

CONFIDENTIAL INFORMAL ADVISORY OPINION

Sent via E-mail to dallison@pefnc.org per Darrell Allison's instructions

To: Darrell Allison
President and Lobbyist
Parents for Educational Freedom in North Carolina

From: Susan R. Lundberg
Lobbying Director
State Ethics Commission

Date: March 31, 2008

Re: Spring 2008 Trip to Florida regarding Florida's McKay Scholarship Special Needs Program

Per your request, I am sending you an informal written advisory opinion regarding the Parents for Educational Freedom in North Carolina's (PEFNC) trip to Florida to visit and learn about Florida's Special Needs Schools, also known as McKay Scholarship Schools. The trip is scheduled to commence April 17, 2008, and terminate on April 18, 2008, including travel time. PEFNC wants to pay the expenses for certain legislators to attend this trip to Florida. Legislators are "designated Individuals" under the Lobbying Law, N.C.G.S. § 120C, and are covered under the Ethics Act, N.C.G.S. § 138A. The term "designated Individuals" also includes legislative employees and public servants as defined under N.C.G.S. § 138A and N.C.G.S. § 120C. PEFNC is a lobbyist principal, therefore, it is prohibited from giving a gift (defined under N.C.G.S. 138A-3(15) as anything of monetary value, unless specifically excluded) to a designated individual (DI) and a DI is prohibited from accepting a gift from a lobbyist principal unless one of the gift ban exemptions of N.C.G.S. § 138A-32(e) is applicable or another provision of N.C.G.S. § 138A or N.C.G.S. 120C allows such.

There is a gift ban exemption for reasonable actual expenditures of a DI (a legislator, legislative employee and public servant) for food, beverages, registration, travel, lodging, other incidental items of nominal value and entertainment (the entertainment must be incidental to the principal agenda of the meeting), in connection with a DI's attendance at an educational meeting for purposes primarily related to the public duties and responsibilities of the DI as long as certain conditions are met. N.C.G.S. § 138A-32(e)(3)i. **All of the following conditions must also be met for the gift ban of N.C.G.S. § 138A-32(e)(3) to be applicable:**

- (a) a lobbyist principal must pay for the DI's expenditures;
- (b) the educational meeting must be attended by at least 10 or more

participants, have a formal agenda, and notice of the meeting must be given at least 10 days in advance of the meeting (the notice must be in writing, e-mails qualify as written, and state the date(s), time, and location of the meeting, identify the meeting, and identify the sponsor(s) of the meeting);

- (c) any food, beverages, transportation, or entertainment must be provided to all of the meeting attendees or to defined groups of 10 or more attendees;
- (d) any entertainment must be incidental to the principal agenda of the meeting; and
- (e) if a DI is a speaker or a member of a panel at the meeting, the DI speaker or panel member must be a bona fide speaker or panel member.

N.C.G.S. § 138A-32(e)(3).

Based on the facts you have provided to me, including the agenda for the entire trip, the names of the participants planning on attending the trip which total more than 10, the names of the speakers and their credentials, and applying the Commission's non-exclusive criteria for educational meetings, I have determined that the PEFNC's trip to Florida to learn about the Florida McKay Scholarship Schools is an educational meeting pursuant to N.C.G.S. § 138A-32(e)(3)i. I have also determined that the nine legislators (Senator Malcolm Graham, Representative Laura Wiley, Representative Paul Stam, Representative Marvin Lucas, Representative Rick Glazier, Representative Larry Bell, Senator Eddie Goodall, Representative Pryor Gibson, and Representative William Wainwright), for whom the PEFNC would like to pay the trip expenses, are attending this educational trip to Florida to learn about the Florida McKay Scholarship Schools for purposes primarily related to each of their public duties and responsibilities. **Therefore, pursuant to N.C.G.S. § 138A-32(e)(3)i, PEFNC may pay for the reasonable actual expenditures of each of these named legislators for food, beverages, travel, lodging, and other incidental items of nominal value related to this trip and each named legislator may accept such as long as the PEFNC also meets all of the conditions of (a) through (e) listed above.**

It is my understanding that: (1) there are no registration fees involved to attend this trip; (2) all trip attendees are being provided the same options for food and beverages, and the same type of transportation; (3) PEFNC is not paying for any entertainment for any trip attendees; and (4) PEFNC is the sole sponsor of this trip and has already sent out a written notice of the trip that contained all of the notice requirements specified above in condition (b).

In addition, it is my understanding that Representatives Rick Glazier and Paul Stam are speaking as part of the formal agenda. Representatives Glazier and Stam will be presenting a 45 minute overview of North Carolina House Bill 388: Tax Credits for Children with Special Needs (H.B. 388), of which Representative Stam was one of the main sponsors. Based on these facts, I have determined that Representative Glazier and Representative Stam are bona fide speakers of the agenda for this trip.

PEFNC will need to report the total amount it spends for this trip on its lobbyist principal report that it is required to file with the Secretary of State's Office because, as we discussed, as well as being educational, this trip is also to influence these participating legislators to support legislation in North Carolina similar to the Florida legislation that established tax credits for these special needs schools, known as the McKay Scholarship Schools. Therefore, the trip meets the definition of lobbying under N.C.G.S. § 120C-100(a)(9) and involves both direct and goodwill lobbying. Accordingly, all of the trips expense are a type of "reportable expenditure" pursuant to N.C.G.S. § 120C-100(a)(12), or compensation to PEFNC's lobbyist(s). How each expense is reported by PEFNC on its lobbyist principal report depends on what type of reportable expenditure it is, or if it is compensation paid to its lobbyist(s).

The amount of trip expenses PEFNC pays for each of these legislators is a gift to the receiving legislator and must be reported on its lobbyist principal report that it is required to file with the Secretary of State's Office for this time period covered by this trip. PEFNC's payment of each of the legislator's trip expenses to Florida to learn about the Florida McKay Scholarship Schools is a reportable expenditure with respect to each legislator because **a gift to a legislator is a reportable expenditure.** PEFNC will need to report the trip expenses it pays for each legislator as gifts given under N.C.G.S. § 138A-32(e)(3)i and it must list the following on its lobbyist principal's report:

- (1) the fair market value of each expense PEFNC paid for on behalf of each legislator;
- (2) a description of each expense PEFNC paid for on behalf of each legislator; and
- (3) the name of each legislator for whom PEFNC paid the allowed expenses.

N.C.G.S. § 120C-400, -401, and -403.

All of the other trip expenses that PEFNC pays, such as PEFNC's staff members expenses to attend the trip and the wages PEFNC pays to its lobbyist(s) for his/her time on this trip, need to be reported as reportable expenditures made for the purpose of lobbying, or if applicable, compensation for its lobbyist(s).

A reportable expenditure is defined as:

any of the following 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:

- a. any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars (\$10.00) per designated individual per calendar day;¹
- b. a contract, agreement, promise, or other obligation whether or not legally enforceable.

N.C.G.S. § 120C-100(a)(12). Accordingly, to be a reportable expenditure, the expenditure for which the lobbyist principal is reimbursing the lobbyist must have been directly or indirectly made to, at the request of, for the benefit of, or on behalf of a designated individual or their immediate family member. It is my understanding that this trip would not take place if legislators were not attending and that PEFNC staff members are attending to educate themselves for personal knowledge and to have the ability to share this knowledge with and educate other North Carolina policy makers, including legislators, legislative employees and public servants. Based on my understanding, this would result in benefiting other DIs, resulting in the PEFNC's payment of the staff members' trip expenses being reportable expenditures for the purpose of lobbying and reportable under N.C.G.S. § 120C-403(b)(1).

A lobbyist principal is required to report all reportable expenditures that fit any of the categories listed in N.C.G.S. § 120C-403(b)(1). A lobbyist principal is also required to report all compensation it pays to its lobbyist(s) for performing his or her lobbying duties and responsibilities. Based on the definition of "compensation" applicable to N.C.S.G. § 120C,² compensation may include

¹ In determining whether greater than ten dollars (\$10.00) of value has been given to a designated individual per calendar day, the cumulative value of all that is given to a designated individual and any of his or her immediate family members in one calendar day is the amount that is used.

² The term "compensation" is not defined in N.C.G.S. Chapter 120C, but it is defined in N.C.G.S. Chapter 138A, the Ethics Act. N.C.G.S. § 120C-100(b) specifically states that, except as otherwise defined in this section, the definitions in Article 1 of N.C.G.S. Chapter 138A apply to N.C.G.S. Chapter 120C. N.C.G.S. § 138A-3(6) defines "compensation" as any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This definition specifically excludes properly received and properly reported campaign contributions. N.C.G.S. § 138A-3(6).

reimbursements a lobbyist principal paid to a lobbyist for direct expenses the lobbyist incurred in the course of performing his or her lobbying duties and responsibilities.³ The facts of each situation will determine what category of N.C.G.S. § 120C-403(b) the lobbyist principal will report the reimbursement under in its report. For example, if the lobbyist is reimbursed for a "reportable expenditure," the reimbursement would be reported under sub-subsections (1), (4), or (5), depending on which of these sub-subsections describes the reportable expenditure.

Pursuant to N.C.G.S. § 120C-403(b), a lobbyist principal's report must list:

- (1) reportable expenditures relating to lobbying;
- (2) solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars (\$3,000);
- (3) compensation for lobbying paid to all lobbyists during the quarter;
- (4) reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures; and
- (5) all reportable expenditures for gifts given under N.C.G.S. § 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under N.C.G.S. 138A-32(e)(10) with a value of more than two hundred dollars (\$200.00).

N.C.G.S. § 120C-403(b).

With this in mind, remember that once the General Assembly is in session, if a lobbyist principal incurs reportable expenditures with respect to lobbying legislators or legislative employees during that month, it is required to file a monthly report, in addition to its quarterly report. Each report that is required to be filed with the Secretary of State's Office is due within 10 business days after the end of the reporting period.

I hope this informal advisory opinion has answered your questions regarding PEFNC's Spring 2008 trip to Florida to learn about Florida's McKay Scholarship

³ The prior version of the Lobbying Law, Article 9A of N.C.G.S. Chapter 120, defined both "compensation" and "expenditure" to include reimbursements of a certain amount. N.C.G.S. § 120-47.1(1). This past law required lobbyist principals to report each expenditure in excess of \$25.00 made in connection with lobbying and all compensation paid to lobbyists in connection with their lobbying activities. N.C.G.S. § 120-47.7(b)

Schools and given you guidance on how PEFNC should report the expenses of this trip on its lobbyist principal report that it is required to file with the Secretary of State's Office. If you should have any questions about this informal advisory opinion, please feel free to contact me.

Please note that this confidential informal advisory opinion, like all other informal advisory opinions, does not confer immunity.

If you want a formal advisory opinion regarding PEFNC's Spring 2008 trip to Florida, please send the Ethics Commission a written request for such. The written request may be sent, directed to my attention, by email to: ethicscommission@ncmail.net; by mail to: State Ethics Commission, 1324 Mail Service Center, Raleigh, NC 27699-1324; or by hand-delivery to State Ethics Commission, 116 West Jones Street, Suite G-068, Raleigh, NC.

Sincerely,

Sue Lundberg

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Ethics Commission
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