



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

November 28, 2007¹

Re: Lobbyists' and Lobbyist Principals' Sponsorship of Events Held In Conjunction With
Legislative Conferences
AO-L-07-0010

Dear Requester:

Initially you requested an informal opinion seeking guidance and answers regarding one or more lobbyist principals and/or lobbyists sponsoring events at which food and beverages are provided to legislators. Usually these events occur in conjunction with a legislative conference that the legislators are attending, but they are not part of the actual agendas of the legislative conferences. I issued an informal written response to you regarding the questions you raised during our telephone conversation. Later, the State Ethics Commission ("Commission") received an e-mail from you in which you requested a formal written advisory opinion ("formal advisory opinion") regarding specific events that you, as a lobbyist, were planning.

The 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 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 advisory opinion from any person affected by Chapter 120C. G.S. 120C-102 requires the request for a formal advisory opinion be in writing and relate to real or reasonably anticipated fact settings and circumstances. All advisory 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. Good faith reliance by the requester on the Commission's issued formal advisory opinion grants civil immunity to the requester from (1)

¹ Note: This formal advisory opinion was initially issued on July 9, 2007; revised on October 29, 2007, to incorporate recent amendments to relevant parts of the Ethics Act, including the definition of "public event"; approved by the Commission on November 9, 2007, subject to modification as directed by the Commission; and revised and reissued on November 28, 2007.

investigation by the Commission regarding the specific facts and circumstances addressed in the Commission's formal advisory opinion and (2) any adverse action by a legislator, legislative employee, or public servant's employing entity regarding the same. In addition, good faith reliance by the requester upon a formal advisory opinion issued by the Commission on or after August 9, 2007, also grants civil immunity to the requester from investigation by the Secretary of State's Office.² Prior to August 9, 2007, the immunity granted by the Commission's formal advisory opinions did not include investigations or enforcement by the Secretary of State's Office. The Commission's formal advisory opinions do not confer immunity from any other investigative or enforcement agency; nor do they include 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).

I issued a formal advisory opinion to you on July 9, 2007. However, because House Bill 1111 (Session Law 2007-348) amended the definitions of "public event," on October 29, 2007, I sent you a revised formal advisory opinion to inform you about the changed definitions and their application for your future reference. This second revised formal advisory opinion contains only one change. This change is the addition of footnote 9 on page 6. Footnote 9 explains in great detail that if all of the conditions of the gift ban of G.S. 138A-32(e)(3)(iii) are met, as of October 1, 2007, this gift ban would apply to reasonable actual expenditures of a legislator or legislative employee for food, beverages, transportation, and incidental entertainment provided by a lobbyist principal at an event *held in conjunction with a non-partisan state, regional, national or international legislative organization* (emphasis added). This second revised formal advisory opinion supersedes all prior formal or informal opinions on this matter.

In your telephone conversations with the Commission's staff, you stated that in the past an entity that you represent, which is the lobbyist principal regarding this request, has made the reservations and paid for the food and beverages for the legislators, and then after the event, this lobbyist principal seeks reimbursement from other entities, many of which are also lobbyist principals, which wish to participate in the funding of the event. You were seeking guidance from the Commission regarding what effect the new lobbying law has on these events. In your e-mail you

² House Bill 1111 (Session Law 2007-348) was signed into law on August 9, 2007. Section 10 of HB 1111 amended subsection (a) of G.S. 120C-102 and broadened the immunity granted to the requester by a formal advisory opinion issued by the Commission on or after August 9, 2007, to include investigations by the Secretary of State. Section 10 of HB 1111 also amended subsection (d) of G.S. 120C-102. Pursuant to the amended subsection (d), as of August 9, 2007, and forward, the Commission is required to provide the Secretary of State with an unedited copy of each formal advisory opinion it issues pursuant to G.S. 120C-102(a) at the time such advisory opinion is issued to the requester (emphasis added). The staff of the Office of the Secretary of State is required to treat the formal advisory opinion as confidential, and it is not a public record. Subsection (d) was also amended to allow the Commission to share all information related to a request made for a formal advisory opinion pursuant to G.S. 120C-102(a) with the staff of the Office of the Secretary of State (emphasis added). If the Commission shares such information with the staff of the Office of the Secretary of State, such staff is required to treat the information as confidential, and it is not a public record. Section 10 of HB 1111 went into effect on August 9, 2007.

requested a formal advisory opinion on the application of the new Lobbying Law, Chapter 120C, to a number of specific events.

The new Lobbying Law applies to lobbyists, lobbyist principals, and legislative liaison personnel. The new Lobbying Law prohibits, among other things, a lobbyist, lobbyist principal, or legislative liaison personnel from giving gifts, directly or indirectly, to a designated individual (legislators, legislative employees, and public servants). G.S. 138A-32(c) of the new State Government Ethics Act (Ethics Act) prohibits a designated individual from knowingly accepting a gift, directly or indirectly, from a lobbyist, lobbyist principal, or legislative liaison personnel, unless an exemption to the gift ban listed in G.S. 138A-32(e) applies. Because the requesting entity is a lobbyist principal and many of the other sponsors of the events are lobbyist principals or lobbyists, for these entities and individuals to be able to participate in the funding of these events and provide food and beverages to legislators and legislative employees at these events, a gift ban exemption under G.S. 138A-32(e) must be met.

In your request you stated the following facts: the requesting lobbyist principal and at least twenty (20) other sponsors were hosting each of these specific events. There would be more than twenty (20) individuals associated with the group of lobbyist principals and lobbyists sponsoring each specific event who would actually attend that particular event. All members of the North Carolina General Assembly and at least ten (10) legislative employees were being invited to each of these events. The requesting lobbyist principal and the other hosting sponsors planned to only give food and beverages for immediate consumption to all of the legislators and legislative employees who attended the events.

Based on the facts you presented, there was an applicable gift ban exemption that would allow the requesting lobbyist principal and the other lobbyist/lobbyist principal sponsors to give this food and beverages to the legislators and legislative employees at these specific events. G.S. 138A-32(e)(1) allows lobbyists and lobbyist principals to give food and beverages for immediate consumption at a “public event.” 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 another 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.³ G.S. 138A-3(29)a.1 applied to events which were open to the general public. You stated that these events were not open to the general public; therefore, G.S. 138A-3(29)a.1 was not applicable.

³ Section 24 of House Bill 1111 (Session Law 2007-348) 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 another 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.

Based on the facts you presented, each of these specific events met the definition of “public event” for legislators under G.S. 138A-3(29)a.2. G.S. 138A-3(29)a.2 had a two-pronged test.⁴ The first prong was (and is under G.S. 138A-3(29)b.) that the “person” sponsoring the event must invite either the entire membership of the House of Representatives or of the Senate, or the entire membership of one of the statutorily listed legislative subgroups. Since you stated that the entire General Assembly was invited, you met the first prong of G.S. 138A-3(29)a.2.⁵

The Commission’s staff has determined that invitations under the Ethics Act and the Lobbying Law must be in writing (e-mails are included as a written invitation), be sent out at least ten (10) days in advance of the event, state the date, time and location of the event, identify the event, and list the names of the sponsors of the event. Based on the content required in the invitation, the sponsoring lobbyist principals and lobbyists must be identified and known prior to the event occurring.

After meeting this first prong, a second prong also had to be met (this second prong still must be met under G.S. 138A-3(29)b). This second prong of G.S. 138A-3(29)a.2⁶ can be met in three ways, depending on who/what is determined to be the “person” holding the organized gathering. The three ways were, and remain, as follows:

- I. If at least ten (10) individuals associated with the person actually attend the event, other than the legislator or legislative employee, or the immediate family of the legislator or legislative employee;
- II. All shareholders, employees, board members, officers, members, or subscribers of the person located in North Carolina are notified and invited to attend the event; or
- III. The person is a governmental body and the gathering/event is subject to the open meetings law.

G.S. 138A-3(29)a.2. Under Chapter 138A, “person” is broadly defined to include an individual, any business entity, committee, association, or any “group of persons acting together.” G.S. 138A-3(27). You stated and your e-mail confirmed that the requesting lobbyist principal and the other hosting lobbyists and lobbyist principals were acting as a group when sponsoring each of these events.

As stated above, one of the ways to meet the second prong of G.S. 138A-3(29)a.2 was/is for at least ten (10) individuals associated with the “person” (here the lobbyists and lobbyist principals sponsoring the particular event) to actually attend that event. Your request stated that more than twenty (20) individuals associated with the group of lobbyists and lobbyist principals (the “person”) which was sponsoring each particular event would actually attend that event.

⁴ The definition of “public event”, as amended by section 24 of HB 1111, resulted in G.S. 138A-3(29)a.2 being renumbered as G.S. 138A-3(29)b. The two-pronged test contained in 138A-3(29)a.2 remains under 138A-3(29)b.

⁵ G.S. 138A-3(29)a.2 is now G.S. 138A-3(29)b.

⁶ See footnote numbers 4 and 5 above.

The determination of who/what is the “person” holding the organized gathering becomes more complicated when the event is being sponsored/funded by a number of lobbyist principals and lobbyists, rather than just one. The Commission decided that for the purposes of meeting subsection I of G.S. 138A-3(29)a.2,⁷ the “person” referenced in subsection I is the “group” of lobbyists and lobbyist principals sponsoring the event.⁸ Therefore, for your referenced event, each sponsoring lobbyist and lobbyist principal did *not* have to have ten (10) individuals associated with them individually actually attend the event to meet subsection I. Rather, the “group” of lobbyists and lobbyist principals sponsoring each of the events was the “person” and, therefore, the group only had to have a total of ten (10) individuals associated with the group of lobbyists and lobbyist principals sponsoring that particular event actually attend that event.⁹

Based on your facts, the second prong of G.S. 138A-3(29)a.2 was met, as long as the sponsoring lobbyists and lobbyist principals were identified prior to the event being held.¹⁰ This is necessary to establish that at least ten (10) individuals associated with the “person” (the group of sponsoring lobbyists and lobbyist principals) hosting a particular event actually attend that event.

Under the facts presented in your request, the requesting lobbyist principal and the other lobbyists and lobbyist principals sponsoring each of the events referenced above were allowed to give

⁷ Subsection I of G.S. 138A-3(29)a.2 is now renumbered as subsection 1 of 138A-3(29)b.

⁸ Initially, before the Commission was in place and had officially met, the Commission’s staff conservatively determined that if more than one lobbyist or lobbyist principal was sponsoring an event, to meet subsection I of G.S. 138A-3(29)a.2 *each* sponsoring lobbyist and lobbyist principal needed to have at least ten (10) individuals associated with each of them individually actually attend the event.

⁹ For example, if five (5) lobbyist principals sponsored the event, each sponsoring lobbyist or lobbyist principal could have had two (2) people actually attend the event for a total of ten (10), or all ten (10) who actually attended could be associated with just one of the sponsoring lobbyists or lobbyist principals, or any other combination of numbers from the “group of sponsoring lobbyists and lobbyist principals” (the “person”) as long as there were at least ten (10) individuals associated with the “group of sponsoring lobbyists and lobbyist principals” who actually attended the event.

¹⁰ Note that if the sponsoring lobbyist principals cannot meet subsection I, then they must meet subsection II of G.S. 138A-3(29)a.2. The “group” analysis used above for subsection I *cannot* be used by the sponsoring lobbyist principals here to meet subsection II of G.S. 138A-3(29)a.2, based upon the language of subsection II and the fact that this group of sponsoring lobbyist principals consists of separate entities with separate shareholders, employees, officers, etc. Accordingly, to meet the second prong of G.S. 138A-3(29)a.2 through subsection II, *each* sponsoring lobbyist principal would need to notify and invite all of their shareholders, employees, board members, officers, members or subscribers located in North Carolina. Again, notification and invitation must be in writing (e-mails are included as a written invitation), be sent out at least ten (10) days in advance, state the date, time, and location of the event, identify the event, and list the names of the sponsors of the event. Pursuant to section 24 of HB 1111, subsection II of G.S. 138a-3(29)a.2 is now renumbered as subsection 2 of 138A-3(29)b.

legislators and legislative employees food and beverages for immediate consumption at the event they hosted per the gift ban exemption of G.S. 138A-32(e)(1).¹¹

These events were for the purpose of lobbying.¹² This made the entire cost of each of the events a reportable expenditure for the purpose of lobbying. Therefore, the entire cost of each of the events needed to be reported to the Secretary of State's Office. Each sponsoring lobbyist and lobbyist principal was required to report the total amount that they gave to sponsor the event and also determine the fair market value of the food and beverage gift given to the legislator and their immediate family member(s). The food and beverages provided to each legislator and their immediate family members were 138A-32(e)(1) gifts that needed to be reported if the fair market value exceeded \$10.00 per calendar day per legislator or their immediate family. G.S.120C-402(b)(4) and 403(b)(5). The food and beverage component needed to be reported on a per-legislator basis with the receiving family member(s) listed separately. G.S. 120C-401(b). The remaining amount of a sponsor's sponsorship money needed to be reported under the proper category of reportable expenditures per G.S. 120C-401(c).

¹¹ Note that section 38 of HB amended G.S. 138A-32(e)(3) so that as of October 1, 2007, the gift ban exemption contained in subsection (iii) of 138A-32(e)(3), applies to reasonable and actual expenditures for food, beverages, transportation, and incidental entertainment provided to a legislator or legislative employee *either* as part of the meeting of a non-partisan state, regional, national or international legislative organization of which the General Assembly, the legislator, or the legislative employee is a member *or* at an event held *in conjunction with* a meeting of such a non-partisan state, regional, national or international legislative organization if all of the other requirements and conditions contained in 138A-32(e)(3) are met. The listed conditions of G.S. 138A-32(e)(3), which apply to all subsections of G.S. 138A-32(e)(3), are: (a) only *lobbyist principals*, not lobbyists, may pay for the listed allowed expenditures (emphasis added); (b) any meeting must be attended by at least ten (10) or more participants, have a formal agenda, and notice of the meeting be given at least ten (10) days in advance of the meeting (the notification must be in writing, which includes e-mails, state the date, time, and location of the event, identify the event, and list the names of the sponsors of the event); (c) any food beverages, transportation, or entertainment must be provided to all attendees or defined groups of ten (10) or more attendees as part of the meeting *or in conjunction with the meeting* (emphasis added); (d) any entertainment must be incidental to the principal agenda of the meeting; and (e) if the legislator or legislative employee is participating as a speaker or a member of a panel, the legislator or legislative employee must be a bona fide speaker or participant. Addition of the language "or in conjunction with the meeting" in condition (c) results in the gift ban exemption of G.S. 138A-32(e)(3)(iii) being applicable as of October 1, 2007, to reasonable actual expenditures of a legislator or legislative employee for food, beverages, transportation, and incidental entertainment provided at an event held in conjunction with a non-partisan state, regional, national or international legislative organization, *if* all of the other conditions of G.S. 138A-32(e)(3) are met.

¹² Under G.S. 120C, the definition of "lobbying" includes both "direct" lobbying and "goodwill" lobbying. Direct lobbying is influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person's immediate family. G.S. 120C-100(a)(9)a. Goodwill lobbying is the developing of goodwill through communications or activities, including the building of relationships, with a designated individual or that person's immediate family with the intention of influencing current or future legislative or executive action, or both. G.S. 120C-100(a)(9)b.