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**FORMAL ADVISORY OPINION—COMMISSION INITIATED**

May 8, 2015

To the Regulated Community

RE: Commission Authority to Issue Advisory Opinions to Judicial Officers  
AO-E-15-003

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Dear Regulated Community:

In accordance with G.S. 138A-13(a1) the State Ethics Commission (“Commission”) adopted this formal advisory opinion at its May 8, 2015, meeting.<sup>1</sup>

Recently a judicial officer<sup>2</sup> requested a formal advisory opinion concerning his/her compliance with Article 4 of the State Government Ethics Act (“Ethics Act”). In considering that request the Commission determined that neither the Commission nor its staff was granted the authority to issue a formal advisory opinion as to the judicial officer’s compliance with Article 4.

G.S. 138A-13(a) provides that “[a]t the request of any public servant or legislative employee ..., or any member of the Commission, the Commission shall render advice on specific questions involving the meaning and application of this Chapter and the public servant's or legislative employee's

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<sup>1</sup> G.S. 138A-13(a1) provides that “[o]n its own motion, the Commission may render advisory opinions on specific questions involving the meaning and application of this Chapter.”

<sup>2</sup> Judicial officers include a “justice or judge of the General Court of Justice, district attorney, clerk of court, or any individual elected or appointed to any of these positions prior to taking office.” G.S. 138A-3(19). The Ethics Act also applies to legislators, legislative employees, and public servants, a term used to apply to executive branch officials.

compliance therewith.” G.S. 138A-13(a2) states that a “public servant or legislative employee” that relies on a formal advisory opinion issued under subsection 13(a) “shall be immune” from investigation by the Commission and the Secretary of State and any adverse action by the employing entity.

The Commission is also authorized to issue recommended formal advisory opinions to legislators at their request and advisory opinions on the Commission’s own motion. G.S. 138A-13(b) and G.S. 138A-13(a1). Staff to the Commission may also issue advice to legislators, but not formal or recommended formal advisory opinions. G.S. 138A-13(c).

However, when it comes to judicial officers’ ability to seek advice from the Commission and staff, G.S. 138A-13(f) states that “[t]his section shall apply to judicial officers only for advice related to Article 3 of this Chapter.” Moreover, judicial officers are not included in a list of those covered persons that receive immunity from investigation by the Commission or the Secretary of State’s office upon issuance of a formal advisory opinion. G.S. 138A-13(a2) and (b1). Yet judicial officers are subject to not only Article 3 of the Ethics Act, requiring the filing of Statements of Economic Interest (“SEI”), but also a number of provisions in Article 4. They include G.S. 138A-31 (use of position for private gain), G.S. 138A-40 (employment and supervision of extended family), G.S. 138A-32(a) (quid pro quo gifts), G.S. 138A-32(b) (soliciting charitable contributions from subordinates), and G.S. 138A-32(h) (restricting acceptance of honoraria).

In interpreting a statute, the Commission is constrained to interpret it as written. *See, e.g., Lanvale Properties, LLC v. County of Cabarrus*, 366 N.C. 142, 154 (2012) (“Statutory interpretation properly begins with an examination of the plain words of the statute. If the language of the statute is clear and not ambiguous, we must conclude that the legislature intended the statute to be implemented according to the plain meaning of its terms.”)

Construing the plain meaning of the statute describing the Commission’s authority to issue advice to judicial officers, the Commission concludes that “this section” as used in G.S. 138A-13(f) is meant to refer to G.S. 138A-13 (advice requests). Thus, G.S. 138A-13(f) specifically limits the Commission and staff’s authority to issue advice to questions arising under Article 3 of the Act, the SEI provision. Therefore, neither the Commission nor its staff has the authority under section 13 of the Ethics Act to issue advice to judicial officers concerning questions arising under Article 4 of the Act, either at the request of a judicial officer or upon the Commission’s own motion.

Interested parties may call the Commission’s staff if there are any questions about the foregoing formal advisory opinion.