



## STATE ETHICS COMMISSION

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### **FORMAL ADVISORY OPINION** **UNEDITED WITH APPROVAL OF REQUESTER**

February 13, 2009

Jim Thompson, Executive Director  
Association Executives of North Carolina  
7511 Mourning Dove Rd, Suite 102  
Raleigh, NC 26615

Via E-Mail and U.S. Mail  
[jim@aencnet.org](mailto:jim@aencnet.org)

RE: Reporting of AENC Legislative Reception Sponsored by Lobbyist Principals and  
"Interested Persons"  
G.S. 120C-400, -401, and -403  
AO-L-09-002

Dear Mr. Thompson:

On October 14, 2008, you requested a formal advisory opinion from the State Ethics Commission ("Commission") regarding a legislative reception that the Association Executives of North Carolina ("AENC") hosted on January 28, 2009 ("Legislative Reception"). On January 16, 2009, the Commission issued AO-L-09-001, concluding that it was permissible to hold the Legislative Reception pursuant to the G.S. 138A-32(e)(1)c. food and beverages exception of the State Government Ethics Act. This formal advisory opinion addresses the reporting obligations of AENC and the lobbyist principals and "interested persons" that co-sponsored the Legislative Reception. It was adopted by the Commission at its February 13, 2009, meeting.<sup>1</sup>

#### **I. Brief Conclusion.**

Those lobbyist principals that co-sponsored the Legislative Reception must report the total amount paid that was attributable to sponsorship of the Reception as a "reportable expenditure for the purpose of lobbying," or approximately \$521. In addition, the sponsoring lobbyist principals must report the per person cost of the food and beverages provided to designated individuals at the Reception. Those lobbyist principals should note on their report that the Legislative Reception was hosted by a number of lobbyist principals and that the co-sponsors shared the cost of the Legislative Reception and the food and beverages provided to designated individuals.

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<sup>1</sup> 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.

## **II. The Facts.**

AENC hosted its semi-annual Legislative Reception welcoming the 2009 General Assembly on January 28, 2009. Food and beverages for immediate consumption were provided. In addition, a high school jazz trio played background music. All members of the General Assembly were invited along with all members of the Council of State, the North Carolina Supreme Court and Court of Appeals and of the North Carolina Congressional delegation, and the Governor and Cabinet. Immediate family members of the legislators, public servants, and judicial officers were also invited to attend. AENC offered tickets to the general public at a cost of \$250.

AENC is not a lobbyist principal. However, the Legislative Reception was sponsored by approximately 60 entities, many of which are lobbyist principals. In addition, other sponsors may have been “interested persons” to attending public servants, as described in G.S. 138A-32(d). Each sponsor paid \$695 to AENC to co-host the Legislative Reception. Sponsors paid this amount to AENC in late 2008 and early 2009. In return, each sponsor received 10 tickets to the Legislative Reception and recognition as a sponsor.

AENC made all of the arrangements for the Legislative Reception, including renting the facility, arranging for food and beverages, and providing and sending out the invitations. Sponsorships paid for the entire cost of the Legislative Reception. Approximately 75% of the proceeds of the sponsorship fee funded the Legislative Reception. The remaining 25% went directly to AENC’s general account without any conditions as to how it must be spent. Accordingly, approximately \$521 of the \$695 paid to AENC was used to sponsor the Legislative Reception.

## **III. Applicable Statutory Provisions.**

A “reportable expenditure” is defined as anything of value that exceeds “\$10 per designated individual per single calendar day,” and that “directly or indirectly is made to, at the request of, for the benefit of, or on behalf of a designated individual or that individual’s immediate family member.” G.S. 120C-100(a)(12).

G.S. 120C-403(b) requires that each registered lobbyist principal file reports of reportable expenditures with the Secretary of State. Items required to be listed on those reports include, among other things:

- (1) All “reportable expenditures made for the purpose of lobbying,”<sup>2</sup> and  
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- (5) All “reportable expenditures for gifts” given under G.S. 138A-32(e).<sup>3</sup>

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<sup>2</sup> “Lobbying” includes “direct” and “goodwill” lobbying. Direct lobbying is “influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person’s immediate family.” Goodwill lobbying is “developing goodwill through communications or activities, including the building of relationships, with a designated individual or that person’s immediate family with the intention of influencing current or future legislative or executive action, or both.” G.S. 120C-100(a)(9)

<sup>3</sup> Except that gifts given by lobbyist principals pursuant to G.S. 138A-32(e)(10) are only reportable to the extent they have “a value of more than \$200.”

The report of each reportable expenditure, including those made “for the purpose of lobbying” and for “gifts” given in accordance with G.S. 138A-32(e), must include the following information:

- (1) The fair market value or face value, if shown.
- (2) The date of the reportable expenditure.
- (3) A description of the reportable expenditure.
- (4) The name and address of the payee or beneficiary.
- (5) The name of any designated individual or that individual’s immediate family member connected with the reportable expenditure.

G.S. 120C-401(b).

G.S. 120C-401(b1) provides that “when more than 15 designated individuals benefit from or request a reportable expenditure, no names of individuals need be reported provided that the report identifies the approximate number of designated individuals benefiting or requesting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1, or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly.”

The Lobbying Law does not specify how expenditures should be reported where multiple lobbyists or lobbyist principals combine to benefit a designated individual or several designated individuals, such as with the AENC Legislative Reception presented here. Other states have recognized the unique reporting issues presented by such events, and some have required that one sponsoring lobbyist principal report the details of the event, including the value of any items received by the public officials. All other sponsoring lobbyist principals report their respective contributions to the event, but are permitted to cross-reference that primary report as to the details of the event.

In AO-L-07-0010, which also concerned legislative events sponsored by a number of lobbyist principals that benefited several legislators, the Commission determined that each sponsoring lobbyist or lobbyist principal was required to report to the Secretary of State’s Office the amount each paid to sponsor the event. In addition, because a gift of food and beverages was given to each attending legislator, the Commission determined that each sponsoring lobbyist and lobbyist principal was required to report the fair market value of the food and beverages given to each legislator if the value exceeded \$10.00 per calendar day.<sup>4</sup> That opinion did not explain how the fair market value of the food and beverages attributable to each legislator should be determined, however.

Thus, the Commission determined that in the case of legislative events sponsored by a number of lobbyists and lobbyist principals, the report filed by each sponsor should include (1) the total contribution made by the lobbyist or lobbyist principal that was used to sponsor the event *and*

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<sup>4</sup> Although the reporting provisions of the Lobbying Law speak in terms of “expenditures,” commonly defined as the amount paid for good or services, those expenditures are required to be reported in terms of the “fair market value” of the items.

(2) the fair market value of the food and beverages received by designated individuals. That opinion did not explain how the value attributable to each legislator should be determined, however.

#### **IV. Reporting Requirements.**

The AENC Legislative Reception presents issues similar to those presented in AO-L-07-0010.<sup>5</sup> Applying those principles, each lobbyist principal contributing to the AENC Legislative Reception must report the total amount of its sponsorship contribution attributable to that event, or approximately \$521. In addition, in AO-L-09-001, the Commission determined that the food and beverages provided at the Legislative Reception were a “gift” to the attending designated individuals but that the gift met the G.S. 138A-32(e)(1)c. exception. Therefore, each sponsoring lobbyist principal must report the “fair market value” of the food and beverages received by designated individuals. Those lobbyist principals should note on their report that the Legislative Reception was hosted by a number of lobbyist principals and that the co-sponsors shared the cost of the food and beverages provided to designated individuals.

“Fair market value” is defined as “the amount at which property would change hands between a willing buyer and a willing seller....” Black’s Law Dictionary. In AO-07-006, while considering the reporting obligations of a lobbyist that provided transportation to a legislator from an airport to a hotel, the Commission concluded that the lobbyist must report the fair market value of the transportation. The Commission suggested that the fair market value could be determined by using the cost of the airport shuttle to the hotel, the customary cab fare to the hotel, or the IRS mileage rate.

Since individual tickets to the Legislative Reception were not purchased and there were no comparable events from which that market value could be derived, it is difficult to ascertain the fair market value of the Legislative Reception. In such circumstances, the reportable expenditures for gifts may be calculated using the actual per person cost of the food and beverages provided at the Reception. The per person cost of the food and beverages may be determined in a number of ways depending on the circumstances. For example, if the event was catered, the caterer’s charge per person for the food and beverages would represent the cost. If that information is not available, the reportable value per person could be calculated by taking the actual total cost of the food and beverages, and dividing that amount by the number of individuals who attended the Reception to determine the per person cost.

Each sponsoring lobbyist principal will need to report its sponsorship of this Legislative Reception on its principal expense report filed with the Secretary of State for the month of January 2009, the month in which the designated individuals received the food and beverages, and otherwise benefitted from the sponsorship.

AENC is not a lobbyist principal and it is not using any of its funds to pay for the costs of the Legislative Reception; therefore, it has no reporting responsibilities regarding this Legislative Reception under G.S. Chapter 120C. However, each sponsoring lobbyist principal must file a lobbyist principal report with the Secretary of State’s Office pursuant to Article 4 of Chapter 120C.

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<sup>5</sup> Except that the organizer of the event in AO-L-07-0010 was a lobbyist principal, unlike AENC here.

In addition, other sponsoring persons, including “interested persons,” who are not lobbyist principals or lobbyists, will need to report the fair market value of the food and beverages given to an attending public servant or a legislator, *if* this sponsoring person gives over \$200 for the purpose of lobbying to any one of these public servants or legislators in the first calendar quarter of 2009. G.S. 120C-800(a). “Fair market value” should be determined in accordance with the standard discussed above.

**V. Conclusion.**

Thank you for contacting the State Ethics Commission concerning these reporting issues. I hope this formal advisory opinion provides you with sufficient guidance. Please do not hesitate to contact the staff of the State Ethics Commission if you have any questions about the foregoing formal advisory opinion.

Pursuant to G.S. § 120C-102(d1), an unedited copy of this formal advisory opinion will be forwarded to the Secretary of State. The Secretary of State is statutorily obligated to treat the opinion as confidential and not a public record.

State Ethics Commission

By: \_\_\_\_\_  
Robert Farmer  
Chairman

**Formal Advisory Opinions of the State Ethics Commission**  
**Issued Pursuant to the Lobbying Law**

Upon the written request of any person, State agency, or governmental unit affected by G.S. Chapter 120C (“the Lobbying Law”), G.S. 120C-102 (a1) authorizes the State Ethics Commission (“Commission”) to issue formal advisory opinions “on the meaning and application” of the Lobbying Law and “that person’s, State agency’s or any other governmental unit’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. 120C-102(a) and (a1).

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. 120C-102(c). Requests for advisory opinions, the opinions themselves, and all materials related to the opinions are confidential and are not public records. G.S. 120C-102(d). However, the Commission is required to send an unedited copy of each formal advisory opinion to the Secretary of State’s Office at the time the formal advisory opinion is issued to the requester, and the Secretary of State is required to treat the formal advisory opinion as confidential and not a matter of public record. G.S. 120C-102(d1). In addition, Commission staff is specifically authorized to share all information and documents related to requests for formal advisory opinions with the Secretary of State’s Office. The Secretary of State’s Office is required to treat any such information and documents in its possession as confidential and not a matter of public record. G.S. 102(d1).