



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

November 14, 2008

RE: International Study Trip & the “Educational Meeting” Gift Ban Exception
AO-L-08-006

Dear Requestors:

You sent the State Ethics Commission (“Commission”) a letter in which you requested a formal advisory opinion concerning whether a lobbyist principal organization (“lobbyist principal”) and a non-lobbyist principal organization (“non-lobbyist principal”) could pay various travel expenses for certain legislators and public servants to participate in an international study trip. Your letter stated that the lobbyist principal and the non-lobbyist principal considered these legislators and public servants to be “policymakers” in areas related to the international study trip. Specifically, you asked: (1) whether the lobbyist principal and the non-lobbyist principal’s international study trip to this country qualifies as an educational meeting under the ethics legislation, which consists of Chapter 138A, the State Government Ethics Act, and Chapter 120C, the Lobbying Law; and (2) whether the lobbyist principal and the non-lobbyist principal are allowed to pay the travel-related expenses of this international study trip, which includes travel, lodging, and food expenses, and other incidental expenses of nominal value connected to this trip, for these legislators and public servants.

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 International Study Trip Meets the Educational Exception to the Gift Ban.

Based upon the information you submitted, it is the Commission's opinion that your international study trip qualifies as an educational meeting under G.S. 138A-32(e)(i). Accordingly, reasonable actual expenditures incurred by North Carolina legislators and public servants in connection with their participation in this study trip may be provided. The hosting lobbyist principal must report those expenditures it pays for on its principal report filed with the Secretary of State for the last quarter in 2008. Other sponsoring lobbyist principals also must report on their principal reports for the last quarter in 2008 any donation or grant given for the purpose of paying for a legislator or public servant's reasonable actual expenditures for this study trip.

i. Facts

Most of the money for this international study trip, including the money for the travel-related costs of the majority of the invited legislators and public servants, is given to the hosting lobbyist principal and the non-lobbyist principal in the form of grants from a private foundation which is not a lobbyist principal. In addition, other organizations and companies, some who are lobbyist principals, are giving money so additional "policy makers," all legislators or public servants, may participate in this study trip.

The money is given by this private foundation to be used for this international study trip with no conditions or requirements attached. The other sponsoring organizations and companies give to provide scholarships to pay for "policy makers" trip expenses, but there are no other conditions or requirements attached. The sponsors have no involvement in the planning, administration, or coordination of the trip. The sponsors make no decisions regarding the trip and have no input as to the selection of the participants. The hosting lobbyist principal and non-lobbyist principal plan, administer, and coordinate the entire trip.

The hosting lobbyist principal and non-lobbyist principal intend for "policymakers" to participate in this study trip. To this end, the hosting lobbyist principal and non-lobbyist principal asked legislative leaders to designate four members from each house of the General Assembly to participate in the study trip. Letters of invitation have been sent to CEOs, chairs, and governing boards of various governmental entities inviting them to attend or to designate a person to attend. In addition, other community leaders are invited to

attend. Each person invited to attend must undergo two to three days of intensive briefings on the educational system, the state of economic development, and the governing system of the country. Participants are required to read background briefing materials.

The hosting lobbyist principal and non-lobbyist principal only pay for the travel-related costs for their participating employees and for participants who have been determined to be “policymakers.” The other invited participants must pay for their own travel-related costs.

The hosting lobbyist principal and non-lobbyist principal have sponsored previous international study trips, and the participants for all of these previous trips have been invited based on their positions, both public and private. The participants for this study trip, again, are being invited based on their positions. Accordingly, many of the participants being invited have been on previous international study trips sponsored by the hosting lobbyist principal and non-lobbyist principal. The invited participants for this trip who have been deemed “policymakers” consist of eight legislators and three public servants.

The country which is the subject of this trip was chosen for four major reasons:

- It has focused on and developed a highly skilled workforce capable of succeeding in a global economy;
- It has successfully integrated educational and economic development planning to create an educational system that is responsive to the needs of the global market;
- It has gone from being one of the most economically distressed countries in its continent to one of its economic success stories, becoming a population magnet due to its integrated educational and economical development and planning;
- It has strong linkages between North Carolina-based businesses, institutions, and companies.

Educational Goals of the trip are:

- To examine how education and technology have helped rebuild this country’s economy by visiting various governmental entities and private businesses and companies;
- To gain a greater understanding of the role that technology and accompanying training programs in technology play in this country’s economy;
- To look for best practices that could be imported to North Carolina and adapted to strengthen North Carolina governmental entities, institutions, and systems, and North Carolina’s effort to develop a more highly-skilled workforce.

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

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. 120C-32(f).

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 hosting lobbyist principal and any other sponsoring lobbyist principal to pay for a legislator or public servant’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 10 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 each 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 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.

A sponsor that is not a lobbyist principal is required to report reportable expenditures made for the purpose of lobbying, including gifts, if: (1) the reportable expenditures given per individual legislator, individual public servant or that person’s immediate family equal a total cumulative value of over \$200 in a calendar quarter; (2) the sponsor is located in North Carolina or the designated individual is in North Carolina when he/she receives the reportable expenditures; and (3) the reportable expenditures are not excluded from Article 8 of Chapter 120C by subsection (e) of G.S. 120C-800. *See* G.S. 120C-800.

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

The Commission 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 this international study trip qualifies as an educational meeting.

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

The public duties of legislators include making policy decisions involving governmental policies, entities, and systems, and economical development and planning in North Carolina. The content and the stated purposes of the study relate to a legislator’s duties. The fact that legislative leaders were asked to designate four members from each house of the General Assembly to participate in the study trip adds credibility to this determination. The public servants invited all have responsibilities connected to these areas and the study clearly relates to their duties. None of the lobbyist principals can influence the selection and a sponsor cannot make a donation to curry favor with a particular legislator or public servant.

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 hosting lobbyist principal’s legislative initiatives that were proposed during the 2007-08 General Assembly Session included: (1) a Senate Bill project that the hosting lobbyist principal drafted at the request of legislative leadership which passed in 2007, resulting in the allocation of money for this project; this project is currently being operated by the hosting lobbyist principal and a non-profit organization; and (2) a successful bill that sought funding for a program that the hosting lobbyist principal administers. The hosting lobbyist principal will seek funding for this program again in 2009. Thus, although the international study trip’s primary purpose is not to

influence legislative or executive action, or to advocate on behalf of specific legislative or executive action, the hosting lobbyist principal's position and priorities on both legislative and executive issues and actions may be discussed during the international study trip. The primary purpose of the lobbyist principal hosting this study trip appears educational, but there is an unavoidable opportunity to influence the participants who are considered the "policymakers."

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 hosting lobbyist principal is a North Carolina corporation with its membership consisting of elected officials, both in the legislative and executive branches of North Carolina government, and others who also have policy-making power regarding particular issues and areas. The hosting non-lobbyist principal is an entity with 501(c)(3) status when applying for grants. The hosting non-lobbyist principal does not have a lobbyist and is not a lobbyist principal. Accordingly, the gift ban does not apply to the hosting non-lobbyist principal.

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

A private foundation which is not a lobbyist principal gave a grant to the hosting lobbyist principal and non-lobbyist principal for the purpose of funding this international study trip. The private foundation has no other involvement with this trip. Through this grant this lobbyist principal and non-lobbyist principal are able to host and sponsor this trip. The hosting lobbyist principal and non-lobbyist principal plan, coordinate, and will administer the entire trip.

In addition to this grant, other organizations and companies have given money earmarked to provide scholarships to pay travel related expenses so additional "policymakers" could participate in the trip. Through the grant and with these funds, the hosting lobbyist principal and non-lobbyist principal are paying all travel related costs, including airfare and other necessary transportation, lodging, meals, and other incidental items of nominal value connected to the study trip for the participants who have been designated by non-sponsors as "policymakers." All of these selected "policymakers" are legislators or public servants. Note that the hosting lobbyist principal and non-lobbyist principal are not paying the travel-related costs of the participants who have not been designated as "policymakers."

Each of these participants will pay a “registration fee” which will cover their travel-related costs, including airfare and other necessary transportation, lodging, meals, and other incidental connected to the study trip.

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?

This “meeting” is a six-day international study trip consisting of approximately 10 hour days, including educational time, breakfast, lunch, and travel time to and from the educational locations within the country. After a full day, the participants are given free time and dinner is usually on their own. There are only two activities that may be deemed entertainment, and both are incidental to the principal agenda and purpose of the study trip. The two activities are a tour of a major city on the first day and an optional cultural activity the last day.

The educational time includes presentations of an overview of another country’s governmental institutions, entities, and systems, with an emphasis on examining particular areas, including the economic development over the last decade, and the relations between the governmental institutions and systems with the country’s economic development policies; visits to various governmental entities, institutions and systems with accompanying presentations, tours, discussions, and observation time; visits with various governmental officials and business professionals; visits to companies with accompanying presentations and discussion with management and employees, with emphasis upon how the governmental institutions and systems develop manpower that meets the economy’s needs. One of the sponsoring companies has a facility in this country that will be visited as part of the trip’s agenda with management and employees at this facility speaking about the interface between the company and the governmental institutions and systems regarding workforce preparation. None of the speakers are associated with the hosting lobbyist principal or non-lobbyist principal, and

many may be deemed experts in their fields, whether that is in governmental issues, public policy issues, education, business, economics, or the link and interconnection of the country's governmental public policy issues and the economics of the country.

A focus of the hosting lobbyist principal is to have legislators and public servant policymakers participate in this trip, and that is why the hosting lobbyist principal pays for these "policymakers'" trip-related costs and expenses. The hosting lobbyist principal has acknowledged that this international study trip probably would not take place if these "policymakers" did not attend.

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 hosting lobbyist principal and non-lobbyist principal's international study trip is being held in another country. This country was selected as the location of this trip for four major reasons, all related to the country's governmental institutions and systems, with an emphasis on examining how this country has progressed from being one of the most economically distressed countries in its area of the world to one of its success stories, and the importance of education and the development of a highly skilled workforce in this turnaround. Participants will have an opportunity to see the benefits of integrating governmental systems with economic development planning as well as the benefits of a focus on governmental institutions and systems that are responsive to the needs of a global marketplace.

Holding the trip in this country is necessary for the hosting lobbyist principal and non-lobbyist principal to meet the educational goals they have set for this trip. Being in this country is integral to the educational content of the trip. For example, the trip includes visits and tours of this country's governmental entities, institutions, and systems, and of private businesses and corporations; meetings and discussions with the leaders and employees of various governmental entities, institutions, and systems of this country, and business representatives and professionals. An individual would not be capable of

obtaining a comparable degree of educational information through other means.

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

This international study trip, including travel time to and from the country, will commence Saturday and end a week later on Sunday. Each of the six days in the country consists of at least seven hours of education and/or travel to and from educational sites. Free time occurs after a full day of educational meetings and/or travel to and from such. It is not unreasonable for a participant to have some free time to relax each day. The length of the days devoted to education and the number of days for the study are reasonably necessary to fulfill the educational requirements.

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?

This “meeting” involves an out-of-the-country trip to another country that many people may wish to visit, and which may be considered a vacation destination for some, but based on the planned agenda this will not be a “vacation trip” for the participants. A majority of the hours of every day of this trip is being held in educational settings and locations with educational presentations, tours, and discussions. It has significant educational value. Therefore, the personal benefit in attending this international study trip would 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 meeting is educational.

IV. Conclusion

Based on the facts presented and the foregoing analysis, at its November 14, 2008, meeting, the Commission determined that this international study trip meets the Commission’s educational meeting criteria. Moreover, the facts presented also establish that: (a) any food, beverages, transportation, or entertainment that is being provided as part of this trip is being provided to all trip participants; (b) the trip has an established formal agenda; and (c) notice of the trip has already been provided to interested individuals, including all of the paying participants and the “policymaker” participants, thereby meeting the requirement of at least 10 days advance notice. In addition,

entertainment provided will be “incidental to the principal agenda of the meeting.” Therefore, this study trip meets the educational meeting exception of G.S. 138A-32(e)(3)(i) and the hosting lobbyist principal and other sponsoring lobbyist principals may pay for the “reasonable actual expenditures” of the invited legislators and public servants for food, beverages, registration, travel, lodging, other incidental items of nominal value, and incidental entertainment incurred in connection with their participation in this 2008 international study trip.

The hosting lobbyist principal will need to report the “reasonable actual expenditures” made in connection with the legislators and public servants’ participation in this international study trip as gifts, and name each receiving legislator and public servant on its principal report filed with the Secretary of State’s Office for the fourth quarter of 2008. G.S. 120C-401 and 120C-403(a) and (c).

The other sponsoring lobbyist principals must also report to the Secretary of State any grant or gift they give to the hosting lobbyist principal to pay for a designated individual’s “reasonable actual expenditures” incurred by participating in this study trip. G.S. 120C-401 and 120C-403.

The hosting non-lobbyist principal is not a lobbyist principal, therefore, it does not have to meet a gift ban exemption to pay for a legislator or public servant’s study trip costs. In addition, because the hosting non-lobbyist principal is a state entity it does need to report to the Secretary of State what it gives to each legislator or public servant. 120C-800(e)(5). However, if other sponsors who are not lobbyist principals give donations or grants to the hosting lobbyist principal and non-lobbyist principal for the purpose of lobbying, direct or goodwill, a legislator or public servant, they may need to report such to the Secretary of State. *See* G.S. 120C-800(a).