



# North Carolina General Assembly Legislative Ethics Committee

## PUBLISHED EDITED ADVISORY OPINION OF THE LEGISLATIVE ETHICS COMMITTEE

**AO-LEC-10-001**

### **Legislator Acceptance and Reporting of Trip Expenses – G.S. 138A-32(c) and G.S. 138A-24(a)(8)**

#### **Questions:**

- (1) May a legislator participate in a trip organized by a foreign country cultural center located in North Carolina where the legislator pays for the expenses of traveling to the foreign country and businesses in the foreign country pay for lodging, food, transportation, and fees for cultural visits?
- (2) Are the expenses paid by the foreign businesses "for the purposes of lobbying" and therefore required to be reported?
- (3) If the expenses must be reported, who is responsible for reporting them?

#### **Opinion:**

Neither the cultural center nor the businesses are registered lobbyists or lobbyist principals in North Carolina. Therefore, the gift ban does not prohibit a legislator from accepting those expenses. (G.S. 138A-32(c)).

Broadly stated, both Chapter 138A and Chapter 120C require that someone (either a legislator or a person who is not a lobbyist or lobbyist principal) must report instances where something with a total value of over \$200 per calendar quarter is given to a legislator when either of the following apply: (1) a reasonable person would conclude that the thing was given "for the purpose of lobbying," (G.S. 138A-24(a)(8)), or (2) the reportable expenditures are made "for the purpose of lobbying" (G.S. 120C-800(a)).

In AO-E-07-004, the Legislative Ethics Committee considered an almost identical situation. It determined that "because of the breadth of the definition of goodwill lobbying, if the legislator is invited on the trip solely

because of the legislator's status as a legislator, the Center's payment of the legislator's expenses *could* be considered to be for the purpose of developing goodwill." (emphasis added). The Legislative Ethics Committee went on to say that if the legislator was being invited "as a participant of a sister cities or other program in which the legislator participated outside of the legislator's legislative duties, the expenses would not be considered to be for the purposes of lobbying and would therefore not have to be reported."

It should be noted that in AO-E-07-0004, the Legislative Ethics Committee never expressly stated whether or not the legislator was required to report the expenditures. Although the opinion intimated that answer might turn on the legislator's status as a legislator, it should not be read to have created a bright line or "but for" test when determining whether the expenses were being paid "for the purpose of lobbying." Instead, the critical factor for determining whether the expenditures were made for the purpose of lobbying is whether or not the person making the reportable expenditure did so with the intent to influence current or future legislative or executive action, or both.

G.S. 120C-100(9) defines "lobbying" in two ways:

- a. *Influencing or attempting to influence* legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.
- b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that designated individual's immediate family *with the intention of influencing* current or future legislative or executive action, or both. (emphasis added)

Both definitions require that there be the intent to influence legislative or executive action, or both. The intent to influence requirement is implicit with regard to direct lobbying, but it is expressly stated when it comes to goodwill lobbying.

Even if a legislator is invited to participate in the trip *solely* because of the legislator's position, whether the expenses must be reported or not turns on whether the person paying the expenses intends to influence current or future legislative or executive action, or both. Determining the intent of persons and businesses in a foreign country is best left to the legislator, rather than resolving the issue by the application of a status-based test.

The answer to the question "who reports the expenditure" depends on where the donor is located. If the donor is outside North Carolina (and the legislator is outside of North Carolina when accepting the expenditure),

then the legislator must report. G.S. 120C-800(b). If the donor is inside North Carolina, then the donor must report. G.S. 120C-800(a). In this instance, because the donors are outside North Carolina and the costs will be paid while the legislator is outside North Carolina, the legislator must report those expenditures either on the legislator's 2011 SEI, or to the Secretary of State's Office within 20 days of the close of the calendar quarter in which the reportable expenditures were accepted.