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FORMAL ADVISORY OPINION-EDITED FOR PUBLICATION

May 12, 2017

Re: Permissibility of Board Member Listing Board Service in Column Byline
AO-E-17-001

Dear Requester:

This is in response to your request for a formal advisory opinion. You asked whether the State Government Ethics Act, G.S. Chapter 138A (“Ethics Act”), would restrict you from referring to your service on a State Board (“the Board”) in the byline of the column you write for a magazine (“the magazine”).

This formal advisory opinion is based upon the information you have provided and was adopted by the State Ethics Commission (“Commission”) at its May 12, 2017, meeting.¹

I. Brief Conclusion

The Ethics Act would restrict you from referring to your membership on the Board in the proposed byline for your column as set forth below.

II. Facts

As a member of the Board, you are a “public servant” who is subject to the Ethics Act. You are also a private business owner. You write a column for a magazine, a service you provide on a volunteer basis. You also place business advertisements in the same magazine. Links to

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.

your columns are also provided on your company's website. The topics of your columns concern the same general subject matter with which your business and the Board is concerned. Your columns generally include a byline that identifies your company and briefly describes the services your company provides. You have asked whether you may include your Board membership in that byline.

III. Applicable Statutory Provisions

Although the Ethics Act does not restrict a public servant's private business or personal pursuits, the Act generally restricts covered officials from using their public positions for personal gain. Accordingly, G.S. 138A-31(b) prohibits a public servant from allowing the use of his/her public position (title) in "nongovernmental advertising" promoting a private business. "Advertising" is defined by a Commission rule as "a written or oral communication that is published, disseminated, circulated, or placed before the public to attract public attention to a product, business, or service." 30 NCAC 08 .0101.

G.S. 138A-31(b) lists several exceptions to the restriction against a public servant's use of his or her official title in advertising. One of those exceptions allows the use of a public servant's official title in a "biographical listing." G.S. 138A-31(b)(3). Another exception allows the public servant to use an official title in "news articles" or "news stories." G.S. 138A-31(b)(2).

The Commission has determined that a "biographical listing" includes information provided about an individual "which includes other relevant work experience in addition to the public servant's public position." AO-E-16-001 (February 12, 2016). In practice, the biographical listing exception to the use of title restriction has allowed public servants to include their positions on resumes or similar website listings if those items also include information about the public servant's relevant work experience.

The Commission has not previously considered the exception for "news stories" or "news articles." However, that exception appears to be intended to allow news organizations to mention a public servant's official title when reporting on information of interest to the public without violating the use of title restrictions of the Ethics Act. Thus, that exception allows a third party to mention the public official's title in connection with the public dissemination of news.

IV. Analysis

The Commission has determined that your reference to your business in the byline for your magazine column is advertising since it is intended to attract public attention to your business. Therefore, G.S. 138A-31(b) restricts you from referencing your membership on the Board in that byline unless an exception applies.

Relevant exceptions include the biographical listing exception and the exception for news stories or news articles. However, neither exception applies in this context.

The byline you propose does not satisfy the requirements of a biographical listing as interpreted by the Commission. Moreover, the Commission concludes that the exception for news articles and news stories does not apply to a magazine column under the circumstances presented here. That exception does not permit you to use your title in information disseminated in a newspaper, magazine, or internet posting and in which you promote your personal business interests where the publication and content of that information is controlled by you.

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.

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).