

§ 138A-13. Request for advice.

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a public servant or legislative employee, legal counsel for any public servant or legislative employee, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advice on specific questions involving the meaning and application of this Chapter and the public servant's or legislative employee's compliance therewith. Requests for advice and advice rendered in response to those requests shall relate prospectively to real or reasonably anticipated fact settings or circumstances.

(b) On its own motion, the Commission may render advisory opinions on specific questions involving the meaning and application of this Chapter.

(c) A request for a formal advisory opinion under subsection (a) of this section shall be in writing, electronic or otherwise. The Commission shall issue formal advisory opinions having prospective application only. A public servant or legislative employee who relies upon the advice provided to that public servant or legislative employee on a specific matter addressed by the requested formal advisory opinion shall be immune from all of the following:

- (1) Investigation by the Commission, except for an inquiry under G.S. 138A-12(c)(3).
- (2) Any adverse action by the employing entity.
- (3) Investigation by the Secretary of State.

(d) At the request of a legislator, the Commission shall render advice on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. Requests for advice and advice rendered in response to those requests shall relate prospectively to real or reasonably anticipated fact settings or circumstances.

(e) A request by a legislator for a recommended formal advisory opinion shall be in writing, electronic or otherwise. The Commission shall issue recommended formal advisory opinions having prospective application only. Until action is taken by the Committee under G.S. 120-104, a legislator who relies upon the advice provided to that legislator on a specific matter addressed by the requested recommended formal advisory opinion shall be immune from all of the following:

- (1) Investigation by the Commission, except for an inquiry under G.S. 138A-12(c)(3).
- (2) Any adverse action by the house of which the legislator is a member.
- (3) Investigation by the Secretary of State.

Any recommended formal advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee, together with a copy of the request. Except for the Lieutenant Governor, the immunity granted under this subsection shall not apply after the time the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(f) At the request of the Auditor, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter, Article 14 of Chapter 120 of the General Statutes, Chapter 120C of the General Statutes, and an affected person's compliance therewith. The request shall be in writing, electronic or otherwise, and relate to real fact settings and circumstances. Except when the question involves a question governed by subsection (d) or (e) of this section, the Commission shall issue an advisory opinion under this subsection within 60 days of the receipt of all information deemed necessary by the Commission to render an opinion. If the question involves a question governed by subsection (d) or (e) of this section, the Commission shall comply with the provisions of that section [subsection] prior to responding to the Auditor by delivering the recommended advisory opinion to the Committee within 60 days of the receipt of all information deemed necessary by the Commission to render

an opinion. The Committee shall act on the opinion within 30 days of receipt and the State Board shall deliver the opinion to the Auditor. If the Committee fails to act on a recommended advisory opinion under this subsection with 30 days of receipt, the Commission shall deliver its recommended advisory opinion to the Auditor. Notwithstanding G.S. 138A-13(i), the Auditor may only release those portions of the advisory opinion necessary to comply with the requirements of G.S. 147-64.6(c)(1).

(g) Staff to the Commission may issue advice, but not formal or recommended formal advisory opinions, under procedures adopted by the Commission.

(h) The Commission shall publish its formal advisory opinions within 30 days of issuance. These formal advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting formal advisory opinions. When the Commission issues a recommended formal advisory opinion to a legislator under subsection (e) of this section, the Commission shall publish only the edited formal advisory opinion of the Committee within 30 days of receipt of the edited opinion from the Committee.

(i) Except as provided under subsections (f), (h) and (j) of this section, a request for advice, any advice provided by Commission staff, any formal or recommended formal advisory opinions, any supporting documents submitted or caused to be submitted to the Commission or Commission staff, and any documents prepared or collected by the Commission or Commission staff in connection with a request for advice are confidential. The identity of the individual making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual who requests advice or receives advice, including a formal or recommended formal advisory opinion, may authorize the release to any other person, the State, or any governmental unit of the request, the advice, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1.

(j) Staff to the Commission may share all information and documents related to requests for advice, made by legislators under this section with staff to the Committee. The information and documents in the possession of staff to the Committee are confidential and are not public records.

(k) This section shall apply to judicial officers only for advice related to Article 3 of this Chapter.

(l) Requests for advice may be withdrawn by the requestor at any time prior to the issuance of the advice. (2006-201, s. 1; 2007-348, s. 31; 2008-213, ss. 2(b), 91.5; 2008-215, s. 6; 2009-570, s. 17; 2010-169, s. 17(p); 2016-125, 4th Ex. Sess., s. 3(e); 2017-6, ss. 2, 3, 5(f); 2018-146, s. 3.1(a), (b).)