person is a governmental body and the gathering is subject to the open meetings law.” G.S. 138A-3(29)a.2.III. Again, you do not need to rely upon these exceptions for the reasons discussed above.

¹ If a designated individual (*e.g.*, a legislator) accepts a reportable expenditure made for the purpose of lobbying, with a total value of over \$200 per calendar quarter, from a “person” exempted or not otherwise covered by Chapter 120C, the “person” making the reportable expenditure must report it to the Secretary of State’s office. *See* G.S. 120C-800(a). Other requirements apply for out-of-state reportable expenditures.

² You state in your facts that *only legislators* will be invited to the reception -- no “public servants” as defined in the Ethics Act. *See* G.S. 138A-3(30). If public servants were involved, this would also trigger the gift ban of G.S. 138A-32(d) for what Commission staff calls “interested persons”: those whom the public servant knows or has reason to know (1) are doing or seeking to do business with the public servant’s employing entity; (2) are engaged in activities that are regulated or controlled by the public servant’s employing entity; or (3) have financial interests that may be substantially and materially affected by performance of the public servant’s official duties. The Commission has determined that local governments are “persons” within the scope of G.S. 138A-32(d). Thus, public servants could not accept a gift, including food and drinks, from the City if the City was such an “interested person” pursuant to G.S. 138A-32(d), unless an exception applied. *See* discussion of the “public event” exception above. [Note: This opinion was issued prior to the passage of House Bill 1111 (Session Law 2007-348) which amended the definition of “person” to expressly exclude political subdivisions of the State, among others. HB 1111, section 23, amending 138-3(27). Thus, the “interested person” analysis would be different today.]

Local Government Officials Performing Official Duties

You also note that the Mayor, City Manager, and City Attorney's participation would solely be in connection with their public duties, and each is a duly elected or appointed official. You believe that these municipal officials fall under the general exemption of G.S. 120C-700(3). I agree.

Except as otherwise provided in Article 8 of the Lobbying Law (miscellaneous reporting provisions for persons exempt or not otherwise covered by the Law),³ the provisions of Chapter 120C shall not be construed to apply to

A duly elected or appointed official or employee of ... a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties....

G.S. 120C-700(3).

The first question then is whether the City's Mayor, Manager, and Attorney are "duly elected or appointed officials or employees." The Mayor is obviously duly elected and covered by this provision. The City Manager and City Attorney are duly appointed by the City Council. *See, e.g.*, G.S. 160A-147 (appointment of city manager); G.S. 160A-173 (appointment of city attorney); *see also* G.S. 153A-114 (appointment of county attorneys). Both city and county managers and attorneys are "officials" for purposes of this provision of the Ethics Act. *See, e.g.*, G.S. 128-1.2. This would include both "in-house" attorneys (those hired by the City as employees) and any outside counsel hired as an independent contractor, as long as all other requirements of this provision are met (see below).⁴

The second requirement is that these officials and employees must be appearing "*solely* in connection with matters pertaining to the office and public duties" (emphasis added). Thus, if local government officials or employees engage in independent lobbying activities not associated with or connected to their public office and duties, they may fall within the coverage of the Lobbying Law and be required to register, report, and fulfill all other necessary requirements of Chapter 120C.

Thus, you are correct that the G.S. 120C-700(3) exemption applies to the City Mayor, City Manager, and City Attorney, as well as any other similarly-situated elected or appointed local government officials. As a general matter, local elected and appointed officials and employees are exempted from most provisions of the Lobbying Law as long as they are performing their official duties, and subject to the possible reporting requirements mentioned above.

³ *See* footnote number 1 above.

⁴ While not at issue in this opinion, I see no reason that this same analysis would not apply to the other types of local government employees and officials listed in G.S. 128-1.2: acting city and county managers, interim city and county managers, finance officers, clerks, and deputy clerks. This is obviously not an exclusive list.