



STATE ETHICS COMMISSION

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

January 16, 2009

Jim Thompson, Executive Director
Association Executives of North Carolina
1306 Annapolis Drive
Raleigh, NC 27608

Via E-Mail and U.S. Mail

jim@aencnet.org

RE: Association Executives of North Carolina's January 2009 Legislative Reception
Application of the G.S. 120C-303 Gift Ban to Reception Sponsors
Application of the G.S. 138A-32(e)(1) Gift Ban Exception
AO-L-09-001

Dear Mr. Thompson:

By e-mail dated October 14, 2008, you requested a formal advisory opinion regarding a legislative reception that the Association Executives of North Carolina ("AENC") plans to host on January 28, 2009. Your request included a number of specific questions. This formal advisory opinion addresses your questions concerning the application of the Lobbying Law's gift ban and was adopted by the State Ethics Commission ("the Commission") at its January 16, 2009, meeting. The Commission will address your additional questions as to the reporting requirements of that law at its next 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 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. The Gift Ban Exception For Food and Beverages For Immediate Consumption.

Based on the facts presented, which are summarized below, the Commission has determined that lobbyist principals may sponsor AENC's January 28, 2009 legislative reception ("Legislative Reception") at which food and beverages will be given to attending legislators and public servants, if the requirements of the gift ban exception of G.S. 138A-32(e)(1)c.1 or c.2 are met.¹ In addition, attending public servants may eat and drink at the Legislative Reception even if an "interested person" to the public servant's employing entity is a sponsor of this reception if those requirements are met. Each sponsoring lobbyist principal will need to report its sponsorship of this Legislative Reception on its principal expense report that it files with the Secretary of State for the month of January 2009, the month in which the designated individuals receive the food and beverages, and benefit from the sponsorship.²

III. The Facts.

AENC is planning to host its semi-annual Legislative Reception welcoming the 2009 General Assembly on January 28, 2009. Food and beverages for immediate consumption will be served at this reception. A high school jazz trio will play background music. All members of the General Assembly will be invited along with all Council of State members, all Supreme Court justices and Court of Appeals judges, the Governor and the members of the Governor's Cabinet and

¹ Based on the facts, the Commission has determined that the background music does not have independent monetary value and therefore is not a gift of entertainment provided to the attending designated individuals. Whether entertainment provided at an event will be deemed a gift will be determined on a case by case basis.

² Accordingly, if a lobbyist principal sponsored this legislative event, that "reportable expenditure" should be disclosed on its principal report for the month of January 2009. More details regarding the method of reporting will be provided in a formal advisory opinion issued by the Commission at its next meeting.

North Carolina's Congressional delegation. Immediate family members of the legislators, public servants, and judicial officers are also invited to attend. Members of the general public must pay \$250.00 to attend this Legislative Reception.

AENC is not a lobbyist principal. However, this Legislative Reception will be sponsored by approximately 60 different sponsors, many of which are lobbyist principals. Other sponsors may include "interested persons," as described in G.S. 138A-32(d), to an attending public servant or their employing entity. A sponsorship is \$695.00 and is paid directly to AENC. Some sponsors will pay AENC in 2008 while others will pay AENC in January of 2009. A sponsor receives 10 tickets to the Legislative Reception and recognition as a sponsor of the reception. AENC is expecting at least 10 individuals "associated with the group of sponsoring lobbyist principals" to actually attend the Legislative Reception.

AENC makes all of the arrangements for the Legislative Reception, including renting the facility, contracting with caterers for food and beverages, and providing and sending out the invitations. AENC pays for all of these expenses with funds provided by the sponsorships. The sponsorships pay for the entire cost of the Legislative Reception, with the balance going to AENC's general account without any conditions attached. Based on the past, AENC expects that approximately 25% of the sponsorships funds will go into its general account.

AENC intends to send a written invitation to all legislators, public servants, and judicial officers at least 24 hours in advance of the Legislative Reception. The written invitation will contain the date, time, and location of the Legislative Reception and state that "[t]his event is permitted under G.S. 138A-32(e)(1)c. – [p]lease enjoy the food and beverages."

IV. Applicable Statutory Provisions.

A. Gift Ban and Applicable Exceptions.

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) [k]nowingly give a gift to a designated individual," or "(2) [k]nowingly give a gift with the intent that a designated individual be the ultimate recipient." Designated individuals include legislators, public servants, and legislative employees.³ G.S. 120C-100(a)(2). A "gift" is defined as anything of monetary value.

This 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 knowingly 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 knowingly accepting gifts from persons who are (1) doing or seeking to do business with the public servant's employing

³ This provision is inapplicable to gifts to judicial officers, which includes all Supreme Court justices and Court of Appeals judges.

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.

The gift ban exception of G.S. 138A-32(e)(1)c.1 allows a lobbyist principal to provide food and beverages for immediate consumption to all designated individuals at an event to which:

(a) the entire General Assembly is invited; and

(b) at least 10 individuals associated with the person⁴ actually attend, other than designated individuals or their immediate family members.

Notice of the event must be from at least one of the hosts⁵ or sponsors of the event, in writing, ⁶ contain the date, time and location of the event, and be given at least twenty-four (24) hours in advance of the event. The written notice must also state whether or not the event is permitted under G.S. 138A-32(e)(1).⁷

One of the key aspects of meeting this part of the food and beverage exception is determining who is “associated with the person” for attendance purposes. This involves interpreting two terms: “associated with” and “the person.”

“Person” is broadly defined in G.S. 138A-3(27); however, the determination of who/what is “the person” holding the gathering becomes more complicated when the event is being sponsored/funded by a number of lobbyist principals rather than just one. The Commission has decided that for the purposes of meeting G.S. 138A-32(e)(1)c.1 (10 individuals associated with the person), “the person” is the group of lobbyist principals sponsoring the event; *not* any sponsoring non-lobbyist principals.

Since “associated with” is not defined, the Commission was guided by G.S. 138A-3(3). That provision includes the following relationships as an “association” with a business: a) an employee; b) a leadership position, including a director, officer, or partner; c) an owner of a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more, or of five percent (5%), whichever is less, other than a trustee on a deed of trust; or d) a lobbyist. Any of these relationships with one of the sponsoring lobbyist principals would qualify as “associated with the person” for attendance purposes under 138A-32(e)(1)c.1. However, this is not an exclusive list, and other associations may, under certain circumstances, qualify

⁴ “Person” is broadly defined under G.S. 138A-3(27) and includes individuals, all types of business entities, associations, organizations, and any group of persons acting together.

⁵ Although AENC is not financially sponsoring the Legislative Reception, it is hosting this event and may send the required written notices to all individuals of the qualifying groups.

⁶ Notice by e-mail qualifies as written notice.

⁷ The written notice requirements also apply to sub-subdivision c.2 of the gift ban exception of G.S. 138A-32(e)(1).

as well. For example, individual members⁸ of the sponsoring “person” (see above) would count, as would official representatives of corporate members (*e.g.*, officers, directors, or owners) of the sponsoring “person.” Other associations will need to be addressed on a case by case basis under the particular facts involved.

Under the facts presented, “the person” referenced in G.S. 138A-32(e)(1)c.1 is the group of lobbyist principals sponsoring the Legislative Reception. Therefore, for AENC’s Legislative Reception to meet sub-subdivision c.1 of G.S. 138A-32(e)1, the group of lobbyist principals sponsoring the Legislative Reception has to have a total of ten (10) individuals associated with their group actually attend the Legislative Reception.⁹

Therefore, provided AENC invites the entire General Assembly to the Legislative Reception by written notice containing the information noted above at least 24 hours in advance of the event and at least ten (10) individuals who are associated with the group of sponsoring lobbyist principals actually attend the Legislative Reception, the sponsoring lobbyist principals’ sponsorship funds may be used to provide food and beverages to all of the attending designated individuals pursuant to the gift ban exception of 138A-32(e)(1)c.1.

B. Specific Questions.

What follows are responses to your specific questions:

1. If AENC posted a visible sign at the entrance table to the event stating “Open to Public – Admission \$250/person”, would the event be the type described in G.S. 138A-32(e)(1)b. such that food and beverage for immediate consumption can be provided?

No. An event or gathering for which the general public has to pay an admission charge to attend is not “open to the general public” and would not qualify under the gift ban exception of G.S. 138A-32(e)(1)b.

2. Are the individual members of AENC in attendance at the event “associated” with AENC, as used in G.S. 138A-32(e)(1)c.1?

AENC is not a lobbyist principal, lobbyist, or legislative liaison. Based on these facts, AENC is not the “person” referred to in G.S. 138A-32(e)(1)c. Therefore, individual members of AENC would not qualify as “individuals associated with the person” sponsoring

⁸ An individual who is a member of AENC (which is *not* one of the sponsoring persons) would need to fit within one of the accepted categories in relation to a sponsoring lobbyist principal (member, employee, officer, director, etc.) to qualify as an individual “associated with the person.”

⁹ For example, ten of the lobbyist principals could each have one individual associated with it attend the Legislative Reception, or ten attendees could be associated with just one of the sponsoring lobbyist principals, or any other combination of attendees associated with the group of sponsoring lobbyist principals.

the Legislative Reception to meet the exception of sub-subdivision c.1 of G.S. 138A-32(e)(1).

3. Assuming there is no sign notifying the public that it is a public event, can AENC and the principals that are sponsors provide food and beverage for immediate consumption at the event, pursuant to G.S. 138A-32(e)(1)c.1.? Do the principals that are sponsors of the event have to provide any notification pursuant G.S. 138A-32(e)(1)c.2.?

See III.A. above.

4. Does the written invitation comply with G.S. 138A-32(e)(1)c.1?

G.S. 138A-32(e)(1)c.1 does not require that the individuals associated with the person be invited by a written invitation or notice. Rather, G.S. 138A-32(e)(1)c.1 requires that at least ten (10) individuals associated with the person actually attend the event.

5. Can AENC send the invitation by e-mail?

Yes. A notice or invitation by e-mail qualifies as a written notice.

V. 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.

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,

Susan R. Lundberg
Lobbying Director

Cc: Robert L. Farmer, Chairman, SEC
Perry Y. Newson, Executive Director, SEC
Kathleen S. Edwards, Assistant Executive Director, SEC
Secretary of State (per G.S. 120C-102(d1))