



STATE ETHICS COMMISSION

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER
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EXECUTIVE DIRECTOR

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

February 13, 2009

Drew Moretz
Vice President of Government Affairs
Greater Raleigh Chamber of Commerce
800 South Salisbury Street
P.O. Box 2978
Raleigh, NC 27602-2798

Via E-Mail and U.S. Mail
dmoretz@raleighchamber.org

RE: The Computer Game Development Forum
Application of the G.S. 120C-303 Gift Ban
Application of the G.S. 138A-32(e)(1)b. Gift Ban Exception
AO-L-09-003

Dear Mr. Moretz:

By e-mails dated November 17, 2008, and January 12, 2009, you requested a formal advisory opinion regarding a forum on Computer Game Development in North Carolina ("Forum") that the Greater Raleigh Chamber of Commerce ("Chamber") planned to host in Raleigh, North Carolina. Initially, the Chamber planned to hold the Forum in November of 2008, but it was rescheduled for February 11, 2009. This formal advisory opinion addresses the application of the Lobbying Law's gift ban to the Forum and was adopted by the State Ethics Commission ("the Commission") at its February 13, 2009, meeting.¹

I. Brief Conclusion.

Based on the facts presented, which are summarized below, the Commission determined that the Chamber was allowed to give food and beverages to the legislators attending the Chamber's February 11, 2009, Forum pursuant to the gift ban exception of G.S. 138A-32(e)(1)b. In addition, the Chamber is required to report the value of all expenses it incurred in sponsoring the Forum on

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.

its principal expense report that it files with the Secretary of State for the month of February 2009, the month in which the designated individuals received the food and beverages, and otherwise benefitted from this Forum.

II. The Facts.

The Chamber is a business membership organization in Wake County. The Chamber is also a lobbyist principal with employees who are registered lobbyists. It has a Public Policy/Government Affairs Department which strives to advance a pro-business strategy through unique programs and legislative agendas.

The Forum consisted of three panels of speakers. Those panels addressed the following topics with respect to the gaming industry in North Carolina: (1) the status of the computer game industry in North Carolina, (2) the significance this industry has to the North Carolina economy, (3) ways in which the state's higher educational systems can meet the game industry's educational needs, and (4) other states' efforts to develop the computer game industry and what North Carolina needs to do to compete with those states. Desserts and beverages were also provided during the Forum. The Forum began at 3:00 p.m. and ended at 5:00 p.m.

The Chamber paid for all expenses associated with hosting the Forum. The Forum was held in a meeting room in the Sheraton Raleigh Hotel. The Forum was open to the general public at no charge. In advance of the meeting, a sign was displayed in the lobby of the Sheraton, in an area immediately visible to the general public, stating when and where the Forum was being held, and that it was open to the general public. Another sign was posted immediately outside the room where the Forum was being held, stating that the Forum was open to the general public. The Chamber invited all of the members of a number of legislative committees and all members of the Wake County legislative delegation to the Forum.

III. Applicable Statutory Provisions.

A. Gift Ban and Applicable Exceptions.

G.S. 120C-303(a) provides that unless permitted by an exception to the gift ban, no lobbyist or lobbyist principal may: "(1) [k]nowingly give a gift to a designated individual," or "(2) [k]nowingly give a gift with the intent that a designated individual be the ultimate recipient." Designated individuals include legislators, public servants, and legislative employees. G.S. 120C-100(a)(2). A "gift" is defined as anything of monetary value. G.S. 138A-3(15).

The gift ban exception of G.S. 138A-32(e)(1)b. allows a lobbyist principal to provide food and beverages for immediate consumption to all designated individuals at an event which:

- (1) at least 10 or more individuals actually attend;
- (2) is open to the general public; and
- (3) displays a sign or other communication that is reasonably designed to convey to the general public that the event is open to the general public displayed at the event.

The Commission has determined that based on the facts presented, if the Chamber displayed the requisite signs as noted above and 10 or more individuals attended the Forum, the Chamber was allowed to provide food and beverages to all of the attending designated individuals pursuant to the gift ban exception of 138A-32(e)(1)b.

B. Reporting Requirements.

A “reportable expenditure” is defined as anything of value, separately or cumulatively, that exceeds \$10 per designated individual in a 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,”² and

- (5) All “reportable expenditures for gifts” given under G.S. 138A-32(e).³

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).

² The definition of “lobbying” includes both “direct” lobbying 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.” G.S. 120C-100(a)(9)a. 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)b.

³ Gifts given by a lobbyist principal pursuant to G.S. 138A-32(e)(10) are only reportable when the value, separately or cumulatively, is more than \$200.

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 Forum appears to be a lobbying⁴ event held for the benefit of the invited designated individuals. Therefore, the entire cost of the Forum will need to be reported to the Secretary of State’s Office. In addition, if it exceeds \$10 per designated individual per day, the fair market value of the food and beverages provided to the attending legislators should be included as reportable expenditures for gifts. G.S. 120C-403(b)(5). All other costs incurred for the Forum should be reported as expenditures for the purpose of lobbying under the proper category. G.S. 120C-403(b)(1) and 120C-401(c).

IV. Conclusion.

Thank you for contacting the State Ethics Commission concerning the Chamber’s Forum. Please do not hesitate to contact the Commission’s staff 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 L. Farmer
Chairman

⁴ See footnote 1.

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).