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## Ethics and Lobbying

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After substantially reforming ethics and lobbying laws in 2006, the General Assembly in 2007 made a series of changes to the State Government Ethics Act, the Legislative Ethics Act, and lobbying laws. In response to media reports surrounding legislative scandals, it enacted new laws requiring the public disclosure of contributors to legal defense funds and requiring elected officials convicted of certain crimes to forfeit their pensions.

### **Continuing Ethical Scandals**

The enactment of the State Lottery in 2005 brought to light questionable conduct by a number of participants. In 2006 much of the focus was on the activities of lottery commissioner Kevin Geddings, who had worked as a consultant for Scientific Games, one of two vendors competing for the lottery contract. The media reported that Geddings failed to disclose the \$24,500 he had been paid by the vendor in 2005 on a statement of financial interest he filed with the North Carolina Board of Ethics. Geddings resigned from the Lottery Commission and in 2007 was sentenced to four years in federal prison and fined \$25,000 for five counts of mail fraud in addition to being convicted of state charges. Also brought to light was the questionable conduct of lobbyist Meredith Norris, a former member of Speaker of the House Jim Black's legislative staff and his campaign's unpaid political director. In 2006 Norris was found guilty of a misdemeanor lobbying law violation for failing to register as a lobbyist for Scientific Games.

The investigations surrounding the State Lottery uncovered wrongdoing in other areas as well, including former Representative Michael Decker's receipt of "blank payee" campaign contributions, his personal use of campaign contributions, and his dealings with Speaker Black. Decker was sentenced in April 2007 to four years in prison for soliciting and accepting \$50,000 from Speaker Black and a job for Decker's son in return for agreeing to switch from the Republican to the Democratic Party in early 2003.

As more information came to light, 2007 brought more scrutiny of Speaker Black's conduct. Black allegedly accepted cash from three chiropractors and deposited the funds into his personal account while advancing legislation the chiropractors supported. S.L. 2007-24 (H 502) repeals a law that resulted from a provision Black inserted into the 2005 budget prohibiting an insurer from

charging a co-payment for visits to a chiropractor that was higher than the co-payment charged for a visit to a primary care physician for comparable treatment.

In February, Black resigned from the House of Representatives and pled guilty to public corruption. In July, he was sentenced to five years and three months in federal prison as well as eight-to-ten months in prison on state corruption charges, to be served concurrently with his federal sentence.

These events undoubtedly motivated the passage of legislation aimed at the conduct of public officials. New laws enacted during the 2007 session addressed (1) public disclosure of contributors to legal defense funds; (2) forfeiture of pensions by elected officials convicted of state or federal felonies related to corruption or election law fraud; and (3) amendment of existing ethics legislation and current laws, including giving the public greater access to ethics complaint hearings.

## **Policy Changes to Ethics and Lobbying Laws**

S.L. 2007-348 (H 1111) makes both clarifying and substantive changes to the State Government Ethics Act (G.S. Chapter 138A), the Legislative Ethics Act (Article 14 of G.S. Chapter 120), and the lobbying laws (G.S. Chapter 120C).

### **Interpretation of Lobbying Laws**

Under the 2006 reform of the ethics and lobbying laws, the State Ethics Commission administered ethics laws, and the Legislative Ethics Committee governed legislative ethics. The State Ethics Commission interpreted lobbying laws while the Secretary of State's Office administered lobbying laws.

Some of the most controversial changes involved the scope of the duties of the Secretary of State's Office, versus those of the State Ethics Commission. Effective July 1, 2007, S.L. 2007-348 amends G.S. 120C-101 to require the commission to adopt rules and definitions necessary to interpret the lobbying laws and to adopt rules necessary to administer the lobbying laws, with the exception of the laws concerning lobbyist registration (Article 2), reporting (Article 4), and miscellaneous provisions including the reporting of expenditures made by individuals exempted from the chapter (Article 8). The duty to adopt rules for and to administer these articles now lies with the Secretary of State. G.S. 120C-102 was also amended to allow the State Ethics Commission staff to share information related to requests for advisory opinions with the Secretary of State's staff. The commission is now also required to provide an unedited copy of each advisory opinion to the Secretary of State at the time the opinion is provided to the individual requesting the opinion.

### **Public Disclosure**

Under the 2006 reforms, G.S. 120-103.1(i)(3) and G.S. 138A-12(i)(4) provided that hearings held by the Legislative Ethics Committee and the State Ethics Commission were held in closed session unless the public servant requested an open hearing. S.L. 2007-348 amends these statutes to require hearings to be open to the public, with the exception of hearings for matters that would be considered in closed session under the Open Meetings law, matters involving minors, and matters involving a personnel record. The act also amends the laws concerning the confidentiality of documents arising from an ethics complaint that is before the committee or commission. G.S. 120-103.1 now provides that once a Legislative Ethics Committee hearing begins, the complaint, the response, the committee's report to the House of Representatives or Senate, and other documents at the hearing that are not otherwise confidential are public records. If a hearing is not held, then the complaint, response, and committee report become public when the committee recommends sanctions to the house of which the legislator is a member.

G.S. 138A-12(n) now provides that once a State Ethics Commission hearing begins, the complaint, response, and other documents at the hearing that are not otherwise confidential are public records. If a hearing is not held, at the time that the commission recommends sanctions to the employer, the complaint and response are made public.

The Legislative Ethics Committee is also required to redact advisory opinions for publication purposes and is allowed to distribute redacted opinions before the opinions are published by the State Ethics Commission under amended G.S. 120-104. S.L. 2007-348 amends G.S. 120-104 and G.S. 120C-102 to allow an individual requesting an advisory opinion from the Legislative Ethics Committee or the State Ethics Commission to withdraw the request at any time before an advisory opinion is issued.

### **Lobbyists**

Effective October 1, 2007, S.L. 2007-348 amends the definition of *lobbyist* to remove the requirement that the individual be “employed by a person for the intended purpose of lobbying.” Under amended G.S. 120C-100(a)(10)d., whether an employee is considered a lobbyist depends on whether a significant part of an employee’s duties includes direct lobbying as well as goodwill lobbying.

The act also amends G.S. 120C-700(3) to specifically include individuals appointed as county or city attorneys as employees of the county or city, thereby exempting those individuals from the lobbying laws when acting on matters related to their office.

### **Gift Ban**

S.L. 2007-348 amends G.S. 120C-303 effective December 1, 2007, to provide that the ban on gifts from lobbyists and lobbyists’ principals applies to knowingly giving gifts. The gift ban is also expanded to include knowingly giving a gift to a third party, intending that the gift be given to a designated individual. G.S. 138A-32 is amended accordingly to prohibit public servants, legislators, and legislative employees from accepting gifts from a third party, knowing that the third party obtained the gift from a registered lobbyist or lobbyist’s principal and that the lobbyist or principal intended the individual to be the recipient of the gift. G.S. 120C-303 also exempts gifts given by a lobbyist or lobbyist principal to a nonpartisan state, regional, national, or international legislative or executive branch organization. Effective October 1, 2007, S.L. 2007-348 amends G.S. 120C-401 to exclude from reporting requirements any gift that has been paid for or returned within the reporting period. If the gift is reported, the payment or return of the gift is required to be reported by the lobbyist or lobbyist’s principal on the next report due. The definition of *gift* in G.S. 138A-3 is amended to exclude the following expressions of condolence: (1) a sympathy card, letter, or note; (2) flowers; (3) food or beverages for immediate consumption; and (4) donations up to \$200 per death per donor to a religious organization, charity, or the state.

### **Statements of Economic Interest**

S.L. 2007-348 amends G.S. 138A-3 to exclude blind trusts from vested trusts that must be disclosed on statements of economic interest. A trust is blind if (1) the covered person and the person’s immediate family know nothing about the trust’s income and (2) the trustee, who has sole discretion over the management of the trust, is independent of the covered person and the person’s immediate family. G.S. 138A-3 is also amended to expand the definition of *business with which associated* to include businesses for which the covered person, or a member of the covered person’s immediate family, is a lobbyist.

## Technical Changes to Ethics and Lobbying Laws

S.L. 2007-347 (H 1110) makes various technical corrections and clarifying changes to G.S. Chapter 138A (the State Government Ethics Act), Article 14 of G.S. Chapter 120 (the Legislative Ethics Act), and G.S. Chapter 120C (Lobbying). The act recodifies G.S. 120C-302, campaign contributions prohibition, from the lobbying law into Article 22A of G.S. Chapter 163, regulating contributions and expenditures in political campaigns. Effective October 1, 2007, it amends G.S. 120C-500 to add community colleges and to exempt agencies and boards with no staff from the requirement that liaison personnel be designated for lobbying. G.S. 138A-3 is amended to clarify that the definition of *nonprofit corporation or organization with which associated* does not include a state or local government entity. G.S. 138A-14 now requires legislative employees to attend refresher ethics education every two years, which is already required for lobbying education and for other covered persons. S.L. 2007-347 also amends G.S. 138A-23 to clarify that statements of economic interest of persons confirmed by the General Assembly to appointment as public servants are public when the appointment is announced and that statements of economic interest of public servants elected to positions by the General Assembly are not public records until the public servant is sworn into office. The act enacts new G.S. 138A-38(b), providing that the exceptions to the conflict of interest laws under the State Government Ethics Act do not permit actions that are otherwise prohibited by law.

## Legal Expense Funds

Contributions to political committees controlled by candidates are regulated and disclosed according to Article 22A of G.S. Chapter 163. In general, only individuals and political committees are allowed to contribute to candidate campaign funds. Contributions are limited to \$4,000 per election cycle; contributions in an amount more than \$50 are required to be made by check or a non-cash method, and the contributor's information is reported to the State Board of Elections. Contributions to legal expense funds, however, have not been regulated or required to be disclosed. Effective January 1, 2008, S.L. 2007-349 (H 1737) enacts new Article 22M of G.S. Chapter 163 to regulate legal expense funds. Violations of the new article are a Class 1 misdemeanor.

New Article 22M requires an elected officer, defined as an individual in public office or seeking public office in North Carolina, to create a legal expense fund if the individual is given a contribution by someone other than a spouse, parent, or sibling to fund an existing or potential legal action taken by or against the elected officer in the officer's official capacity. Once a legal expense fund is required, contributions from family members must also be reported. The following are not considered contributions: (1) the provision of legal services to an elected officer by the state or any of its political subdivisions when those services are authorized or required by law or (2) the provision of free or pro bono legal advice or legal services, as long as any costs incurred or expenses advanced for which clients are liable under other provisions of law are considered contributions. A legal action is defined to include formal disputes in judicial, legislative, or administrative forums as well as an investigation conducted before any formal proceedings begin. The requirement to establish a legal expense fund does not apply to contributions that are made to the state or any of its political subdivisions.

Only one legal expense fund can be created by or for an elected officer for the same legal action; actions arising out of the same set of transactions are considered the same legal action. A legal expense fund created for one legal action or potential legal action may be kept open for subsequent legal actions or potential legal actions.

Legal expense funds must have an appointed treasurer, who is trained by the State Board of Elections. The treasurer is required to keep accounts of contributions and expenditures and file organizational and quarterly reports with the State Board of Elections. Reports that show a total of more than \$5,000 in contributions or expenditures for the quarter must be filed electronically. The

quarterly report must report all expenditures and contributions totaling more than \$50 in the quarter. Contributions of more than \$50 must be made by non-cash methods. For each contribution totaling more than \$50 for the quarter from any one individual, the treasurer must include the name, mailing address, and occupation of the contributor, the amount contributed, and the date the contribution was received. The quarterly report must also include a separate record of all loan proceeds. It is a Class I felony to sign a report knowing that it is false.

Legal expense funds are prohibited from accepting contributions exceeding \$4,000 per calendar year from a corporation, labor union, insurance company, professional association, or business entity. A legal expense fund also may not accept contributions from any affiliated corporations, labor unions, insurance companies, or professional associations, that when totaled, would exceed the annual contribution limits for that legal defense fund.

When a legal expense account is closed, the treasurer is required to distribute the remaining funds as follows: (1) to the Indigent Persons' Attorney Fee Fund, (2) to the North Carolina State Bar for the provision of civil legal services for indigents, (3) as contributions to a charitable organization described in section 170(c) of the Internal Revenue Code (unless the candidate or the candidate's spouse, children, parents, brothers, or sisters are employed by the organization), (4) as a refund of all or a portion of a contribution to the contributor, or (5) to the Escheat Fund.

S.L. 2007-349 also makes conforming changes to the duties of the State Board of Elections in G.S. 163-278.22, G.S. 163-278.5 and G.S. 163-278.23 are amended to include the new Article 22M in provisions of the campaign finance act limiting the scope of coverage to North Carolina elections and governing the authority of the Executive Director of the Board of Elections to issue requested advisory opinions that protect the individual making the request from prosecution. The act repeals G.S. 163-278.36, which required reporting of donations to, and payments from, any "booster fund," "support fund," and "unofficial office account."

## **Pension Forfeiture by Felons**

Effective for offenses committed on or after July 1, 2007, S.L. 2007-179 (S 659) requires elected officials convicted of state or federal felonies related to corruption or election law fraud to forfeit their pensions. New G.S. 120-4.33, G.S. 128-38.4, G.S. 135-18.10, and G.S. 135-75.1 prohibit the board of trustees from paying retirement benefits, other than a return of contributions, to individuals convicted of specified felonies while in office if the individual is (1) an elected official who is a member of the Legislative Retirement System, (2) an elected official who is a member of the Local Governmental Employees' Retirement System, (3) an elected official who is a member of the Teachers' and State Employees' Retirement System, or (4) a member of the Judicial Retirement System. The offense must also have been committed while the individual was serving in the applicable office and the conduct on which the offense is based must be directly related to the individual's service.

The covered offenses are as follows:

Federal offenses:

- 18 U.S.C. § 201 (Bribery of public officials and witnesses)
- 18 U.S.C. § 286 (Conspiracy to defraud the Government with respect to claims)
- 18 U.S.C. § 287 (False, fictitious or fraudulent claims)
- 18 U.S.C. § 371 (Conspiracy to commit offense or to defraud United States)
- 18 U.S.C. § 597 (Expenditures to influence voting)
- 18 U.S.C. § 599 (Promise of appointment by candidate)
- 18 U.S.C. § 606 (Intimidation to secure political contributions)
- 18 U.S.C. § 641 (Public money, property, or records)
- 18 U.S.C. § 666 (Embezzlement and theft)
- 18 U.S.C. § 1001 (Statements or entries generally)
- 18 U.S.C. § 1341 (Frauds and swindles)
- 18 U.S.C. § 1343 (Fraud by wire, radio, or television)

- 18 U.S.C. § 1503 (Influencing or injuring officer or juror generally)
- 18 U.S.C. § 1951 (Interference with commerce by threats or violence)
- 18 U.S.C. § 1952 (Interstate and foreign travel or transportation in aid of racketeering enterprises)
- 18 U.S.C. § 1956 (Laundering of monetary instruments)
- 18 U.S.C. § 1962 (Prohibited activities)
- Section 7201 of the Internal Revenue Code (Attempt to evade or defeat tax)

State felony offenses:

- Article 29, 30, or 30A of G.S. Chapter 14 (Relating to bribery, obstructing justice, and secret listening)
- G.S. 14-228 (Buying and selling offices)
- Part 1 of Article 14 of G.S. Chapter 120 (Code of Legislative Ethics)
- Article 20 or 22 of G.S. Chapter 163 (Relating to absentee ballots, corrupt practices and other offenses against the elective franchise, and regulating of contributions and expenditures in political campaigns)

Offenses related to perjury or false information:

- Perjury committed under G.S. 14-209 in falsely denying the commission of an act that constitutes a covered state felony offense.
- Perjury under Article 22A of G.S. Chapter 163.
- Subornation of perjury committed under G.S. 14-210 in connection with the false denial of another regarding either of the above.

Forfeited money goes to the Civil Penalties and Forfeiture Fund. S.L. 2007-179 amends G.S. 120-4.12, G.S. 128-26, G.S. 135-4, and G.S. 135-56 to provide that members who have not vested in the respective retirement systems on July 1, 2007, and who are convicted of a covered offense committed after July 1, 2007, forfeit all retirement benefits. Members who have vested as of July 1, 2007, and are convicted of a covered offense committed after July 1, 2007, are not entitled to creditable service that accrues after July 1, 2007.

*Christine B. Wunsche*