



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

November 14, 2008

RE: Legislative Leaders' Conference & the "Educational Meeting" Gift Ban Exception
AO-L-08-005

Dear Requester:

You requested a formal advisory opinion from the State Ethics Commission ("Commission") concerning whether a 501(c)(3) non-profit organization, established by your company, could pay various travel expenses for certain North Carolina legislators to participate in a conference for legislative leaders. The conference is being hosted by an educational institution. This is the formal advisory opinion you requested.

A. **Formal Advisory Opinions of the State Ethics Commission.**

G.S. 120C-102 establishes the requirements for the Commission's issuance of formal advisory opinions to certain individuals, including lobbyists and lobbyist principals. G.S. 120C-102 requires that a 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 have prospective application only.

Once issued, a formal advisory opinion confers limited civil immunity upon the requester if the Commission's advice is followed. Good faith reliance by the requester on the Commission's formal advisory opinion immunizes the requester from (1) investigation by the Commission regarding the specific facts and circumstances addressed in the opinion and (2) any adverse action by a legislator, legislative employee, or public servant's employing entity. In addition, good faith reliance by the requester on a formal advisory opinion grants civil immunity to the requester from investigation by the Secretary of State's Office regarding the specific facts and circumstances addressed in the opinion. The Commission's formal advisory opinions do not confer immunity from any other investigative or enforcement agency, or immunize the requester 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 an edited copy of formal advisory opinions within 30 days of issuance. G.S. 120C-102(c) and (d).

The Commission is authorized to share all information related to formal advisory opinion requests pertaining to G.S. Chapter 120C with staff of the Office of the Secretary of State, which must treat such information as confidential and not a public record. The Commission must forward an unedited copy of each formal advisory opinion issued under G.S. 120C-102 to the Secretary of State at the time the opinion is issued. Those unedited opinions are confidential and not a public record. G.S. 120C-102(d1).

B. The Conference Meets the Educational Meeting Exception to the Gifts Ban.

Based upon the information you have provided, it is the Commission's opinion that the conference qualifies as an "educational meeting" under G.S. 138A-32(e)(3)(i). Accordingly, reasonable actual expenditures incurred by the North Carolina legislators in connection with their attendance at the conference may be provided. The lobbyist principal must report those expenditures on its principal report filed with the Secretary of State for the quarter covering the month the conference is held.

i Facts.

The company is a lobbyist principal. It provides certain services to states in connection with their operation of publically funded programs.

The 501(c)(3) non-profit organization ("non-profit organization") is not a lobbyist principal. It was established and funded by the lobbyist principal company. The non-profit organization's operating expenses are derived from investment income generated from the lobbyist principal company's initial funding. The non-profit organization is operated and controlled by a board of directors which consists entirely of officers and employees of the lobbyist principal company. Therefore, the lobbyist principal company has complete control over the non-profit organization and directs the non-profit organization's donations to various groups.

The lobbyist principal company, through its non-profit organization, has given an unlimited grant to an educational institution to host, plan, and coordinate the conference. The conference is being held outside of North Carolina on the campus of the hosting educational institution and at a hotel in the same area. The non-profit organization is the sole monetary sponsor of this conference, with the educational institution coordinating the accommodations, including the location of the conference, and the travel and lodging arrangements for the attending legislators.

The non-profit organization has worked with the educational institution in planning the agenda and selecting the speakers and panel members. The non-profit organization had sole control over the selection of legislators invited to the conference. The educational institution sent the letter of invitation to the selected legislators. All of the selected legislators are senate and house ranking leaders or chairs or members of particular legislative committees for the states they represent. The purpose of this conference is to convene legislative leaders from a number of states to discuss state strategies to address a particular public policy concern before the commencement of the 2009 state legislative sessions. The stated objectives of the conference are to:

- (1) provide a relaxed environment in which participants can study and share insights into strategies to address those public policy concerns;

- (2) provide experts and speakers on voters' beliefs, financing, identifying the public's needs in this area, and effective administrative approaches to addressing those needs;
- (3) study cutting-edge strategies, drawing upon distinct examples of states implementing relevant strategies;
- (4) provide a round table format for participants to develop better awareness of the issues and to seek feedback on and possible solutions to those issues; and
- (5) provide networking opportunities.

A final report from the conference will be prepared by the educational institution and sent to each participant and to the invited legislators who were unable to attend.

ii. Applicable Law.

The Lobbying Law, North Carolina General Statutes ("G.S.") Chapter 120C, prohibits, among other things, a lobbyist, lobbyist principal, or legislative liaison personnel from giving gifts (including anything of monetary value), directly or indirectly, to a designated individual (legislators, legislative employees, and public servants) unless an exception to the gift ban listed in G.S. 138A-32(e) applies.¹ Because the non-profit organization is funded and controlled exclusively by the lobbyist principal company, the activities of the non-profit organization are attributable to the lobbyist principal company.

The G.S. 120C-303(a)(1) gift ban prohibits a lobbyist principal from "knowingly giving a gift to a designated individual." Accordingly, for the non-profit organization, at the direction of the lobbyist principal company, to use funds generated from the lobbyist principal company's original gift to pay for the legislator's travel expenses, a gift ban exemption under G.S. 138A-32(e) must be met.

G.S. 138A-32(e)(3)(i) permits a lobbyist principal to pay for the "reasonable actual expenditures" of a public servant, legislator, or legislative employee incurred in connection with the individual's attendance at an educational meeting "for purposes primarily related to the public duties and responsibilities of the covered person" Any food, beverages, transportation, or entertainment must be provided to all attendees or defined groups of 10 or more attendees and the meeting must: (a) be attended by at least ten or more participants; (b) have a formal agenda; and (c) be noticed at least 10 days in advance. Any entertainment provided at the meeting "must be incidental to the principal agenda of the meeting." The educational meeting exception allows a public servant, legislator, or legislative employee to accept "reasonable actual expenditures" for food, beverages, registration, travel, lodging, other incidental items of nominal value, and incidental entertainment in connection with their attendance at the educational meeting.

G.S. 120C-403(b) requires a 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), and all gifts given under the gift ban exemption of G.S. 138A-32(e)(10) with a value of more than \$200. Accordingly, a

¹ A gift may also be given if another provision of G.S. Chapter 120C or a provision of G.S. Chapter 138A allows it to be given. For example, *see* G.S. 138A-32(f).

sponsor, that is a lobbyist principal and that is providing a gift allowed under the gift ban exception of G.S. 138A-32(e)(3)(i), is required to report on its lobbyist principal report “reasonable actual expenditures” for food, beverages, registration, travel, lodging, other incidental items of nominal value, and incidental entertainment in connection with the designated individuals’ attendance at the educational meeting if the value of the expenditures is greater than \$10 per day per individual legislator, individual public servant, or that individual’s immediate family. G.S. 120C-401, 120C-403(b)(5), and 120C-100(a)(12)a.

iii. Application of the Commission’s Educational Meeting Criteria.

The Commission has adopted nine non-exclusive factors that will be considered when determining what is an “educational meeting” under G.S. 138A-32(e)(3)(i) (“Criteria”). These Criteria are for guidance purposes only and no one factor is controlling. The determination as to whether a particular meeting, conference or event is an “educational meeting” under G.S. 138A-32(e)(3)(i) is based on the specific facts presented. The following is a discussion of the Criteria as applied to the question of whether the conference qualifies as an educational meeting.

I. Is the educational content of the meeting related to a specific public duty or responsibility of the covered person?

The public duties of all legislators include making decisions pertaining to governmental policies, systems, and strategies pertaining to this area of public policy. The content and the stated purposes of the conference relate to a legislator’s public duties. Therefore, the content of the conference complies with this factor of the Criteria.

II. What is the meeting’s primary purpose?

A. Is it to influence a public servant, legislator, or legislative employee with respect to executive or legislative action or to curry favor concretely? Or, is the meeting primarily intended to present information to enhance a person’s understanding of a subject matter or for the purpose of self-improvement?

Meetings intended to influence rather than educate may include meetings that are directly related to an upcoming official vote, recommendation, or other legislative or executive action.

In determining the purpose of the meeting, the Commission will consider whether the entity holding the meeting:

- has legislation pending before the General Assembly or intends to request legislative action;
- is seeking to introduce legislation or impact executive action at the time of the meeting;
- will be impacted by upcoming actions or decisions of the public servant, legislator, or legislative employee; or
- is holding the meeting for the purpose of advocating on behalf of legislative or executive action.

The lobbyist principal company's legislative lobbying during the 2007-08 General Assembly session pertained to this area of public policy, including supporting a bill to create a public program designed to meet certain recognized needs. In 2009, the lobbyist principal company plans to support the introduction of a similar bill and anticipates that it will be lobbying in this area of public policy. However, the conference's formal agenda does not include a discussion of any specific legislative proposal or the lobbyist principal company's products. In addition, no speaker is from the lobbyist principal company. Rather, individuals, including national scholars, with different approaches to these policy issues, will be presenting at the conference. Thus, the primary purpose of this conference appears to be to educate rather than advocate or curry favor for the lobbyist principal company.

B. What is the nature of the entity holding the meeting?

- Is the entity a State agency or governmental entity?
- Is the entity an educational institution?
- Is the entity an organization that routinely sponsors meetings with educational content?
- Is the entity holding the meeting a lobbyist principal?

The non-profit organization is a 501(c)(3) organization that was established and funded by the lobbyist principal company. The conference is entirely funded by an unrestricted grant from the non-profit organization. The conference will be held at an educational institution that routinely hosts educational meetings. The non-profit organization routinely sponsors educational meetings pertaining to the issues that will be discussed at the conference.

C. Is the lobbyist principal paying for the person's attendance at the meeting also sponsoring the meeting?

Yes. The lobbyist principal company, through the non-profit organization, is sponsoring the conference hosted by the educational institution and paying for the travel-related expenditures, including airfare and other necessary transportation, lodging, meals, and other incidental items of nominal value connected to the legislators' participation in the conference.

D. What is the agenda of the meeting?

- Other than the speech or roundtable discussion in which the public servant, legislator, or legislative employee is participating, what proportion of the individual events scheduled at the meeting have a speaker, roundtable discussion, or other educational content?
- What proportion of those sessions is held in the absence of a meal or entertainment?
- What proportion of the meeting agenda includes meals or entertainment with formal educational content?
- Does the agenda cover a wide range of topics or have a very limited, industry or client-specific focus?

- Would the meeting take place regardless of whether the invited designated individual(s) attends?
- Who are the speakers?
- Are they associated with the lobbyist principal or its lobbyist?
- Are they independent experts in their field?

The conference commences with a welcome reception and dinner and continues for a day and a half. The educational portion of the conference begins the day after the welcome reception and dinner, and consists of six hours, including two 15 minute breaks and a 90 minute lunch with a speaker involving an educational topic. There is a reception and dinner that night with entertainment incidental to the principal agenda of the conference. The educational portion, the reception, the dinner, and the incidental entertainment are all being held on the campus of the educational institution. The final half day of the conference consists entirely of educational sessions held at the hotel where the participants are staying, commencing at 8:30 am and concluding at 12:00 noon, with one 15 minute break. Participants then depart. The conference consists of a total of 9.25 hours of education which includes a lunch with a speaker. There are two receptions and dinners without any educational content, two breaks of 15 minutes and limited free time.

The agenda covers a number of topics centering on this area of public policy. All of the speakers have been invited based on their knowledge and expertise in this area, including professors from various educational institutions, researchers from various associations and institutions, and executives from various programs. None of the moderators, speakers, or panel members are directly associated with the lobbyist principal company or the non-profit organization. The lobbyist principal company has confirmed that the conference will be held regardless of whether a North Carolina legislator participates.

E. Is the location of the meeting directly related to the meeting's educational content?

- Is there a reason for holding the meeting in a location other than where the attendees live or work?
- Is it necessary to the meeting's educational purpose that an individual travel in connection with the meeting?
- Is the meeting sponsored by a state, national, or international organization for the benefit of its state, national, or international membership?
- Is the location of the meeting otherwise integral to the educational content of the meeting?
- Would an individual be capable of obtaining a comparable degree of educational information through other means that would not require travel?

The conference will involve legislators from a number of states, not just from North Carolina, so the conference could not be held in a location where all of the participants lived. The conference will be held at an educational institution and will include speakers from this educational institution. The participants would not be

capable of obtaining a comparable degree of educational information through other means that would not require travel.

F. Is the length of the educational meeting reasonably necessary to fulfilling the educational purpose of the trip?

The conference provides for a day of travel to the meeting, a day and a half of meetings and a half day of travel home. There is very little free time, and except for the receptions and dinners, the time is educational. The length of this conference is reasonable in relationship to the educational goals and purpose of the conference. The travel time is reasonable based on participants coming from a number of states.

G. What degree of personal benefit does the individual gain from attendance at the meeting?

- Does the personal benefit outweigh the public benefit gained by the educational value of the meeting?

Although the conference is being held in a city that is a common vacation destination, the large majority of the time encompassed in the conference is spent at educational sessions at the campus of an educational institution, with the remaining time spent at the hotel where the participants are staying. The time at the hotel includes a half day of educational sessions and the welcome reception and dinner the first night of the conference. Based on the topics that will be addressed, the diversity of the speakers and their expertise and knowledge in these topics, the conference will provide educational information that is valuable to a legislator. Any personal gain received through this conference is minimal and does not outweigh the public benefit gained by the educational value.

H. Are there other factors that would support the conclusion that the meeting is educational?

We are currently not aware of other factors that would support the conclusion that the conference is educational.

F. Conclusion

Based on the facts presented and the foregoing analysis, the Commission determined that the conference meets the Commission's educational meeting criteria. Moreover, the facts presented also established that: (a) any food, beverages, transportation, or entertainment that is being provided as part of this conference is being provided to all trip participants; (b) the conference has an established formal agenda; and (c) notice of the conference has already been provided by the educational institution to the invited legislators, thereby meeting the requirement of at least ten days advance notice. In addition, entertainment provided will be "incidental to the principal agenda of the meeting." Therefore, the conference meets the educational meeting exception of G.S. 138A-32(e)(3)(i) and the lobbyist principal company, through the non-profit organization, will be allowed to pay for the "reasonable actual expenditures" of the invited North Carolina legislators for food, beverages, registration, travel, lodging, other incidental items of nominal value, and incidental entertainment incurred in connection with their participation in the conference.

The lobbyist principal company will need to report the “reasonable actual expenditures” made in connection with the North Carolina legislators’ participation in this conference on its principal report filed with the Secretary of State’s Office for the last quarter of 2008. N.C.G.S. § 120C-403(a) and (c).