



# North Carolina General Assembly Legislative Ethics Committee

## PUBLISHED EDITED ADVISORY OPINION OF THE LEGISLATIVE ETHICS COMMITTEE

AO-E-07-0001

### Legislator Participation in Official Actions – G.S. 138A-37 and 138A-38

Approved by the Legislative Ethics Committee April 26, 2007

#### **Question:**

May a legislator take official legislative action, including introducing, advocating for, and voting on a bill to amend statutes pertaining to unpaid military leaves of absence for elected or appointed State and local officials where the legislator is a member of the reserve component of the armed forces, as are several other State and local elected officials?

#### **Opinion:**

Yes.

G.S. 138A-31 of the State Government Ethics Act states that except as permitted under G.S. 138A-38, a covered person (which includes legislators) shall not knowingly use his or her public position in an official action or legislative action that will result in a “financial benefit” to the covered person. Although there is no direct financial benefit associated with the leave of absence provided to a State official under G.S. 128-39, there could be an indirect financial benefit if the official were granted a leave that extended throughout the length of the period of active military service, as it would be more likely that the official could thereby resume his or her public position upon the termination of the leave. G.S. 138A-37(a) provides that a legislator should not knowingly participate in a legislative action from which the legislator would “reasonably and foreseeably benefit,” but only after the legislator considers whether his or her judgment would be substantially influenced by the interest and the need for his or her particular contribution. In view of the uncertainty of being called to reserve service, and the indirect nature of the financial benefit the legislator would derive from the leave, it does not appear that the legislator's legislative acts would be substantially influenced by the legislator's economic interests.

Moreover, G.S. 138A-38 specifically permits a covered person to participate in a legislative action under certain listed circumstances. G.S. 138A-38(1) permits participation in such actions if the only benefit that accrues to the covered person “is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.” In the situation presented by the legislator’s question, any benefit that the legislator would gain from proposed amendments to the statutes would accrue to the general class of all elected State, county, and municipal officials who are members of the reserve components of the armed forces. The benefit that the legislator would receive from passage of the bill would be no greater than the benefit that would accrue to members of that class. Therefore, the legislator may participate in the bill’s introduction and advocate on behalf of and vote on that bill.