



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION UNEDITED WITH APPROVAL OF REQUESTER

November 19, 2010

The Honorable Wayne Goodwin
Commissioner of Insurance
North Carolina Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

Re: Hosting Monthly Radio Show on Shaw University Radio Station
G.S. 138A-32(c) and (d); G.S. 138A-31(b); G.S. 138A-31(c)
AO-E-10-003

Dear Commissioner Goodwin:

This is in response to your request for a formal advisory opinion. You ask whether it would be permissible to design and host a monthly radio program on Shaw University's public radio station ("WSHA") under the State Government Ethics Act ("Ethics Act"), North Carolina General Statutes ("G.S.") Chapter 138A. This opinion was adopted by the Commission at its November 19, 2010, meeting.¹

I. Brief Conclusion.

Under the Ethics Act, it is permissible for you to host a monthly radio program and to accept from WSHA free air time and other resources necessary to the program's production.

II. Facts.

You are the North Carolina Commissioner of Insurance. You are therefore a public servant subject to the requirements of the Ethics Act. You are currently a regular guest of a monthly, hour-long, radio program entitled "The State of Insurance." North Carolina Department of Insurance ("NCDOI") employees have also appeared on the program. The radio program provides listeners with information on insurance topics and other issues within NCDOI's regulatory functions. "The State of Insurance" program is part of WSHA's weekly "Community Program Series," which is currently hosted by Ms. Nicole Gye'Nyame.

¹ Please see the enclosure entitled "Formal Advisory Opinions Issued by the State Ethics Commission" for further information regarding the protections offered to individuals receiving those opinions.

WSHA has invited you to assume responsibilities for hosting the monthly “The State of Insurance” program. The topics discussed will continue to concern insurance topics of interest to listeners. From time to time you will interview NCDOJ employees. You expect that there will also be occasions when members of your senior staff will host the show in your absence.

The air time and resources necessary for the production of “The State of Insurance” program are currently provided by WSHA. WSHA is not a registered lobbyist principal or an entity which is regulated by the NCDOJ or has financial interests that may be substantially and materially affected by NCDOJ or which does or is seeking to do business with the NCDOJ. No state funds are used to finance the radio program. WSHA’s support of this program will continue once you assume hosting responsibilities. Although WSHA receives general financial support from a variety of individuals and businesses, that financial support will not be earmarked or given with the intent that it fund the production or airing of “The State of Insurance.”

III. Applicable Statutory Provisions.

A. Use of Title in Nongovernmental Advertising.

G.S. 138A-31(b) provides that a covered person (a term that includes public servants):

Shall not mention or permit another person to mention the covered person’s public position in nongovernmental advertising that advances the private interest of the covered person or others.

The term “nongovernmental” appears to refer to the source of the funding or resources for the advertisement and therefore applies when the funding comes from a private source. AO-E-09-004 (April 24, 2009). “Advertising” is generally defined as “the action of attracting public attention to a product or business.” *Id.*

A number of exceptions to the prohibition against the use of a covered person’s title are listed, including a “charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3).”

B. Use of State Funds for Advertising and PSAs Featuring Covered Persons.

G.S. 138A-31(c) generally prohibits a covered person from using or permitting:

- The use of State funds for any advertisement or public service announcement;
- In a newspaper, on radio, television, magazines, or billboards;
- That contains that covered person’s name, picture, or voice;
- Except in case of State or national emergency and where the announcement is “reasonably related to the person’s official function.”

Fund-raising on behalf of public radio or television is exempt from this prohibition.

C. The Ethics Act's Gift Ban.

G.S. 138A-32(c) and (d) generally restrict a public servant's knowing acceptance of a "gift" from registered lobbyists, lobbyist principals, or "interested persons," individuals or entities that are regulated by, do or seek to do business with, or have financial interests that may be substantially or materially affected by the public servant's actions. Public servants are also restricted from knowingly accepting gifts from third parties if the public servant knows that a lobbyist, lobbyist principal, or "interested person" intended that an ultimate recipient of the gift be a public servant.² "Gift" is generally defined to include "anything of monetary value." There are a number of exceptions to the gift ban listed in G.S. 138A-32(e).

IV. Application of the Ethics Act's Restrictions to Your Proposed Radio Show.

In applying the foregoing statutory standards to your request, the Commission has determined that the radio program hosted by you, in which you review insurance issues and other matters regulated by the NCDOT, does not constitute "advertising" as that term is used in G.S. 138A-31(b). Specifically, the radio program is not used to promote particular products or businesses, but rather would provide general information to consumers about insurance issues.

Moreover, even if your hosting of the radio program could be construed to promote WSHA, your activities would be included within the exception for charitable solicitations for 501(c)(3) nonprofits such as WSHA.

Similarly, your hosting of this radio program does not fall within the G.S. 138A-31(c) restriction against the use of State funds for advertisements or public service announcements since State funds are not being used to pay for the air time or production costs of this program.

Finally, since WSHA is not a registered lobbyist principal or an interested person, the Ethics Act's gifts ban would not apply to the free air time or production resources provided by the station to you. No other corporations or individuals will be providing funds to support the production or airing of this particular radio program.

V. Closing.

Thank you for contacting the State Ethics Commission. Please do not hesitate to call the Commission's staff if you have any questions about the foregoing formal advisory opinion.

State Ethics Commission

By: _____
Robert L. Farmer
Chairman

² Effective December 1, 2010.

Formal Advisory Opinions Issued by the State Ethics Commission
Pursuant to the Ethics Act

Upon the written request of a public servant or legislative employee, G.S. 138A-13(a) of the State Government Ethics Act (“the Ethics Act”) authorizes the State Ethics Commission (“Commission”) to issue formal advisory opinions on the “meaning and application” of the Ethics Act “and the public servant’s or legislative employee’s compliance therewith.” All opinions have prospective application only, are limited to the particular facts presented, and confer limited civil immunity upon a requester who follows the advice given. G.S. 138A-13(a) and (a2).

Reliance upon a formal advisory opinion immunizes the public servant or legislative employee making the request from (1) investigation by the Commission, except the alleged violation of criminal law while performing his or her official duties, (2) adverse action by his or her employing entity, or (3) investigation by the Secretary of State. G.S. 138A-13(a2).

Once issued by the Commission, formal advisory opinions are published in a redacted format on the Commission’s website within 30 days of issuance. G.S. 138A-13(d). Otherwise, 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).