



## STATE ETHICS COMMISSION

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

ROBERT L. FARMER  
CHAIRMAN

PERRY Y. NEWSON  
EXECUTIVE DIRECTOR

### **FORMAL ADVISORY OPINION – EDITED FOR PUBLICATION**

February 10, 2012

Re: Registered Lobbyist Filing Notice of Candidacy and Running for State Elected  
Legislative Office  
AO-L-12-001

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Dear Requester:

This is in response to your request for a formal advisory opinion. You have requested advice as to whether a registered lobbyist can file a notice of candidacy and continue to lobby for pay while he or she runs for a state legislative office. This formal advisory opinion was adopted by the Commission at its February 10, 2012, meeting.<sup>1</sup>

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

A registered lobbyist may file a notice of candidacy for a state elected legislative office and continue to lobby while he or she runs for a state legislative office. If the lobbyist is elected to office in the 2012 election, the lobbyist will need to cease lobbying and terminate his or her registration as a lobbyist effective on or before December 31, 2012, as the legislative office term will commence on January 1, 2013. If the lobbyist is not elected he or she can continue to lobby and can re-register as a lobbyist in 2013 as the lobbyist will not have been “in office” so there will be no “cooling off” period applicable to him or her under the Lobbying Law.

#### **II. The Facts.**

A registered lobbyist would like to run for a state legislative office in the 2012 election and continue to lobby while he or she seeks office. Though the lobbyist cannot file his or her notice of candidacy with the State Board of Elections until February 13, 2012, the lobbyist would like to announce his or her intention to run for legislative office and commence fund-raising as soon as possible.

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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.

### **III. Applicable Statutory Provisions and Constitutional Provisions.**

The Lobbying Law, G.S. Chapter 120C, defines “legislator” to include: (1) a member or presiding officer of the General Assembly; (2) an individual elected or appointed a member or presiding officer of the General Assembly prior to taking office; (3) an individual who has properly filed a notice of candidacy for such office with the Board of Elections; and (4) an individual who has been properly nominated for such office. G.S. 120C-100(a)7; 138A-3; and 120C-104. The Lobbying Law prohibits, among other things, a legislator from registering as a lobbyist while in office or before the later of the close of session<sup>2</sup> in which the legislator served or six months after leaving office. G.S. 120C-304(a).

Pursuant to the State Constitution, the term of a legislator shall commence on the first day of January following his or her election. Art II, § 9, N.C. Const. The Constitution also requires “each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.” Art. II, §12, N.C. Const.

### **IV. Application of the Lobbying Law to Your Question.**

You have asked whether the Lobbying Law prohibits a registered lobbyist from filing a notice of candidacy and running for a state elected legislative office while he or she continues to lobby for pay. G.S. 120C-104 establishes that when an individual properly files a notice of candidacy for a state legislative office with the State Board of Elections that individual will be considered a “legislator” under the Lobbying Law, and certain requirements and prohibitions will immediately apply to that individual. However, the G.S. 120C-304(a) restriction will not apply to the individual unless he or she is elected.

G.S. 120C-304(a) prohibits a legislator from registering as a lobbyist (1) while the legislator is in office; or (2) within six months of the close of the session or six months after leaving office, whichever is later. This restriction does not apply until the legislator is “in office” or has been in office within the last six months. Clearly, one is not “in office” until he or she has been elected. The question that needs to be determined is, when is an elected legislator deemed to be “in office.” The Lobbying Law does not address this issue, nor does the Ethics Act. However, this issue is addressed in the North Carolina Constitution.

Pursuant to the North Carolina Constitution, a legislator’s term of office commences on the first day of January following his or her election. Art II, § 9, N.C. Const. The State Constitution also requires each member of the General Assembly, “before taking his or her seat,” to take an oath or affirmation that he or she will support the State Constitution. Art. II, § 12,

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<sup>2</sup> The General Assembly is deemed “in session” from the date set by law or resolution that the General Assembly convenes for a regular session until the General Assembly adjourns sine die or recesses or adjourns for more than 10 days; and in extra session from the date the General Assembly convenes until it adjourns sine die or recesses or adjourns for more than 10 days. N.C.G.S. 120C- 100(a)(4).

N.C. Const. Considering the language of these two sections, Section 9 establishes that an elected legislator is officially in office as of the first of January the year immediately following the election based on his/her term officially commencing on that date. The meaning and application of Section 12 is less clear with its language of “before taking his seat,” a legislator shall take an oath. However, a reasonable interpretation of this language is that a legislator could not officially take his seat in the General Assembly prior to his term commencing. This interpretation is consistent with the oath of office usually occurring after the first of the year.

Applying the applicable statutes and Constitutional provisions to your question, the Commission has determined that the Lobbying Law does not prohibit a registered lobbyist from filing a notice of candidacy and running for a state elected legislative office while he or she continues to lobby for pay. Relying on Section 9 of the Constitution, the Commission concludes that if a lobbyist is elected to a state legislative office in 2012, the lobbyist will need to cease lobbying for pay and terminate his or her registration as a lobbyist on or before December 31, 2012, as the lobbyist will commence his or her legislative term and be “in office” on January 1, 2013. If the lobbyist is not elected, the lobbyist will not have been “in office” and he or she may continue to lobby for pay through the end of the year and may re-register as a lobbyist on January 1, 2013.