



North Carolina General Assembly Legislative Ethics Committee

PUBLISHED EDITED ADVISORY OPINION OF THE LEGISLATIVE ETHICS COMMITTEE

AO-E-07-0008

Solicitation of Donations for Charitable Organization Food Drive – G.S. 138A-31(b) and 138a-32(b)

Approved by the Legislative Ethics Committee April 26, 2007

Question:

May a legislator ask fellow legislators, legislative employees, lobbyists, lobbyist principals, state agencies, public servants, and private businesses to give nonperishable food items or money donations to a charitable organization as part of a legislative food drive? One such food drive historically coincides with commencement of the legislative session and another is planned around National Hunger Awareness Day.

Opinion:

Legislators are prohibited from knowingly using their public position in any official or legislative action that will result in a financial benefit, direct or indirect, to themselves, their family members, or a “business with which [they are] associated.” G.S. 138A-31(a). A “business with which associated” is defined to include *for-profit* businesses only. G.S. 138A-3(2) & (3).¹

G.S. 138A-31(b) prohibits covered persons, including legislators, from mentioning or permitting someone else to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. But the statute provides that "The prohibition in this subsection shall not apply to ... the charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3)." Since the organization is a charitable 501(c)(3) organization, the legislator would be allowed to mention or allow others to mention his or her public position in charitable solicitations for the organization.

In addition, G.S. 138A-32(b) allows covered persons, including legislators, to make “generic written solicitations to all members of a class of subordinates.” This would

¹ There is a separate definition for a “nonprofit corporation or organization with which associated.” G.S. 138A-3(24).

allow a legislator to use a generic written solicitation to ask all members of any such class, perhaps including legislative employees or fellow legislators or even legislators as a whole, for a charitable donation.

The only caution is to avoid either an actual or apparent *quid pro quo* in connection with the solicitation. A legislator obviously cannot solicit a donation or contribution "in return for being influenced" in the discharge of the legislator's official responsibilities. G.S. 138A-32(a).

In conclusion, a legislator may ask those listed above, including lobbyists, lobbyist principals, and fellow legislators, to give donations to a charitable organization.