



## STATE ETHICS COMMISSION

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### **FORMAL ADVISORY OPINION** **UNEDITED WITH APPROVAL OF REQUESTOR**

November 14, 2008

Mr. Chad W. Essick, Esquire  
Poyner & Spruill  
Post Office Box 10096  
Raleigh, North Carolina 27612

VIA E-MAIL AND  
U.S. MAIL

RE: Applicability of G.S. 120C-303(a), 138A-32(c)-(d), and G.S. Chapter 120C's Reporting Requirements to the 2009 Junior League Inaugural Ball Weekend  
AO-L-08-007

Dear Mr. Essick:

By letter dated September 22, 2008, you requested an informal written opinion regarding the application of the G.S. 120C-303(a) gift ban to donations from lobbyists and lobbyist principals to the Junior League of Raleigh ("the JLR") in connection with the 2009 Inaugural Ball Weekend ("Inaugural Ball Weekend"). You also asked whether those donations were subject to the reporting requirements of G.S. Chapter 120C. Finally, you asked whether the JLR may give the newly elected Governor and members of the Council of State free tickets to the Inaugural Ball Weekend. You subsequently requested a formal advisory opinion. This formal advisory opinion was adopted by the State Ethics Commission "the Commission" at its November 14, 2008, meeting.

#### **I. 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 "any person affected by this Chapter." G.S. 120C-102(a). 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).

## **II. Chapter 120C's Gift Ban and Reporting Requirements.**

The answers to your questions concerning the applicability of the gift ban and the reporting requirements of G.S. Chapter 120C to contributions from lobbyists and lobbyist principals will vary according to the specific circumstances of each contribution. The Commission has provided general guidance in order to assist the JLR in finalizing its plans for the Inaugural Ball Weekend. However, to the extent individual lobbyists or lobbyist principals seek immunity as to their obligations under the gift ban and the reporting provisions of G.S. Chapter 120C, they will need to request an opinion independently.

Based upon the information you have provided, it is the Commission's opinion that if a registered Lobbyist or Lobbyist Principal makes a monetary or in-kind donation to the Junior League for the general purpose of sponsoring the 2009 Inaugural Ball Weekend or makes a donation in sponsorship of a particular event, G.S. 120C-303(a) would, in most cases, be inapplicable. In addition, the Commission has determined that those donations would most likely not be "reportable expenditures" pursuant to G.S. Chapter 120C. However, donations that are earmarked to benefit a "designated individual" (a legislator, legislative employee, or public servant) or to sponsor a particular event that disproportionately benefits designated individuals may be restricted by the G.S. 120C-303(a) gift ban. In the event that an exception to the gift ban applied to allow those earmarked donations or they were otherwise deemed to be for the purpose of lobbying, they would be reportable.

Inaugural Ball tickets given to the Governor and members of the Council of State by the JLR are not subject to the G.S. 120C-303(a) gift ban because the JLR is not a registered lobbyist principal. There are no other provisions in the Lobbying Law or G.S. Chapter 138A, the State Government Ethics Act ("Ethics Act"), that restrict the JLR from giving those tickets. Although, G.S. 138A-32(d) restricts public servants from accepting tickets from so-called "interested persons," it does not appear that the JLR would be included within that definition.

## **A. Facts**

You represent the JLR, a non-profit organization created for charitable and educational purposes. The JLR is not a registered lobbyist principal. Every four years the JLR hosts an inaugural ball to honor the newly elected Governor. The JLR is in the process of organizing the 2009 Inaugural Ball Weekend. Events will include the Council of State Reception, Rock the Ball party, Governor's Reception, Inaugural Gala Presentation, and Inaugural Ball. The general public may purchase tickets to the various events. Ticket costs range from \$20 for the Rock the Ball party to \$200 for tickets to both the Gala Presentation and the Inaugural Ball. Tickets to the Council of State Reception cost \$125. However, it is anticipated that the Governor's Reception will be limited to sponsors donating at least \$5,000.

The JLR gives members of the Council of State and their spouses tickets to all events. In addition, the incoming Governor is given a group of tickets to the events. The majority of individuals attending past inaugural ball weekend events have been members of the business community who are not "designated individuals." Ticketholders to the events receive entry to the event along with food, beverages, and entertainment.

The primary purpose of the 2009 Inaugural Ball Weekend is to raise money for the JLR and, in turn, various charitable causes sponsored by the JLR. In addition to selling event tickets to the general public, the JLR solicits individual and business sponsors. Sponsorships can be purchased through monetary or in-kind contributions. Businesses and individuals can commit to a general sponsorship or can sponsor a particular event. The proceeds from sponsor contributions are used to pay for the event, but most of the donations are used to support the JLR's charitable mission. In return for their donations, sponsors are given tickets to the Inaugural Ball Weekend events. The number of tickets given to each sponsor varies according to the sponsorship level. In addition, sponsors contributing at various levels are recognized in the invitation or the program for the events.

## **B. Relevant Statutory Provisions**

G.S. 120C-303(a), as amended by S.L. 2008-213, provides that unless permitted by an exception to the gift ban, no lobbyist or lobbyist principal may: "(1) Knowingly give a gift to a designated individual," or "(2) Knowingly give a gift with the intent that a designated individual be the ultimate recipient." That gift ban also applies to liaison personnel as to gifts given to legislators. G.S. 120C-500(d). G.S. 138A-32(c) in turn prohibits designated individuals from accepting a gift from a registered lobbyist, lobbyist principal, or legislative liaison personnel (1) directly or (2) if the lobbyist, lobbyist principal, or legislative liaison "intended for the ultimate recipient of the gift to be a" designated individual.

G.S. 138A-32(d) also prohibits public servants from accepting gifts from persons who are (1) doing or seeking to do business with the public servant's employing entity, (2) engaged in activities regulated by that entity, or (3) have financial interests that may be substantially affected by the public servant acting in an official capacity.

Article 4 of G.S. Chapter 120C requires that all "reportable expenditures made for the purpose of lobbying" and reportable expenditures for gifts given under various gift ban exceptions

be reported by lobbyists, lobbyist principals, and legislative liaison personnel. "Lobbying" is defined to include:

- a. 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.
- b. Developing 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.

The term "lobbying" does not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both. G.S. 120C-100(a)(9).

### **C. Analysis.**

#### **1. Application of the Lobbying Law's Gift Ban.**

You have indicated that contributions made to the JLR in connection with the Inaugural Ball Weekend are generally designated to sponsor the Inaugural Ball Weekend or are specifically designated to sponsor a particular event held during the Inaugural Ball Weekend. Although the circumstances underlying each donation will vary, general contributions to the JLR to sponsor the Inaugural Ball Weekend would not appear to be restricted by the Lobbying Law's gift ban, as it is unlikely that those contributions are being given with the specific intent of benefitting a particular designated individual or a group of designated individuals. Although general contributions to the Inaugural Ball events may benefit a designated individual on the same basis as other attendees, given the variety of events sponsored, the availability of tickets to the general public, and the fact that a majority of individuals attending the Inaugural Ball are not designated individuals, it would be unlikely that such a donation would be specifically intended to benefit a particular designated individual or a group of such individuals. Therefore, in most cases such donations would not be restricted by G.S. 120C-303(a).

However, there may be circumstances where a donation to the JLR would violate the indirect gift ban of G.S. 120C-303(a). This could be the case where a lobbyist or lobbyist principal earmarked a donation to benefit particular designated individuals or to sponsor an event that disproportionately benefitted designated individuals. In those circumstances, there would be a greater likelihood that the donation was specifically intended to benefit those individuals and the indirect gift ban may apply. The availability of a gift ban exception would depend upon the specific facts underlying each situation (i.e., if the gift was due to an independent business or civic relationship) and the nature of the event being sponsored (i.e., food and beverages only or entertainment included).

In addition, if a lobbyist or lobbyist principal directly gave a designated individual tickets to one of the Inaugural Ball Weekend events, this would be considered a gift subject to the direct gift ban of G.S. 120C-303(a). Thus, this gift would be prohibited unless an exception applied. Since entertainment is included with tickets to most if not all of the events, the G.S. 138A-32(e)(1)

exception applicable to food and beverages for immediate consumption would not apply. The G.S. 138A-32(e)(10) exception may apply, depending upon the nature of the donor's relationship to the designated individual.

## **2. The Reportability of Contributions Under Chapter 120C.**

Donations made for the general purpose of sponsoring the Inaugural Ball Weekend and associated events would most likely not be "reportable expenditures" pursuant to G.S. Chapter 120C. This conclusion is based upon what the Commission understands to be the general purpose behind most contributions to those events -- to support the community and to advertise a particular business. Therefore, such donations would generally not be viewed as being for the purpose of lobbying. Nor would those donations be reportable as a gift, since they would not be considered gifts under G.S. 120C-303(a).

However, the G.S. 120C-303(a) gift ban may apply to donations that are earmarked by the lobbyist or lobbyist principal to benefit particular designated individuals or to sponsor an event that is specifically restricted to designated individuals or which a disproportionate number of such individuals are expected to attend. If there is a gift ban exception that would apply to allow the gift, the lobbyist or lobbyist principal must report that gift in accordance with G.S. 120C-401 and 120C-403. Even if the donation is not deemed a gift, under some circumstances a donation to a particular event could be reportable as being for the purpose of lobbying. Accordingly, donations that are earmarked to benefit particular events or individuals will need to be considered individually. To the extent tickets are available to the general public, donations to particular events would be less likely to be for the purpose of lobbying.

## **3. The JLR's Provision of Tickets to the Governor and Council of State Members.**

The JLR plans to give tickets to the Inaugural Ball Weekend events to the newly elected Governor and members of the Council of State. The JLR is not a lobbyist principal and therefore is not subject to the G.S. 120C-303(a) gift ban. However, G.S. 138A-32(d) restricts public servants from accepting tickets from certain interested persons. You have indicated that the JLR does not do business or seek to do business with the Governor's Office or Council of State agencies, is not regulated by those agencies, and is not impacted financially by those agency's official actions. Therefore gifts from the JLR would not be restricted by G.S. 138A-32(d). However, those ticket donations may be reportable pursuant to G.S. 120C-800(a) if they are for the purpose of lobbying and exceed \$200 in value per quarter.

## **III. Conclusion.**

Thank you for contacting the State Ethics Commission concerning these issues. I hope this formal advisory opinion provides you with sufficient guidance and answers to your specific questions. Please do not hesitate to contact me if you have any questions about the foregoing formal advisory opinion.

Chad W. Essick  
November 14, 2008  
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Pursuant to G.S. § 120C-102(d1), an unedited copy of this formal advisory opinion will be forwarded to the Secretary of State. The Secretary of State is statutorily obligated to treat the opinion as confidential and not a public record.

Sincerely,

Kathleen S. Edwards  
Assistant Director and Compliance Officer

cc: Robert L. Farmer, Chairman, SEC  
Perry Y. Newson, Executive Director, SEC  
Susan R. Lundberg, Lobbying Director, SEC  
Secretary of State (per 120C-102(d))