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FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

October 3, 2007

Re: No “Cooling Off” Period for Former Legislators Who Become Liaison Personnel
G.S. 120C-100(a)(10), -304, -501(a)
AO-E-07-0013

Dear Requester:

You requested a formal advisory opinion on the question of whether a State legislator is required to wait six months before serving as a liaison personnel (also called a legislative liaison) for a State entity under Chapter 120C of the North Carolina General Statutes, the Lobbying Law. Your letter requests an opinion on behalf of both the State entity and the legislator; however, neither the Lobbying Law nor the State Government Ethics Act (Chapter 138A of the General Statutes) allows for a third party to request an advisory opinion for a legislator, particularly one that grants immunity. Consequently, the legislator may want to request a separate opinion on this same question. The answer will, of course, be the same.¹

The Commission has authorized its staff to issue formal written advisory opinions pursuant to G.S. 120C-102 and 138A-13 upon the receipt of a proper request. All opinions are limited to the particular facts presented. Formal advisory opinions confer limited civil immunity upon a requester who follows the advice given. Good faith reliance upon a requested formal advisory opinion on a specific matter immunizes the requester from investigations by the Commission, any adverse action by the requester’s employing entity, and investigation by the North Carolina Secretary of State.² Formal advisory opinions do not confer immunity from any criminal investigation or prosecution. Requests for advisory opinions, the opinions themselves, and all materials related thereto are

¹ Since the legislator’s question, like the State entity’s, would involve the interpretation and application of Chapter 120C and *not* Chapter 138A or Part 1 of Article 14 of Chapter 120 (the Code of Legislative Ethics of the Legislative Ethics Act), the author believes that the Commission’s formal opinion on the matter would be final and binding, rather than a “recommended advisory opinion” pursuant to 138A-13(b), and would *not* be forwarded to the Legislative Ethics Committee for further consideration.

² Section 10 of House Bill 1111 (Session Law 2007-348) amended 120C-102 to expand the scope of immunity to investigations by the Secretary of State. Section 31 of HB 1111 (amending 138A-13) did the same with regard to “ethics” advisory opinions. These particular changes were effective August 9, 2007.

confidential and not a matter of public record, although the Commission is required to publish edited formal advisory opinions annually. G.S. 120C-102(d). Furthermore, Commission staff may share all information related to formal advisory opinion requests pertaining to Chapter 120C with staff of the Office of the Secretary of State and all information related to formal advisory opinion requests pertaining to legislators with staff to the Legislative Ethics Committee, all of whom must treat such information as confidential and not a public record.³ Finally, the Commission must forward an unedited copy of formal advisory opinions issued under G.S. 120C-102 to the Secretary of State at the time such opinion is issued.

Your question is as follows: under G.S. 120C-304, may a former legislator serve as liaison personnel (legislative liaison) for a State entity immediately upon leaving public office? Put differently, does 120C-304 require a former legislator to wait six (6) months after leaving public office before he or she may be employed as a legislative liaison?

A former legislator may go to work as a legislative liaison without waiting the six (6) months required by G.S. 120C-304(a). The six-month "cooling off" period does *not* apply to registered liaison personnel.

As a general rule, legislators or former legislators may not register as *lobbyists* under Chapter 120C either (1) while in office or (2) before the later of the close of session as set forth in G.S. 120C-100(a)(4)b.1⁴ or six months after leaving office. G.S. 120C-304(a), as amended by section 13.(a) of House Bill 1111 (Session Law 2007-348). This six-month waiting period expressly applies to former legislators acting as lobbyists and is commonly referred to as a "cooling off" period.

Recently-enacted House Bill 1111 (Session Law 2007-348) amended the definition of "lobbyist," but did not change the express exclusion from that term for liaison personnel:

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter.

G.S. 120C-100(a)(10), as amended by sections 8.(a) and 8.(b) of House Bill 1111. "Liaison personnel" is defined as any State employee, counsel employed under G.S. 147-17,⁵ or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying designated individuals.⁶ G.S. 120C-100(a)(8), as amended by section 6.(b) of House Bill 1110 (Session Law 2007-347).

³ Sections 10 and 31 of House Bill 1111 (Session Law 2007-348).

⁴ G.S. 120C-100(a)(4)b.1 defines "regular session" as the time the General Assembly convenes beginning from the date set by law or resolution until it adjourns sine die. This sub-section was amended by section 13.(a) of House Bill 1111 (Session Law 2007-348).

⁵ G.S. 147-17 provides for the employment of legal counsel by State departments, agencies, etc., under certain circumstances and upon meeting certain conditions.

⁶ "Designated individual" is a defined term and includes legislators, legislative employees, and public servants. G.S. 120C-100(a)(2).

Liaison personnel are governed by Article 5 of Chapter 120C. Section 120C-501(a) provides that, “Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.” Each public entity may designate no more than two liaison personnel. G.S. 120C-500. Liaison personnel must register with the Secretary of State’s office, file expenditure reports, and comply with the general gift ban with respect to legislators and legislative employees. *See* G.S. 120C-501(b), -(c), and -(d). University of North Carolina liaison personnel are also restricted from giving athletic tickets to designated individuals for the purpose of lobbying. G.S. 120C-501(e). But other than those specific requirements and prohibitions, Chapter 120C does not apply to liaison personnel. G.S. 120C-501(a). This would include the six-month “cooling off” period of 120C-304(a).

Therefore, for the reasons set forth above, including the express exclusion of registered liaison personnel from the definition of lobbyist, and the fact that the “cooling off” period only applies to legislators or former legislators acting as lobbyists, a former legislator may immediately go to work as a State entity's liaison personnel without waiting six months.