



STATE ETHICS COMMISSION

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FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION

October 3, 2007¹

Re: Members of State Board Lobbying Members of Congress; Article 5 Liaison Personnel.
G.S. 120C-500(a), (b), and (c)
AO-L-07-0011

Dear Requester:

You sent the State Ethics Commission (Commission) an e-mail requesting guidance on specific issues arising under the new Lobbying Law (Chapter 120C) and the new State Government Ethics Act (Chapter 138A), which became effective January 1, 2007. At the time of your request, the full Ethics Commission had not yet been appointed. Therefore, an opinion offered by the Commission's staff represented his or her personal opinion, and not that of the Commission. On January 17, 2007, I issued an informal written advisory opinion to you. At that time, you requested that once the Commission was appointed, a formal written advisory opinion be issued to you regarding the situation on which my informal written advisory opinion was issued.

On January 24, 2007, the Commission held its first meeting. At this meeting the Commission authorized its staff to issue formal written advisory opinions ("formal advisory opinions") pursuant to G.S. 138A-13 and 120C-102, upon the receipt of a proper request. All opinions are based on the particular facts presented. Once issued, these formal advisory opinions confer limited civil immunity upon the requester if the advice given is followed. Opinions issued do not confer immunity from any criminal investigation or prosecution. Requests for advisory opinions, the opinions themselves, and all materials related thereto are confidential and not a matter of public record, although the Commission is required to publish redacted opinions annually. G.S. 120C-102(d).

At its February 22, 2007, meeting, the Commission reviewed the informal written advisory opinion I issued to you on January 17, 2007. The Commission adopted my informal written advisory

¹ Note: This formal advisory opinion was initially issued as an informal written advisory opinion on January 17, 2007; approved by the Commission as a formal advisory opinion on February 22, 2007; revised on October 3, 2007, to incorporate recent amendments to relevant parts of the Ethics Act and Lobbying Law; and approved as revised on November 9, 2007.

opinion as a formal advisory opinion. This final opinion supersedes all prior formal or informal opinions on this matter

In your e-mail you stated that some of the members of a North Carolina State board (“the Board”) were asking whether they could lobby North Carolina members of the United States Congress on behalf of the Board’s professional organization. The State Government Ethics Act (“Ethics Act”) and the North Carolina Lobbying Law (“Lobbying Law”) apply to North Carolina legislators who are members of, or candidates for, the North Carolina General Assembly. G.S. 138A-3(22) and 120C-104. The Ethics Act and the Lobbying Law do not apply to the North Carolina members of the United States Congress. Accordingly, any requirements or prohibitions under these state laws do not pertain to lobbying members of the United States Congress. Therefore, the Board’s members can lobby the North Carolina members of the United States Congress, unless there is a federal law that prohibits such lobbying.

Since the Board is a state board with non-advisory authority, it and all of its voting members (including ex-officio members) are covered under the Ethics Act and the Lobbying Law. Accordingly, the requirements and prohibitions of these laws do apply when the Board wants to lobby members of the North Carolina General Assembly. Prior to August 9, 2007, the Lobbying Law required all covered state boards to designate at least one, but not more than two, liaison personnel to conduct the board’s lobbying of members of the North Carolina General Assembly for legislative action. G.S. 120C-500(a) and (c). As of August 9, 2007, pursuant to the signing of House Bill 1110 (Session Law 2007-347), if a state board does not have staff, it does not have to designate liaison personnel to lobby for legislative action.² However, if the board designates liaison personnel, the designated liaison personnel must register and report with the Secretary of State’s Office pursuant to G.S. 120C-402 and comply with the sections of the Ethics Act and Lobbying Law that are applicable to liaison personnel. *See* G.S. 120C-501(b), (c), (d), and (e).

In addition, prior to the signing of HB 1110 on August 9, 2007, no state funds could be used by covered state boards to contract with persons who were not State employees to lobby legislators or legislative employees. G.S. 120C-500(b).³ Section 6.(a) of HB 1110 amended G.S. 120C-500(b) to allow state funds to be used to pay counsel employed under G.S. 147-17 to lobby legislators and legislative employees for legislative action.

² *See* Section 6.(a) of HB 1110.

³ *See* Section 6.(a) of HB 1110 and G.S. 147-17. Section 147-17 provides for the employment of legal counsel by State departments, agencies, etc., under certain circumstances, including approval by the Governor.