

*State Ethics & Lobbying
Reform
Applications and Implications for
Local Governments*

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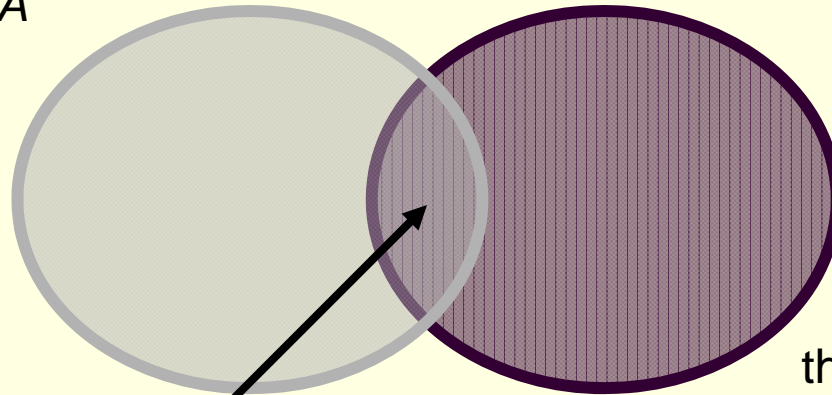
What Did the 2006 Reforms Do?

- Established new statutory **ethical** standards for certain state public officials by imposing **obligations, prohibitions, and penalties for violations** – *New G.S. Chapter 138A*
- Expanded the State **Lobbying** Act regulating **direct and goodwill** lobbying activities for **both** legislative **and executive branch** actions – *New G.S. Chapter 120C*
- Expanded the **Legislative** Ethics Act for members of the General Assembly

Is It Ethics or Is It Lobbying?

Ethics Act

Applies in all contexts
G.S. 138A



Some provisions overlap

Lobbying Act

Applies generally in
the context of lobbying
and some other
interactions with
legislators and certain
public officials
G.S. 120C

*Who is covered under the
Ethics and Lobbying Laws?*

Ethics Act – Who is Covered?

- **“Covered Persons”** are . . .
 - Legislators
 - Judicial Officers (All justices and judges, DA’s, and Clerks of Court)
 - **Public Servants**
 - Includes individuals appointed or elected to these positions who have not yet assumed office, or persons working under contract in one of these positions

- **Legislative employees** – are not “covered persons” but still subject to some provisions of the Act

Ethics Act – Who is a Public Servant?

- Constitutional Officers
 - Chief Deputies and Chief Administrative Assistants
- Cabinet Secretaries
 - Chief Deputies and Chief Administrative Assistants
- Confidential assistants and secretaries to all of the above
- Governor's Office employees
- Certain exempt policy-making employees and their confidential secretaries
- Certain Judicial employees
- Voting members of non-advisory State Boards
- UNC and Community College trustees, presidents, chancellors and certain other officials

Ethics Act – What is a “State Board”?

- **The Act:** *“Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, as determined and designated by the Commission, except for those public bodies that have only advisory authority.”* – G.S. 138A-3(1)
- **Categories of Boards – *Which are covered?***
 - Statewide
 - Local Gov’t
 - Quasi-Statewide
 - Quasi-Local Gov’t

Ethics Act and Local Governments

Question #1:

*Are Local Government Officials
“Covered Persons”?*

Answer:

NO!

So Why Pay Attention? . . .

Ethics Act and Local Governments

The Ethics Act *may* apply in some situations:

- Local official or employee serving in a dual position that is a “covered person”
- Some “local boards” may be covered
- Potential application of lobbying laws

Lobbying Act – What is Lobbying?

- **Direct** – Influencing or attempting to influence legislative **or executive action** through *direct* communication with a designated individual or that person's immediate family
- **Indirect** – **Developing goodwill** through communications or activities, including building relationships, with a designated individual or that person's immediate family with the intent of influencing current or future legislative or executive action
- Does **not** include communications and activities such as business, civic, religious, fraternal, personal or commercial relationships if not connected to legislative or executive action

Lobbying Act – Who Can Be “Lobbied”?

A “**designated individual**” is a:

- Legislator
- Legislative employee
- Public Servant
 - Includes individuals appointed or elected to these positions who have not yet assumed office, *or persons who have filed notice of candidacy for office*, or persons working under contract in one of these positions

Lobbying Act – Who is a “Lobbyist”?

Anyone who engages in “lobbying” and:

- Represents another person and is compensated for the purpose of lobbying
- Contracts for economic consideration for the purpose of lobbying
- Is an employee whose job duties include lobbying as a significant part. (*State agency liaison personnel are not “lobbyists” but are subject to some requirements*)

A person on whose behalf a lobbyist lobbies is a **“principal”**

Lobbying Act – Are You Covered?

You Might Be A Lobbyist If You Are . . .

- Engaged in direct or indirect communications influencing or attempting to influence legislative or executive action AND
- Communicating with or to a designated individual or that individual's immediate family AND
- Doing so for compensation or as a significant part (or all) of your job duties

Lobbying Act – Who Is Exempt?

- Elected or appointed local government officials and *employees*
- Individuals expressing personal opinions
- Persons invited to appear before committees
- Professional services drafting bills or advising clients
- News media
- Persons responding to inquiries
- Political committees

Lobbying Act – Who Is Exempt?

Local Government Exemption:

“A duly elected or appointed official or employee of the State, a county, municipality, school district, or other government agency when appearing solely in connection with matters pertaining to the office and public duties.”

G.S. 120C-700(3)

Lobbying Act and Local Governments

Question #2:

Are RETAINED City and County Attorneys Covered under the Local Government Exemption?

Answer:

YES!

(Appointed City and County Attorneys are considered “employees” for purposes of Chapter 120C)

Ethics, Lobbying and Local Governments

Question #3:

Are Local Governments that hire lobbyists subject to the Ethics and Lobbying Acts?

Answer:

YES!

(They become “principals”)

Lobbying Act and Local Governments

The Lobbying Act *may* apply in some situations:

- Independent contractors not covered under local government lobbying exemption
(ex: engineering firms; outside legal counsel)
- A local government that has retained a contract lobbyist for state-level lobbying is a “lobbyist principal” subject to the general lobbying law requirements and prohibitions

*What is required and what is
prohibited under the
Ethics and Lobbying Laws?*

Ethics Act – What is Required?

- Publicly disclose economic interest (must file SEI prior to initial appointment/election/hiring and then annually) – G.S. 138A, *Article 3*
- Participate in ethics education programs - G.S. 138A-14
- Take an active role in furthering ethics in public service and ensuring compliance with the act (for Department heads and chairs of covered boards) – G.S. 138A-15
- Determine whether a conflict of interest exists before taking official action – G.S. 138A-35
- Where disqualifying conflict of interest is found, remove conflict or resign from position - G.S. 138A-39

Ethics Act – What is Prohibited?

- Using or allowing use of public position for private gain, in private advertising, or using state funds for any advertisement – *G.S. 138A-31*
- Accepting certain gifts – *G.S. 138A-32*
- Receiving outside compensation for official duties – *G.S. 138A-33*
- Using nonpublic information for personal financial gain – *G.S. 138A-34*
- Participating in official actions where there is a personal financial interest - *G.S. 138A-36-37*
- Employing and/or supervising family members – *G.S. 138A-40*

Lobbying Act – What is Required?

- Register with Secretary of State
 - Applies to Principals
- Report lobbying expenditures
 - Applies to Principals
- Participate in educational programs (not mandatory)
- Identify himself or herself as a lobbyist and disclose his or her principal

Lobbying Act – What is Prohibited?

- No gifts to designated individuals
 - Applies to Principals
- No campaign contributions* or election \$ influence
- Cannot serve as campaign treasurer
- No contingent fee compensation
- Cannot serve on body regulating activities of clients
- No use of cash or credit unless present

*G.S. 163-278.13C(a)

Lobbying Act - Local Government Reporting Requirements

Local Governments must still report to the Secretary of State:

- Expenditures of more than \$200 lobbying a designated individual per calendar quarter – G.S. 120C-800(a)
- Expenditures of more than \$200 for a designated individual (“scholarships”) to attend a conference, meeting, or similar event – G.S. 120C-800(c)

*To Give or Not To
Give . . .*

What is a “Gift”?

- Anything of monetary value
- Given or received without valuable consideration
- By or from any of the following:
 - Lobbyist or lobbyist principal
 - Liaison personnel (state agency “lobbyists”)
 - “Interested person” (persons with business, regulatory, or material financial interest in a public servant’s official duties)

Ethics Act – Gift Prohibitions

- Gifts from Lobbyists and Lobbyists Principals
 - No *de minimus* exception
- Gifts from persons with business, regulatory, or material financial interest in a public servant's official duties ("interested persons")
- "Quid pro quo"
- Honorarium (beyond actual expenses)
- Solicitation of charitable contributions from subordinate employees

Ethics Act – Gift Prohibitions

	Quid Pro Quo	Solicit Charitable Contribution From Subordinate	Lobbyist, Principal	“Interested Persons”	Honorarium
Legislators	Covered	Covered	Covered	Not covered	Covered
Judicial Officers	Covered	Covered	Not covered	Not covered	Covered
Public Servants	Covered	Covered	Covered	Covered	Covered
Legislative Employees	Covered	Not covered	Covered	Not covered	Covered

Ethics Act – Gift Prohibition Exceptions

- Exempted from “gift” are: - G.S. 138A-3(15)
 - Items for which fair market value is paid
 - Commercially available loans
 - Arrangements made in normal course of business
 - Academic and athletic scholarships
 - Lawful political campaign contributions
 - Expressions of condolence at an individual’s death

- Other exceptions to “Lobbyist/Principal” gift ban and “Interested Persons” gift ban – G.S. 138A-32(e)



Enforcement

Enforcement

Ethics Act – State Ethics Commission

- Issues opinions and rules
- Conducts investigations
- Reviews Statements of Economic Interest

Lobbying Act

- State Ethics Commission
 - Conducts Investigations
 - Issues opinions and rules
- Secretary of State
 - Manages registration of lobbyists and principals
 - Develops registration and reporting forms
 - Issues rules relating to registration and reporting

Enforcement

- Violations of Ethics Act:
 - Grounds for disciplinary action
 - Constitute misfeasance, malfeasance, or nonfeasance in office
- Violations of Economic Disclosure Requirements:
 - Failure to file or complete SEI = \$250 Fine
 - Failure to disclose = Class 1 misdemeanor
 - Providing false information = Class H felony
 - May also constitute perjury = Class F felony

Ethics & Lobbying – Other Laws

The new Act does not override other existing ethics and conflict of interest laws

- Influencing action through campaign contributions – G.S. 120C-301
- Other Conflict of Interest Prohibitions:
 - Contracting for self benefit – G.S. 14-234
 - Building inspectors – G.S. 153A-35
 - Project designers – G.S. 133-1, 133-2
 - Hospital authorities and public hospitals – G.S. 131E-21, 131E-14.2
 - City and County officials' voting – G.S. 153A-44, 160A-75
 - Gifts from Contractors and Others – G.S. 133-32
- Misuse of Confidential Information – G.S. 14-234.1

Resources

- State Ethics Commission
(919) 807-4620 www.ethicscommission.nc.gov
- Secretary of State Lobbyist Registration Section
(919) 807-2219 www.secretary.state.nc.us/lobbyists/
- UNC-CH School of Government
 - Fleming Bell (919) 966-4210 bell@sog.unc.edu
 - Norma Houston (919) 843-1903 nhouston@northcarolina.edu
- **Local Government Law Bulletin # 116**, October 2007
www.sog.unc.edu (available for free; download from web)
- General Assembly Bill Look-up www.ncleg.net
(S.L. 2006-201, S.L. 2007-347, S.L. 2007-348)