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**CONFIDENTIAL FORMAL ADVISORY OPINION**  
**UNEDITED WITH APPROVAL OF REQUESTER**

May 8, 2015

Mr. John Aldridge  
Assistant General Counsel  
North Carolina Sheriff's Association  
P.O. Box 20049  
Raleigh, NC 27619-0049

RE: Providing Complimentary Admission to Public Servants and Judicial Officers Attending the NCSA's 2015 Annual Training Conference  
AO-L-15-003

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Dear Mr. Aldridge:

This is in response to your April 9, 2015, request for a formal advisory opinion. You have asked whether the Lobbying Law, G.S. Chapter 120C, would allow the North Carolina Sheriff's Association ("NCSA"), a lobbyist principal, to invite various public servants and judicial officers to its 2015 Annual Training Conference ("2015 Conference"); and whether the State Government Ethics Act ("the Ethics Act"), G.S. Chapter 138A, would allow public servants and judicial officers to accept the NCSA's invitation. You have stated that some of those officials will receive complimentary admission to the conference while others will be asked to pay the same registration fee as all other attendees. You also seek guidance on the NCSA's expenditure reporting obligations under the Lobbying Law.

This formal advisory opinion is based upon the information provided by the NCSA and was adopted by the State Ethics Commission ("Commission") at its May 8, 2015, meeting.<sup>1</sup>

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<sup>1</sup> 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.

**I. Brief Conclusion.**

Based upon a review of the agenda for the 2015 Conference, the Commission has determined that the NCSA may provide complimentary meeting admission to certain attending public servants along with food, beverages, informational materials, and certain entertainment provided to all meeting attendees as part of the meeting or in conjunction with the meeting. Alternatively, the NCSA may charge those public servants the customary registration fee for the meeting. Because judicial officers<sup>2</sup> are not subject to the gift ban of the Ethics Act, it would not restrict the offer of or their acceptance of complimentary registration to the 2015 Conference.<sup>3</sup>

**II. The Facts.**

The NCSA conducts periodic meetings to which its members are invited. They include NCSA's Annual Training Conference and two biannual meetings held in the spring and the fall. The NCSA would like to invite various judges, district attorneys, and certain senior officials in the State executive branch to attend its 2015 Conference to be held from July 26-28, 2015, at Sunset Beach. The early registration fee charged attendees is \$275 and the regular registration fee is \$325.

The NCSA may provide complimentary admission to the meeting to selected public servants<sup>4</sup> and judicial officers, which will include admission to the training sessions along with informational materials, food and beverages, and incidental entertainment. Other public servants and judicial officers will be charged the customary registration fee. All attendees will be expected to pay their own travel and lodging expenses.

You have provided the agenda for the 2015 Training Conference. A summary of that meeting's agenda is as follows:

- 1) **July 26, 5:00-7:00 p.m.:** Grand Opening Reception.
- 2) **July 27, 8 a.m.-2:00 p.m.:** Opening Ceremony and General Sessions ("Leadership During Times of Crisis" and "Managing the Media in Crisis"), deli lunch.
- 3) **July 27, 8:30-11:00 p.m.:** Entertainment – "The Band of Oz."

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<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 Director and Assistant Director of the Administrative Office of the Courts are considered public servants under the Ethics Act.

<sup>3</sup> However, judicial officers, along with legislators, legislative employees, and public servants, are restricted by G.S. 138A-32(a) from soliciting and receiving anything of value in return for being influenced in connection with their official responsibilities.

<sup>4</sup> Invited public servants are employed by the Administrative Office of the Courts and the Community College System; the Offices of the Governor, Lieutenant Governor, State Auditor, Chief Medical Examiner, and Chief Information Officer; the Departments of Justice, Secretary of State, State Treasurer, Commerce, Cultural Resources, Health and Human Services, Labor, Agriculture, Public Safety, Environment and Natural Resources, Insurance, Transportation, Public Instruction, and Revenue; and the Governor's Crime, ABC, Utilities, and Parole Commissions.

- 4) **July 28, 7:00 a.m.-noon:** Continental Breakfast and General Sessions (“Gang Threats to Law Enforcement” and “Post Crisis Intervention Strategies”).
- 5) **July 28, 6:00 p.m.-10:30 p.m.:** Reception, Banquet, and Post-Banquet Dessert and Coffee.

### **III. Applicable Statutory Provisions.**

#### **A. The Gift Ban and Exceptions.**

The Lobbying Law prohibits a lobbyist, lobbyist principal, or legislative liaison from giving direct or indirect gifts (defined as “anything of monetary value”), to a designated individual (legislators, legislative employees, and public servants), unless a gift ban exception applies. G.S. 120C-303(a). The Ethics Act also restricts legislators and public servants from accepting those gifts. G.S. 138A-32(c).<sup>5</sup>

One of the gift ban exceptions, G.S. 138A-32(e)(3), allows a lobbyist principal (but not a lobbyist) to pay for those “reasonable actual expenditures” incurred by a public servant, legislator, or legislative employee in connection with attending one of four types of 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 ....”

Listed “reasonable actual expenditures” include food, beverages, registration costs, travel, lodging, other incidental items of nominal value, and entertainment provided “in connection with” a designated individual’s attendance at the meeting. G.S. 138A-32(e)(3).

The Commission has adopted various non-exclusive factors to be considered when determining what is an “educational meeting” under G.S. 138A-32(e)(3)(i), including the following:

- 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) Whether the meeting would take place without the invited public officials;
- 4) 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; and
- 4) The relationship between the meeting’s location and length to its educational purpose.

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<sup>5</sup> Although neither gift ban applies to the giving or receipt of gifts by judicial officers, the North Carolina Code of Judicial Conduct does restrict the acceptance of gifts by North Carolina judges under certain circumstances. The North Carolina Judicial Standards Commission is granted the authority to issue formal advisory opinions interpreting the Code.

30 NCAC 07C.0101.

In addition to the specific meeting criteria outlined above, G.S. 138A-32(e)(3) sets forth general requirements that must also be met. They include a requirement that any (a) food, beverages, transportation, or entertainment provided to the designated individuals also be provided to all attendees or defined groups of 10 or more attendees “as part of the meeting or in conjunction with the meeting”; (b) that the meeting be attended by at least 10 or more participants, have a formal agenda, and be noticed at least 10 days in advance; and (c) that any entertainment provided “must be incidental to the principal agenda of the meeting.”

The “reimbursement exception” of the gift ban also allows a lobbyist principal to defray meeting-related expenses of public servants as long as acceptance of those expenses is approved by the agency as expenses that are work-related and of the type that would otherwise be reimbursed by the State. G.S. 138A-32(f).

#### **B. Lobbying Law Reporting Requirements.**

G.S. 120C-403(b)(5) requires that registered lobbyist principals report expenditures made for certain “gifts” given to legislators, legislative employees, and public servants that are allowed under the exceptions to the Ethics Act’s gift ban. “Gifts” are defined to include “anything of monetary value given or received without valuable consideration ...” G.S. 138A-3(15). The reporting obligation is triggered once the value of gifts given by a lobbyist principal to those individuals or member of their immediate family exceed \$10.

In applying this requirement to events and meetings where complimentary admission is provided, the “fair market value” of admission would be the amount charged to members of the general public to attend the event. G.S. 120C-401(b)(1). If there was no admission charge applied to members of the public, the market value of admission may be calculated using the actual per person cost of the food, beverages, and other items of value provided at the event; or by totaling the cost of the event(s) attended by the legislator or public servant and dividing that total by the number of individuals attending, to get the per person cost of the event. Alternatively, for food and beverage events, the caterer’s per person charge for the event can also be used. AO-L-09-002 (State Ethics Commission, February 13, 2009).

#### **IV. Analysis.**

Based upon a review of the schedule and content of the 2015 Conference, the Commission has concluded that the Opening Session and the four General Sessions scheduled for July 27<sup>th</sup> and the morning of July 28<sup>th</sup> comply with the educational meeting criteria. They include diverse topics and presenters, have presentations with educational content starting the morning of July 27<sup>th</sup> and continuing until the morning of July 28<sup>th</sup>. In addition, that exception’s general requirements have been met. The exception would therefore allow the NCSA to give, and certain public servants to accept, food and beverages provided in close proximity to the conference’s educational content, including the Grand Opening Reception, deli lunch, and continental breakfast.

The educational meeting exception also requires that the particular topics to be covered at the meeting be primarily related to the public duties and responsibilities of those public servants attending.

Based upon available information concerning the meeting topics and the law enforcement-related duties of the various public servants invited, the 2015 Conference is primarily related to the duties of those public servants within the Administrative Office of the Courts; the Offices of the Governor and the Lieutenant Governor; the Departments of Justice and Public Safety; and the ABC Commission, Parole Commission, and Governor's Crime Commission.

Therefore, the educational meeting exception would allow NCSA to provide complimentary admission to public servants in the agencies listed above and to make the reception, one breakfast, and lunch available to the individuals attending that meeting. As noted, the NCSA is not restricted by the Lobbying Law's gift ban from providing complimentary admission to judicial officers attending the meeting.

With respect to those public servants from the agencies not listed above, based upon the information provided and the Commission's understanding of the agency's public duties, the content of the meeting does not appear to be primarily related to the official's responsibilities. However, the individual agencies in question may give advance approval to a particular official to attend the 2015 Training Conference under the "reimbursement exception" referenced above as long as the agency determines that the official's attendance is related to his or her position.

The educational meeting exception allows a lobbyist principal to pay those "reasonable actual expenditures" for food and beverages provided in connection with a public servant's attendance at a meeting. In addition, the exception requires that any entertainment provided at a meeting be "incidental." However, the July 28<sup>th</sup> Reception, Banquet, and Post-Banquet Dessert and Coffee takes place some six hours after the last training session concludes. Given the significant time span between the end of the session and the Banquet activities, those activities would not be reasonably incurred by the public servants in conjunction with attending the meeting and therefore complimentary admission tickets to those activities may not be provided to public servants.

However, complimentary admission to the Banquet could be provided to legislators and public servants, but only if the G.S. 138A-32(e)(1)c. requirements are met as to attending legislators and public servants. Alternatively, public servants may attend the Banquet under G.S. 138A-32(e)(12) if it is related to the public servant's public duties.

In addition, the July 28<sup>th</sup> party featuring "The Band of Oz" would not be considered "incidental entertainment" and therefore would not be allowed under the educational meeting exception.

The NCSA may also invite various public servants to attend the meeting in return for the payment of the customary registration fee. However, if that registration fee does not reflect the actual cost of the meeting and meeting registration is not offered to the general public or all State employees on the same terms, a gift ban exception must apply before the NCSA can offer, and public servants can accept, the NCSA's invitation to register at the customary rate.

The fair market value of the complimentary admission, including food and beverages, meeting materials, and incidental items of monetary value given to public servants would be reportable by NCSA on its expenditure report filed with the Office of the Secretary of State. That gift shall be reported on the

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expense report filed for the month the reportable expenditure is received by the legislators and public servants, e.g. the date(s) on which the event was attended. 30 NCAC 10C .0102.

**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).