



North Carolina General Assembly Legislative Ethics Committee

PUBLISHED EDITED ADVISORY OPINION OF THE LEGISLATIVE ETHICS COMMITTEE

AO-E-08-0003

Disclosure of Extended Family Member's Business and Customers on Statement of Economic Interest – G.S. 138A-24

Approved by the Legislative Ethics Committee May 14, 2008

Question:

Must a legislator disclose volunteer activities of a business in which the adult child of the legislator has an ownership interest on the legislator's Statement of Economic Interest?

Opinion:

No.

The purpose of the State Government Ethics Act (Act) is to ensure that public officials are not influenced by their personal interests. The Act seeks to accomplish this goal by affirmatively requiring that public officials be educated as to their obligations under the Act and annually disclose financial information on the Statement of Economic Interest. The Act also prohibits those officials from accepting certain items of value from individuals and entities who may attempt to influence the officials and from participating in official and legislative actions to the extent those officials may be influenced by their personal interests.

The Act's legislative conflict of interest standards are set forth in G.S. 138A-31(a)¹ and G.S. 138A-37(a). G.S. 138A-38(a) describes conduct that is permissible even if it otherwise would constitute an actual conflict of interest under G.S. 138A-31(a) or G.S. 138A-37(a). The remedy for an actual conflict of interest that is not subject to the G.S. 138A-38 safe harbor provisions is recusal.

G.S. 138A-31(a) prohibits a legislator from taking legislative action that provides a financial benefit to the legislator, a member of the legislator's extended family, or a business with which the legislator is associated. That provision does not extend to a

¹ G.S. 138A-31(a) is also applicable to public servants, judicial officers, and legislative employees.

pledge of collateral by a business with which a legislator is associated to another business owned by an adult family member.

G.S. 138A-37(a) similarly prohibits a legislator's participation in a "legislative action" if (1) the "legislator, a member of the legislator's extended family, the legislator's client," or a business or nonprofit with which the legislator is associated has an "economic interest in," or would derive a reasonably foreseeable benefit from 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.²

An "economic interest" is defined as "[m]atters involving a business with which associated or a nonprofit corporation or organization with which associated." A business or nonprofit with which associated includes a business or nonprofit in which the legislator or the legislator's immediate family holds a leadership position or owns an interest valued at \$10,000 or more, or for which the legislator or immediate family member is a lobbyist or an employee.³ G.S. 138A-3(3) and 138A-3(24).

Thus, both G.S. 138A-31(a) and G.S. 138A-37(a) require that legislators generally examine legislative actions that would benefit any of the following individuals or entities:

- The legislator.
- A member of the legislator's extended family, for example siblings, children, and parents of the legislator.
- The legislator's clients (inapplicable to G.S. 138A-31(a)).
- Businesses or nonprofits with which the legislator or the legislator's immediate family "is associated."

As with G.S. 138A-31(a), G.S. 138A-37(a) does not encompass a business with which the legislator is associated providing collateral to the business of an adult family member not residing in the legislator's household. Nor would the application of those provisions lead one to conclude that the sponsor or customer of an entity whose loan was secured by another entity, which was co-owned by a legislator, would present a conflict of interest as to that legislator.

² The conflict provisions as applied to legislators are narrower than those applicable to public servants. As with the conflict provisions applicable to legislators, G.S. 138A-36(a) provides that a public servant should avoid participating in official actions in which the public servant has an economic interest. In addition, G.S. 138A-36(c) requires that a public servant take appropriate steps to ensure that he or she does not participate in matters in which his or her impartiality might be questioned due to a "familial, personal, or financial relationship with a participant in the proceeding." The legislative conflicts provision does not specifically refer to personal relationships.

³ An independent contractor relationship with a nonprofit is also included.

The purpose of the Statement of Economic Interest (SEI) filing requirement is to assist public officials and those who appoint or employ them to “identify and avoid conflicts of interest.” G.S. 138A-21. This goal is achieved by encouraging the public official to carefully consider conflicts in the course of completing the SEI, allowing the public to review and consider a public official’s interests, and enabling Commission staff to evaluate the SEI and guide the official in order to guard against unrecognized undue influence.

The Act requires that public officials disclose information about the official and the official’s “immediate family” on the SEI:⁴

"Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be provided to all questions. The form shall include the following information about the filing person and the filing person’s immediate family." G.S. 138A-24(a).

This is reflected, as it must be, in the SEI itself.⁵ None of the SEI questions directly require that the official disclose information related to members of his or her extended family that do not reside in the official’s household, such as an adult child. G.S. 138A-24 delineates the type of information that must be disclosed in the SEI. Those categories of information can generally be summarized to include the legislator or immediate family’s direct financial interests (G.S. 138A-24(a)(2)-(5)); associations with non-profits (G.S. 138A-24(a)(11)); the receipt of gifts 138A-24(a)(8)); or the lobbying activities of the legislator or his or her immediate family (G.S. 138A-24(a)(12)).

Question 19, as it existed on the 2007 SEI, sought disclosure of additional information with respect to “potential or actual conflicts of interest” not otherwise disclosed on the SEI. As already noted, the SEI provisions of the Act specifically require disclosure of information related to a public official’s immediate family, a requirement that would exclude information related to the interests of an official’s adult child. Moreover, given

⁴ “Immediate family” generally includes family members who live in the public official’s immediate household. It does not include adult children who live outside the public official’s household, such as the adult child in this situation.

⁵ The 2007 SEI form repeats this limitation 14 times, and it was included in the transmittal memo sent to legislators and all other filers.

the vague nature of this disclosure requirement, it is extremely difficult for a public official to determine what must be disclosed in response to this question.

Legislative Ethics Committee Note of Subsequent Legislative Action:

See S.L. 2008-213, Sec. 72 that amends G.S. 138A-24(a)(10) which sets out any additional information not otherwise specified that may be included on the Statement of Economic Interest.

See S.L. 2008-213, Sec. 84 which repeals G.S. 138A-3(11), which had previously defined "economic interest", and amends the conflict of interest analysis process for legislators.