



## STATE ETHICS COMMISSION

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### **FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION**

March 7, 2007

Re: Statement of Economic Interest Disclosure Requirements  
G.S. 138A-22 and 138A-24  
AO-E-07-0005

Dear Requester:

This is in response to your letter in which you requested a formal advisory opinion concerning the Statement of Economic Interest (“SEI”) filing requirements of certain public servants.

G.S. 138A-13(a) of the State Government Ethics Act (“the Act”) provides that public servants, their supervisors, legal counsel representing the public servant, or an agency’s ethics liaison may request an advisory opinion “on specific questions that relate prospectively to real or reasonably anticipated fact settings or circumstances.” The State Ethics Commission (“Commission”) has authorized its staff to issue formal advisory opinions pursuant to G.S. 138A-13(a) of the Act upon the receipt of a proper request. All opinions are limited to the particular facts presented and confer limited civil immunity upon a requestor who follows the advice given. Reliance upon a formal advisory opinion on a specific matter immunizes a public servant from (1) investigation by the Commission and (2) any adverse action by the employing entity.

Once finalized, formal advisory opinions will be published in a redacted format on the Commission’s website. Formal advisory opinions do not confer immunity from criminal investigation or prosecution. 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).

Many of your questions are speculative or do not provide information that is specific enough to provide concrete guidance. However, I have attempted to provide general guidance. Responses to the specific questions asked, as numbered in the request, follow.

- (1) Since this advisory opinion was issued in advance of the 2007 SEI filing deadline, your question regarding whether public servants within your agency will be

required to file their SEIs in the event a response to your questions is not received by the SEI filing deadline is moot.

- (2) G.S. 138A-22(a) requires that “public servants” file Statements of Economic Interest, “except for public servants included under G.S. 138A-3(30)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars (\$60,000)....” Therefore, public servants included within those categories and whose annual compensation is less than \$60,000 are not subject to the SEI filing requirements of the Act.
- (3) G.S. 138A-24(a)(2)f. requires disclosure of the names of “nonpublicly owned companies or business entities” in which a public servant, spouse, or members of the public servant’s immediate family have financial interests valued at \$10,000 or more. G.S. 138A-24(a)(2)i. also requires that the individual describe any “material business dealings, contracts, or other involvement” which that company, or other companies in which the primary company owns securities or equity interests over \$10,000, has with the State, or if the company is “regulated by” the State, “if known.” “Regulatory relationship” is not defined in the Act. You have asked whether certain routine administrative requirements imposed on North Carolina entities by your agency constitute a “regulatory relationship” with the State. They would not. You have asked whether you are required to perform “research” to determine the nature of an entity’s business or regulatory relationship with the State. G.S. 138A-24(a)2.i. requires a description of business with the State “if known.” This would require the exercise of due diligence by reviewing information readily available, not extensive investigation or research.
- (4) SEI question 14, required by G.S. 138A-24(a)(7), asks whether a public servant or the public servant’s immediate family or employer have “memberships or other affiliations” with organizations “over which the public servant’s agency or board may have jurisdiction.” You have asked if various units within your agency have “jurisdiction over any subject matter areas.” I am unable to respond to this question without more specific information concerning the societies, organizations, or advocacy groups of which each person is a member or with which that person is affiliated.
- (5) You have asked for clarification of the phrase “memberships or affiliations” as used in G.S. 138A-24(a)(7). You provide a number of examples of business or personal relationships that public servants in your agency have with a variety of entities. In response to your specific questions:
  - A “membership” in an alumni association or other organization that the public servant did not affirmatively join or in which the public servant does not actively participate would probably not qualify as a “membership or affiliation.” However, I would need to know the specific circumstances in order to provide a specific response.
  - An individual’s current status as a charitable donor may qualify as a “membership or affiliation,” but more specific information must be provided

before this question can be answered. However, a charity's mere solicitation of donations from an individual would not be considered to be a "membership or affiliation."

- An individual's possession of a Harris Teeter VIC membership need not be disclosed in response to question 14 on the SEI.
- Generally, an individual's membership in a trade association with which his or her employing entity "may have jurisdiction" should be disclosed in response to question 14. If there are particular organizations about which individual public servants have questions, they can contact the Ethics Commission with that information.
- You have asked for a list of any other "types or categories of memberships or affiliations" that public servants should report. Given your agency's varying authority and activities and the unlimited number of memberships or affiliations available, this is not possible. However, if any public servants have specific questions concerning whether an organization should be listed in response to question 14, please ask them to contact the Ethics Commission.