



STATE ETHICS COMMISSION
1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324

George L. Wainwright, Jr., Chair
Jane F. Finch, Vice Chair

Perry Y. Newson, Executive Director

Commissioners:
William P. Farthing, Jr.
Tommy D. McKnight
Robert L. Moseley, Jr.
Clarence G. Newsome
J. LeRoy Roberts
Daniel J. Zeller

Phone: 919-715-2071
Fax: 919-715-1644
Email: ethics.commission@doa.nc.gov
www.ethicscommission.nc.gov

CONFIDENTIAL FORMAL ADVISORY OPINION

November 6, 2015

Mr. Rick Van Sant
Executive Director
The Center for International Understanding
68 T.W. Alexander Drive
Box 13628
Research Triangle Park, NC 27709

RE: Paying Expenses of Legislators to Participate in the 2016 Global Leaders Program to Tokyo and Singapore
AO-E-15-004

Dear Mr. Van Sant:

This is in response to your October 5, 2015, request for a formal advisory opinion. You have asked whether the State Government Ethics Act ("the Ethics Act"), G.S. Chapter 138A, would allow legislators and public servants to participate in the 2016 Global Leaders Program ("2016 GL Program") sponsored by the UNC System's Center for International Understanding and the NC State Global Training Initiative. Participants in the 2016 GL Program would travel to Tokyo and Singapore from March 4-13, 2016. Travel costs of participating legislators and public servants may be paid by donations from lobbyist principals and interested persons. You have also asked whether registered lobbyist principals may make those donations to the Center in accordance with the gift ban of the Lobbying Law, G.S. Chapter 120C.

This formal advisory opinion is based upon the information you have provided and was adopted by the State Ethics Commission ("Commission") at its November 6, 2015, meeting.¹

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

I. Brief Conclusion.

The Commission has determined that the 2016 GL Program 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 be satisfied. Therefore, lobbyist principals may donate funds in order to pay for the reasonable actual travel expenses of participating legislators and the legislators may accept those expenditures.

In addition, “interested persons” and lobbyist principals may donate funds to pay for the travel expenses of participating public servants, and those public servants may accept those expenditures, if the trip is related to the job duties of the public servant, in the case of lobbyist principal donations. Or in the case of interested person donations, the expenses would have been otherwise reimbursed by the agency and the public servant receives advance approval from his or her State agency to accept those expenditures.

II. The Facts.

The Center is planning the 2016 GL Program in order to allow participants to study economic development in Tokyo and Singapore with a focus on the life science and technology industries. This is the seventh international study trip in the Global Policy Series.

Approximately 25-30 individuals are expected to participate in the 2016 GL Program, including the trip to Tokyo and Singapore. Funding provided by the Mariam and Robert Hayes Charitable Trust and the Blanche and Julian Robertson Family Foundation will pay a portion of the air and ground transportation, meals, and lodging expenses for six to eight legislators traveling to Tokyo and Singapore. There may also be a few public servants who will receive outside funding to participate in the trip. Neither the Charitable Trust nor the Foundation are registered lobbyist principals.

You are continuing to seek additional sponsors to defray the travel costs of attending legislators and public servants. Some of those sponsors may be registered lobbyist principals or businesses that are regulated by the State or do business with the State. However, none of those sponsors will be involved in the planning or administration of the 2016 GL Program or the selection of participating legislators and public servants.

Other Program participants include local elected officials, four representatives from the Center and the NC State Global Training Initiative, and various North Carolina businesses, educational institutions, and State agencies. Participants will be charged \$4,200 plus airfare of approximately \$1,800 to \$2,000.

The 2016 GL Program will focus on the following goals:

- Strengthen connections to the life science and technology industries in order to expand current and future collaborations with Singapore and Japan;
- Analyze the economic climate and evaluate the driving factors that allow science and technology companies to thrive in Singapore;

- Consider Singapore's value to North Carolina businesses, both as an entry point to Asian markets and as a growing investor in the U.S;
- Assess economic connection between Japan and North Carolina and formulate recommendations to support foreign direct investment to our State;
- Determine best practices that may be applicable for specific entities or regions of the State.

The tentative travel itinerary you provided for the 2016 GL Program, excluding travel time to and from Tokyo and an orientation day, consists of 8 to 10 hours of scheduled activities a day during a five-day period beginning on Monday, March 7, 2016, and ending Friday, March 11, 2016, including meetings, presentations, and site visits.

Scheduled activities include site visits to various life sciences, advanced manufacturing, and technology companies; visits to educational institutions including the Singapore Institute of Technology and the National University of Singapore; site visits to various businesses, including SAS Singapore, Google Singapore, and Quintiles Singapore; a tour of Singapore General Hospital and Biopolis, a research hub for the biomedical industry; and meetings with a variety of governmental officials at the Singapore Ministry of Trade and Industry, the Ministry of Manpower, the Economic Development Board, the Infocomm Development Authority, the Standards, Productivity, and Innovation Board ("SPRING"), and the Agency for Science, Technology, and Research.

Prior to the trip, participants will be required to read background materials and attend small group meetings and an orientation workshop on economic development in Japan and Singapore, including their connections with the North Carolina life sciences and technology industries. Upon their return from Singapore and Tokyo, participants will attend a full-day debriefing session and explore ways in which the knowledge gained can be applied to enhance economic development in North Carolina. Participants will also share recommendations with the General Assembly's International Trade Business Caucus.

III. Applicable Statutory Provisions.

The Lobbying Law prohibits a lobbyist, lobbyist principal, or legislative liaison² 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 and public servants are restricted from accepting those gifts. G.S. 138A-32(c). The gift ban also restricts a public servant's acceptance of a gift from "interested persons," generally individuals or entities that are doing business with or regulated by a public servant's agency. 30 NCAC 07A.0101.

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

² State entities, such as the Center and the NC State Global Training Initiative, are not restricted from giving gifts to designated individuals.

meetings delineated in that exception. In particular, 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 the following non-exclusive factors to be considered when determining what is an “educational meeting” under G.S. 138A-32(e)(3)(i):

- 1) Whether the meeting’s primary purpose is to promote learning for professional improvement or to influence a particular legislative or official action;
- 2) Whether the meeting’s organizer is an independent educational or governmental institution or a Lobbyist Principal.
- 3) The proportion of educational content relative to meals and entertainment provided at the meeting and the proportion of presenters who are outside experts or are independent from the Lobbyist Principal paying for the meeting expenses;
- 4) The relationship between the meeting’s location and length to its educational purpose.

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, 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.”

The “reimbursement exception” of the gift ban would also allow lobbyist principals and interested persons to defray the travel expenses of participating public servants as long as acceptance of those expenses is approved by the agency as expenses that are work-related and are the types of expenses that would otherwise be reimbursed by the State. G.S. 138A-32(f).

IV. Analysis.

Based upon a review of the itinerary for the 2016 GL Program, it appears that the Program’s content is related to the public duties of invited legislators and may be related to the duties of attending public servants, depending upon their job responsibilities.

Moreover, the Program 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, the meeting is not related to a particular legislative or official action, the meeting is scheduled with educational content throughout each day and includes minimal entertainment and meal activities, and the meeting location (e.g. Tokyo and Singapore) and length is closely related to its education goals.

You have also stated that there will be at least 10 participants in the Program. 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. 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 for food, beverages, registration, travel, lodging (including airfare and ground transportation), incidental items of nominal value, and incidental entertainment to attending legislators; and public servants if job-related; and for those individuals to accept those expenditures. Similarly, sponsoring interested persons may pay for the travel expenses of participating public servants as long as those public servants receive advance approval from the appropriate agency official in accordance with the requirements of the reimbursement exception outlined above.

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.

State Ethics Commission

By: _____
George L. Wainwright, Jr.
Chairman

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).