



# North Carolina General Assembly Legislative Ethics Committee

## PUBLISHED EDITED ADVISORY OPINION OF THE LEGISLATIVE ETHICS COMMITTEE

**AO-E-07-0007**

### **Legislator Participation in Official Actions that Would Benefit Spouse's Business – G.S. 138A-37**

Approved by the Legislative Ethics Committee May 3, 2007

#### **Questions:**

A legislator asked the following questions regarding the employment of the legislator's spouse with an architectural firm that specializes in commercial architectural designs, including educational facilities and buildings that receive LEED (Leadership in Energy and Environmental Design) certification:

1. May the legislator vote on bills that would streamline the process for the award of State construction contracts?
2. May the legislator support a bill authorizing a statewide school construction bond?
3. May the legislator participate in the discussion of a bill that requires new state buildings, including those constructed by State universities and community colleges, be designed and constructed, at a minimum, to meet the LEED silver standard?
4. Does legislation enacted in prior years that enabled the formation of public/private partnerships for the construction of education facilities present a conflict of interest for the legislator?

The legislator also asked the following question regarding his own business relationship:

5. As the owner of two hair salons that are part of a nationally franchised business, would the legislator's ability to propose or vote on bills relating to the cosmetology or to franchise businesses be limited?

**Opinion:**

G.S. 138A-37(a) prohibits a legislator's participation in a "legislative action," as defined in G.S. 120C-100(5), if: (1) the "legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated" has an "economic interest in" the action, and (2) the "legislator concludes that an actual economic interest" exists and that the interest "would impair the legislator's independence of judgment." In reaching this conclusion, G.S. 138A-37(a) requires that the legislator consider: (a) whether "the legislator's judgment would be substantially influenced by the interest," and (b) "the need for the legislator's contribution" to the matter.

G.S. 138A-3(11) defines "economic interest" as "matters" involving "a business with which associated or a nonprofit corporation or organization with which associated." "Business with which associated" also includes a business that employs a legislator's spouse. G.S. 138A-3(3). Even if a member of a legislator's family has an economic interest in a legislative action, and that interest would have the potential to influence the legislator's judgment, G.S. 138A-38 specifically allows a legislator to participate in a legislative action in a number of listed circumstances. G.S. 138A-38(1) authorizes participation if the "only interest or reasonably foreseeable benefit" that accrues to the business "is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class."

Although a legislator must make the ultimate determination concerning the degree to which the interests of his or her spouse's employer would influence legislative actions, the following guidance should be considered in making this determination:

1. **May the legislator vote on bills that would streamline the process for the award of State construction contracts?** It is unclear what, if any, direct economic interest the employer of the legislator's spouse would have regarding a bill to modify the State construction contract procedure. Moreover, even if such an interest were demonstrated, given the bill's tangential relationship to the employer of the legislator's spouse, it would be unlikely that this interest would substantially influence any legislative action that a legislator might take concerning this provision.
2. **May the legislator support a bill authorizing a statewide school construction bond?** Such a bill would provide a potential benefit to a firm specializing in school facility design. However, the adoption of such a bill would not necessarily guarantee an increase in school construction, much less the increase of business to the employer of the legislator's spouse, since the issuance of the bonds is contingent upon the voters' approval. Moreover, since there are over one-hundred architectural firms that work in this area and which would have the potential to bid on such projects, it appear unlikely that the legislator would be substantially influenced by the potential benefit to the

employer of the legislator's spouse in the exercise of the legislator's legislative discretion.

3. **May the legislator participate in the discussion of a bill that requires that new State buildings, including those constructed by State universities and community colleges, be designed and constructed, at a minimum, to meet the LEED silver standard?** While there is a potential indirect benefit, whether the benefit would accrue to the employer of the legislator's spouse is significantly contingent upon actions by persons outside the General Assembly in addition to the legislative action. Given the contingent nature of the benefit, it is unlikely the legislator would be substantially influenced by the potential benefit to the employer of the legislator's spouse in taking legislative action on this matter.
4. **Does legislation enacted in prior years that enabled the formation of public/private partnerships for the construction of education facilities present a conflict of interest for the legislator?** The State Government Ethics Act does not create a conflict of interest for the spouse of a legislator or the employer of the legislator's spouse by virtue of a legislator's service in the General Assembly. Additionally, any conflict of interest the legislator might have would only apply to possible future legislation, not past legislation.
5. **As the owner of two hair salons that are part of a nationally franchised business would the legislator's ability to propose or vote on bills relating to the cosmetology or to franchise businesses be limited?** It is not possible to provide specific guidance on this question without more information as to the nature of the bills in question. However, the existence of a conflict, if any, would depend on whether the legislator's business would benefit from the legislative action taken. G.S. 138A-37. If a conflict does exist, the legislator would need to examine G.S. 138A-38 to determine if the legislator can act.