



*State of North Carolina  
Department of the Secretary of State*

ELAINE F. MARSHALL  
SECRETARY OF STATE

Joal H. Broun  
Lobbying Compliance Director

December 15, 2014

**Hand Delivery**

Honorable George L. Wainwright, Jr.  
Chair  
State Ethics Commission  
1324 Mail Service Center  
Raleigh, NC 27699-1324

**RE: Request for an Advisory Opinion Regarding Whether Sexual Favors or Sexual Acts between a lobbyist and a designated individual constitute a gift or a thing of value provided by a lobbyist or a lobbyist principal to the designated individual and, thereby, fall within the Reportable Expenditure or Gift definitions of N.C.G.S. § 120C-100(a)(12) and G.S. § 138A-3(15)**

Dear Justice Wainwright,

**Request**

Pursuant to N.C.G.S. § 120C-102, the N.C. Department of the Secretary of State requests and seeks an interpretation from the State Ethics Commission of whether sexual favors or sexual acts between a lobbyist and a designated individual are gifts or things of value provided by the lobbyist or lobbyist principal which must be reported on the quarterly or monthly lobbying expense report.

**Background**

In order to clarify this request for the Ethics Commission, we have provided a list of statutes that we believe may be helpful in the analysis of our question.

1. Duty to Report

Upon registration as a lobbyist, the lobbyist has the obligation to file a report for any period in which they were registered. N.C.G.S. §§ 120C-401, 402. In this regard, the lobbyist has the duty to include all reportable expenditures. N.C.G.S. § 120C-400.

## 2. Applicable definitions

The Lobbying Act defines lobbying as:

- (9) Lobby or Lobbying. - Any of the following:
- 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.

The terms "lobby" or "lobbying" do not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

The Lobbying Act also defines the phrase "reportable expenditure" as

- Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual ...:
- 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 single calendar day.
  - b. A contract, agreement, promise, or other obligation whether or not legally enforceable.

The Ethics Act defines "gift" as "[a]nything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3). N.C.G.S. § 138A-3(15).<sup>1</sup>

The North Carolina General Statutes define the phrase "sexual act" as "cunnilingus, fellatio, anilingus, or anal intercourse, but does not include vaginal intercourse." N.C.G.S. § 14-27.1(d). It is also "the penetration, however slight, by any object into the genital or anal opening of another person's body..." *See Id.* In addition, "sexual contact" is defined as "(i) touching the sexual organ, anus, breast, groin, or buttocks of any person, (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person." Also, N.C.G.S. § 14-203(5) defines prostitution as "[t]he performance of, offer of, or agreement to perform vaginal intercourse, any sexual act as defined in G.S. 14-27.1, or any sexual contact . . ., for the purpose of sexual arousal or gratification for any money or other consideration."

### Previous Advisory Opinions

The Commission has issued several advisory opinions regarding what is reportable under the Lobbying Act when a lobbyist is in a personal relationship with the designated individual and

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<sup>1</sup> N.C.G.S. § 120C-100(b) Except as otherwise defined in the Lobbying Act (Chapter 120C), the definitions in Article 1 of Chapter 138A of the General Statutes apply.

the lobbyist provides gifts to the designated individual under circumstances that a reasonable person would conclude that the gifts were not given for the purpose of lobbying. First, a lobbyist asked if he could give a former classmate and friend, now a legislator, a ride to the airport. The Commission determined that “[b]ased on your fraternal and personal relationship with this legislator, which is not related to the legislator’s public service or position, and the fact that you were giving the ride based on this relationship, and not for the purpose of lobbying, the G.S. 138A-32(e)(10) gift ban exception applied.” See Article 3 Gift Ban – *Lobbyist Giving Legislator a Free Ride; Gift Ban Exception for Personal Relationship and Reporting Obligations*, AO-L-07-006. Consequently, the Commission determined that the lobbyist could give the ride but the lobbyist had to report the value of the ride on the lobbyist reports that he had to file with the Secretary of State’s Office for the period in which the lobbyist gave the ride to the legislator. N.C.G.S. § 120C-402. *Id.*

In another advisory opinion, a lobbyist asked the Commission if the lobbyist had to report inaugural tickets given to him by the lobbyist principal that he would then give to a designated individual with whom he had a pre-existing relationship. That is, the relationship existed prior to the person becoming a designated individual. Under those circumstances, the lobbyist had to report to the Secretary of State the value of the inaugural tickets because the tickets were valued at greater than ten dollars. The Commission stated that the lobbyist had to report “all gifts given to the designated individual if the gift has a fair market value greater than ten dollars.” *Lobbyist Giving Event Tickets to Designated Individual with Whom Lobbyist Has Personal Relationship*, A) L-13-002.

#### Assumptions For Purposes of this Request

Two persons, one lobbyist and one a designated individual, are not married to each other and are over the age of majority. The Lobbying Act requires that a lobbyist report all gifts to designated individuals on the lobbyist expense report. The Ethics Act defines gift as “[a]nything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3).<sup>2</sup>”

1. Do sexual favors or sexual acts that a person provides to a designated individual to lobby or to develop goodwill or both on behalf of another, trigger the registration obligation?
2. Are sexual favors or sexual acts that a registered lobbyist or a registered lobbyist principal provides to a designated individual for the purpose of lobbying or to develop goodwill a reportable expenditure as defined by the Lobbying Act that must be reported?
3. Are sexual favors or sexual acts that a registered lobbyist or a registered lobbyist principal provides to a designated individual for the purpose of lobbying or to develop goodwill a gift as defined by the Ethics Act that must be reported?

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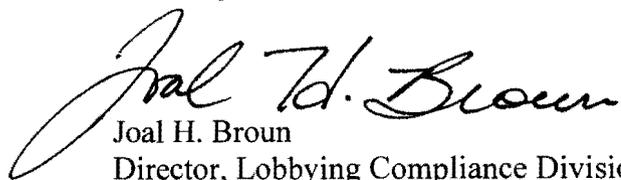
<sup>2</sup> 1) A person seeking to do business with the public servant’s employing entity; 2) A person who is engaged in activities that are regulated or controlled by the public’s servant employing entity; 3) A person who has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant’s official duties.

4. Are sexual favors or sexual acts that a lobbyist or a lobbyist principal provides not for the purpose of lobbying a gift as defined by the Ethics Act that must be reported?
5. Is a designated individual who receives sexual favors or sexual acts that a lobbyist or a lobbyist principal provides outside North Carolina obligated to report such sexual favors or sexual acts as required by N.C.G.S. § 120C-800?

Conclusion

Therefore, we request that the Ethics Commission provide an interpretation of whether a sexual favor or sexual act provided to a designated individual by a lobbyist or lobbyist principal is a reportable expenditure or a gift reportable under the Lobbying Act. Finally, pursuant to N.C.G.S. § 120C-102(d), we also request that the State Ethics Commission publish the final advisory opinion to the web unredacted.

Sincerely,



Joal H. Broun  
Director, Lobbying Compliance Division

Cc: Perry Newson, Executive Director, State Ethics Commission