



STATE ETHICS COMMISSION

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ROBERT L. FARMER
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FORMAL ADVISORY OPINION **UNEDITED WITH APPROVAL OF REQUESTER**

November 19, 2010

Mr. James Kuszaj
Director of Communications and Legal Affairs
Manufacturers and Chemical Industry Council of North Carolina
620 N. West Street, Suite 101
Raleigh, North Carolina 27603

Re: Providing Transportation, Food, and Beverages to Legislators and Legislative Employees
Attending the 2011 Shrimp-a-roo Event
G.S. 138A-32(e)(1) and G.S. 138A-32(e)(6)
AO-L-10-003

Dear Mr. Kuszaj:

On May 30, 2008, you contacted the State Ethics Commission ("Commission"), requesting guidance regarding whether the Manufacturers and Chemical Industry Council of North Carolina ("MCIC"), a lobbyist principal, could provide complimentary transportation, food, and beverages to legislators and legislative employees attending MCIC's June 24, 2008, Shrimp-a-roo event ("the Shrimp-a-roo") in accordance with G.S. Chapter 120C ("the Lobbying Law"). You specifically asked if the gift ban exceptions of G.S. 138A-32(e)(1) and G.S. 138A-32(e)(6) were applicable.

At the time of your 2008 request, Commission staff provided you with verbal advice. Commission staff advised you that the event would comply with the G.S. 138A-32(e)(1) exception but that event-related transportation would not meet an exception. You subsequently requested a formal advisory opinion, but due to the high volume of advisory opinion requests, Commission staff was unable to comply with your request. More recently you requested that the Commission issue a formal advisory opinion as to the planned 2011 "Shrimp-a-roo" event, scheduled for June 2011. This opinion was adopted by the Commission at its November 19, 2010, meeting.¹

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.

I. Brief Conclusion.

The Shrimp-a-roo event meets the G.S. 138A-32(e)(1) gift ban exception, allowing MCIC to provide food and beverage for immediate consumption. However, that exception does not allow the gift of transportation. Accordingly, MCIC may not provide transportation to legislators and legislative employees attending the 2011 Shrimp-a-roo under that exception. Moreover, MCIC's complimentary event transportation will not be generally available to the general public or all other state employees, therefore, the G.S. 138A-32(e)(6) gift ban exception will not apply. Accordingly, MCIC may not provide the attending legislators and legislative employees with complimentary transportation to and from the 2011 Shrimp-a-roo event.

II. The Facts.

MCIC is a lobbyist principal. On June 24, 2008, MCIC hosted its 2008 Shrimp-a-roo event. MCIC invited all members of the North Carolina General Assembly, all legislative staff, and all MCIC members to that event. That event was not open to the general public. In 2008, written invitations were sent out at least 10 days in advance. Free food and beverages were provided to all attendees at the 2008 Shrimp-a-roo event.

MCIC currently plans to host the Shrimp-a-roo event in 2011. As with the 2008 Shrimp-a-roo, the 2011 event will be held at the MCIC offices at 620 N. West Street in Raleigh. The event will not be open to the general public. MCIC plans to invite all members of the General Assembly and all legislative staff. MCIC will have at least 10 individuals associated with MCIC present at the event or, alternatively, must invite all shareholders, employees, board members, officers, members, or subscribers of MCIC. Invitations to the event will be sent out at least 10 days in advance and will include the date, time, and location of the event and a statement that the event is permitted under the Ethics Act.

The MCIC office is approximately 1 mile from the Legislative Building. The MCIC office is in a free standing building located in an area that is not commonly traveled by the general public. Due to limited parking around the MCIC office, MCIC plans to provide a complimentary round-trip shuttle bus service to transport legislators and legislative employees from the Legislative Building, at the corner of West Jones and North Salisbury Streets, to the MCIC office, at the corner of North West and North Harrington Streets. Transportation will be available during the event, from 4:30 p.m. to 8:00 p.m. The event invitation provided to legislators and legislative employees will also inform those invited that transportation will be provided and will provide details as to the location of the bus stop.

The shuttle bus service will be provided by a bus contracted by MCIC. You have indicated that in addition to event attendees, members of the general public will be permitted to ride the event bus at no charge. However, members of the general public will not receive an invitation to or be permitted to attend the 2011 Shrimp-a-roo. MCIC plans to notify members of the general public that the bus is available to them at no charge by hanging a sign on the bus while it operates that day stating it is open to the general public at no charge. MCIC does not plan to provide the general public with any prior notice of the date and hours the bus will be available that day, or of its location, route, or schedule.

III. Applicable Statutory Provisions.

The Lobbying Law prohibits, among other things, a lobbyist or lobbyist principal from giving gifts (including anything of monetary value), directly or indirectly, to a designated individual (legislators, legislative employees, and public servants) unless an exception to the gift ban listed in G.S. 138A-32(e) applies. That gift ban also applies to liaison personnel as to gifts given to legislators and legislative employees. G.S. 120C-501(d).

There are a number of gift ban exceptions listed in G.S. 138A-32(e). Many of the exceptions allow only certain types of gifts to be given under certain conditions. What gifts are allowed often depends on the specific facts and circumstances. Transportation is specifically allowed to be given under certain conditions, depending on the specific facts and circumstances.

G.S. 138A-32(e)(1)c. permits a lobbyist principal or lobbyist to give a designated individual food and beverages for immediate consumption in connection with an event, meeting, or gathering to which:

(a) the entire General Assembly is invited; and

- (1) at least 10 individuals associated with the lobbyist principal or lobbyist actually attend, other than designated individuals or their immediate family members; or
- (2) all shareholders, employees, board members, officers, members or subscribers of the lobbyist principal are notified and invited to attend.

Notice of the event must be from at least one of the hosts or sponsors of the event, in writing,² contain the date, time and location of the event, and be given at least twenty-four (24) hours in advance of the event. The written notice must also state whether or not the event is permitted under G.S. 138A-32(e)(1).³ However, transportation may not be given under this exception.

G.S. 138A-32(e)(6) sets forth an exception for “[a]nything generally made available or distributed to the general public or all other state employees by the lobbyist or lobbyist principal...” The application of this exception depends on the specific facts and circumstances of the general public’s access to or receipt of the gift that is being given to the designated individual.

“Generally made available to the general public” is not specifically defined in G.S. Chapter 138A, the State Government Ethics Act, or the Lobbying Law. However, this phrase is used in G.S. 138A-3(15), which excludes certain items from the definition of “gift.” G.S. 138A-3(15)b. excludes commercial loans if those loans are “generally available to the general public in

² Notice by e-mail qualifies as written notice.

³ The written notice requirements also apply to sub-subdivision c.2 of the gift ban exception of G.S. 138A-32(e)(1).

the normal course of business ...,” as long as the terms of those loans are not more favorable than those t generally available to the public.

Thus, in order for a loan to be deemed to be “generally available to the general public” and thus excluded from the gifts ban, it must be offered under the same terms as it is offered to the general public. Accordingly, when a loan is specifically tailored to benefit a designated individual and is not offered on the same terms to members of the general public, it cannot be considered to be “generally available to the general public.”

IV. Discussion.

The gift ban exception of G.S. 138A-32(e)(1) allows a lobbyist principal to give the gift of food and beverages for immediate consumption in connection with a qualifying event. In 2008, Commission staff advised you that MCIC had met all of the statutorily required criteria, making its 2008 Shrimp-a-roo event a G.S. 138A-32(e)(1) qualify event.⁴ Similarly, the G.S. 138A-32(e)(1)c. exception will allow MCIC to provide food and beverages for immediate consumption at the upcoming 2011 Shrimp-a-roo. This conclusion is based upon the facts that MCIC plans to invite the entire General Assembly. The exception will also require that MCIC have at least 10 individuals associated with MCIC present at the event or, alternatively, must invite all shareholders, employees, board members, officers, members, or subscribers of MCIC. MCIC must also comply with the invitation requirements of that provision. Assuming those requirements are followed, MCIC will be permitted to provide food and beverages for immediate consumption to the legislators and legislative employees attending the 2011 Shrimp-a-roo.

Your primary question pertains to whether MCIC may provide complimentary event transportation to the legislators and legislative employees attending the 2011 Shrimp-a-roo. You asked whether MCIC is allowed to provide transportation under the G.S. 138A-32(e)(1) exception since the transportation will be provided in connection with a G.S. 138A-32(e)(1) qualifying event. The language of G.S. 138A-32(e)(1) establishes that only food and beverages for immediate consumption are allowed to be given under this exception. Therefore, transportation may not be given under this exception.

You also asked whether this complimentary event transportation would be allowed under the gift ban exception of G.S. 138A-32(e)(6). For MCIC to be allowed to provide legislators and legislative employees with this complimentary event transportation under this exception, the transportation needs to be “generally made available to the general public or all other state employees.” Based on the presented facts, the Commission finds that the Shrimp-a-roo event transportation will be specifically tailored to benefit the legislators and legislative employees attending this private event and will provide little to no benefit to the general public. The bus will only operate from 4:30 to 8:00 p.m., the time this private legislative event occurs, on the day of this event. This transportation will be from the legislative building to the MCIC headquarters

⁴ At the time of this event MCIC met the 138A-32(e)(1) gift ban exception in effect on June 24, 2008. Effective August 15, 2008, the definition of “public event” was repealed and the gift ban exception of 138A-32(e)(1) was rewritten. Session Laws 2008-231, section 49 and sections 79 through 82.

and back. This bus route is not a route commonly used by the general public and does not go to a public place or a public event.

In addition, although those invited to the event will receive notice of the transportation in advance of the event, the only sign or communication to the general public that this private bus is available for members of the general public to ride at no charge will be the sign MCIC plans to hang on the side of the private bus stating it is open to the general public at no charge. The general public will not have any prior notice that this bus is available for the general public to ride at no charge on this specific date during these specific times, or of its route. There will be no reason for the general public to looking for or at this private bus, much less reading the sign on it, if such is even readable at a distance.

Based on the presented facts, the Commission has determined that the proposed 2011 Shrimp-a-roo event transportation will not be noticed in a way that will reasonably convey to the general public that the bus is available to the members of the general public at no charge. In addition, allowing the general public to ride a private bus at no charge on a date, at limited times, and on a route that is specifically tailored for the benefit of the designated individuals does not result in this transportation being "generally made available to the general public." Therefore, the proposed Shrimp-a-roo event transportation does not fit within the gift ban exception of G.S. 138A-32(e)(6) and MCIC may not provide this complimentary transportation to the attending legislators and legislative employees.

V. Closing.

Thank you for contacting the State Ethics Commission concerning these issues. 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 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 and must relate to real or reasonably anticipated fact settings or circumstances. G.S. 120C-102(a). Formal advisory opinions confer limited civil immunity upon a requester who follows the advice given. G.S. 120C-102(a1).

Once issued by the Commission, formal advisory opinions are published in an edited 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. 120C-102(d1).