



STATE ETHICS COMMISSION

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CONFIDENTIAL FORMAL ADVISORY OPINION

November 1, 2013

Mr. Adam Hartzell
Executive Director
The Center for International Understanding
100 East Six Forks Road, Suite 300
Raleigh, NC 27609

RE: Paying Expenses of Legislators to Participate in the 2013 Global Leaders Program Study Trip "Economic Development – India and North Carolina"
AO-E-13-005

Dear Mr. Hartzell:

This is in response to your September 25, 2013, request for a formal advisory opinion regarding whether the State Government Ethics Act ("Ethics Act"), G.S. Chapter 138A, would allow legislators to participate in an international study trip to India planned for February 7-17, 2014 ("2014 India Trip"); and whether the Lobbying Law, G.S. Chapter 120C, would allow registered lobbyist principals to donate funds to Council of The Center for International Understanding ("the Center"), in order to pay the trip-related costs of those participating legislators.

This formal advisory opinion is based upon the information provided by the Center and was adopted by the State Ethics Commission ("Commission") at its November 1, 2013, meeting.¹

I. Brief Conclusion.

The Commission has determined that the 2014 India Trip qualifies as an educational meeting related to the public duties of attending legislators and that the additional meeting requirements of G.S. 138A-32(e)(3)a.-d. will also be satisfied. Therefore, lobbyist principals may donate funds to the Center in order to pay for the reasonable actual travel expenditures of participating legislators and the legislators may accept those expenditures.

¹ Please see the enclosure entitled "Recommended Formal Advisory Opinions Issued by the State Ethics Commission" for further information regarding the protections offered to individuals receiving those opinions.

II. The Facts.

The Center operates within the University of North Carolina's ("UNC's") General Administration. It is not a lobbyist principal. The Center is planning the 2014 India Trip in order to allow participants to study economic development in India with a focus on the information technology and import/export service sectors. This is the fifth international study trip in the Center's Global Policy Series.

Approximately 20-25 individuals are expected to participate in the 2014 India Trip. Contributions made to the Center by Quintiles, the Local Government Federal Credit Union, and the Moise and Vera Khayrallah Fund of the Triangle Community Foundation will cover the cost of the plane flight to India for 10 legislators and meals, lodging, and ground transportation while those participants are in India. None of those organizations are registered lobbyist principals.

The Center is also continuing to seek donations from additional entities, some of which may be registered lobbyist principals, to defray the travel costs of the attending legislators. None of the 2014 India Trip sponsors will be involved in the planning or administration of the trip or the selection of the participants.

Other 2014 India Trip participants include representatives of the Center, Quintiles, the NC Biotechnology Center, Alan Gordon Immigration Law, the Cabarrus County School Board and Board of County Commissioners, Aerial BioPharma, LLC, the NC Dental Society, and the NC Departments of Commerce and Agriculture and Consumer Services. Those participants will be charged a program fee of \$6,915 to \$7,785, including airfare.

Participants in the 2014 India Trip will visit three major cities: Mumbai, Bangalore and Delhi to study successful economic practices. The Center states that the educational goals of the trip include the following:

- Expand understanding of India's economy today and engage with experts about themes of innovation and entrepreneurship that run through India from the IT sector to manufacturing and job growth;
- Explore ways to expand existing relationships with North Carolina businesses working in India and India businesses working in North Carolina;
- Learn about features of India culture, history, and government which impact business interactions; and
- Identify policies, resources, and practices which might strengthen North Carolina's economy through increasing exports to and engagement with India.

The 2014 India Trip, excluding travel time to and from India, consists of 8 to 10 hours of scheduled activities a day during a seven-day period beginning on Sunday, February 9, 2014 and ending the morning of Saturday, February 15, 2014, including meetings, presentations, and site

visits. There will also be optional cultural trips to the Taj Mahal and the Agra Fort from February 15-16, 2014.²

Scheduled activities include meetings with various trade, commerce, and industry membership associations, including the Indian Merchants Chamber, Mumbai, TiE Bangalore, and the Confederation of Indian Industry (tentative); a presentation on the Indian educational system by Dr. Shasi Tharoor, a member of the Indian Parliament and former representative to the United Nations, and a visit to the Indian Institute of Management Bangalor, one of the top business schools in India; and site visits to various businesses and non-profit organizations, including Selco, which provides sustainable energy solutions (solar and biomass) to underserved households and businesses, BioCon, a biopharmaceutical company, and a number of information technology companies including Cisco, a networking equipment company, Wipro, a hardware and software design company, and Infosys, a software services provider. At the time of the issuance of this opinion, some of the events and visits were yet to be determined.

Prior to the trip, participants will be required to read background materials and attend an orientation workshop on India's economic and business practices, current demographic, educational and economic connections between India and North Carolina, India's social and historical context and the impact of cultural attitudes on India's business practices. Upon their return, participants will attend a full-day debriefing session.

III. Applicable Statutory Provisions.

The Lobbying Law prohibits a lobbyist, lobbyist principal, or legislative liaison³ from giving direct or indirect gifts ("anything of monetary value"), 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. G.S. 120C-303(a). Legislators are also restricted from accepting those gifts. G.S. 138A-32(c). One of the gift ban exceptions, G.S. 138A-32(e)(3), allows a lobbyist principal, but not an interested person or lobbyist, to pay for "reasonable actual expenditures" incurred by a public servant, legislator, or legislative employee in connection with that individual's attendance at the four types of meetings delineated in that exception.

G.S. 138A-32(e)(3)(i) allows the payment of expenses incurred for attending *an educational meeting* "for purposes primarily related to the public duties and responsibilities of the covered person" Permissible expenses include food, beverages, registration, travel, lodging, incidental items of nominal value, and incidental entertainment. The Commission has adopted several non-exclusive factors that will be considered when determining what is an "educational meeting" under G.S. 138A-32(e)(3)(i). Those factors are codified in the N.C. Administrative Code under 30 NCAC 07C.0101.

In addition to the specific meeting criteria outlined above, G.S. 138A-32(e)(3) sets forth general requirements applicable to those meetings. They include a requirement that any food,

² Legislators and public servants who stay in India for those cultural trips will be required to pay for related lodging, meal, ground travel, and entertainment expenses from February 15th until the morning of February 17, 2013.

³ State entities, such as the Center, are not restricted from giving gifts to designated individuals.

beverages, transportation, or entertainment be provided to all attendees or defined groups of 10 or more attendees and that the meeting: (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. Moreover, any entertainment provided “must be incidental to the principal agenda of the meeting.”

IV. Analysis.

Based upon a review of the itinerary for the 2014 India Trip, it appears that the meeting’s content is related to the public duties of invited legislators.

Moreover, the 2014 India Trip fits the educational meeting criteria of G.S. 138A-32(e)(3)(i). Factors that support the educational purpose of the meeting include the fact that the meeting agenda includes a wide variety of presentations and site visits to governmental, business, and educational institutions.

You have stated that there will be at least 10 participants in the 2014 India Trip. In addition, the trip has a formal agenda, has been noticed at least 10 days in advance, and incidental entertainment, if any, is being provided to all participants. Although the cultural visits on February 16, 2014, do not fit within the “incidental entertainment” limitations of the meeting exception, you are requiring that each legislator pay for additional expenses associated with those cultural visits, including meals, lodging, ground transportation, and entertainment expenses from February 15-February 17, 2014. Thus, the meeting also complies with the general meeting requirements imposed by G.S. 138A-32(e)(3)a.-d.

Therefore, it is permissible for registered lobbyist principals to donate funds to the Center for food, beverages, registration, travel, lodging, incidental items of nominal value, and incidental entertainment to attending legislators and for the legislators to accept those expenditures.

V. Closing.

Thank you for contacting the State Ethics Commission. Please do not hesitate to call the Commission’s staff 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.

Formal Advisory Opinions Issued by the State Ethics Commission

Upon the written request of a public servant or legislative employee, G.S. 138A-13(a) of the State Government Ethics Act (“the Ethics Act”) authorizes the State Ethics Commission (“Commission”) to issue formal advisory opinions on the “meaning and application” of the Ethics Act “and the public servant’s or legislative employee’s compliance therewith.” All opinions have prospective application only, are limited to the particular facts presented, and confer limited civil immunity upon a requester who follows the advice given. G.S. 138A-13(a) and (a2).

Reliance upon a formal advisory opinion immunizes the public servant or legislative employee making the request from (1) investigation by the Commission, except the alleged violation of criminal law while performing his or her official duties, (2) adverse action by his or her employing entity, or (3) investigation by the Secretary of State. G.S. 138A-13(a2).

Once issued by the Commission, formal advisory opinions are published in a redacted format on the Commission’s website within 30 days of issuance. G.S. 138A-13(d). Otherwise, requests for advisory opinions, the opinions themselves, and all materials related to the opinions are confidential and are not public records. G.S. 138A-13(e).

Upon the written request of any person, State agency, or governmental unit affected by G.S. Chapter 120C (“the Lobbying Law”), G.S. 120C-102(a1) authorizes the State Ethics Commission (“Commission”) to issue formal advisory opinions “on the meaning and application” of the Lobbying Law and “that person’s, State agency’s or any other governmental unit’s compliance therewith.” All opinions have prospective application only and must relate to real or reasonably anticipated fact settings or circumstances. G.S. 120C-102(a). Formal advisory opinions confer limited civil immunity upon a requester who follows the advice given. G.S. 120C-102(a1).

Once issued by the Commission, formal advisory opinions are published in an edited format on the Commission’s website within 30 days of issuance. G.S. 120C-102(c). Requests for advisory opinions, the opinions themselves, and all materials related to the opinions are confidential and are not public records. G.S. 120C-102(d). However, the Commission is required to send an unedited copy of each formal advisory opinion to the Secretary of State’s Office at the time the formal advisory opinion is issued to the requester, and the Secretary of State is required to treat the formal advisory opinion as confidential and not a matter of public record. G.S. 120C-102(d1). In addition, Commission staff is specifically authorized to share all information and documents related to requests for formal advisory opinions with the Secretary of State’s Office. The Secretary of State’s Office is required to treat any such information and documents in its possession as confidential and not a matter of public record G.S. 120C-102(d1).