LEGISLATIVE RESEARCH COMMISSION

LEGISLATIVE ETHICS AND LOBBYING

REPORT TO THE 1985 GENERAL ASSEMBLY OF NORTH CAROLINA 1986 SESSION

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June 1, 1986

TO THE MEMBERS OF THE 1985 GENERAL ASSEMBLY (1986 SESSION):

The Legislative Research Commission herewith reports to the 1985 General Assembly (1986 Session) on the matter of legislative ethics and lobbying. The report is made pursuant to Chapter 790 of the 1985 General Assembly (1985 Session).

This report was prepared by the Legislative Research Commission's Committee on Legislative Ethics and Lobbying and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,

Liston B. Ramsey — J. J. (Monk) Harrington

Cochairmen
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

Senator J. J. Harrington, Cochairman
Senator Henson P. Barnes
Senator A. D. Guy
Senator Ollie Harris
Senator Lura Tally
Senator Robert D. Warren

Representative Liston B. Ramsey, Cochairman
Representative Christopher S. Barker, Jr.
Representative John T. Church
Representative Bruce Ethridge
Representative Aaron Fussell
Representative Barney Paul Woodard

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PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner"[G.S. 120-30.17(1)].

At the direction of the 1985 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The co-chairmen of the Legislative Research Commission, under the authority of General Statute 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairmen, one from each house of the General Assembly, were designated for each committee.

The study of legislative ethics and lobbying was authorized by Section 1(40) of Chapter 790 of the 1985 Session Laws (1985 Session). That act states that the Commission may consider Senate Bill 829 in determining the nature, scope and aspects of the study. Section 4 of Senate Bill 829 reads in part: "The Committee shall study all aspects of legislative ethics and lobbying, including but not limited to ethics and lobbying laws and rules of other legislative bodies, with a view to strengthening the existing North Carolina statutes and rules on these matters." Relevant portions of Chapter 790 and Senate Bill 829 are included in Appendix A.

The Legislative Research Commission grouped this study in its State Government Operation area under the direction of Representative Christopher S. Barker, Jr. The Committee was chaired by Senator Marshall A. Rauch and Representative Annie Brown Kennedy. The full membership of the Committee is listed in Appendix B of this report.

COMMITTEE PROCEEDINGS

The Committee on Legislative Ethics and Lobbying (hereafter "Committee") has held four meetings thus far. Many legislative agents, representatives of governmental agencies, and other interested parties were notified of the Committee's meetings. A list of those mailed notices of the meetings is attached as Appendix C. Lists of those attending Committee meetings, as well as Committee minutes are contained in the Committee's records on file in the Legislative Library.

December 12, 1985 Meeting

The Committee held its initial meeting on December 12, 1985. At that meeting the cochairmen polled the membership of the Committee on the legislative ethics and lobbying issues which each would like to have the Committee address.

After listing all the issues, the Committee then decided which issues could be addressed effectively prior to the convening of the 1986 Session of the General Assembly and which issues should be presented to the 1987 General Assembly when it convenes. The Committee decided to turn its attention first to the following matters: 1) legislators' acceptance of entertainment and gifts; 2) fundraising functions given by legislators during the session; 3) legislators' requesting legislative agents' financial aid for entertainment functions; 4) the propriety of business associates and law partners of legislators' working as legislative agents; 5) the application of the Rotary Four-Way Test to the legislative process; and 6) guidelines for legislators' use of telephone, secretarial, and mailing services.

The Committee decided to defer consideration of the following items until after the 1986 Session: 1) legislative agents' disclosures of all clients and business interests; 2) Legislative

Ethics Committee powers and procedures; 3) ethical guidelines for legislators regarding various matters, including debate, voting, use of misleading titles in bills; 4) acceptable benefits from lobbyists; and 5) legislative agents' ethical concerns in representing clients with opposing interests. The Committee's staff outlined to the Committee the present Legislative Ethics Act, which requires financial disclosure and creates a Legislative Ethics Committee, the Lobbying Act, and other statutes relating to ethical considerations; rules of the houses of the General Assembly relating to ethics and lobbyists; and ethical guidelines, principles and suggestions issued by the Legislative Ethics Committee; and related matters. A copy of these materials is attached as Appendix D.

Mr. Willis Marshall and Mr. Barry Davis, past District Governors, Rotary District 771, urged that the Committee recommend the adoption of Rotary International's Four-Way Test as a set of ethical principles for the General Assembly. The Four-Way Test poses the following questions: 1) Is it the truth? 2) Is it fair to all concerned? 3) Will it build goodwill and better friendships? 4) Will it be beneficial to all concerned? Mr. Marshall supplied the Committee with a copy of a Resolution from the State of Florida's House of Representatives urging that organizations such as the League of Cities, the State Association of County Commissioners, the district school boards, and the United States Congress endorse and adopt the Four-Way Test. A copy of the Florida Resolution is attached as Appendix E.

The Committee discussed legislators' lack of knowledge of the existing statutory framework on ethical matters, principles already enunciated by the Legislative Ethics Committee, and areas of ethical difficulties. The Committee agreed to recommend to the Legislative Services Commission that a seminar on legislative ethics be conducted prior to each regular session to increase awareness by members of the General Assembly of this important component of the legislative process.

The Committee directed its cochairmen to invite the Secretary of State, as the state official responsible for the administration of the lobbying law, to appear at the next meeting of the Committee and to outline that law pointing out any difficulties with that law he might have and make any suggestions with regard to improvements in that law he might like to have made. The letter of invitation is attached as Appendix F. The Committee directed its staff to research the law of other states with regard to giving of gifts to and solicitation of gifts by legislators.

January 24, 1986 Meeting

At its second meeting, on January 24, 1986, Committee staff presented information on the regulation, in other states and in North Carolina, of legislators' law partners' serving as legislative agents (Appendix G). While no state statutes were found prohibiting business partners of legislators from serving as lobbyists, the issue of law partners of legislators' lobbying is addressed by the bars in other states and by the American Bar Association. Bar opinions on the general subject were found in seven other states: five prohibit legislators' law partners from being employed as lobbyists; one prohibits a partner of a member of a city council from appearing before the city council; and one specifically allows law partners of legislators to be employed as legislative agents upon full disclosure by the lawyer-legislator. The staff also presented information on rulings on this issue by the North Carolina State Bar (Appendix H). This State's Bar has ruled that a law partner of a legislator may lobby the legislature if the legislator-partner limits his involvement with regard to deliberation on the lobbied issue and discloses in writing or in open meeting his relationship to the matter involved. The Committee discussed legislation to prohibit the practice of legislators' business associates serving as legislative agents in North Carolina.

The application of the Rotary Four-Way Test to the legislative process was again discussed. The Committee decided that, while the Four-Way Test was well-intentioned, the effect of its specific application to the legislative process was uncertain and thus the Committee took no further action on this matter.

Mr. Clyde Smith, Deputy Secretary of State, and Ms. Brenda Pollard, Executive Assistant to the Secretary of State, responded to the Committee's request for information on the administration of the Lobbying Article by saying that Secretary of State Thad Eure did not wish to take a position on problems in the Article. Mr. Smith provided information on 1) the responsibilities of the Secretary of State under the Lobbying Article; 2) the number of lobbyist registrations for the past five years; 3) the money expended for lobbying; 4) fees collected under the Article; 5) the steps taken to assure compliance with the Article; and 6) the numbers of violations of the Article (Appendix I).

Mr. Smith noted that the figures for the money expended for lobbying could not easily be ascertained due to the way the the expense-reporting statutes are structured. The figures he provided were gathered from news reports compiled by reporters, rather than being determined by the Department. Mr. Smith mentioned that one of the largest problems that Department has is getting legislative agents to file their expense reports in a timely fashion. The biennial legislative agent registration requirement and the annual expense reporting requirement tend to encourage inactive legislative agents to be remiss in submitting expense reports after short sessions. In 1983, 510 persons registered as legislative agents. In 1984, an additional 74 legislative agents registered. All 584 legislative agents registered during the 1983-1984 biennium had to submit expense reports in 1984 whether or not they lobbied before the 1984 "short session". Mr. Smith also opined that the $10 penalty in G.S. 120-47.6 and G.S. 120-47.7 for late filings of expense reports was

too low to assure that expense reports would be submitted in a timely fashion.

The Committee directed the staff to meet with the Secretary of State's office before the next meeting to determine how some of the problems in the Article could be remedied and to present proposals to the Committee.

The Committee discussed the ethical problems associated with legislative agents' giving gifts to legislators and with legislators' soliciting and accepting gifts from legislative agents. Mr. Sam Johnson, a Committee member and a legislative agent, cited several situations where lobbyists are asked for contributions: 1) fund-raisers during the session; 2) campaign financing when the General Assembly is not in session; 3) legislative activities (e.g., basketball games); 4) meetings at which legislators are invited to speak; 5) distribution of calendars and other bric-a-brac; and 6) events for the entire legislature or one committee.

The staff reported that current North Carolina law does not address gift-giving to legislators. The two statutes which deal with bribery of legislators, G.S. 14-219, Bribery of Legislators, and G.S. 120-86, Bribery, (Appendix D) only cover situations where there is an understanding that something of value is being given to a legislator in exchange for a specific legislative action or inaction.

The Committee's staff presented information on the regulation of gift-giving in states contiguous to North Carolina (Appendix J). With the exception of Tennessee, which prohibits legislators from soliciting loans from lobbyists and lobbyists from making loans to legislators, states contiguous to North Carolina do not regulate gift-giving. The staff also presented information about the statutes in 14 other states which do prohibit the practice of gift-giving in lobbying. The memorandum outlining the law of

other states regarding gift-giving to legislators is contained in Appendix J. The Committee reviewed legislation to regulate the giving of gifts to legislators in lobbying in North Carolina.

March 14, 1986 Meeting

At its third meeting, on March 14, 1986, the Committee reviewed legislation to restrict gift-giving to legislators by legislative agents, to prohibit spouses and certain business associates of legislators from lobbying, and to strengthen and clarify various provisions of Article 9A of Chapter 120 of the General Statutes regulating lobbying.

In discussing compliance with the various reporting provisions in the lobbying law, representatives of the Secretary of State indicated that few State agencies file the accountings of monies expended by their official liaison personnel in influencing legislation which are required under G.S. 120-47.8(6). A discussion followed on the need for such accountings other than by those temporary employees hired specifically for lobbying.

April 18, 1986 Meeting

At the Committee's last meeting held before the 1986 Session, the Committee approved the text of the two proposed bills, one to restrict gift-giving to legislators by legislative agents and one to amend the lobbying article, and the text of the final report to the 1986 Session of the 1985 General Assembly and discussed the Committee's future direction.

FINDINGS AND RECOMMENDATIONS

I. Administrative Action

The Committee on Legislative Ethics and Lobbying makes the following findings and recommends the following actions to the Legislative Services Commission:

Ethics Seminar

A. Findings

1) An awareness of ethical concerns is an indispensable part of conducting the public's business in a responsible manner.

2) With the exception of an ethics program presented to the North Carolina General Assembly in the late 1970's by Legis 50, a public interest group, there has not been a comprehensive and systematic presentation of ethical concerns and principles in the legislative process to newly-elected and incumbent legislators.

3) Many newly-elected legislators may be unaware of ethical principles and concerns which are particular to the legislative process.

B. Recommendation

The Committee recommends that the Legislative Services Commission, as a part of its orientation process for new legislators prior to the convening of each General Assembly, and in conjunction with the Legislative Ethics Committee, present a seminar for all legislators to promote awareness of ethical concerns in the legislative process.

II. Legislative Action

The Committee on Legislative Ethics and Lobbying makes the following findings and recommends the following actions to the 1986 Session of the 1985 General Assembly:

1. Gift-giving in Lobbying

A. Findings

1) The promotion of the public's trust in the fairness and impartiality of the workings of government is a principal concern of all responsible governmental officials.

2) Any practice which tends to undermine that trust is one that should be restricted to promote the greater good.

3) When legislators receive gifts, other than those of nominal value, from legislative agents or their employers, an appearance of impropriety attaches to the act, regardless of later legislative action or inaction.

4) The present statutes do not address the issue of legislative agents or their employers giving gifts to legislators.

5) In order to foster the public's confidence in the integrity of the legislative process, at least 14 states have enacted legislation restricting gifts to legislators by lobbyists.

B. Recommendation

That legislation be enacted to regulate the solicitation and receipt of gifts by legislators and the giving of gifts to legislators in lobbying. The proposed bill and a section-by-section analysis of it are contained in APPENDIX K.

2. Clarifying Changes to Lobbying Law

A. Findings

1) The present law regulating lobbying in North Carolina, Article 9A of Chapter 120 of the North Carolina General Statutes (G.S. 120-47.1 et seq.), is ambiguous, confusing and difficult to administer.

2) As the work of the General Assembly in recent years has expanded beyond the limits of the actual legislative session, the work and activities of legislative agents have similarly expanded.

3) The present law requires biennial registration of legislative agents and the filing of reports after every regular yearly session of these agents' expenditures.

4) In North Carolina, the biennial legislative agent registration requirement and the expense reporting requirement after each regular session held in a year results in some legislative agents, who are inactive during the short session, being remiss in submitting expense reports after that session.

5) In order that public confidence and trust be retained in the legislative process, the public should be assured that private financial dealings of legislators present no conflict of interest between the public trust and private interests.

6) A legislative agent who is a business associate or spouse of a legislator could be perceived as having a disproportionate amount of influence in the legislative decision-making process.

7) While the North Carolina State Bar has not prohibited the practice of law partners of legislators serving as legislative agents, the Bars of five states have prohibited those in that

particular business status from being employed as legislative agents.

8) The current $10 penalty in G.S. 120-47.6 and G.S. 120-47.7 for late filings of expense reports is too low to assure that expense reports will be submitted in a timely fashion.

B. Recommendations

That legislation be enacted to amend Article 9A of Chapter 120 of the General Statutes to:

1. allow either biennial or annual registration of lobbyists;

2. require legislative agent registration for any legislative lobbying activities whether or not the General Assembly is in session;

3. change the fee structure of the lobbying law to encourage compliance with the expense reporting requirements;

4. clarify the law by resolving ambiguity and eliminating confusing language and provisions in the law;

5. prohibit business associates and spouses of legislators from acting as legislative agents; and

6. strengthen various reporting provisions in the law.

The proposed bill and a section-by-section analysis of it are contained in Appendix L.

SESSION LAWS
OF THE
STATE OF NORTH CAROLINA

FIRST SESSION 1985

S.B. 636 **CHAPTER 790**

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, MAKING TECHNICAL AMENDMENTS THERETO, AND TO MAKE OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. Studies Authorized. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1985 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

. . .

(40) Legislative Ethics and Lobbying (S.B. 829-Rauch), ...

Sec. 3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1987 General Assembly, or the Commission may make an interim report to the 1986 Session and a final report to the 1987 General Assembly.

Sec. 4. Bills and Resolution References. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

. . .

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 18th day of July, 1985.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985

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I

SENATE BILL 829

Short Title: Legislative Ethics Study. (Public)

Sponsors: Senators Rauch; Cobb, Johnson of Cabarrus, Redman,*

Referred to: Rules.

June 21, 1985

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STUDY COMMITTEE ON LEGISLATIVE ETHICS AND LOBBYING, TO MAKE AN APPROPRIATION THEREFOR, AND TO MAKE TECHNICAL AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. Committee established. There is established the Study Committee on Legislative Ethics and Lobbying.

Sec. 2. Membership; terms of office. The Committee shall consist of 12 members of the General Assembly to be appointed as follows: the President of the Senate shall appoint six Senators, three of whom shall be members of the minority party; and the Speaker of the House of Representatives shall appoint six Representatives, three of whom shall be members of the minority party.

Sec. 3. Cochairmen; call of meeting. The President of the Senate and the Speaker of the House shall each designate a cochairman from his appointees. Meetings of the Committee may be called by either of the cochairmen.

Members shall be appointed as soon as practicable after the adjournment of the 1985 Session of the 1985 General Assembly.

The members shall serve until the convening of the 1987 General Assembly.

Members shall not be disqualified from completing a term of service on the Committee because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Committee.

Sec. 4. Duties. The Committee shall study all aspects of legislative ethics and lobbying, including but not limited to ethics and lobbying laws and rules of other legislative bodies, with a view to strengthening the existing North Carolina statutes and rules on these matters. The Committee may report to the 1986 Session of the 1985 General Assembly and shall report to the 1987 General Assembly upon its convening. The Committee shall terminate upon the convening of the 1987 General Assembly.

Sec. 5. Powers. The provisions of G.S. 120-19.1 through 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly.

Sec. 6. Compensation and expenses of members. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1.

Sec. 7. Staffing and use of the legislative complex. The Committee may use the staff of the Legislative Services Office upon the approval of the Legislative Services Commission. The Committee may use the facilities of the Legislative Office Building and the State Legislative Building.

Sec. 8. There is appropriated from the General Fund to the General Assembly for the work of the Study Committee on

Legislative Ethics and Lobbying the sum of twelve thousand dollars ($12,000) for the 1985-86 fiscal year and twelve thousand dollars ($12,000) for the 1986-87 fiscal year.

Sec. 9. The last sentence of G.S. 120-19.4(b) is amended by deleting the citation "G.S. 5-4" and inserting in lieu thereof the following: "G.S. 5A-12 or G.S. 5A-21, whichever is applicable."

Sec. 10. G.S. 120-99 is amended by adding a new paragraph to read:

"The provisions of G.S. 120-19.1 through 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the Chairman shall sign all subpoenas on behalf of the Committee."

Sec. 11. This act is effective upon ratification.

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*Additional Sponsors: Walker, Winner.

APPENDIX B

MEMBERS OF THE

LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE

ON LEGISLATIVE ETHICS AND LOBBYING

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APPENDIX C

LIST OF THOSE MAILED
COMMITTEE MEETING NOTICES

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Mig Hayes
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P.O. Box 430
Raleigh, N.C. 27602

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4917 Rembert Drive
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Ms. Brenda Pollard
Office of Secretary of State
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League of Women Voters
3800 Barrett Drive
Raleigh, N.C. 27610

Common Cause Office of N.C.
19 West Hargett Street, Suite 809
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ATTN: Mr. Don Kemp

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Michael Crowell
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Mr. Elton Edwards
P.O. Box 448
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APPENDIX D

Statutes, Rules and Considerations in North Carolina on Legislative Ethics and Lobbying

Statutes

C5-022

The General Statutes of North Carolina

§ 120-6. Members to convene at appointed time and place.

Every person elected to represent any county or district in the General Assembly shall appear at such time and place as may be appointed for the meeting thereof, on the first day, and attend to the public business as occasion shall require. (1787, c. 277, s. 1, P. R.; R. C., c. 52, s. 27; Code, s. 2847; Rev., s. 4401; C. S., s. 6090.)

§ 120-7. Penalty for failure to discharge duty.

If any member shall fail to appear, or shall neglect to attend to the duties of his office, he shall forfeit and pay for not appearing ten dollars ($10.00), and two dollars ($2.00) for every day he may be absent from his duties during the session, to be deducted from his pay as a member; but a majority of the members of either house of the General Assembly may remit such fines and forfeitures, or any part thereof, where it shall appear that such member has been prevented from attending to his duties by sickness or other sufficient cause. (1787, c. 277, s. 2, P. R.; R. C., c. 52, s 28; Code, s. 2848; Rev., s. 4402; C. S., s. 6091.)

§ 120-8. Expulsion for corrupt practices in election.

If any person elected a member of the General Assembly shall by himself or any other person, directly or indirectly, give, or cause to be given, any money, property, reward or present whatsoever, or give, or cause to be given by himself or another, any treat or entertainment of meat or drink, at any public meeting or collection of the people, to any person for his vote or to influence him in his election, such person shall, on due proof, be expelled from his seat in the General Assembly. (1801, c. 580, s. 2 P R.; R. C., c. 52, s. 24; Code, s. 2846; Rev., s. 4403; C. S., s. 6092.)

ARTICLE 9A.

Lobbying.

§ 120-47.1. Definitions.

For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) The terms "contribution," "compensation" and "expenditure" mean any advance, conveyance, deposit, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or anything of value and any contract, agreement, promise or other obligation whether or not legally enforceable.

(2) The term "legislative agent" shall mean any person who is employed or retained, with compensation, by another person to give facts or arguments to any member of the General Assembly during any regular or special session thereof upon or concerning any bill, resolution, amendment, report or claim pending or to be introduced. The term "legislative agent" shall include, but not be limited to, corporate officers and directors and other individuals who are full or part-time employees of other persons and whose duties or activities as legislative agents, as hereinbefore defined, are incidental to the principal purposes for which they are employed or retained. The reimbursement of actual personal travel and subsistence expenses reasonably necessary to communicate with a member or members of the General Assembly shall not be considered compensation for purposes of determining whether a person is a legislative agent under this subdivision.

(3) The term "person" means any individual, firm, partnership, committee, association, corporation or any other organization or group of persons. (1933, c. 11, s. 1; 1975, c. 820, s. 1.)

§ 120-47.2. Registration procedure.

(a) In each General Assembly session and for each employer, or retainer, every person employed or retained as a legislative agent in this State shall, before engaging in any activities as a legislative agent, register with the Secretary of State. If a corporation or partnership is employed or retained as a legislative counsel, and more than one partner, employee or officer of the corporation or partnership, shall act as a legislative agent on behalf of the client, then the additional individuals shall be separately listed on the registration under subsection (b), and a fee in the same amount as imposed by G.S. 120-47.3 shall be due for each such individual in excess of one.

(b) The form of such registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as legislative agent.

(c) Each legislative agent shall register again with the Secretary of State no later than 10 days after any change in the information supplied in his last registration under subsection (b). Such supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as a legislative agent and whom they represent. A supplemental list shall be furnished periodically each 20 days thereafter as the session progresses. (1933, c. 11, s. 2; 1973, c. 1451; 1975, c. 820, s. 1; 1983, c. 713, s. 51.)

§ 120-47.3. Registration fee.

Every person, corporation or association which employs any person to act as legislative agent as defined by law to promote or oppose in any manner the passage by the General Assembly of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the State, or to act in any manner as a legislative agent in connection with any such legislation, shall pay to the Secretary of State a fee of seventy-five dollars ($75.00) which fee shall be due and payable by either the employer or the employee at the time of registration.

A separate registration, together with a separate registration fee of seventy-five dollars ($75.00), shall be required for each person, corporation or association for which a person acts as legislative agent. Fees so collected shall be deposited in the general fund of the State. (1975, c. 852, s. 1; 1983, c. 713, s. 50.)

§ 120-47.4. Written authority from employer to be filed; copy for legislative committee.

Each legislative agent shall file with the Secretary of State within 10 days after his registration a written authorization to act as such, signed by the person employing him. (1933, c. 11, s. 4; 1961, c. 1151; 1975, c. 820, s. 1.)

§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a legislative agent for compensation which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.

(b) No person shall attempt to influence the action of any member of the General Assembly by the promise of financial support of his candidacy, or by threat of financial contribution in opposition to his candidacy in any future election. (1933, c. 11, s. 3; 1975, c. 820, s. 1.)

§ 120-47.6. Statements of legislative agent's lobbying expenses required.

Each legislative agent shall file annually, within 30 days after the final adjournment of the regular session of the General Assembly held in a calendar year, a report with respect to each person represented setting forth the date, to whom paid, and amount of each expenditure made during the previous year in connection with promoting or opposing any legislation in any manner covered by this Article, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures in a particular category if the total amount expended in the particular category on behalf of a person represented is twenty-five dollars ($25.00) or less. A report shall be filed annually whether or not contributions or expenditures are made. All reports shall be in such form as shall be prescribed by the Secretary of State and shall be open to public inspection. When a legislative agent fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the agent of his delinquency and the penalties provided by law. Within 20 days of the receipt of such letter, the agent shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ($10.00). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a legislative agent under this Article. No legislative agent may register or reregister under this Article until he has fully complied with this section. (1933, c. 11, s. 5; 1973, c. 108, s. 70; 1975, c. 820, s. 1.)

§ 120-47.7. Statements of employer lobbying expenses required.

Each person who employs or retains a legislative agent shall file annually, within 30 days after the final adjournment of the regular session of the General Assembly held in a calendar year, a report with respect to each agent employed or retained setting forth the date, to whom paid, and amount of each expenditure made during the previous year in connection with promoting or opposing any legislation in any manner covered by this Article, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to legislative agents. It shall not be necessary to report expen-

ditures in any particular category if the total amount expended in the particular category on behalf of a person represented is twenty-five dollars ($25.00) or less. In the category of compensation to legislative agents it shall not be necessary to report the full salary, or any portion thereof, of a legislative agent who is a full-time employee of or is annually retained by the reporting employer. A report shall be filed annually whether or not payments are made. All reports shall be in the form prescribed by the Secretary of State and open to public inspection. When an employer or retainer of a legislative agent fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the employer or retainer of his delinquency and the penalties provided by law. Within 20 days of the receipt of such letter, the employer or retainer shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars ($10.00). Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. (1933, c. 11, s. 5; 1973, c. 108, s. 70; 1975, c. 820, s. 1.)

§ 120-47.8. Persons exempted from provisions of Article.

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as a legislative agent, solely engaged in expressing a personal opinion on legislative matters to his own legislative delegation or other members of the General Assembly.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative agent in connection with that or any other legislative matter.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to his office and public duties.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients as to the construction and effect of proposed or pending legislation where such professional services are not otherwise, directly or indirectly, connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of such news medium.

(6) Notwithstanding the persons exempted in this section, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended in influencing or attempting to influence legislation, other than the salaries of regular full-time employees.

(7) Members of the General Assembly.

(8) A person responding to inquiries from a member of the General Assembly, and who engages in no further activities as a legislative agent in connection with that or any other legislative matter.

(9) An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only. (1933, c. 11, s. 7; 1975, c. 820, s. 1; 1977, c. 697.)

§ 120-47.9. Punishment for violation.

Whoever willfully violates any provision of this Article shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000), or imprisoned not exceeding two years, or both. In addition, no legislative agent who is convicted of a violation of the provisions of this Article shall in any way act as a legislative agent for a period of two years following his conviction. (1933, c. 11, s. 8; 1975, c. 820, s. 1.)

§ 120-47.10. Enforcement of Article by Attorney General.

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint made to him of violations of this Article, make an appropriate investigation thereof, and he shall forward a copy of the investigation to the district attorney of the judicial district of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article. (1975, c. 820, s. 1.)

ARTICLE 10.

Influencing Public Opinion or Legislation.

§ 120-48. Registration of persons and organizations engaged principally in influencing public opinion or legislation.

Every person, firm, corporation, association, or organization, whether by or through its agents, servants, employees or officers, who or which is principally engaged in the activity or business of influencing public opinion and/or legislation in this State shall, prior to engaging in such activity or business, cause his, or its name to be entered upon a docket in the office of the Secretary of State of North Carolina, as hereinafter provided. (1947, c. 891, s. 1.)

§ 120-49. Information to be shown on docket.

The following information shall be entered in such docket:

The name, business address of the principal and all branch offices of the applicant; the purpose or purposes for which such corporation, association, or organization was formed; the names of the principal officers, the names and addresses of its agents, servants, employees or officers by or through which it intends to carry on such activity or business in this State; a financial statement showing the assets and liabilities of the applicant and the source or sources of its income, itemizing in detail any contributions, donations, gifts or other income and from what source or sources received. (1947, c. 891, s. 2.)

§ 120-50. Docket kept by Secretary of State; record open to public.

The Secretary of State shall prepare and keep in his office the docket containing the information required by G.S. 120-49. Such record shall be a public record and shall be open to the inspection of any citizen at any time during the regular business hours of the office of the Secretary of State. (1947, c. 891, s. 3.)

§ 120-51. Certain localized activities exempted.

This Article shall not apply to any person, firm, corporation, or organization who or which is engaged in influencing public opinion on any matter which is applicable only to one county or one county and a county contiguous thereto. (1947, c. 891, s. 4.)

§ 120-52. Failure to comply with Article made misdemeanor.

Any person, firm, corporation, association, or organization who or which shall engage in the activity or business herein described without first causing his, her, or its name to be entered upon such docket in the manner and form prescribed in this Article shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned in the discretion of the court. (1947, c. 891, s. 5.)

§ 120-53. Time for registration by persons presently engaged in regulated activities.

All persons engaged in the activity or business herein described, on April 5, 1947, shall, within 30 days thereafter, cause his, her, or its name to be entered upon the docket in the office of the Secretary of State of North Carolina in the manner and form prescribed by this Article. (1947, c. 891, s. 6.)

§ 120-54. Annual registration required.

Every person, firm, corporation, or organization engaging in the activity or business prescribed in this Article shall, on or before the first day of January, 1948, and annually thereafter, again cause his, her, or its name to be entered upon such docket in the manner and form prescribed in this Article. (1947, c. 891, s. 7.)

§ 120-55. Exemption of newspapers, radio, political candidates, etc.

This Article shall not apply to persons, firms, corporations, or organizations who carry on such activity or business solely through the medium of newspapers, periodicals, magazines, or other like means which are or may be admitted under United States postal regulations as second-class mail matter in the United States mails as defined in Title 39, § 224, United States Code Annotated, and/or through radio, television or facsimile broadcast operations. This Article shall also not apply to any person, firm, corporation, candidate in any political election campaign committee, or any committee, association, organization, or group of persons who or which filed information as required by the Corrupt Practices Act of 1931. (1947, c. 891, s. 8.)

ARTICLE 14.

Legislative Ethics Act.

Part 1. Code of Legislative Ethics.

§ 120-85. Definitions.

As used in this Article:

(1) "Business with which he is associated" means any enterprise, incorporated or otherwise, doing business in the State of which the legislator or any member of his immediate household is a director, officer, owner, partner, employee, or of which the legislator and his immediate household, either singularly or collectively, is a holder of securities worth five thousand dollars ($5,000) or more at fair market value as of December 31 of the preceding year, or constituting five percent (5%) or more of the outstanding stock of such enterprise.

(2) "Immediate household" means the legislator, his spouse, and all dependent children of the legislator.

(3) "Vested trust" as set forth in G.S. 120-96(4) means any trust, annuity or other funds held by a trustee or other third party for the benefit of the member or a member of his immediate household. (1975, c. 564, s. 1.)

§ 120-86. Bribery, etc.

(a) No person shall offer or give to a legislator or a member of a legislator's immediate household, or to a business with which he is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that such legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of his duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer to theaten economically, directly or indirectly, that legislator with the intent to influence the legislator in the discharge of his legislative duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer to threaten economically, directly or indirectly, that legislator with the intent to influence that legislator in the discharge of his legislative duties.

(d) For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.

(e) Violation of subsection (a) or (b) is a Class I felony. Violation of subsection (c) is not a crime but is punishable under G.S. 120-103. (1975, c. 564, s. 1; 1983, c. 780, s. 2.)

§ 120-87. Disclosure of confidential information.

No legislator shall use or disclose confidential information gained in the course of or by reason of his official position or activities in any way that could result in financial gain for himself, a business with which he is associated or a member of his immediate household or any other person. (1975, c. 564, s. 1.)

§ 120-88. When legislator to disqualify himself or submit question to Legislative Ethics Committee.

When a legislator must act on a legislative matter as to which he has an economic interest, personal, family, or client, he shall consider whether his judgment will be substantially influenced by the interest, and consider the need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the legislature. If after considering these factors the legislator concludes that an actual economic interest does exist which would impair his independence of judgment, then he shall not take any action to further the economic interest, and shall ask that he be excused, if necessary, by the presiding officer in accordance with the rules of the respective body. If the legislator has a material doubt as to whether he should act, he may submit the question to the Legislative Ethics Committee for an advisory opinion in accordance with G.S. 120-104. (1975, c. 564, s. 1.)

Part 2. Statement of Economic Interest.

§ 120-89. Statement of economic interest by legislative candidates; filing required.

Every person who files as a candidate for nomination or election to a seat in either house of the General Assembly shall file a statement of economic interest as specified in this Article within 10 days of the filing deadline for the office he seeks. (1975, c. 564, s. 1.)

§ 120-90. Place and manner of filing.

The statement of economic interest shall cover the preceding calendar year and shall be filed at the same place, and in the same manner, as the notice of candidacy which a candidate seeking party nomination for the office of State Senator or member of the State House of Representatives is required to file under the provisions of G.S. 163-106. (1975, c. 564, s. 1.)

§ 120-91. Certification of statements of economic interest.

The chairman of the county board of elections with which a statement of economic interest is filed shall forward a certified copy of the statement to the State Board of Elections and the offices to which copies of the notice of candidacy filed by a candidate seeking party nomination for the office of State Senator or member of the State House of Representatives is required to be forwarded under the provisions of G.S. 163-108. (1975, c. 564, s. 1.)

§ 120-92. Filing by candidates not nominated in primary elections.

A person who is nominated pursuant to the provisions of G.S. 163-114 after the primary and before the general election, and a person who qualifies pursuant to the provisions of G.S. 163-122 as an independent candidate in a general election shall file with the county board of elections of each county in the senatorial or representative district a statement of economic interest. A person nominated pursuant to G.S. 163-114 shall file the statement within three days following his nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an independent candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed pursuant to that section. A person elected pursuant to G.S. 163-11 (vacancy in office) shall file a statement of economic interest within 10 days after taking the oath of office. (1975, c. 564, s. 1.)

§ 120-93. County boards of elections to notify candidates of economic-interest-statement requirements.

Each county board of elections shall provide for notification of the economic-interest-statement requirements of G.S. 120-95 and 120-96 to be given to any candidate filing for nomination or election to the General Assembly at the time of his or her filing in the particular county. (1975, c. 564, s. 1.)

§ 120-94. Statements of economic interest are public records.

The statements of economic interest are public records and shall be made available for inspection and copying by any person during normal business hours at the office of the various county boards of election where the statements or copies thereof are filed. If a county board of elections of a county does not keep an office open during normal business hours each day, that board shall deliver a copy of all statements of economic interest filed with it to the clerk of superior court of the county, and the statements shall be available for inspection and copying by any person during normal business hours at that clerk's office. (1975, c. 564, s. 1.)

§ 120-95. Legislators to file statement of economic interest with Legislative Services Officer.

Every member of the General Assembly, however selected, shall by January 15 next following his election file a statement of economic interest with the Legislative Services Officer of the General Assembly. A copy of the statement so filed shall be placed in the Legislative Library and shall be available for inspection and copying by any person during normal library hours. On or before December 16 of the year members of the General Assembly are elected, the Legislative Services Officer shall cause notice of the filing requirement of this section to be mailed to all elected members of the General Assembly. (1975, c. 564, s. 1.)

§ 120-96. Contents of statement.

Any statement of economic interest filed under this Article shall be on a form prescribed by the Committee, and the person filing the statement shall supply the following information:

(1) The identity, by name, of any business with which he, or any member of his immediate household, is associated;

(2) The character and location of all real estate of a fair market value in excess of five thousand dollars ($5,000), other than his personal residence (curtilage), in the State in which he, or a member of his immediate household, has any beneficial interest, including an option to buy and a lease for 10 years or over;

(3) The type of each creditor to whom he, or a member of his immediate household, owes money, except indebtedness secured by lien upon his personal residence only, in excess of five thousand dollars ($5,000);

(4) The name of each "vested trust" in which he or a member of his immediate household has a financial interest in excess of five thousand dollars ($5,000) and the nature of such interest;

(5) The name and nature of his and his immediate household member's respective business or profession or employer and the types of customers and types of clientele served;

(6) A list of businesses with which he is associated that do business with the State, and a brief description of the nature of such business;

(7) In the case of professional persons and associations, a list of classifications of business clients which classes were charged or paid two thousand five hundred dollars ($2,500) or more during the previous calendar year for professional services rendered by him, his firm or partnership. This list need not include the name of the client but shall list the type of the business of each such client or class of client, and brief description of the nature of the services rendered. (1975, c. 564, s. 1.)

§ 120-97. Updating statements.

Each person who is required to file a statement of economic interest under this Article shall file an updated statement at the office required by this Article by January 15 of the second year following his or her election on a form prescribed by the Legislative Ethics Committee. The Committee shall forward the form to those required to file same on or before December 16. (1975, c. 564, s. 1.)

§ 120-98. Penalty for failure to file.

(a) In the case of a candidate, if the statement of economic interest required by this Article is not filed when required herein, the county board of elections shall immediately notify the candidate that his name will not be placed on the ballot unless the statement is received within 15 days. If the statement is not received within 15 days, the candidate shall be disqualified and his filing fee returned.

(b) In the case of a member, willful failure to file shall result in that member's not being allowed to take the oath of office or enter or continue upon his duties or receive any compensation from public funds provided, however, the Committee may, for good cause shown, allow said member to file the required statement and remove his disability. (1975, c. 564, s. 1.)

Part 3. Legislative Ethics Committee.

§ 120-99. Creation; composition.

The Legislative Ethics Committee is created to consist of a chairman and eight members, four Senators appointed by the President of the Senate, two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader, and four members of the House of Representatives appointed by the Speaker of the House, two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader.

The President of the Senate shall designate a member of the General Assembly as chairman of the Committee in odd-numbered years, and the Speaker of the House shall designate a member of the General Assembly as chairman of the Committee in even-numbered years. The chairman will vote only in the event of a tie vote.

The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the chairman shall sign all subpoenas on behalf of the Committee. (1975, c. 564, s. 1; 1985, c. 790, s. 6.)

§ 120-100. Term of office; vacancies.

Initial members of the Legislative Ethics Committee shall be appointed as soon as practicable after the ratification of this Article and shall serve until the expiration of their current terms as members of the General Assembly. Thereafter, appointments shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered years, and appointees shall serve until the expiration of their then-current terms as members of the General Assembly. The chairman shall serve for one year and shall be appointed each year. A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the vacancy. (1975, c. 564, s. 1.)

§ 120-101. Quorum; expenses of members.

Five members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

The chairman and members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties. (1975, c. 564, s. 1.)

§ 120-102. Powers and duties of Committee.

In addition to the other powers and duties specified in this Article, the Committee has the following powers and duties:

(1) To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.

(2) To receive and file any information voluntarily supplied that exceeds the requirements of this Article.

(3) To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.

(4) To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.

(5) To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6) To advise General Assembly committees, at the request of a committee chairman, or at the request of three members of a committee, about possible points of conflict and suggested standards of conduct of committee members in the consideration of specific bills or groups of bills.

(7) To suggest to legislators activities which should be avoided.

(8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, to investigate and dispose of the matter according to the terms of this Article. (1975, c. 564, s. 1; 1979, c. 864, s. 3.)

§ 120-103. Possible violations; procedures; disposition.

(a) Institution of Proceedings. — On its own motion, or in response to signed and sworn complaint of any individual filed with the Committee, the Committee shall inquire into any alleged violation of any provision of this Article.

(b) Notice and Hearing. — If, after such preliminary investigation as it may make, the Committee determines to proceed with an inquiry into the conduct of any individual, the Committee shall notify the individual as to the fact of the inquiry and the charges against him and shall schedule one or more hearings on the matter. The individual shall have the right to present evidence, cross-examine witnesses, and be represented by counsel at any hearings. The Committee may, in its discretion, hold hearings in closed session; however, the individual whose conduct is under inquiry may, by written demand filed with the Committee, require that all hearings before the Committee concerning him be public or in closed session.

(c) Subpoenas. — The Committee may issue subpoenas to compel the attendance of witnesses or the production of documents, books or other records. The Committee may apply to the superior court to compel obedience to the subpoenas of the Committee. Notwithstanding any other provision of law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties.

(d) Disposition of Cases. — When the Committee has concluded its inquiries into alleged violations, the Committee may dispose of the matter in one of the following ways:

(1) The Committee may dismiss the complaint and take no further action. In such case the Committee shall retain its records and findings in confidence unless the individual under inquiry requests in writing that the records and findings be made public.

(2) The Committee may, if it finds substantial evidence that a criminal statute has been violated, refer the matter to the Attorney General for possible prosecution through appropriate channels.

(3) The Committee may refer the matter to the appropriate House of the General Assembly for appropriate action. That House may, if it finds the member guilty of unethical conduct as defined in this Article, censure, suspend or expel the member. (1975, c. 564, s. 1.)

§ 120-104. Advisory opinions.

At the request of any member of the General Assembly, the Committee shall render advisory opinions on specific questions involving legislative ethics. These advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee. (1975, c. 564, s. 1.)

§ 120-105. Continuing study of ethical questions.

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as sections to cover the administrative branch of government and shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government. (1975, c. 564, s. 1.)

§ 120-106. Article applicable to presiding officers.

The provisions of this Article shall apply to the presiding officers of the General Assembly. (1975, c. 564, s. 2.)

§ 14-91. Embezzlement of State property by public officers and employees.

If any officer, agent, or employee of the State, or other person having or holding in trust for the same any bonds issued by the State, or any security, or other property and effects of the same, shall embezzle or knowingly and willfully misapply or convert the same to his own use, or otherwise willfully or corruptly abuse such trust, such offender and all persons knowingly and willfully aiding and abetting or otherwise assisting therein shall be punished as a Class F felon. (1874-5, c. 52; Code, s. 1015; Rev., s. 3407; C. S., s. 4269; 1979, c. 716; c. 760, s. 5.)

ARTICLE 5.

Political Activity of Employees.

§ 126-14.1. Threat to obtain political contribution or support.

(a) It is unlawful for any person to coerce a State employee subject to the Personnel Act, probationary State employee, or temporary State employee to support or contribute to a political candidate or party by explicitly threatening him with employment termination or discipline.

(b) Any person violating this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment for not more than six months, or both.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee, who without probable cause falsely accuses a person of violating this section shall be subject to discipline or termination in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution. (1985, c. 469, s. 3.)

§ 126-15.1. Probationary State employee defined.

As used in this Article, "probationary State employee" means a State employee who is exempt from the Personnel Act only because he has not been continuously employed by the State for the period required by G.S. 126-5(d). (1985, c. 469, s. 4.)

§ 126-15. Disciplinary action for violation of Article.

Failure to comply with this Article is grounds for disciplinary action which, in case of deliberate or repeated violation, may include dismissal or removal from office. (1967, c. 821, s. 1.)

ARTICLE 60.

State and Certain Local Educational Entity Employees, Nonsalaried Public Officials, and Legislators Required to Repay Money Owed to State.

Part 1. State and Local Educational Entity Employees.

§ 143-552. Definitions.

As used in this Part:

(1) "Employing entity" means and includes:

a. Any State entity enumerated in G.S. 143B-3 of the Executive Organization Act of 1973;

b. Any city or county board of education under Chapter 115 of the General Statutes; or

c. Any board of trustees of a community college or technical institute under Chapter 115A of the General Statutes.

(2) "Employee" means any person who is appointed to or hired and employed by an employing entity under this Part and whose salary is paid in whole or in part by State funds.

(3) "Net disposable earnings" means the salary paid to an employee by an employing entity after deduction of withholdings for taxes, social security, State retirement or any other sum obligated by law to be withheld. (1979, c. 864, s. 1.)

§ 143-553. Conditional continuing employment; notification among employing entities; repayment election.

(a) All persons employed by an employing entity as defined by this Part who owe money to the State and whose salaries are paid in whole or in part by State funds must make full restitution of the amount owed as a condition of continuing employment.

(b) Whenever a representative of any employing entity as defined by this Part has knowledge that an employee owes money to the State and is delinquent in satisfying this obligation, the representative shall notify the employing entity. Upon receipt of notification an employing entity shall terminate the employee's employment if after written notice of his right to do so he does not repay the money within a reasonable period of time; provided, however, that where there is a genuine dispute as to whether the money is owed or how much is owed, or there is an unresolved issue concerning insurance coverage, the employee shall not be dismissed as long as he is pursuing administrative or judicial remedies to have the dispute or the issue resolved.

(c) An employee of any employing entity who has elected in writing to allow not less than ten percent (10%) of his net disposable earnings to be periodically withheld for application towards a debt to the State shall be deemed to be repaying the money within a reasonable period of time and shall not have his employment terminated so long as he is consenting to repayment according to such terms. Furthermore, the employing entity shall allow the employee who for some extraordinary reason is incapable of repaying the obligation to the State according to the preceding terms to continue employment as long as he is attempting repayment in good faith under his present financial circumstances, but shall promptly terminate the employee's employment if he ceases to make payments or discontinues a good faith effort to make repayment. (1979, c. 864, s. 1.)

§ 143-554. Right of employee appeal.

(a) Any employee or former employee of an employing entity within the meaning of G.S. 143-552(1)a whose employment is terminated pursuant to the provisions of this Part shall be given the opportunity to appeal the employment termination to the State Personnel Commission according to the normal appeal and hearing procedures provided by Chapter 126 and the State Personnel Commission rules adopted pursuant to the authority of that Chapter; however, nothing herein shall be construed to give the right to termination reviews to anyone exempt from that right under G.S. 126-5.

(b) Before the employment of an employee of a local board of education within the meaning of G.S. 143-552(1)b who is either a superintendent, supervisor, principal, teacher or other professional person is terminated pursuant to this Part, the local board of education shall comply with the provisions of G.S. 115-142. If an employee within the meaning of G.S. 143-552(1)b is other than one whose termination is made reviewable pursuant to G.S. 115-142, he shall be given the opportunity for a hearing before the local board of education prior to the termination of his employment.

(c) Before the employment of an employee of a board of trustees of a community college or technical institute within the meaning of G.S. 143-552(1)c is finally terminated pursuant to this Part, he shall be given the opportunity for a hearing before the board of trustees. (1979, c. 864, s. 1.)

Part 2. Public Officials.

§ 143-555. Definitions.

As used in this Part:

(1) "Appointing authority" means the Governor, Chief Justice of the Supreme Court, Lieutenant Governor, Speaker of the House, President pro tempore of the Senate, members of the Council of State, all heads of the executive departments of State government, the Board of Governors of The University of North Carolina, and any other State person or group of State persons authorized by law to appoint to a public office.

(2) "Employing entity" means and includes:
   a. Any State entity enumerated in G.S. 143B-3 of the Executive Organization Act of 1973;
   b. Any city or county board of education under Chapter 115 of the General Statutes; or
   c. Any board of trustees of a community college or technical institute under Chapter 115A of the General Statutes.

(3) "Public office" means appointive membership on any State Commission, council, committee, board, including occupational licensing boards as defined in G.S. 93B-1, board of trustees, including boards of constituent institutions of The University of North Carolina and boards of community colleges and technical institutes created pursuant to G.S. 115A-7, and any other State agency created by law; provided that "public office" does not include an office for which a regular salary is paid to the holder as an employee of the State or of one of its departments, agencies, or institutions.

(4) "Public official" means any person who is a member of any public office as defined by this Part. (1979, c. 864, s. 1.)

§ 143-556. Notification of the appointing authority; investigation.

Whenever a representative of an employing entity as defined by this Part has knowledge that a public official owes money to the State and is delinquent in satisfying this obligation, the representative shall notify the appointing authority who appointed the public official in question. Upon receipt of notification the appointing authority shall investigate the circumstances of the claim of money owed to the State for purposes of determining if a debt is owed and its amount. (1979, c. 864, s. 1.)

§ 143-557. Conditional continuing appointment; repayment election.

If after investigation under the terms of this Part an appointing authority determines the existence of a delinquent monetary obligation owed to the State by a public official, he shall notify the public official that his appointment will be terminated 60 days from the date of notification unless repayment in full is made within that period. Upon determination that any public official has not made repayment in full after the expiration of the time prescribed by this section, the appointing authority shall terminate the appointment of the public official; provided however, the appointing authority shall allow the public official who for some extraordinary reason is incapable of repaying the obligation according to the preceding terms to continue his appointment as long as he is attempting repayment in good faith under his present financial circumstances, but shall promptly terminate the public official's appointment if he ceases to make payments or discontinues a good faith effort to make repayment. (1979, c. 864, s. 1.)

Part 3. Legislators.

§ 143-558. Definition of employing entity.

For the purposes of this Part "employing entity" shall have the same meaning as provided in G.S. 143-552(1) and 143-555(2). (1979, c. 864, s. 1.)

§ 143-559. Notification to the Legislative Ethics Committee; investigation.

Whenever a representative of any employing entity as defined by this Part has knowledge that a legislator owes money to the State and is delinquent in satisfying this obligation, this information shall be reported to the Legislative Ethics Committee established pursuant to Chapter 120, Article 14 of the General Statutes for disposition. (1979, c. 864, s. 1.)

Part 4. Confidentiality Exemption, Preservation of Federal Funds, and Limitation of Actions.

§ 143-560. Confidentiality exemption.

Notwithstanding the provisions of any law of this State making confidential the contents of any records or prohibiting the release or disclosure of any information, all information exchange among the employing entities defined under this Article necessary to accomplish and effectuate the intent of this Article is lawful. (1979, c. 864, s. 1.)

§ 143-561. Preservation of federal funds.

Nothing in this Article is intended to conflict with any provision of federal law or to result in the loss of federal funds. If the exchange among employing entities of information necessary to effectuate the provisions of this Article would conflict with this intention, the exchange of information shall not be made. (1979, c. 864, s. 1.)

§ 143-562. Applicability of a statute of limitations.

Payments on obligations to the State collected under the procedures established by this Article shall not be construed to revive obligations or any part thereof already barred by an applicable statute of limitations. Furthermore, payments made as a result of collection procedures established by the terms of this Article shall not be construed to extend an applicable statute of limitations. (1979, c. 864, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1985

H

ADOPTED
SIMPLE
RESOLUTION

HOUSE RESOLUTION 5
Committee Substitute Favorable 3/13/85
Third Edition Engrossed 3/14/85

Sponsors: Representative

Referred to:

February 6, 1985

A HOUSE RESOLUTION ADOPTING THE PERMANENT RULES OF THE 1985 SESSION OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES.

Be it resolved by the House of Representatives:

Section 1. The permanent rules of the 1985 Session shall read as follows:

RULES OF THE 1985 HOUSE OF REPRESENTATIVES

GENERAL ASSEMBLY OF NORTH CAROLINA

• • •

IV. Voting

RULE 20. Use of Electronic Voting System.--

• • •

(d) The voting station at each member's desk in the Chamber shall be used only by the member to which the station is assigned. Under no circumstances shall any other person vote at a member's station. It is a breach of the ethical obligation of a member either to request that another person vote at the requesting member's station, or to vote at another member's station. The Speaker shall enforce this rule without exception.

• • •

RULE 24.1A. Excuse From Deliberations and Voting on a Bill.--(a) Any member shall upon request be excused from the deliberations and voting on a particular bill, but to do so must make that request after the second reading of the bill and before any motion or vote on the bill or any amendment thereto. If the reason for the request arises at some point later in the proceedings, the request may be made at that time.

(b) The member may make a brief statement of the reasons for making that request. The member may send forward to the Principal Clerk, on a form provided by the Clerk, a concise statement of the reason for the request, and the Clerk shall include this statement in the Journal.

(c) The member so excused shall not debate the bill or any amendment to the bill, vote on the bill, offer or vote on any amendment to the bill, or offer or vote on any motion concerning the bill at that reading, any subsequent reading, or any subsequent consideration of the bill.

(d) A member may request that his excuse from deliberations on a particular bill be withdrawn.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1985

S

ADOPTED
SIMPLE
RESOLUTION

SENATE RESOLUTION 8
Adopted 1/19/85

Sponsors Senator

Referred to: Rules,

February 7, 1985

A SENATE RESOLUTION ADOPTING THE PERMANENT RULES OF THE SENATE FOR THE 1985 SESSION OF THE GENERAL ASSEMBLY OF NORTH CAROLINA.

Be it resolved by the Senate:

Section 1. The permanent rules for the 1985 Session are as follows:

PERMANENT RULES OF THE 1985 SENATE
GENERAL ASSEMBLY OF NORTH CAROLINA

• • •

IV. Voting

RULE 25. Use of electronic voting system.--

• • •

(d) The voting station at each Senator's desk in the Chamber shall be used only by the Senator to which the station is assigned. Under no circumstances shall any other person vote at a Senator's station. It is a breach of the ethical obligation of a Senator either to request that another vote at the requesting Senator's station, or to vote at another Senator's station. The Chair shall enforce this rule without exception.

• • •

RULE 29. Duty to vote: excuses.--(a) Every Senator who is within the bar of the Senate when the question is stated by the Chair shall vote thereon unless he is excused by the Senate. The bar of the Senate shall include the entire Senate Chamber.

(b) Any Senator may request to be excused from voting, either immediately before or after the vote has been called for and before a viva voce vote result has been announced or before the electronic voting system has been unlocked. The Senator may make a brief statement of the reasons for making such request, and shall send forward to the Principal Clerk, on a form provided by the Clerk, a concise statement of the reason for the request, and the Clerk shall include this statement in the Journal. The question on granting of the request shall be taken without debate.

• • •

DEVELOPMENT OF ETHICAL GUIDELINES AND PRINCIPLES FOR LEGISLATORS

The Legislative Ethics Committee is charged by statute with four types of duties: (1) preparation, distribution and filing of forms for Statements of Economic Interest by candidates for legislative seats and by members of the General Assembly; (2) the development of ethical guidelines and principles to guide members of the General Assembly in the performance of their proper function; (3) investigation and action upon alleged violations of ethical principles by legislators; and (4) a continuing study of ethical questions to the end that high standards of ethics shall be promoted and maintained in the legislative branch of North Carolina State Government. This report analyzes possible approaches to the effective performance of the second of these four types of duties.

I. The Statutory Mandate

The relevant parts of the Legislative Ethics Act read as follows (Code section numbers are those which appear in the General Statutes; section numbers in brackets are those which appear in the enrolled act):

> §120-102 [120-747]. Powers and duties of Committee.--In addition to the other powers and duties specified in this Article, the Committee has the following powers and duties:

(5)[e] To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly Committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6)[f] To advise General Assembly committees, at the request of a committee chairman, or at the request of three members of a committee, about possible points of conflict and suggested standards of conduct of committee members in the consideration of specific bills or groups of bills.

(7)[g] To suggest to legislators activities which should be avoided.

Of these three subparagraphs, number (6) requires no action by the Legislative Ethics Committee until the chairman or three members of a committee request advice. This report does not deal further with subparagraph (6).

Subparagraph (5) requires the preparation of a list of ethical principles and guidelines governing possible conflict-of-interest situations. Subparagraph (7) deals not with potential conflicts of interest but rather with activities which should be avoided because they are either unethical or may raise questions in the minds of fair-minded persons as to the ethics of individual legislators; this subparagraph is thus concerned with both evil and the appearance of evil.

Possible approaches to discharge by the Legislative Ethics Committee of its duties under subparagraphs (5) and (7) are set out in the following sections of this report.

II. Ethics Guidelines Governing Possible Conflicts of Interest

G.S. 120-88 places upon the individual legislator the duty to consider possible conflict-of-interest situations and to take affirmative action to avoid improper conduct in those situations:

> §120-88 [120-61]. When legislator to disqualify himself or submit question to Legislative Ethics Committee.--When a legislator must act on a legislative matter as to which he has an economic interest, personal, family, or client, he shall consider whether his judgment will be substantially influenced by the interest, and consider the need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the legislature. If after considering these factors the legislator concludes that an actual economic interest does exist which would impair his independence of judgment, then he shall not take any action to further the economic interest, and shall ask that he be excused, if necessary, by the presiding officer in accordance with the rules of the respective body. If the legislator has a material doubt as to whether he should act, he may submit the question to the Legislative Ethics Committee for an advisory opinion in accordance with G.S. 120-104.

With no more than this statute to guide them, several legislators might in complete good faith reach sharply different conclusions as to the possible effect on their respective judgments of specific fact situations. Under such subjective determinations, one legislator might abstain from debate and discussion on a particular bill in committee or on the floor, while another legislator on the same facts might participate freely. Such a situation would almost surely lead ultimately to general disregard of the statute. It appears to be the duty of the Ethics Committee under sub-paragraph (5) of G.S. 120-102 to develop sufficient guide-lines to make the decision of legislators as to proper conduct in conflict-of-interest situations more objective and more nearly uniform.

In developing these guidelines, certain basic premises must be established. These premises may be articulated by answering the following questions:

1. Does the fact that a legislator is employed in a given business, industry or occupation, either as owner, worker, or both, automatically create a conflict of interest with respect to legislative proposals affecting that business, industry or occupation?

If the answer to this question is "No," then the Committee will need to pursue more specific facts that would create a conflict. If the answer to this question is "Yes," then the Committee must confront this critical question:

a. Shall a legislator be barred from serving on a legislative committee which deals with bills relating immediately to the business, industry or occupation in which the legislator is employed? Specifically, shall a bank officer be allowed to sit on the Banking Committee? An insurance agent on the Insurance Committee? A school teacher on the Appropriations Committee? A farmer on the Agriculture Committee?
If the answer to question 1a. is "No," then the Committee may wish to consider the following question:

b. When a legislator is appointed to serve on a committee which deals with bills relating immediately to the business, industry or occupation in which the legislator is employed, should the legislator be required to file with the chairman of the legislative committee and with the Ethics Committee a more detailed statement than that contained in the Statement of Economic Interest filed by all legislators? For example, is it meaningful and practicable to require specifics about extent of interest in the business, salary, known impact of state law upon the business, etc.? If such a statement were required, should it be confidential or open to the public?

2. Does a possible conflict of interest exist whenever a bill affects a legislator's economic interest simply because the bill affects the business, industry or occupation in which the legislator is employed, or does a conflict exist only when the bill affects the legislator in some manner different

than it affects persons in the business, industry or occupation generally?

3. Does a possible conflict of interest arise when a legislator has a professional relationship with a business which will be affected by proposed legislation? Does the answer to this question depend upon the nature of the relationship? For example, Lawyer A receives a retainer from Bank X. Lawyer B receives no retainer from Bank Y but regularly handles all of Y's legal business. Are the two lawyers subject to the same conflicts of interest when they are dealing with a bill which is opposed or supported by the banking industry?

4. When a conflict of interest is found to exist, either by the legislator himself or by the Ethics Committee, what is the proper course of conduct for the legislator?

a. Shall he abstain from voting, either in committee or on the floor of his house, but be free to participate in discussion and debate?

b. Shall he abstain from both voting and discussion and debate in committee and on the floor, but be free to discuss the question with legislators outside these formal arenas?

c. Shall he abstain from voting, discussion and debate and all other types of communication, formal and informal with other legislators on the particular bill or matter?

d. Shall he be required to state publicly to the committee or to his house that the possible conflict exists, and then participate fully in voting, discussion and debate?

5. If the legislator or Ethics Committee has not found a conflict of interest to exist, may any member of the committee or of the house considering a bill raise the question as to a possible conflict? If so, how shall the question be resolved so as to allow consideration of the bill to proceed and also to assure that the rights of the challenged legislator are not defeated?

6. With respect to economic interests represented by ownership, not accompanied by active participation in the operation of a business, is there a minimum amount below which it is arbitrarily to be ruled that no conflict exists? If so, are the minimums set out in the Statement of Economic Interest controlling?

III. Suggested List of Activities Which Should Be Avoided

Subparagraph (5) of G.S. 120-102 makes it the duty of the Legislative Ethics Committee to suggest to legislators activities which should be avoided. Another section of the Legislative Ethics Act and a section of the Criminal Code are relevant to this duty:

§120-86 [120-59] Bribery, etc.--No person shall offer or give to a legislator or a member of a legislator's immediate household, or to a business with which he is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or a promise of future employment, based on any understanding that such legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of his duties.

§14-219. Bribery of legislators.--If any person shall directly or indirectly promise, offer or give, or cause to be promised, offered or given, any money, bribe, present or reward, or any promise, contract, undertaking, obligation or security for the payment or delivery of any money, goods, right of action, bribe, present or reward, or any other valuable thing whatever, to any member of the Senate or House of Representatives of this State after his election as such member, and either before or after he shall have qualified and taken his seat, with intent to influence his vote or decision on any question, matter, cause or proceeding which may then be pending before the General Assembly, or which may come before him for action in his capacity as a member of the General Assembly, such person so offering,

promising or giving, or causing or procuring to be promised, offered or given any such money, goods, bribe, present or reward, or any bond, contract, undertaking, obligation or security for the payment or delivery of any money, goods, bribe, present or reward, or other valuable thing whatever, and the member-elect who shall in anywise accept or receive the same or any part thereof, shall be guilty of a felony, and shall be fined not exceeding five years, and the person convicted of so accepting or receiving the same, or any part thereof, shall forfeit his seat in the General Assembly and shall be forever disqualified to hold any office of honor, trust or profit under this State.

Thus, the criminal statute, which was enacted in 1868, makes it a felony for a legislator to accept or receive anything of value with the intent that his vote or action on any matter coming before the General Assembly shall be influenced thereby. Enforcement of this statute is accomplished through the normal criminal law enforcement channels.

The Legislative Ethics Committee has no jurisdiction over non-legislators who offer or give bribes. The Committee is concerned with the legislator who solicits or accepts offers.

Corrupt intent is an essential feature of the offense under the criminal statute. The applicable section of the Ethics Act (G.S. 120-86) involves intent in the first part, but the last sentence also prohibits solicitation or acceptance of anything of value "where it could reasonably be inferred" that the thing of value would influence the legislator. It is here that the Committee may wish to prepare a list of activities which legislators should eschew in order to avoid the "reasonable inference" of wrongdoing.

Certain technical questions arise, such as, "What constitutes soliciting?" and "What is the content of the phrase 'anything of monetary value?'" These semantic exercises aside, certain very practical questions suggest themselves. The thread of consistency running through them all is contained in two questions:

1. Is there a point at which the monetary value of a gift, etc., becomes so low that there can be no reasonable inference that the gift was intended to affect the judgment or actions of the legislator?

2. Does the existence of a special business, professional or social relationship between giver and receiver negate any inference of intent to affect the judgment or actions of the legislator?

3. Does the type of giver --e.g., business subject to State regulation, business not subject to State regulation, individual, etc.-- affect the existence of a reasonable inference of intent to affect the judgment or actions of the legislator?

Specifically, the following questions might be asked:

a. Is it unethical for a legislator to accept a special rate, lower than that charged members of the general public, for housing, automobile leasing, and similar goods and services?

If so, does it make any difference if the special rate is available to all legislators or is offered to legislators on a selective basis?

b. Is it unethical for a legislator to share quarters with another legislator and allow the other to pay more than his pro rata share of the costs?

c. Is it unethical for a legislator to accept such items as tickets to an athletic contest or other entertainment from (1) an individual, (2) a business subject to state regulation, (3) a business not subject to state regulation, (4) a state institution?

d. Is it unethical for a legislator to accept contributions in kind of food and other refreshments for a party hosted by the legislator, from (1) an individual, (2) a business subject to state regulation, (3) a business not subject to state regulation?

e. Is it unethical for a legislator to accept free season passes to motion picture theaters?

g. What are the limits, if any, on accepting invitations to social functions, including meals and other refreshment, from the various types of hosts.

(1) Is it acceptable to attend dinners and parties which are held on a regular and recurring basis by the same host during a session?

(2) Is it permissible to attend one dinner per session hosted by any of the types of hosts?

h. Is it permissible for a legislator to accept a gift at Christmas from a business subject to State regulation? If so, is there a value limit?

i. Suppose a legislator is engaged in a particular business and has friends across the state in that same business. Is the legislator free to pursue normal social activity with that business group, even though the business is subject to state regulation?

The State of California has a law that requires that each legislator report every thing of value received, including a soft drink or a cup of coffee. The report must list the giver and the date of the gift. A large staff of investigators enforces the law. The Committee may wish to consider whether some adaptation of this requirement would be meaningful or practicable in North Carolina.

IV. Confidential Information

G.S. 120-87 /120-607 provides:

"§120-87. Disclosure of confidential information.-- No legislator shall use or disclose confidential information gained in the course of or by reason of his official position or activities in any way that could result in financial gain for himself, a business with which he is associated or a member of his immediate household or any other person."

This Ethics Committee may need to consider the following questions:

1. Do we need a definition of "confidential information" as the term is used in the statute? Just what did the General Assembly have in mind? Should this definition be developed on a case-by-case basis through advisory opinions or does it require immediate articulation?

Possible examples: A member of the Committee on Transportation learns under confidential circumstances of plans to construct a new highway or to upgrade an existing highway. He buys undeveloped land in the path of the development; or, he informs a friend who buys land; or, if the development will depreciate certain property, he sells, or the friend he informs, sells property which will be damaged by the development.

A legislator learns under confidential circumstances that a proposed tax change has the support of powerful forces adequate to enact it. He buys or disposes of property, realizes or defers income or expense, or otherwise acts to obtain maximum benefit or minimum injury from the change,

2. What degree of proof would be required to find a violation of this section? Would knowledge--action--benefit automatically constitute a violation, or would it be necessary to show that the action was triggered by the confidential information and not by sound business judgment based upon analysis of other available facts?

3. Even though proof of violation might be very difficult to establish, is it desirable to articulate guidelines to assist the conscientious legislator who might find himself confronted with a question in this area?

State of Florida
House of Representatives

Resolution No. 906

Introduced by Representative Brown

A resolution urging the League of Cities, the State Association of County Commissioners, the district school boards and the United States Congress to endorse and adopt the Four-Way Test.

WHEREAS, in 1932, Herbert J. Taylor developed a series of questions known as the Four-Way Test in an effort to promote a better attitude among his fellow workers and through them, a better relationship between his corporation and the people it served, and

WHEREAS, the Rotary International quickly adopted the test as a code of personal principles which could be used to transform a community from a collection of bitter rivals divided by internal strife to a growing cooperative organism concerned with the welfare of its component parts, and

WHEREAS, Walter LeGrande, a pharmacist and Rotarian from Daytona Beach, Florida, understood the value of the principles embraced in the four-way test and desired to make Daytona Beach a better place to live in for its citizens, and

WHEREAS, the use of the four-way test in Daytona Beach, Florida, united a city which had been splintered by competitive factions and commercial rivalry to the extent that tourists no longer felt welcome and thereby transformed Daytona Beach into a model of cooperative commercial effort, and

WHEREAS, there have been few periods in the history of our country when we have been more in need of philosophical principles which would help to unite us in our national purpose, and

WHEREAS, the four-way test asks:

1. Is it the TRUTH?
2. Is it FAIR to all concerned?
3. Will it build GOODWILL and BETTER FRIENDSHIPS?
4. Will it be BENEFICIAL to all concerned?, and

WHEREAS, organizations such as the League of Cities, the State Association of County Commissioners, the United States Congress and our own Legislature should endorse and promote the four-way test, and

WHEREAS, the Legislature of the State of Florida should promote the four-way test, NOW, THEREFORE,

Be It Resolved by the House of Representatives of the State of Florida:

That the Legislature urges the League of Cities, the State Association of County Commissioners, the district school boards and the United States Congress to endorse and adopt the Four-Way Test as an aid in the development of a greater national purpose.

BE IT FURTHER RESOLVED that a copy of this resolution be presented to Walter LeGrande, as a tangible token of the sentiments expressed herein.

This is to certify that the foregoing resolution was adopted on the 9th day of April 1980, and appears in the permanent Journal of the House of Representatives.

Speaker

Attest:

Clerk

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

January 13, 1986

The Honorable Thad Eure
Secretary of State
Capitol Building
Raleigh, North Carolina 27611

Dear Mr. Eure:

Pursuant to Section 1 (40) of Chapter 790 of the 1985 Session Laws, the Legislative Research Commission has appointed a committee to study the issues of Legislative Ethics and Lobbying proposed initially by Senate Bill 829, introduced by Senator Rauch. I enclose copies of the cited legislation for your information. Senator Rauch and Representative Kennedy have been appointed to cochair the Committee on Legislative Ethics and Lobbying.

At its first meeting last December, the Committee decided to take up the issue of regulation of lobbyists at its next meeting. The Committee voted to invite you, as the state official responsible for administering the regulation of lobbying (Article 9A of Chapter 120 of the General Statutes), to address it at that meeting. Specifically the Committee would like you to provide it with the following information:

1. an outline of your responsibilities under the statute;

2. for each of the last five years:

   a. the number of legislative agents and the number of their employers or retainers registered;

   b. the amount of money expended for lobbying in each of the following categories: transportation; entertainment; food; any item having a cash equivalent value of more than $25; contributions made, paid, incurred or promised; and compensation

to legislative agents as well as the total figure for lobbying expenses for each year;

c. the total amount of the fees collected by your office for lobbying registration;

d. the costs incurred by the State in administering Article 9A of Chapter 120.

3. what formal or informal checks, if any, exist to assure compliance with the lobbying law;

4. the number and type of apparent violations reported by you to the Attorney General pursuant to G.S. 120-47.10;

5. your opinion as to what changes in law or procedure, if any, are needed to the effective regulation of lobbying in this State;

6. any other matter you wish to apprise the Committee of with regard to lobbying.

The next meeting of the Committee will be held on Friday, January 24, 1986 at 10:30 a.m. in Room 605 of the Legislative Office Building. We would ask you to provide 15 copies of your written statements to the Committee at that meeting so that Committee members might have the benefit of them at the meeting and later.

Sincerely,

Marshall A. Rauch

Senator Marshall A. Rauch

Annie B. Kennedy

Representative Annie B. Kennedy
Cochairmen, Legislative Ethics and Lobbying Committee

T-096
Enclosures
cc: Mrs. Brenda Pollard

STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

MEMORANDUM

DATE: January 17, 1986

TO: Terrence D. Sullivan

FROM: Dianne Dunlap, Research Assistant

SUBJECT: Regulations in other states regarding legislators' law or corporate partners' lobbying in legislatures

I have researched the regulations in other states regarding legislators' law or corporate partners' lobbying in legislatures. There do not appear to be any states which by statute prohibit this practice. However, the Ethics Committee of the Florida House of Representatives has issued opinions on the subject of legislators' law partners' lobbying in legislatures. The American Bar Association (ABA) has also issued opinions on the subject. Additionally, there are also state bar opinions from at least seven states which address some aspect of the issue.

The Ethics Committee of the Florida House of Representatives, in Opinion 27 (copy attached), tells a member that "[i]t was the unanimous decision of this Committee that such an arrangement [being in practice or associated with an attorney who is a lobbyist] is in conflict with the best interests of the Legislature and the constituents you serve." In Interpretation 29 (copy attached), the Ethics Committee addresses a similar issue--the possibility of an ethical violation when a member's law partner is also the spouse of a registered lobbyist before the Florida Legislature. In Interpretation 29, the Committee concludes that "the situation you have posited does not represent an unethical situation unless other behavior, outside of the bare situation, would cause such situation to arise."

The ABA has issued three opinions on this subject (copies attached). ABA Formal Opinion 296 states in part:

> A law firm may not accept employment to appear before legislative committees while a member of the firm is

> serving in the Legislature even if full disclosure is made to the committee and the member of the Legislature would not share in the fee received.

This opinion was modified by ABA Formal Opinion 306 which states in part:

> Wherever under constitutional or statutory provisions or legislative rules consent has been given, expressly or by necessary implication, a lawyer may engage in lobbying on behalf of a client before a legislative committee or otherwise where a member of his firm or associate is a member of the legislature.

ABA Informal Opinion 1182 states that "It is generally recognized that disqualification of a lawyer [from accepting a retainer or other compensation for representing certain clients] includes disqualification of his law partners..."

The state bars in at least seven states have addressed the issue of elected officials or their partners representing clients before the officials' political bodies. Summaries of opinions (from the "ABA/BNA Lawyers Manual on Professional Conduct") or copies of opinions obtained are attached, these being:

Delaware
-#1982-5: "Lobbying by the lawyer legislator or members of the lawyer legislator's firm is prohibited by several ethics opinions, e.g., Opinions 83 and 87 Michigan State Bar Committee Professional Ethics. [However,] [w]e think the better rule permits lobbying only if full disclosure of the interest is made pursuant to Article II Section 20 of the Delaware Constitution and the legislator does not vote on the question."

Florida
-#59-31: "It is improper for a lawyer whose partner serves in the Florida Legislature to represent a client before the Legislature as a registered lobbyist even though the lawyer who is a legislator makes full disclosure of such facts, and does not share in any fees generated by the lobbying activities."
-#67-5: "A member of the Florida Bar who is a partner or associate of a member of the Legislature may not accept a retainer to perform lobbying services before the Legislature."
-#67-5 Supplemental: "The conclusion reached in Florida Opinion 67-5 is applicable even though disclosure of the representation by the law firm is made during a political campaign, and the legislator-partner disqualifies himself in accordance with a rule of the Legislature from voting on matters of direct interest to the client."

Maine
-#28: "[C]an an attorney-legislator also work as a registered lobbyist to represent a client's interests in specific legislative measures? Clearly that question must be answered in the negative. Such employment would be diametrically in conflict with the ethical standard set forth in Rule 3.2(d). It would also create a classic conflict of interest under Rules 3.4(b) and 3.4(c). Since the attorney-legislator himself could not be employed as a lobbyist before the legislature, neither can any of his associates or partners be so employed."

Mississippi
-#62: "The position taken by the Firm...that it would be ethically improper for members of the Firm to continue to represent the Mississippi Legislature and it Committees and/or clients before such bodies, or to accept such representation after [the official] becomes a member of the Firm is correct in the opinion of the Committee."

New Hampshire
-#5 [summary appearing in ABA/BNA Lawyers Manual on Professional Conduct]: "Members of a firm may not appear before a city council of which one member of the firm is a member, even when that member abstains from any discussion or voting on the matter, and members of the firm may not appear before boards appointed by the council."

Vermont
-#82-5: "It seems clear that this rule [DR 8-101(A)] would prohibit the lawyer from representing clients before a legislative committee while serving as a member of the legislature. It would be difficult if not impossible, for the lawyer to separate his public position from his action on behalf of the client...Since the legislator is disqualified from representing clients before the legislature, members of his firm are disqualified."

Virginia
-#419: "Having considered these authorities, it is our opinion that it is improper for a lawyer to lobby when his partner is a member of the legislature, regardless of disclosure and abstention by the legislator and disclosure by the lobbyist."
-#537: "It is, therefore, the opinion of the Committee that it is improper for an attorney to lobby before the General Assembly or other legislative body when the lobbyist's law partner is a member of that elected body. We do not believe the Comprehensive Conflict of Interest Act obviates this result or in any way diminishes the professional responsibility of the attorney."

attachments

Opinion 27

The Committee has responded to an inquiry from a Member with the following:

Dear Representative:

You asked for an opinion from the Select Committee on Standards and Conduct as follows:

> I would like to have an opinion from your committee whether or not a member of the legislature may be in practice with or associated with an attorney who is a lobbyist.

It was the unanimous decision of this Committee that such an arrangement is in conflict with the best interests of the Legislature and the constituents you serve. In no way does this reflect on the integrity of those engaged in lobbying. We accept lobbying as an entirely legitimate activity in the democratic process and do not intend to reflect on any member of this profession as long as a person is in compliance with applicable law.

The Committee further suggests that you and your intended associate refer to the canons of the Florida Bar, vis-a-vis, Opinion 67.5 and others.

In conclusion, the Committee would caution members of the Florida House of Representatives to avoid situations that would appear to be a conflict of interest even though no conflict does exist.

Leon N. McDonald, Sr., Chairman — November 8, 1973
Select Committee on Standards & Conduct

(Journal, House of Representatives, 1974, January 30, page 14)

Interpretation 28

Response from Chairman Martin, dated May 15, 1978, to an inquiry from a Member of the House regarding a possible ethical violation if the Member's law partner is the spouse of a registered lobbyist:

"I am in receipt of your letter of May 11, 1978, asking essentially the following question:

> Is there any ethical violation when a member's law partner is also the spouse of a registered lobbyist before the Florida Legislature?

"Your question demonstrates a situation of the type that is occurring much more frequently now and it is not uncommon for both spouses in a marriage to be involved in professional careers which overlap from time to time.

"First, it is abundantly clear that your situation does not fall within the realm of Chapter 112, the Code of Ethics for Public Officers and Employees. There is no provision in the Code that would pertain to this situation unless some other action or activity were involved which, of course, related to

some corrupt misuse of office.

"Likewise, it is clear that the situation does not fall within one of the specific House Rules relating to conduct by members of the Florida House of Representatives. Rule 5.6, however, does relate to the general conduct by a House Member. Rule 5.6 states:

> Legislative office is a trust to be performed with integrity in the public interest. A Member of the House is jealous of the confidence placed in him by the people. By personal example and by admonition to colleagues whose behavior may threaten the honor of the lawmaking body, he shall watchfully guard the responsibility of his office.

"It is my opinion that this rule also has been complied with in that you are taking, and have taken in the past, great care to avoid even the appearance of any impropriety.

"I would like to point out to you, however, Opinion No. 27 of the Select Committee on Standards and Conduct, issued January 30, 1974, where the Committee held that there was a conflict when a member of the Legislature was a law partner of a registered lobbyist. The decision stated:

> It was the unanimous decision of this Committee that such an arrangement is in conflict with the best interests of the Legislature and the constituents you serve. In no way does this reflect on the integrity of those engaged in lobbying. We accept lobbying as an entirely legitimate activity in the democratic process and do not intend to reflect on any member of this profession as long as a person is in compliance with applicable law.

"Also, it should be noted that the Florida Bar has issued several opinions (59-31 and 67-5) which concluded:

> It is improper for a lawyer whose partner serves in the Florida Legislature to represent a client before the Legislature as a registered

> lobbyist even though the lawyer who is a legislator makes full disclosure of such facts, and does not share in any fees generated by the lobbying activities.
> Opinion 59-31, April 11, 1960
> Committee on Professional Ethics of
> the Florida Bar.

"We have contacted, hypothetically, and have spoken to the Staff Counsel of the Florida Bar and, although this particular situation has never been decided, he cited opinion 74-49 wherein it was held that:

> Where two attorneys are husband and wife, it is not unethical per se for a law firm employing one spouse to represent a client whose interests are adverse to those of a client represented by a law firm employing the other spouse; but impermissible conflicts may arise and must be decided on a case by case basis.
> Opinion 74-49, February 20, 1975
> Committee on Professional Ethics of
> the Florida Bar.

"In conclusion, the situation you have posited does not represent an unethical situation unless other behavior, outside of the bare situation, would cause such situation to arise."

FORMAL OPINION 296
(August 1, 1959)

A law firm may not accept employment to appear before legislative committees while a member of the firm is serving in the Legislature even if full disclosure is made to the committee and the member of the Legislature would not share in the fee received.

CANONS INTERPRETED: PROFESSIONAL ETHICS 6, 26

The opinion of the Committee was stated by MR. JOHNSON, Messrs. Armstrong, Jones, McCowan, Miller, Jr., Pettengill, Shepherd, Jr., and Coulter concurring.

The text of the Opinion is as follows:

Canon 26 of the Canons of Professional Ethics read:

> A lawyer openly and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the Courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding, to influence action.

and Canon 32:

> No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. . . . But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

In *Opinions 72* and *49* this Committee held:

> The relations of partners in a law firm are such that neither the firm nor any member or associate thereof, may accept any professional employment which any member of the firm cannot properly accept.

In *Opinion 16* this Committee held that a member of a law firm could not represent a defendant in a criminal case which was being prosecuted by another member of the firm who was public prosecuting attorney. The Opinion stated that it was clearly unethical for one member of the firm to oppose the interest of the state while another member represented those interests. The positions are inherently antagonistic and no question of consent could be involved as the public is concerned and it cannot consent. Since the prosecutor himself could not represent both the public and the defendant, no member of his law firm could either.

It is the opinion of the Committee that a law firm could not accept employment to appear before a legislative committee while a member of the firm is serving in the Legislature. A full disclosure before the committee would not alter this ruling nor would it be changed by the fact that the member of the Legislature would not share in the fee received thereby.

ABA

FORMAL OPINION 306
(May 26, 1962)

Wherever under constitutional or statutory provisions or legislative rules consent has been given, expressly or by necessary implication, a lawyer may properly engage in lobbying on behalf of a client before a legislative committee or otherwise where a member of his firm or associate is a member of the legislature.

CANON INTERPRETED: PROFESSIONAL ETHICS 6

This Committee said in formal *Opinion 296*, dated August 1, 1959, in effect, that there was a necessary conflict of interest where a partner or associate of a law firm was in the legislature, for another representative of the firm to appear before the legislature and sponsor or oppose legislation in the interest of one of the clients of the firm; and since the public was involved, consent to the dual representation could not be given, so as to meet the requirements of *Canon 6*, wherein it is provided (in part) that it is unprofessional to represent conflicting interests except by express consent of all concerned given after a full disclosure of the facts.

We have been advised that in some states, particularly some of the smaller states, our ruling has had the effect of cutting down on the number of lawyers in the legislatures, and has deterred many able young lawyers employed by law firms from standing for positions in the legislature; and as requested by some members of the Bar from certain of these states, we have given consideration to *Opinion 296*. While we adhere to the basic principles of that opinion, we have concluded that it should be modified and supplemented as hereinafter set out.

We have concluded that if in any particular state there are constitutional or statutory provisions or legislative rules which expressly or by necessary implication recognize the propriety of a lawyer appearing before legislative committees, or otherwise lobbying in the legislature for a client where a member of his firm or associate was at the time a member of the legislature, or where provision has been made permitting a member of the legislature to disqualify himself from voting on or participating in the discussion of the matter involved, consent has been given resolving the conflict of interest questions, either by the people through the constitution or by the Legislature speaking for the state.

Section 22 of the Article III of the Constitution of the State of Texas reads as follows:

A member who has a personal or private interest in any measure of bill, proposed, or pending before the Legislature, shall disclose the fact to the House of which he is a member, and shall not vote thereon.

While no effort has been made to check the constitutions of all the states, such check as the Committee has made discloses that several other states have provisions substantially the same as that contained in the Texas Constitution but that no such provisions appear in the constitutions of a number of other states.

Such provisions have been construed as not disqualifying a legislator whose interest is merely that which is common to large segments of the public (such as a bill dealing with veterans of wars). While such provisions were probably never intended to apply to the situation we now have under discussion, such provisions are very broad and it seems to the Committee they might appropriately be considered as applicable to a legislator-lawyer whose firm was employed by a client to lobby for or against certain legislation. As a member or associate of the law firm he has a "personal and private interest" in the activities of the firm in behalf of the client. Accordingly, it is the opinion of the Committee that in states having a constitutional provision of this kind, the public in its basic law has consented to appearances by lawyers under such circumstances and has removed the question of conflict by providing that the legislator in question should disclose the interest and not vote upon the measure.

Even in States which do not have such constitutional provisions (assuming no conflict with existing constitutional provisions) the Committee is of the opinion that consent of the public may properly be given by an act of the legislature or legislative rule substantially to the effect of the aforesaid constitutional provisions, or in any other manner recognizing the possible conflict of interest and either expressly or by necessary implication permiting it under prescribed circumstances.

Without such constitutional or statutory provisions or legislative rules the mere disclosure by the lawyer-legislator of the conflict of interest and a voluntary disqualification on his part to participate in the legislation involving such conflict is not sufficient to meet the requirements of *Canon 6*, as interpreted by this Committee. This would seem to involve, in part at least, the abdication of the functions for which the legislator was elected, without constitutional or legislative permission therefor. With such constitutional or legislative provisions the public policy of the state has been declared.

A number of states have adopted so-called lobbyists registration statutes, generally providing (in substance) that anyone acting in a representative capacity who appears before a legislative committee or contacts any member of the legislature for or against any pending legislation shall file with the legislative body a statement showing the name of his client and giving the measure or general subject matter in which the client is interested. It has been suggested to our Committee that compliance with such lobbyist registration statutes is sufficient to take the case out from under our *Opinion 296*, and resolve the question of conflict of interest. We do not so hold. Such statutes are designed to give the legislature and the public notice of the client or person represented and of the legislation which it advocates or opposes through its representative. While such statutes are of general application, they do not purport to deal with the question of conflict of interest. Accordingly, we hold that they are not sufficient to give an implied consent by the public, resolving the question of conflict of interest, where a law firm appears before a legislature committee or otherwise contacts members of the legislature on behalf of a client for or against a pending measure, and where at the same time a partner or associate in said firm is a member of the legislature.

To the extent herein provided, formal *Opinion 296* is modified and qualified; but otherwise said *Opinion 296* is adhered to.

ABA

Informal Opinion 1182 December 5, 1971
Conflict of Interest;
Lawyer-Legislator

You have posed for our response eight questions relating to the professional responsibilities of lawyers who are also serving as legislators. We take up the questions in the order you have stated them.

> Your first question is: "Should a lawyer who is a member of a legislative body accept a retainer or other compensation from an electric utility, a loan company, a labor union, an insurance company, a bank, a farmer's cooperative, a railroad, or any other organization which is likely to be affected by the passage or defeat of proposed legislation?"

A categorical answer cannot be given. No Disciplinary Rules of the Code of Professional Responsibility contain a provision that will necessarily and always prohibit a lawyer's representing either an individual or an organization that is likely to be affected by the passage or defeat of proposed legislation, even though the lawyer also is a legislator. In certain circumstances, however, the Disciplinary Rules may have the effect of proscribing acceptance of a tendered retainer.

DR 8–101(A)(3) provides that a lawyer shall not

> "... accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official."

In some circumstances fact issues could exist whether a retainer accepted from a client by a lawyer-legislator was made by the client with the "purpose of influencing" the lawyer-legislator's action as a public official, and whether the lawyer either knew or cannot deny knowing this because the purpose was "obvious."

DR 8–101(A)(1) provides that a lawyer shall not

> "... use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest."

The CPR does not define "special advantage" or "not in the public interest." We cannot, however, construe subd. 1 as being a blanket prohibition against the representation by a lawyer-legislator of clients who may be affected by the defeat or passage of proposed legislation, for two reasons: (1) if the committee that drafted the Code had desired for it to include such a blanket proscription, that committee could and would have simply stated that a lawyer while serving as a member of a legislature shall not represent a client who is likely to be affected by the passage or defeat of proposed legislation; and (2) to interpret subd. 1 as constituting such a blanket proscription would make it a drastic measure, for there would be extremely few clients whom the lawyer-legislator could represent. Accordingly, we think that "special

advantage" refers to a direct and peculiar advantage, and "not in the public interest" refers to action (or legislation) clearly inimical to the best interests of the public as a whole. This interpretation is reinforced by the underlying policies indicated in EC 8-8. Thus it is apparent that a disciplinary action under DR 8-101(A)(1) may involve several fact issues, such as whether there was a special advantage for the client or whether the action was in the public interest.

We also note that neither (1) nor (3) of DR 8-101(A) makes any distinction between organizations such as you list and other clients.

Although it does not state a basis for discipline, EC 9-2 gives guidance to the lawyer-legislator in the situation you mention, when it says:

> "When explicit ethical guidance does not exist a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession."

Likewise, EC 8-8 suggests:

> "A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties." While these provisions do not require a lawyer to refuse a retainer in the situations you mention, they should cause a lawyer to shun acceptance of a retainer if, under all circumstances, his conduct will adversely affect public confidence or his conduct might result in his professional duties to client being at variance with his official duties as a legislator. Certainly a lawyer cannot, consistently with the guidance given under Canon 9, accept a retainer where its acceptance will give the appearance of professional impropriety.

> Your second question is: "If so, what is the proper course for the lawyer to follow when legislation affecting this client is being considered by the legislature? Should he disclose his retainer and request that he be excused from participating in the consideration of the matter?"

Since Question 1 could not be answered categorically, Question 2 does not call for an answer. It should be noted, however, that the Code of Professional Responsibility did not undertake to regulate the conduct of the lawyer as a legislator, leaving this to local law. The local law should, of course, be observed; *see* EC 1-5. Under Rule 9 of this Committee's Rules of Procedure, this Committee "will not issue opinions on questions of law . . ."

> Your third question is: "Where the compsensation of members of administrative boards is fixed by the legislature, or where their appointments are subject to legislative approval or where they are elected by the legislature, should lawyer-legislators appear before these administrative boards in behalf of private clients?"

DR 8-101(A)(2) proscribes a lawyer's using "his public position to influence, or attempting to influence, a tribunal to act in favor of himself or of a client." Thus a lawyer appearing before an administrative board the compensation of whose members are fixed by the legislature or the appointment of whose members are either subject to approval by the legislature or

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given to the lawyer by EC 8–4, which indicates that a lawyer holding such dual employment should make clear whether his position, pro or con, concerning particular legislation is a position taken in his capacity as legislator or in his capacity as a state employee. In accepting such dual employment, a lawyer in any event should consider the guidance given in the Ethical Considerations of Canon 9.

Your eighth question is: "Do the same rules apply to a law partner of the legislator?"

It is generally recognized that disqualification of a lawyer includes disqualification of his law partners; *see, e.g.*, ABA Formal Opinion 33 (1931); *W. E. Bassett Co. v. H. C. Cook Co.*, 201 F. Supp, 821 (1962); *Consolidated Theater Corp. v. Warner Bros. Pictures, Inc.*, 113 F. Supp. 265 (1953); Note, 73 Yale L. J. 1058 (1964); *cf.* DR 5–105(D) (relating specifically to differing interests of two clients); DR 1–102(A)(2); *but see* ABA Formal Opinion 220 (1941). While the question is not completely free from doubt, in our opinion the same rules apply to a lawyer partner of the legislator. A lawyer legislator should never, of course, use his position in the legislature to his advantage in the representation of his clients (*see* DR 8–101), and his conduct should be governed at all times by the Code.

Our conclusions would be substantially the same under the former Canons. *See* Opinion 306 (1962). Two members of the Committee did not participate in the opinion on the ground that the inquiry is too vague to be susceptible of an answer.

DELAWARE STATE BAR ASSOCIATION COMMITTEE

ON PROFESSIONAL ETHICS

OPINION 1982-5

The Committee has been presented by the President of the Delaware State Bar Association with seven questions concerning restrictions on the private practice of a lawyer who also serves in the Delaware General Assembly. The questions, which will be taken up one by one, are quite broad and it is difficult to contemplate the innumerable situations which might arise within their scope. Consequently, categorical answers cannot be given to all of the questions. Nevertheless, the Committee recognizes that knowledge of ethical constraints will aid members of the Bar in deciding whether to run for elective office. We shall therefore endeavor to give as much guidance as we can.

GENERAL PRINCIPLES

The regulation of the ethical conduct of a lawyer-legislator is shared by Delaware Supreme Court and the General Assembly.[1] The General Assembly regulates the conduct of its own members, Del. Const. art. II, § 9. A legislator who is an attorney is also subject to the

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[1] Some states have constitutional or statutory provisions touching this question. See p. 9 below. We know of no such provision in Delaware, and in any case our function is restricted to advice on ethics and does not include the construction of Constitutional, statutory or common law.

ethical standards of his profession. Higgins v. Advisory Committee on Professional Ethics, 73 N.J. 123, 373 A.2d 372 (1977). This Committee's role does not include advice on the ethics of legislators in their legislative role. We are concerned only with advising on the ethical conduct of lawyer-legislators in their roles as lawyers.

Where the regulation of ethical conduct is joint, the respective bodies will exercise their regulatory powers on a complementary basis. State v. Leonardis, 73 N.J. 360, 375 A.2d 607 (1977). Accordingly, in applying the Delaware Lawyer's Code of Professional Responsibility to lawyer-legislators, the Code's standards should be read in a way that impinges the least on the authority of the legislature to determine the propriety of conduct and the freedom of popularly elected legislators to carry out their legislative duties.

Our paramount obligation under the Code is to "maintain the highest standard of professional conduct...," Hull v. Celanese Corp., 513 F.2d 568, 571 (2d Cir. 1975). We are also conscious that such conduct includes furthering other public interests. One such interest which has impact on the present question is the access to service in the General Assembly of citizens trained in the law. As the ABA recognizes:

> Lawyers often serve as legislators.... This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system.

Model Code of Professional Responsibility EC 8-8.

> If government service will tend to sterilize an attorney in too large an area of law for too long a time... the sacrifice of entertaining government service will be too great for most men to make.

Kaufman, The Former Government Attorney and the Canons of Professional Ethics, 70 Harv.L.Rev. 657, 668 (1957).

Undue regulation of the livelihood of a lawyer-legislator will tend to discourage abler attorneys from seeking public office. Service in the General Assembly is a part-time position. The legislative session lasts 50-55 days per year and a member is paid $11,400 per year. If a lawyer-legislator is to maintain the expected standard of living he or she must also be free to have a meaningful and remunerative legal practice.

Canon 9 provides that every attorney:

> "SHOULD AVOID EVEN THE APPEARANCE OF IMPROPRIETY."

Model Code of Professional Responsibility Canon 9.

Recent judicial interpretations of this Canon support the conclusion that disqualification in the absence of actual or threatened wrongdoing is not necessary to preserve the

integrity of the Bar. An attorney's conduct need not be governed by standards attributable only to the most cynical members of the public, Woods v. Covington County Bank, 537 F.2d 804, 813 (5th Cir. 1976); rather, Canon 9 speaks to the view of the average layman. Price v. Admiral Insurance Co., 481 F.Supp. 374, 378 (E.D.Pa 1979).

While in some contexts courts have disqualified attorneys under Canon 9 in the absence of an actual breach of another Canon, see, e.g., Cinema 5, Ltd. v. Cinerama, Inc., 528 F.2d 1384, 1387 (2d Cir. 1976), the clear trend is away from such a subjective and undefinable standard. In the Woods case, for example, the Fifth Circuit adopted a two-part standard for determining whether an attorney should be disqualified under Canon 9. The Court there required, first that there be "at least a reasonable possibility that some specifically identifiable impropriety did in fact occur" Woods, 537 F.2d at 813 and second, that the Court "must also find that the likelihood of public suspicion ...outweighs the social interests which will be served by a lawyer's continued participation in a particular case." Id. at n. 12. Accord, Church of Scientology v. McLean, 615 F.2d 691, 693 (5th Cir. 1980); Zylstra v. Safeway Stores, Inc., 578 F.2d 102, 104 (5th Cir. 1978). This two-part test appears to us to be appropriate for our

analysis. That is, not only must there be a strong likelihood of reasonable public suspicion but there must exist as well a reasonable possibility of actual impropriety i.e., a violation of the law or the Canons of Ethics.

The Fifth Circuit reasoned in Woods that an inflexible application of Canon 9 would defeat important social interests such as "the lawyer's right freely to practice his profession, and the government's need to attract skilled lawyers." Woods, 537 F.2d at 812.

That the "appearance of impropriety" doctrine should not be given an overbroad application was recently reaffirmed in Arkansas v. Dean Foods Products Co., 605 F.2d 380 (8th Cir. 1979), wherein the Eighth Circuit stated:

> [D]isqualification in spasm reaction to every situation capable of appearing improper to the jaundiced cynic is as goal-defeating as failure to disqualify in blind disregard of flagrant conflicts of interest.

Id. at 383.

The Second Circuit has adopted a strictly factual approach when applying Canon 9. In Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp., 518 F.2d 751 (2d Cir. 1975), the court recognized that "ethical problems cannot be resolved in a vacuum," Id. at 753, quoting Emle Industries, Inc. v. Patentex, Inc., 478 F.2d 562, 565 (2d Cir. 1973), and that "[t]horough consideration of

the facts...is required." Id. at 753. The Second Circuit relying on the words of Judge Kaufman in United States v. Standard Oil Co., 136 F.Supp. 345 (S.D.N.Y. 1955), advised:

> When dealing with ethical principles, it is apparent that we cannot paint with broad strokes...the conclusion in a particular case can be reached only after painstaking analysis of the facts....

Id. at 367. See also Board of Education v. Nyquist, 590 F.2d 1241, 1247 (2d Cir. 1979) ("appearance of impropriety is simply too slender a reed on which to rest a disqualification order except in the rarest cases"); R-T Leasing Corp. v. Ethyl Corp., 484 F.Supp. 950, 954 (S.D.N.Y. 1979), aff'd, 633 F.2d 206 (2d Cir. 1980) ("Canon 9...has been cautiously applied by the courts...").

The application of the rule of these recent decisions to the matter at hand leads us to conclude that a lawyer-legislator should be disqualified from areas of legal practice as to which public suspicion of impropriety might attach only where, on the facts of the specific case there is a reasonable possibility that a specific impropriety has occurred or is likely to occur. One such potential impropriety which stands out is the absolute prohibition against a lawyer-legislator using his or her office to obtain a personal advantage or advantage for a private client. Where there is a reasonable possibility that

actions taken by the lawyer-legislator will violate this proscription, the lawyer will be disqualified and if such conduct occurs the lawyer will be subject to professional discipline.

QUESTIONS

I. The first question is: "Would a lawyer-legislator be prohibited from representing a state agency, county government, municipal corporation (or agency thereof), school board, school district or other political subdivision?"

There is no ethical bar to a lawyer-legislator representing the State or one of its agencies. This view is supported by ABA, Committee on Ethics and Professional Responsibility, Informal Opinion 1182 (1971), which found that "[n]o Disciplinary Rule necessarily prohibits a legislator from being employed in another capacity by the state...." Id. at 415. Under Delaware law a member of the General Assembly may be employed by the State in another capacity. Opinion of the Justices, Del.Supr., 245 A.2d 172 (1968).

The state Constitution provides that a member of the General Assembly may not hold another state "office." Del. Const. art. II, § 14. We do not read that provision to prohibit from representation of government bodies in the legislator's individual capacity as a private lawyer but

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rather a prohibition from service in an official position such as Attorney General or State Auditor.

If while carrying out the duties of a private lawyer, the legislator uses his political position to obtain an advantage for his or her clients that lawyer will be subject to professional discipline. A clear instance of profiting from public office would be the acceptance of employment as a result of a political favor. Just as public service should not directly limit private practice, by the same token, public service should not bring private benefit.

II. The second question is: "Would a lawyer-legislator be prohibited from litigating against, making an appearance before, or otherwise taking an adversary position against the State, any State agency, county government, municipal corporation (or agency thereof), school board, school district or other political subdivision, on behalf of a client?"

There is no absolute ethical bar to a legislator representing private clients against the State or its agencies. There is no apparent conflict of interest in these circumstances because a member of the General Assembly represents not the State government, nor any of its branches, departments or agencies, but rather, his or her constituency. Compare, ABA, Committee on Ethics and Professional Responsibility, Informal Opinion 287.

A lawyer-legislator who votes for funds for a particular agency does not thereby establish a sufficient relationship with the government body to justify a per se disqualification from representing interests against or before that agency. (Compare U.S. v. Standard Oil, 136 F.Supp. at 364 where Judge Kaufman declined to restrict former government attorneys from practicing before the agencies for which they had previously worked.) Similarly, it is not reasonable to disqualify a lawyer-legislator from representing a client against the State where there is not some close factual relationship between the lawyer's legislative responsibilities and the case at hand. If the legislator uses public office to wield influence or otherwise advance the interest of a private client, professional discipline for the specific breach is appropriate.

A member of the General Assembly who has worked closely with a particular agency or state official, however, must be especially careful to avoid profiting personally from this relationship. There would be clear grounds for professional discipline, for example, if the legislator, in working with an agency, became privy to confidential information concerning a specific matter and thereafter represented a party who might be aided by the use of the information.

We note that the Oregon Constitution specifically prohibits lawyer-legislators from opposing the State in civil litigation, Oregon Const. art. XV, § 7, and the Georgia Constitution has recently been so construed. Georgia Department of Human Resources v. Sistrunk, et al., 291 S.E.2d 524 (Ga. Supr. 1982). New Jersey has a statute which precludes practice before State agencies (N.J.S.A. 52:13D-16). There may be other such provisions in other states. We have not done a fifty state search.

The Delaware Constitution has no such provision and we know of no Delaware statute on the question. The Georgia Supreme Court in the Sistrunk case specifically stated that civil and criminal representation against the State was not proscribed by Canon 9.

III. The third question is: "Would a lawyer-legislator be prohibited from representing persons accused of criminal or traffic offenses?"

There is no absolute ethical bar to a legislator representing persons accused of criminal or traffic offenses against the State. The lawyer must not, however use his position to repeal or amend existing law for a client's benefit and if the lawyer doubts his capacity to retain an impartial attitute toward criminal legislation then such representations should be declined. Our reasoning is the same as that which allows a legislator to represent a

private interest against the State. Members of the General Assembly represent not the State but rather the member's constituency. Cf. ABA, Committee on Ethics and Professional Responsibility, Informal Opinion 1126 (1969). We distinguish what may appear to be contrary language in Opinion 1980-4 because that opinion dealt with the Lieutenant Governor a high state official who, in the public eye, represents the sovereignty of Delaware.

We note, however, that it would be inappropriate for the lawyer-legislator to permit parties to the Court (or administrative) proceedings to use the title "Senator" or "Representative" and it would be highly unethical for the member to use the position of legislator to intercede with the State on behalf of a client.

IV. The fourth question is: "If a lawyer-legislator serves in the State Senate, are there any particular ethical strictures applicable because of the Senate's constitutional role in the process of confirmation of appointees to the judiciary or to other positions in the Executive Branch?"

There are no ethical strictures which would bar a lawyer-Senator from carrying out the constitutionally established role in the appointment process. A Senator (members of the House do not participate in the appointment process) must be free to carry out this function as part of their duties. Once an individual has been nominated

by the Governor, there should be no blanket prohibition on a Senator voting for the nominee even if he were also a client if there exists a good faith belief that the client is qualified for the position.

The Senator should also be mindful of Disciplinary Rule 8-101(A)(3) which provides that a lawyer shall not:

> accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

The Senator's vote must not be influenced by the promise of or potential for personal benefit from the nominee.

The Senate's reappointment of judicial officials every twelve years might be seen by some to give rise to opportunities for improper legislative influence on the judiciary or benefits to a lawyer-legislator in his private practice. Judges are subject to many pressures and are owed a presumption of honesty and integrity. Experience shows that our judges regularly render fair and just decisions regardless of the status or power of the lawyer or party who appears before them. Should a lawyer-Senator attempt to exert such influence, severe professional discipline would be appropriate.

V. The fifth question is: "In instances where a constituent or member of the public contacts a lawyer-legislator about a problem and the lawyer-legislator believes that the problem requires a private legal solution rather than a political solution, is the lawyer-legislator prohibited in any way from accepting the constituent or member of the public as a client?"

This question presents the facts with sufficient particularity to justify per se disqualification. Where a lawyer, acting in his or her official capacity as a legislator, is contacted by a constituent for reasons related to legislative matters, the lawyer may not generate or seek to generate private legal business from that constituent. If the lawyer-legislator determines that the constituent requires legal assistance, it would be appropriate to refer the constituent to another attorney.

As we have emphasized, a lawyer-legislator is absolutely prohibited from using public office to gain advantage in private legal practice. Taking on business generated through public office would violate this proscription. A lawyer who is contacted first in the capacity of legislator is therefore prohibited from simultaneously acting as the constituent's lawyer in the same matter.

VI. The sixth question is: "What ethical, statutory or constitutional restrictions would be applicable with respect to the advocacy or promotion of a client's cause by a lawyer-legislator in the legislature, including voting on a particular act, bill or resolution affecting this client?"

> A. A lawyer who holds public office shall not:
>
> (1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.

Model Code of Professional Responsiblity DR 8-101(A)(1) (1979).

As interpreted in ABA, Committee on Ethics and Professional Responsibility, Informal Opinion 1182 (1971) DR 8-101(A)(1) is not a blanket prohibition against supporting legislation which affects a client's interests. If the Code stood for such a blanket proscription, it would have been drafted to state that a lawyer while serving in the legislature is disqualified from supporting legislation which affects the interests of a client. Such a measure, however, would be as impractical as it would be drastic. Few pieces of legislation do not affect the interests of some client of a busy lawyer.

Under DR 8-101(A)(1), the legislator is prohibited only from obtaining a "special advantage" for a client. This has been interpreted as a "direct and peculiar" advantage. ABA Committee on Ethics and Professional Responsibility Informal Opinion 1182 (1971). A lawyer should not be restricted in the support of a bill of general interest to the public, even if the bill also happens to affect the interests of a client.

Lobbying by the lawyer legislator or members of the lawyer legislator's firm is prohibited by several ethics

opinions, e.g., Opinions 83 and 87 Michigan State Bar Committee Professional Ethics. We think the better rule permits lobbying only if full disclosure of the interest is made pursuant to Article II § 20 of the Delaware Constitution and the legislator does not vote on the question. ABA, Committee on Ethics and Professional Responsibility, Formal Opinion 306 (1962).

Although it is not contrary to the Code of Professional Responsibility to propose and vote on legislation which affects the interests of clients if the legislator believes in good faith that the legislation is in the public interest, the lawyer-legislator must abide by Ethical Consideration 8-1 which provides:

> Lawyers...should propose legislative and other reforms...without regard to the selfish interests of clients.

A lawyer-legislator would violate the public trust (and perhaps be subject to professional discipline) were he or she to confine legislative initiatives in the General Assembly to legislation which favorably affected private clients.

VII. The seventh question is: "If the lawyer-legislator is disqualified in any given instance, are partners and associates in his firm similarly disqualified?"

If a lawyer-legislator is disqualified in a given instance, law partners and associates are similarly disqualified. The Code is explicit on this point, providing that:

> If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment.

Model Code of Professional Responsibility DR 5-105(d). Other authorities recognize that disqualification of a lawyer includes disqualification of law partners. See, e.g., ABA, Committee on Ethics and Professional Responsibility, Formal Opinion 33 (1931); W. E. Bassett Co. v. H. C. Cook Co., 201 F.Supp. 821 (D.Conn.), aff'd, 302 F.2d 268 (2d Cir. 1962); T.C. Theatre Corp. v. Warner Bros. Pictures, Inc., 113 F.Supp. 265 (S.D.N.Y. 1953).

CONCLUSION

The Committee has attempted to resolve the acutely sensitive dilemma of advising on the ethical conduct of lawyer-legislators without needless interference with the public's historic access to the service of lawyers in the General Assembly. While the broad nature of the questions posed makes precise answers difficult, the Committee believes that blanket disqualification of lawyer-legislators without evidence of actual conflict or other impropriety is not called for by the Code and if applied, would be contrary to the public interest. The proper solution, we believe, is to discipline those lawyers who, in fact, use public office for private gain in the practice of law.

Mr. Russell would not, because of Canon 9 considerations, permit a lawyer legislator to represent the State or a private client before a State agency or in a matter against the State. Mr. Hearn does not believe that it is appropriate for the Committee to opine on the proper conduct of lawyers in the legislative context.

The Committee on Professional Ethics

DATED: August 6, 1982

OPINION 59--31
April 11, 1960

It is improper for a lawyer whose partner serves in the Florida Legislature to represent a client before the Legislature as a registered lobbyist even though the lawyer who is a legislator makes full disclosure of such facts, and does not share in any fees generated by the lobbying activities.

Canons: 6, 26, 29, 32
Opinion: ABA 296

Chairman HOLCOMB stated the opinion of the committee:

A member of The Florida Bar requests an opinion on whether a member of a law firm, another member of which serves in the Florida Legislature but does not share in any fees from legislative representation, may represent a client before the Florida Legislature, registering as a lobbyist, advising with a client concerning the representative process, drafting proposed legislation and/or amendments to proposed legislation and appearing before appropriate committees of the Legislature and discussing proposed legislation with members of the Legislature. Our attention is called to the December, 1959 issue of the American Bar Journal, which at page 1272 carries Opinion 296 dated August 1, 1959.

A reading of the opinion of the American Bar Committee on Professional Ethics does not seem to leave any room for argument as the rule is laid down that (1) a law firm may not accept employment to appear before legislative committees while a member of the firm is serving in the legislature; and (2) a law firm may not accept such employment although full disclosure is made to the committee as to the representation and the fact that one of the partners is a member of the legislature; and (3) a law firm may not accept such employment when the member of the firm who is serving in the legislature does not share in any fees received therefrom.

We would say that the member would not be permitted to accept such representation.

OPINION 67–5
March 6, 1967

A member of The Florida Bar who is a partner or associate of a member of the Legislature may not accept a retainer to perform lobbying services before the Legislature.

Canons: 6, 26
Opinions: 59-31, ABA 296, 306; Michigan 83

Chairman MACDONALD stated the opinion of the committee:

The Board of Governors of The Florida Bar has inquired whether a member of The Florida Bar who is a partner of a member of the legislature may accept a retainer to perform lobbying services before the legislature. We are further requested to advise whether a fee sharing arrangement between the legislator and his partner whereby the legislator would not participate in fees received for lobbying services, or an arrangement whereby the legislator would refrain from voting on matters of interest to the client paying such fees would affect our answer to the basic inquiry.

We conceive lobbying generally to be the making of representations to the members of a legislative body for the purpose of influencing consideration by such legislators of pending or proposed legislation, compare *United States v. Rumely*, 345 U.S. 41, 97 L.Ed. 770, 73 S.Ct. 543 (1953). We treat lobbying as an entirely legitimate activity in the democratic process, and do not intend by this opinion to lend weight to any of the unfavorable connotations sometimes sought to be engrafted upon this phrase. Indeed lobbying, so long as in compliance with applicable law, seems to be sanctioned by the law of Florida, see Section 11.05, Florida Statutes 1965. We also emphasize that we deal with the precise question presented and do not deal with other questions sometimes allied to it, including appearances of legislators or their partners as counsel before public agencies.

The question presented is not new. It has been considered by this and other committees rendering advisory opinions in the ethical field on previous occasions. Two present members of this Committee, however, question whether the inquiry is within our jurisdiction, inasmuch as in their view lobbying is not the practice of law. The majority disagrees, believing that although lobbying like many other activities may be legally performed by non-lawyers, a lawyer performing such activities may not evade the ethical requirements imposed upon him as a member of the Bar. Indeed Canon 26 expressly provides that professional advocacy before legislative bodies shall be "upon the same principles of ethics which justify. . .appearance before the Courts."

In Opinion 296 (August 1, 1959) the Committee on Professional Ethics of the American Bar Association held that a law firm could not accept employment to appear before legislative committees while a member of the firm was serving in the legislature, even upon full disclosure of such representation, and even though the lawyer-legislator did not share in any fee received by the firm. This Committee in its Opinion 59–31 (April 11, 1960) adhered completely to Opinion 296. The reasoning of these opinions was obviously grounded in the inherent conflict of interest in one member of a law partnership serving in the legislature, and the other arguing before the legislature with reference to the

contents of proposed legislation, and further in the inability of the public to furnish any meaningful consent to such conflicting representation (see Canon 6). These opinions find support in the earlier Opinion 83 of the Michigan Committee (July, 1944).

Subsequent to our Opinion 59-31, the American Bar Association Committee gave further consideration to the same problem in Opinion 306 (May 26, 1962). It there concluded that, if there were constitutional or statutory provisions or legislative rules which expressly, or by necessary implication, recognized the propriety of a lawyer appearing as a lobbyist before the legislature when a member of his firm was a member of the legislature, or where provision had been made permitting a member of the legislature to disqualify himself from voting on or participating in the discussion of the matter involved, consent in effect had been given to such representation, thereby presumably meeting the consent requirements of Canon 6. The Committee then proceeded to construe a provision of the Constitution of the State of Texas, reaching the conclusion that such provision permitted a member of the legislature to disqualify himself, thus constituting the requisite public consent. However paradoxically the Committee also concluded that "such provisions were probably never intended to apply to the situation we now have under discussion."

We find no reason to recede from our former Opinion 59-31 on the basic question. There is an inescapable conflict of interest involved which clearly would be violative of Canon 6. Although the distinctions sought to be drawn in Opinion 306 of the American Bar Association Committee are apparently only of academic interest in Florida because no "consent" provision of the type there considered has been brought to our attention as being in force in our state, we have no hesitancy in suggesting that in logic only a constitutional provision clearly dealing with the precise question should fairly be construed as public consent. Moreover, it seems that intentional disqualification of a legislator under most circumstances is a positive disservice to his constituents. We also again conclude, one member dissenting, that no sanctity is given to the arrangement if the legislator does not participate in the fees received for the lobbying services. Such arrangements are simply too subject to abuse by virtue of the flexibility inherent in the other financial dealings between partners.

In summary, we conclude that it is violative of Canon 6 for a partner or associate of a member of the legislature to engage in lobbying activities before the legislature, its members or its committees. In our judgment this rule would apply even though the lawyer-legislator did not participate in a fee for such service, and even though he disqualified himself in voting on proposals of interest to the client for whom the lobbying service was rendered. In a few instances acceptance of our view may impose a hardship upon some members of the Bar who offer themselves for public service in the legislature. We trust our opinion will not operate to reduce the interest of lawyers in such service, for we are immodest enough to believe that participation of lawyers is an indispensable element in legislative activity, and that our brethren who have so participated have in overwhelming measure brought honor to our profession. Nevertheless we do not believe that the Canons can be relaxed for the sole purpose of accommodating hardship, particularly when the conflict of interest is so clear. Acceptance of such burden, if it be such, is presumably a necessary corollary of the acceptance of the other satisfactions emanating from public service in the legislature.

OPINION 67–5 Supplemental
April 18, 1967

The conclusion reached in Florida Opinion 67–5 is applicable even though disclosure of the representation by the law firm is made during a political campaign, and the legislator-partner disqualifies himself in accordance with a rule of the Legislature from voting on matters of direct interest to the client.

Canons: 6, 26
Opinion: ABA 306

Chairman MACDONALD stated the opinion of the committee:

We are requested to reconsider such portion of our original opinion rendered on March 6, 1967, as may pertain to a situation involving a partnership in a metropolitan Florida community, one of whose members is a member of the House of Representatives of the Florida Legislature. Since approximately 1954 this firm has represented a corporation operating a pari-mutuel betting enterprise in Florida. In the course of general representation of this business one of the partners has appeared and registered as a lobbyist before the House of Representatives of the Florida Legislature. The firm has also on occasion served as lobbyist for other clients whose representation predates World War II.

In 1963 one of the partners of the firm was elected to the Legislature. During the course of his campaign he announced his membership in the firm and its representation of these clients, together with his decision that he would forego voting on matters of interest to these clients. This decision was made known through press releases and was discussed in the course of various speeches and debates in the campaign. Subsequent to election in 1963, this partner has been returned to the Legislature without opposition in 1964 and 1966, and has been recently re-elected over opposition in the 1967 reapportionment election.

On approximately three or four occasions since election this legislator has refrained from voting under the authority of the appropriate rule of the House of Representatives. This rule in present form is Rule 5.1, and in pertinent part provides as follows:

> "Every Member who shall be in the Chamber when a question is put, when he is not excluded by interest, shall give his vote, unless the House, by unanimous consent shall excuse him. Any Member desiring to be excused on any question shall make application to that effect before the calling of the yeas and nays, and such application shall be accompanied by

a brief statement of reasons, and shall be decided without debate."

We are advised that a substantially similar rule is in effect in the Senate in the form of Rule 4.1.

The point is made on behalf of these members of The Florida Bar that the foregoing disqualifications under the appropriate legislative rule, and the election after public announcement of the existence of the lobbying activity, provide the necessary public consent to what otherwise might be a conflict of interest, and is in keeping with the arrangement approved by the Committee of the American Bar Association in Opinion 306.

The Committee has carefully considered this contention, and reviewed its original opinion, not only because of the involved issues of importance to the Bar, but because of the announced intention of the legislator-partner to withdraw from the firm if necessary. Although as mentioned in our original opinion we had apprehended that some hardship might inure to the members of The Florida Bar, it is nonetheless distressing that such hardship may repose upon those who have gone to unique, if not unprecedented lengths to confront and endeavor to resolve the problem. Nevertheless, we conclude, one member dissenting and one member abstaining, that our original opinion is applicable to the situation outlined to us, and that it would be an improper conflict of interest for the lobbyist partner to appear before the Legislature in representation of clients under these circumstances. We emphasize again that our opinion is necessarily directed to the conduct of the lobbyist partner and not with the propriety of the conduct of a member of the Legislature, per se, although necessarily the propriety and conduct of one must be analyzed in the light of the actions or status of the other.

With reference to the contention concerning the rule of the House of Representatives, it is our opinion that it does not provide a meaningful consent from the public to the representation of conflicting interests. Although we regret that we were not made aware of the existence of this rule at the time of the rendition of our original opinion, it was made clear at that time that in our judgment only a constitutional provision dealing with the question could fairly be regarded as public consent. Nevertheless we are glad to have the opportunity to alleviate any doubt by consideration of the specific rule, and appreciate the fact that our attention has been invited to the same. This is merely another justification for our repeated caveat that our opinions are advisory only and necessarily rely in most instances upon the facts and circumstances presented to us.

Likewise we find no meaningful public consent in the election after announcement of the possible conflicting interest and intention not to vote. Indeed the instant circumstances present a classic case against the proposition urged. The legislator-partner was initially elected from a field of 27 candidates in the March 1963 reapportionment elections following a brief campaign. We find it difficult indeed to regard votes cast in his favor as representing an informed consent. This is as true as is the converse observation that it would be equally difficult to construe votes in favor of any of his 26 opponents as an expression of disapproval of this arrangement. Subsequently and until the latest reapportionment the legislator has served without opposition, although, of course, duly elected at general elections. In our judgment this is simply not an informed

consent. There are numerous qualities of the respective candidates. There are numerous issues in a typical political campaign. The legislator here involved, a person of obvious character and ability, presents many qualities which would be deserving of the choice of voters.

With reference to the particular act of disqualification it is our judgment that this in itself is hardly a solution to the problem. There are many occasions in legislative matters on which the lack of a vote is as important, or indeed more important, than a vote for or against a particular proposition. In fact the importance of voting is emphasized by its requirement in the very rule cited to us.

We cannot conclude this opinion without offering our unanimous expression of esteem for the members of the Bar who have presented this inquiry to us. The unprecedented steps which they have taken in the past and their announced willingness to promptly abide by the Canons of Ethics as interpreted by this Committee provide noteworthy examples of which all Floridians, both lawyers and non-lawyers, can well be proud.

ETHICS OPINION #28
Adopted 2/4/82

THE GRIEVANCE COMMISSION OF THE BOARD OF OVERSEERS OF THE BAR

QUESTIONS

The Commission has been asked to render an advisory opinion on the ethical duties of an attorney-legislator, and of his law firm, to the general public and the firm's clients, in the following situations:

1. One or more of the law firm's clients may be affected, either favorably or unfavorably, by a proposed legislative action.

2. Another attorney from the law firm testifies at a public hearing and participates in a legislative committee's work session in a general capacity as a citizen (not as a privately retained lobbyist for a specific client). It is assumed that some of the law firm's clients would inevitably have some degree of interest in the legislative matter, such as changes in landlord-tenant law, inheritance taxes, the Probate Code, worker's compensation laws, etc.

3. Another attorney from the law firm is employed as a registered lobbyist to represent a client's interest in specific legislative measures.

OPINION

The Maine Bar Rules do not have a great deal to say about the conduct of attorneys as legislators. The only Rule directly on point is 3.2(d)[1], which is identical to DR 8-101 of the ABA Code of Professional

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[1] "(d) Acts as a Public Official. A lawyer who holds public office shall not:

(1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows, or it is obvious, that such action is not in the public interest;

(2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client;

(3) Accept any thing of value from any person when the lawyer knows, or it is obvious, that the offer is for the purpose of influencing his action as a public official."

Maine

> Most Legislators must look to income from private sources, not their public salaries, for their sustenance and support for their families; moreover, they must plan for the day when they must return to private employment, business or their professions.
>
> The increasing complexity of government at all levels, with broader intervention into private affairs, makes conflicts of interest almost inevitable for all part-time public officials, and particularly for Legislators who must cast their votes on measures affecting the lives of almost every citizen or resident of the State. The adoption of broader standards of ethics for Legislators does not impugn either their integrity or their dedication; rather it recognizes the increasing complexity of government and private life and will provide them with helpful advice and guidance when confronted with unprecedented or difficult problems in that gray area involving action which is neither clearly right nor clearly wrong." M.R.S.A. Section 1011.

It is with these considerations in mind that the Commission now takes this opportunity to offer some general guidance on provisions of the Maine Bar Rules as they apply to an attorney-legislator and to other lawyers in his firm.

Situation No. 1: Attorney-legislator as member of a law firm which has one or more clients that may be affected, either favorably or unfavorably, by a proposed legislative action.

Rule 3.2(d)(1) requires that an attorney-legislator shall not:

> "(1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows, or it is obvious, that such action is not in the public interest;" (emphasis supplied)

As noted by the ABA Committee on Ethics and Professional Responsibility (in its interpretation of DR 8-101, which is identical to our Rule 3.2(d)):

> "The CPR [Code of Professional Responsibility] does not define "special advantage" or "not in the public interest." We cannot, however, construe subd. 1 as being a blanket prohibition against the representation by a lawyer-legislator of clients who may be affected by the defeat or passage of proposed legislation, for two reasons: (1) if the

> committee that drafted the Code had desired for it to include such a blanket proscription, that committee could and would have simply stated that a lawyer while serving as a member of a legislature shall not represent a client who is likely to be affected by the passage or defeat of proposed legislation; and (2) to interpret subd. 1 as constituting such a blanket proscription would make it a drastic measure, for there would be extremely few clients whom the lawyer-legislator could represent. Accordingly, we think that "special advantage" refers to a direct and peculiar advantage, and "not in the public interest" refers to action (or legislation) clearly inimical to the best interests of the public as a whole. . . Thus it is apparent that a disciplinary action under DR 8-101(a)(1) may involve several fact issues, such as whether there was a special advantage for the client or whether the action was in the public interest." (emphasis supplied) ABA Informal Opinion No. 1182 (1971).

We agree with this reasoning, particularly in light of the statement of purpose of our Legislature as quoted above, and we adopt this approach with regard to Rule 3.2(d)(1) of the Maine Bar Rules. We believe a similar approach is warranted with regard to Rule 3.2(d)(3), which provides that an attorney-legislator shall not:

> "(3) Accept any thing of value from any person when the lawyer knows, or it is obvious, that the offer is for the purpose of influencing his action as a public official." (emphasis supplied)

Again, we do not read this Rule as a blanket prohibition against acceptance by an attorney-legislator of compensation for services rendered (by him or his firm) from clients likely to be affected by the passage or defeat of proposed legislation. Only in those cases where payments are made "for the purpose of influencing his actions as a public official," and where the attorney "knows" this, or cannot deny knowing it because the purpose of the payment "is obvious," do the strictures of this Bar Rule come into play. We believe the factual questions noted above with regard to both 3.2(d)(1) and 3.2(d)(3) must of necessity be dealt with on a case-by-case basis, in the context of disciplinary proceedings, and should

not be discussed in any detail by positing various hypotheticals in an advisory opinion.

Another aspect to be considered here involves the ethical obligations of the attorney-legislator to his clients.[2] Rule 3.6(a) requires that a lawyer "employ reasonable care and skill and apply his best judgment in the performance of his services" for a client. Implicit in this Rule is the duty to avoid conflict of interest situations where the exercise of a lawyer's independent professional judgment on behalf of a client will be, or is likely to be, adversely affected. See Rules 3.4(b) and 3.4(c). Whenever such situations arise, Rule 3.5(b)(2)(ii) mandates withdrawal from such representation, and Rule 3.4(k) extends this requirement to all partners and associates of the lawyer involved.

Applying these rules to an attorney-legislator, the Commission believes that mandatory termination of representation of a client should only occur in those rare cases where the legislator's public responsibilities will, or are likely to, adversely affect his independent professional judgment on behalf of the client. This would normally not occur simply by virtue of the fact that the client may be affected by proposed legislative action, since almost all citizens or residents of the State are affected to one degree or other by most legislation. For example, the fact that an attorney-legislator might be considering or even proposing probate law reform would not normally preclude him and other members of his law firm from handling the administration of an estate with

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[2]We do not believe the general public should be considered a "client" of the attorney-legislator for purposes of applying the Maine Bar Rules, and we do not treat it as such in this opinion. Again, the primary source of rules of conduct for an attorney serving as a legislator is the statute on Legislative Ethics referred to above.

independent professional judgment and complete loyalty to the client involved. The Commission does not propose to posit examples where this would not be the case, preferring instead to treat specific situations as they arise, in the context either of disciplinary proceedings or requests for advisory opinions.

Also of relevance to the situation presented is Rule 3.4(a), which provides:

> "(a) Disclosure of Interest. Before accepting any professional employment a lawyer shall disclose to the prospective client his relationship, if any, with the adverse party; his interest, if any, in the subject matter of the employment; all circumstances regarding his relationship to the parties; and any interest or connection with the matter at hand that a lawyer knows or reasonably should know would influence the client in the selection of a lawyer." (Emphasis supplied.)

We interpret this Rule to require disclosure to any prospective client of the attorney-legislator's firm in cases where the duties owed to his constituency and the citizens of Maine would cause him to have an interest or a connection with the matter at hand that could influence the client in the selection of the lawyer. As stated in the Reporter's Notes to Rule 3.4(a), this Rule seeks to mandate complete disclosure of all facts that could possibly be relevant to the subject issue. This then provides the client with information to make a judgment on the retention of an attorney. Accordingly, if the attorney-legislator's activities in the Legislature have more than a general connection with the subject matter of the representation of the client, these activities would have to be disclosed in detail before employment could be accepted.

Similarly, Rule 3.4(f) provides that:

> "Except with the informed written consent of the client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of the client will be, or reasonably may be, affected by any interest of the lawyer."

As pointed out in the Reporter's Notes, the term "any interest" as used in this Rule includes any form or nature of interest, including political or personal interests. However, the interest must be such that it will, or reasonably may, affect the attorney-legislator's professional judgment on behalf of the client. Whenever that is the case, then no lawyer in the firm can accept the employment without first obtaining the client's informed written consent after full disclosure. See Rule 3.4(k).

In making the disclosures required by Rules 3.4(a) and 3.4(f), and in obtaining the client's consent pursuant to Rule 3.4(f), the attorney involved must also be sensitive to the strictures of Rules 3.6(k) and 3.9(b)(5) about implying improper influence.

Situation No. 2: Another lawyer in the firm (as a private citizen and not as attorney or lobbyist for any specific client or group of clients) testifies at a public hearing and participates in a legislative committee's work session

The Commission sees no ethical impropriety in this situation of an attorney participating in the legislative process as a private citizen, even though the legislation being discussed would inevitably have some impact on some of his firm's clients, so long as the relationship between the attorney in question and the attorney-legislator is promptly and fully disclosed. In fact, such involvement in the legislative process by attorneys acting as private citizens is to be encouraged. (See EC 8-1, ABA Code of Professional Responsibility.) Clearly, the duty of loyalty to a client does not require that an attorney, when acting as a private citizen, remain a spokesman for his client's interests. On the other hand, if the attorney's personal political viewpoint is such as to affect

the exercise of his professional judgment on behalf of the client, then the requirements of Rules 3.4(a) and 3.4(f) come into play (see above).

With regard to the attorney-legislator himself, his ethical duties in this situation are covered by the statute on Legislative Ethics.

Situation No. 3: Another lawyer in the firm is employed as a registered lobbyist to represent a client's interest in specific legislative measures.

Because of the impact of Rule 3.4(k), the threshhold question here must be: can an attorney-legislator also work as a registered lobbyist to represent a client's interests in specific legislative measures? Clearly, that question must be answered in the negative. Such employment would be diametrically in conflict with the ethical standard set forth in Rule 3.2(d). It would also create a classic conflict of interest under Rules 3.4(b) and 3.4(c). Since the attorney-legislator himself could not be employed as a lobbyist before the legislature, neither can any of his associates or partners be so employed. Rule 3.4(k). See Opinion 415, New York State Bar Association Committee on Professional Ethics (October 6, 1975).

ETHICS OPINION 62
OF THE MISSISSIPPI STATE BAR
RENDERED DECEMBER 5, 1981

Editors Note: DR 2-102(B) has been amended by the Supreme Court's order dated May 16, 1983. The reference made to DR 2-102(B) in this opinion should now be cited to DR 2-102(A).

PRACTICE OF LAW – ADVERTISING – DUAL EMPLOYMENT: Propriety of (i) Elected Official Engaging in Practice of Law and Use of Public Official's Name on Letterhead of Firm and Other Permitted Advertising and (ii) Dual Employment By Lawyers.

MULTIPLE REPRESENTATION – CONFLICT OF IN-

INTEREST Propriety of Representation by Public Official, His Law Partner and Associates of State Agencies and of Private Clients Before State Agencies

DUTY OF LAWYER-PUBLIC OFFICIAL.

The Ethics Committee of the Mississippi State Bar Association has been requested to render an opinion as to the ethical restrictions involved in the practice of law by an elected official under the following submitted factual situation

"The law firm of _____ __& _ _ _____and Mr. __ _____ have tentatively agreed to a proposed relationship wherein Mr. _ _ ____ _ would become a member of our firm while remaining in public office as Lieutenant Governor of Mississippi."

You advise that the scope of the present Firm's professional relationship with the State of Mississippi and the proposed future relationship in the event Mr _____ becomes a member of the Firm is and will be as follows:

"At the present time members of the Firm are actively representing the Mississippi State Legislature and some of its Committees. In particular, the Mississippi Legislature, and specifically the Joint Legislative Committee on Legislative Reapportionment and Congressional Redistricting, has been represented by members of your Firm and that one member of the Firm has been, and is now, involved in the representation of the Mississippi Legislature in the litigation of the Mississippi "Open Primary Law".

"The Firm and Mr. _____ have concluded that in the event Mr. _____ becomes a partner in the Firm, the Firm and all members thereof, including Mr. _____, would be prohibited by law from representing either the Mississippi Legislature and its Committees, or from representing any clients before or against the Legislature or any of its Committees. Upon admission of Mr _____ as a partner into the Firm, all members who presently represent the Legislature and/or its Committees in the capacities noted will resign as counsel and no members of the Firm, including Mr _ _ _ _, will accept any further employment as legal counsel to the Legislature or its Committees so long as Mr _____ remains Lieutenant Governor and a member of the Firm.

"Members of the Firm have previously represented various State Boards, Commissions, Departments, and Agencies and clients before such Boards, Commissions, Departments, and Agencies and would propose to continue such representation in the event Mr _ _ _ _ becomes a member of the Firm unless such representation violates the Code of Professional Responsibility, but that Mr _____ will not personally represent a State Agency, Board, Commission, or Department nor would he represent any client before any of said agencies, excluding, of course, courts and other agencies of the judicial branch of the State government. Further, as a "self imposed prohibition", the Firm and Mr _____ have agreed that the association between the two insofar as the Firm's continuing to represent State Boards, Commissions, Departments, and Agencies and clients before such bodies is concerned shall be under the following circumstances so long as Mr. remains in the office of Lieutenant Governor and a member of the Firm, to wit:

First, Mr _____ will not share in any fees or other compensation for services performed by the Firm in representing any other State Boards, Commissions, Departments or other Agencies or any clients before or against any such State Boards, Commissions Departments, or other Agencies.

Second, Mr _____ will not share in any fees or other compensation for services performed by the Firm with respect to public contracts authorized or funded by laws enacted by the Legislature during his service as (sic) Lieutenant Governor.

Third, Mr. _____and the Firm will not use Mr. ___'s public position to influence or attempt to influence any tribunal to act in favor of a client and will avoid giving the impression of implying that such influence will be exercised.

Fourth, the Firm will establish a system of accounts which clearly distinguishes between the matters in which Mr _____ may participate financially from those in which he may not participate. In addition, the Firm will establish a procedure for informing all lawyers practicing with the Firm of the identity of all matters that may not be reviewed by Mr. _____ or discussed with him because he is disqualified from professional involvement in the matters."

It is further the Committee's understanding that the structuring of the Firm's relationship with Mr. _____will be memorialized by publishing the same in the official journal of the Mississippi State Senate or in some other public record.

At the outset, the Committee issues the caveat that the scope of this Opinion is limited in general under the mandate of Article 8-15(c) of the Bylaws of the Mississippi State Bar Association which prohibit this Committee from rendering opinions on questions of law. Consequently, the opinion herein rendered will be limited to the issue of whether the proposed course of professional conduct under the stated circumstances is or is not in violation of the Code of Professional Responsibility. In particular, this opinion will not address the propriety of the proposed conduct in relation to the provisions of *Miss. Code. Ann.*, § 25-4-1 (Supp. 1981) (Mississippi Ethics Law).

The stated circumstances and the inferences arising therefrom raise three ethical considerations when viewed in light of the provisions of the Code of Professional Responsibility of the Mississippi State Bar. These are:

(1) whether the Firm may use the public official's name in its permitted advertising, such as on its letterhead, business cards, and office plaques, and may Mr _____properly accept dual employment;

(2) the propriety of the representation by the public official, his law partners and associates of State agencies and of private clients appearing before State agencies; and

(3) whether or not the participation of the public official under the stated circumstances in the affairs of the Firm implies the Firm and the public official member is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

Each of these considerations will be addressed separately.

I.

Practice of Law – Advertising

The stated circumstances indicate that the public official will be actively engaged in the practice of law with the Firm. From this statement, the Committee infers that the public office which Mr _____holds is a part-time office and does not require that Mr _____be engaged in the performance of the duties of that office on a full-time basis or at the very

least Mr. _____ will participate on a regular basis in the conduct of the Firm's normal business. This portion of this opinion is premised upon this understanding.

Disciplinary Rule 2-102(B) is determinative of this issue. It provides in pertinent part that

> "A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of the firm *during any significant period in which he is not actively and regularly practicing law as a member of the firm*, and during such period other members of the firm shall not use his name in the firm name or in professional notices of the firm." (emphasis ours)

The aspirational objectives of Ethical Consideration 2-12 finds application to this issue. There it is stated:

> "A lawyer occupying a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his name to remain in the name of the firm if he actively continues to practice law as a member thereof. Otherwise, his name should be removed from the firm name, and he should not be identified as a past or present member of the firm; and he should not hold himself out as being a practicing lawyer."

In the absence of constitutional or statutory imposed restrictions upon the practice of law by the holder of the Lieutenant Governor's office and on the basis of your representation that Mr. _____ will practice law on *a regular and active basis* with the Firm, the Committee is of the opinion that it would be proper under the circumstances and assumptions noted for Mr. _____ to engage in the private practice of law and that his name be used in the Firm's authorized advertising.

The related issue of the propriety of dual employment by lawyers, i.e., another business or profession, was addressed by the Ethics Committee of the Mississippi State Bar in Opinion No. 15, rendered March 16, 1968. This Committee there had the following inquiry submitted to it:

> "Can an attorney actively practice law and actively engage in another profession or a business such as real estate or insurance? . . ."

Answering this inquiry, the Committee opined that it was improper for a lawyer to engage in a business or another profession when it is of such a nature or is so conducted as to be inconsistent with his duty as a member of the Bar. The Committee further stated that there was nothing in the Rules of Professional Conduct (now Code of Professional Responsibility) to prevent a lawyer from engaging in an independent business or profession entirely distinct from one unrelated to his law practice, *provided he in no way uses such occupation to advertise or as a feeder to his law practice.* The Committee in Opinion No. 15 set forth the standards to be applied to determine if the other business or activity was of such a nature or was so conducted as to be inconsistent with the lawyer's duty as a member of the Bar as follows:

> "(1) If a separate business is clearly not necessarily the practice of law when conducted by a lawyer, and
>
> "(2) If it can be conducted in accordance with and so as not to violate the Canons, and
>
> "(3) If it is not used or engaged in in such a manner as to directly or indirectly advertise or solicit legal matters for the lawyer as a lawyer, and
>
> "(4) If it will not 'inevitably serve' as a feeder to his law practice, and
>
> "(5) If it is not conducted in or from a lawyer's law office."

If these guidelines are adhered to, nothing in the Code of Professional Responsibility would prohibit Mr. _____ from retaining employment as Lieutenant Governor and engaging in the practice of law. In light of the structuring of the relationship which Mr. _____ will occupy with the Firm so long as he serves as Lieutenant Governor, the Committee is of the opinion that adherence to such guidelines by Mr. _____ and the firm satisfies standards 3 and 4 enumerated above. Standards 1 and 5 are obviously met under the submitted facts and standard 2 will be addressed in the remaining portion of this Opinion.

Opinions 15 and 35 of the Ethics Committee of the Mississippi State Bar, Formal Opinions 1240, 1205, and 1134 and Informal Opinions 775 and 931 of the American Bar Association are applicable in whole or in part to these issues and support the opinions expressed herein.

2.

Multiple Representation—Conflict of Interest

The position taken by the Firm and Mr. _____ that it would be ethically improper for members of the Firm to continue to represent the Mississippi Legislature and its Committees and/or clients before such bodies, or to accept such representation after Mr. _____ becomes a member of the Firm is correct in the opinion of the Committee.

Canon 5 of the Mississippi State Bar Code of Professional Responsibility mandates that:

"A Lawyer Should Exercise Independent Professional Judgment On Behalf Of A Client"

Canon 8 provides that:

"A Lawyer Should Assist In Improving The Legal System"

A consideration of the two cited Canons and the Disciplinary Rules propounded by the Supreme Court of the State of Mississippi, including, but not limited to, DR 5-105(A), (D), and DR 8-101(A) (1), place beyond question the propriety of the position taken by the Firm and Mr. _____. Mr. _____ certainly would be prohibited as a lawyer-public official from accepting employment in his lawyer capacity by the Mississippi Legislature or its Committees. Likewise, he would be ethically prohibited under the cited Canons and Disciplinary Rules from representing a client before the Legislature or any of its Committees.

His disqualification in these instances operates under the Code of Professional Responsibility as a disqualification of any members of his law firm. DR 5-105(D) provides that "[I]f a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or of his firm may accept or continue such employment."

The remaining inquiry concerning the possibility of conflict of interest concerns the continued representation of State Departments, Agencies, Commissions, or Boards by the Firm. The Committee is mindful of the self-imposed restraints made by the Firm and Mr. _____ that Mr. _____ will not represent such Agencies or clients before such Agencies, nor will he share in any of the income realized by other members of the firm who continue to engage in such practice, nor will he be privy to or have access to any information possessed by the Firm in its representation of such clients. The Committee is of the opinion that while such self-imposed restrictions concerning the limitation of Mr. _____'s practice and his divorcement from any business conducted by other members of the Firm with such Agencies is laudatory, the mandate of DR 5-105(D) must be followed in resolution of the question

under consideration. That is to say that if Mr. _____ were ethically prohibited from accepting such representation under DR 5-105(A), then no matter what internal arrangements are made between Mr. _____ and the Firm, all partners or associates of his or of his Firm would be unable to accept or continue such employment. The question presented then is whether Mr. _____ could ethically accept such employment as a lawyer while he occupies the office of Lieutenant Governor.

At the outset of the discussion on this point, your attention is directed to the aspirational objective of Canon 8 as memorialized in EC8-8 that:

> "Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties."

Canon 6 of the Canons of Professional Ethics of the American Bar Association (the predecessor to Canon 5 of the American Bar Association Code of Professional Responsibility) provides in pertinent part that:

> "It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this Canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

The American Bar Association Committee on Ethics and Professional Responsibility addressed the dictates of Canon 6 in Informal Opinion 855 insofar as the Canon applied to "actual and possible conflicts of interest" of a lawyer in public office. There, that Committee opined in part as follows:

> "Generally speaking, any persons in public offices, including attorneys, have as their primary duty that of performing the functions of the office in a wholly honest, impartial, and ethical manner.
>
> "Under both the foregoing Canons (6 and 37) the duties and considerations of possible conflicts are such that what a lawyer cannot do because of these ethicals precepts relating to other parties neither his partner, his associate, nor one with whom he shares offices, may do.
>
> "If there is no conflict of interest nor violation of confidence, an attorney who happens to be an appointee of a mayor in one capacity may properly appear before other appointees or appointed bodies of the same mayor in other related boards, or offices, or courts, and may likewise make claims against the city in fields which are not related to his office in the city."

Application of the principles discussed hereinabove leads the Committee to the conclusion that Mr. _____ would be prohibited from practicing before a State Board, Department, Commission, or Agency of the State of Mississippi of which his official duties required him to serve as or appoint a member of or to perform any other active duties in connection with the functioning of such Agency. It follows that Mr. _____'s disqualification would prohibit any partners or associates of his law firm from practicing law before such Agency.

However, if Mr. _____'s official duties as Lieutenant Governor of the State of Mississippi raised no conflict with his representation of the Agency itself, then based on the authorities cited above, no conflict of interest would exist and the representation by the firm would not constitute unethical conduct, provided that the considerations addressed in the third portion of this Opinion do not in and of themselves prohibit such representation.

In summary, as long as Mr. _____'s duties to the public as Lieutenant Governor and his duty to his clients as a lawyer do not conflict, his representation of clients before State Departments, other than the Legislature and its Committees, does not violate the Code of Professional Responsibility. So long as his representation of such State Departments and of clients before such State Departments permits him to have a free, impartial, and unbiased attitude toward the enactment of laws governing the operation and conduct of the Departments, then no conflict of interest would exist. Whether such conflict did exist would be a question that the lawyer-public official would have to answer on a case to case basis.

Finally, the Committee again acknowledges that Mr. _____ and the Firm have established an intra-firm policy under the terms of which Mr. _____ voluntarily agrees that he will not represent any State Departments or clients before such Agencies, will not participate in the fees earned by other members of the Firm by virtue of such representation, nor will he advise clients of the Firm or be privy to any information gained by other members of the Firm in such representation. As noted above, these precautions against the "appearance of impropriety" are to be looked on with favor. The determinative issue concerning conflicts, however, is whether Mr. _____ would be disqualified if he did in fact propose to engage in the representation which other members of the Firm propose to do.

Under the hypothesized circumstances submitted and subject to the conditions and limitations noted in this portion of this Opinion, the Committee is of the opinion that Mr. _____ could ethically undertake such representation. To reinforce what has been said hereinabove, the final test must be as set forth in Formal Opinion 315 of the American Bar Association concerning an inquiry as to whether a firm, whose partner has been elected to the office of governor of a state, could continue his name in the firm name. There it was said in part:

> "(I)f the name of the office holder is retained in the firm name, then the firm must be extremely careful to avoid any representation which will or might appear to be in conflict with the duties of the governor where there might be any possible statutory or ethical conflict. At any time when it appears that such conflict might appear, the firm must disqualify itself."

3.

Duty of Lawyer – Public Official

Two further ethical considerations arise under the stated factual situation concerning the duty imposed upon a lawyer who also serves as a public official under the Code of Professional Responsibility.

Disciplinary Rule 8-101(A) of Canon 8 of the Code of Professional Responsibility governs the disciplinary enforceable obligation of a lawyer who holds public office. There, it is stated:

> "(A) A lawyer who holds public office shall not:
>
> "(1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.
>
> "(2) Use his public position to influence, or attempt

to influence, a tribunal to act in favor of a client

"(3) Accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official."

Under the mandate of Canon 9 that "(A) lawyer should avoid even the appearance of professional impropriety", Disciplinary Rule 901 provides in part:

"(C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official."

As is evident, these two ethical considerations are closely related to and have a bearing upon the preceding question under discussion. To the extent, if any, that the hypothesized conduct would be prohibited under these two Disciplinary Rules, such conduct would also be unethical under Canon 5 and the pertinent Disciplinary Rules thereunder.

This Committee in the past has been called upon to address its attention to the extent which certain lawyer-public officials could engage in the practice of law with propriety. This question was addressed in Opinions 26, 30, 31, 35, 37, 38, 45, 54, 55, and 58 of the published Opinions of the Ethics Committee of the Mississippi State Bar Association. Of these ten published Opinions, only Opinion 35 was concerned in any respect with the situation where the lawyer was a member of the State Legislature, which position is the most analogous to Mr. _____'s public office. However, even Opinion 35 does not directly address the issue presented here. The Committee there only noted that "(I)t is aware that there is no prohibition against a lawyer who regularly practices remaining as a member of his law firm while serving in the legislative body."

Probably the most definitive ethical opinion relating to the possible conflicts existing when a lawyer in active practice also serves in a state legislature is Informal Opinion 1182 of the American Bar Association Committee on Ethics and Professional Responsibility rendered December 5, 1971. There, that Committee was presented with a series of questions concerning the perimeters in which a lawyer legislator could represent private clients without violating the disciplinary mandates of DR 8-101(A) (1), (2) and (3).

Due to the dearth of definitive opinions concerning the ethical considerations faced by a lawyer legislator in Mississippi, the Committee feels that an in-depth review of ABA Informal Opinion 1182 is in order here.

The first question directed to that committee was whether a lawyer who is a member of a legislative body should accept a retainer or other compensation from a client who is likely to be affected by the passage or defeat of proposed litigation. Citing Dr 8-101(A) (1) and (3), the ABA committee opined that the Code of Professional Responsibility did not contain a provision that would necessarily and always prohibit a lawyer's representing either an individual or an organization whose interests might be affected by the passage or defeat of proposed legislation pending in the body wherein the lawyer is a member. It was stated that the prohibition of DR 8-101(A) (3) against a lawyer-public official accepting anything of value when he knows, or it is obvious, that the offer is for the purpose of influencing his official action does proscribe the acceptance of a tendered retainer if facts exist which make it obvious that that was the purpose of the tender or that the lawyer actually knew its purpose. In such a situation, acceptance of the tender would be in violation the disciplinary rules of the Code of Professional Responsibility. Further, the committee, citing DR 8-101(A) (1), recognized that a lawyer-public official could not use his public position to obtain a special advantage in legislative matters for himself or for a client when he knows, or it is obvious, that such course of action is not in the best interest of the public. The committee, concentrating on the key phrases in this disciplinary rule, i.e., "special advantage" and "not in the public interest" held that subdivision (1) could not be interpreted as being a blanket prohibition against representation by a lawyer-legislator under the circumstances being considered for the following reasons:

"(1) If the committee that drafted the Code had desired for it to include such a blanket proscription, that committee could and would have simply stated that a lawyer while serving as a member of a legislature shall not represent a client who is likely to be affected by the passage or defeat of proposed legislation; and (2) to interpret Subd. 1 as constituting such a blanket proscription would make it a drastic measure, for there would be extremely few clients whom the lawyer-legislator could represent."

The committee then held that the term "special advantage" must be construed as referring to a direct and peculiar advantage and "not in the public interest" must be construed to refer to legislation "clearly inimical to the best interest of the public as a whole". The committee, recognizing that the aspirational objective of EC 9-2 does not state a basis for lawyer discipline, opined, however, that the ethical consideration did give guidance to the lawyer-legislator when it says "(W)hen explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession."

Secondly, the committee was asked to express its opinion on the ethical considerations where the compensation of members of administrative boards is fixed by the legislature or their appointments are subject to such approval whether a lawyer-legislator should appear before these administrative boards in behalf of private clients.

Citing DR 8-101(a) (2), the committee recognized that a lawyer cannot ethically use his public position to influence a tribunal to act in favor of a client. Recognizing that practice before such a board by the lawyer-legislator would place him in a strong or powerful position to "use his public position to influence the board in his favor", the committee stated that no categorical answer could be given to the question due to the fact that in each case it would depend upon whether the lawyer did in fact either influence or attempt to influence the board. Therefore, the committee could not definitely answer the inquiry.

The third question presented to the ABA committee which is pertinent to this inquiry concerned the propriety of the acceptance by the lawyer-legislator of legal employment by the state or by one of its agencies. The committee opined that no Disciplinary Rule "necessarily prohibits a legislator from being employed in another capacity by the state." However, drawing attention to Ethical Consideration 8-4, the Committee noted that under the stated circumstances a lawyer must be careful to identify the capacity in which he appears, whether on behalf of himself, a client, or the public.

Finally, the Committee was asked to express its opinion on whether the same rules apply to a law partner of the legislator.

The Committee stated that "(W)hile the question is not completely free from doubt" the same considerations would apply to a law partner of the legislator.

Based upon the foregoing opinion, this Committee is of the opinion that neither Mr. _____ nor his law partners are proscribed from engaging in the practice of law in the hypothesized situation provided the factual circumstances of any particular incident of representation did not violate the dictates of the disciplinary rules cited in the foregoing ABA opinion or DR 9-101(C).

Every lawyer is under a professional obligation to aspire to the principles of the Canons of the Code of Professional Responsibility, one of which (Canon 9) provides that "A Lawyer Should Avoid Even the Appearance Of Professional Impropriety." Observance of and adherence to this principle, while applying equally to all members of the profession, probably attains more significance when the lawyer also happens to be an elected public official.

While the Committee is of the opinion that Mr. _____ could engage in dual employment while serving as Lieutenant Governor of the state without violating the disciplinary rules and principles of the Code of Professional Responsibility under the circumstances and in the situations discussed hereinabove, the Committee is of the opinion that the willingness of Mr. _____ to forego private employment in the areas indicated and the structuring of the firm so as to insulate him from all connection with the Firm's representation of, against, or before legislative or executive branches of the state government dispels any conceivable appearance of impropriety.

Opinion (5) **Appearance of impropriety; Conflicts of interest; Legislator, lawyer serving as.** Members of a firm may not appear before a city council of which one member of the firm is a member, even when that member abstains from any discussion or voting on the matter, and members of the firm may not appear before boards appointed by the council. DR 5-105(D); Canon 9. (10/23/81)

OPINION NO. 82-5

Synopsis: Members of the law firm of a lawyer-legislator may not represent private clients before the legislature or a legislative committee.

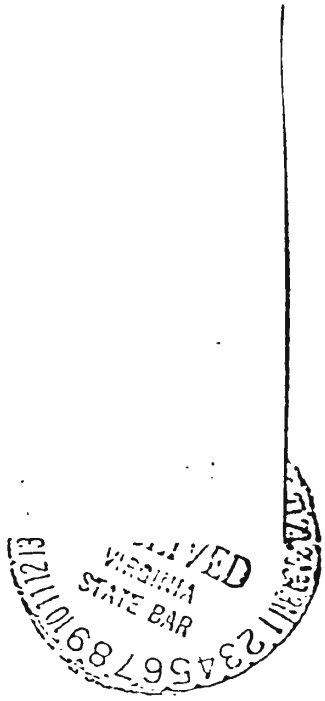
Opinion: A lawyer who is considering running for the Legislature asks whether members of his firm will be able to "engage in lobbying efforts and the presentation of evidence before legislative committees" if the lawyer is elected.

In Opinion No. 76-12, this Committee explored the restrictions imposed by the Code of Professional Responsibility on the practice by a lawyer who is also a legislator. Based on the relevant opinions of the ABA Ethics Committee, the committee found no per se disqualification rules except where the legislator represents a private client to challenge the constitutionality of a law enacted while the lawyer is in the legislature. Thus, there is no per se disqualification of a lawyer-legislator from representing criminal defendants, representing private clients before state administrative agencies or representing private clients in eminent domain proceedings in which the state is an opposing party. However, the opinion emphasizes that the lawyer cannot provide representation where the conflict between his public duties and the responsibilities to his client is such that he cannot discharge both. See DR 5-101(A). Nor can he provide representation where he would use his position as a legislator to influence, or attempt to influence, a tribunal to act in favor of himself or a client. See DR 8-101(A)(2). Any disqualification imposed on the lawyer applies to members of his firm. See DR 5-105(D).

The situation in this request is distinguishable from that in the earlier opinion of the Committee. Here, the role conflict is more direct and the appearance of misuse of a public position would be greater.

Much of the earlier opinion involved interpretations of DR 8-101(A). That rule prohibits use of public office for gain for himself or a client where such use is not in the public interest, use of the public position to influence a tribunal for a client, and acceptance of anything of value to influence his conduct as a public official. It seems clear that this rule would prohibit the lawyer from representing clients before a legislative committee while serving as a member of the legislature. It would be difficult, if not impossible, for the lawyer to separate his public position from his action on behalf of the client.

ABA Informal Opinion 1182 (1971) finds that DR 5-105(D) prohibits a law partner of the lawyer-legislator from doing anything the lawyer-legislator could not do. Since the legislator is disqualified from representing clients before the legislature, members of his firm are disqualified. The answer to the question asked is no.



Stephen J. Telfeya[illegible]
Assistant Bar Counsel
Virginia State Bar
Suite 1622, 700 Building
700 East Main Street
Richmond, Virginia 23219

Dear Steve:

Thank you for your letter of February 6, 1981, regarding a lawyer acting as a lobbyist when a member of his firm is a member of the legislature. The Ethics Opinion No. 68 you sent me dated September 25, 1956 does discuss that question in its Inquiry No. 9.

Since this opinion is 25 years old, I would like to get an informal opinion from the State Bar Legal Ethics Committee. This opinion suggests that it is alright in "a rare and random case" but such conduct is not condoned in practice. This opinion predates the recent disclosure statutes.

The question specifically would be, is it proper or improper for a lawyer to act as a lobbyist when a member of his firm is a member of the legislature? Is it improper if (1) the legislator makes full disclosure as does the lobbyist on all statutory disclosure forms, and, in addition, (2) the legislator refrains from voting on measures affecting the interest of the lobbyist.

Such disclosure is made by members of state agency boards who refrain from voting on contractural matters between that agency and a corporation of which they are a director. Legislators also usually refrain from voting on matters affecting institutions with which they are connected such as when a legislator is a bank board member.

LEO #537 - CONFLICT OF INTERESTS
LOBBYING BEFORE LEGISLATIVE BODIES

It is improper for an attorney to lobby before the General Assembly or other legislative body when the lobbyist's law partner is a member of that elected body. Furthermore, the Virginia Comprehensive Conflict of Interest Act does not obviate this conclusion nor in any way diminish the professional responsibility of the attorney. [DR 9-101(C), LEO #188, and LE-IO #136 (withdrawn for reconsideration 9/8/83)]

Committee Opinion

January 18, 1984

Commonwealth of Virginia

VIRGINIA STATE BAR

Michael L. Rigsby, Bar Counsel
Suite 1022, 700 Building
700 East Main Street
Richmond, Virginia 23219

LEGAL ETHICS

Dear

The Legal Ethics Committee has considered your inquiry of February 20, 1981, concerning the propriety of a lawyer acting as a lobbyist when a member of his firm serves in the legislature. The Committee is mindful of Legal Ethics Opinion No. 68 expressing the view that such conduct is not per se unethical. In Legal Ethics Opinion No. 136, however, a very restrictive view was expressed concerning the propriety of a lawyer appearing before the governing body of a municipality of which his law partner is a member, even if the latter abstains. We have also considered Ethical Considerations 8-8 and 9-2 and Disciplinary Rule 8-101(A)(1). Having considered these authorities, it is our opinion that it is improper for a lawyer to lobby when his partner is a member of the legislature, regardless of disclosure and abstention by the legislator and disclosure by the lobbyist.

Very truly yours,

Alex T. Mayo, Jr.
Chairman

c

ATMjr/jr

Virginia

December 21, 1983

LE # 537

Mr. Mike Rigsby
Virginia State Bar
700 Building
Richmond, Virginia 23219

Dear Mr. Rigsby:

Per our conversation I am resubmitting the information that requested at an earlier date. It was as follows:

Reference was made to Legal Ethics Opinion No. 136 dated November 27, 1964. An opinion would be appreciated as to whether such Legal Ethics Opinion, specifically the second inquiry dealing with appearances before City Council or committees of that Council for the purposes of advocating passage of legislation, is still applicable and in full force and effect. The specific inquiry is whether the reasoning of the Opinion would still be applicable in view of recent decisions relating to lawyer advertising and solicitation or by passage of the Comprehensive Conflict of Interest Act or for any other reason. Because time is of the essence, we would appreciate as an immediate response as possible to this inquiry.

Thanking you in advance for your cooperation, I am

Sincerely,

Virginia

Virginia State Bar

Suite 1615 [illegible] Building [illegible] East Main Street
Richmond, Virginia 23219 • (804) [illegible]

STANDING COMMITTEE ON LEGAL ETHICS

LE # 537

COPY

January 18, 1984

[illegible], Esquire

Dear M

This is in response to your letter of December 21, 1983 to the Virginia State Bar in which you inquire as to the propriety of an attorney appearing as a lobbyist before a legislative body in which his law partner serves as a member.

DR 9-101(C) of the Virginia Code of Professional Responsibility provides:

> A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

Informal Opinion No. 136 (1964), subsequently withdrawn for further consideration, indicates a prior interpretation of the Committee in a similar situation. In that opinion, the Committee concluded that it would be improper for an attorney to appear before the city council whose membership included his own law partner.

In Legal Ethics Opinion No. 188 (1982), the Council affirmed the recommendation of the Committee that it would be improper for a town, county or Commonwealth's Attorney to defend criminal cases in the jurisdiction where he had public responsibility.

Part of the reasoning of the Committee was:

> Further, it represents an exploitation of his public office, either real or apparent, where he appears in the same jurisdictions where he regularly prosecutes. The same is true as to county, city and town attorneys if such attorneys defend criminal cases in which there is alleged a violation of county, city or town ordinances. Even where the attorney is not regularly involved in the prosecution of the violation of such ordinances, there is the appearance of a conflict of interest in that he represents both the town and the defendant.

In the same opinion, the Committee concluded that "where a member of the firm is precluded under this opinion from representing criminal defendants, all members of the firm are disqualified in the particular case."

It is, therefore, the opinion of the Committee that it is improper for an attorney to lobby before the General Assembly or other legislative body when the lobbyist's law partner is a member of that elected body.

We do not believe the Comprehensive Conflict of Interest Act obviates this result or in any way diminishes the professional responsibility of the attorney.

Very truly yours,

Phillip C. Stone
Chairman

PCS:plc

cc: Members of the Committee
Michael L. Rigsby, Esquire
Rhetta M. Daniel, Esquire

STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

MEMORANDUM

DATE: January 20, 1986

TO: Members of the Legislative Ethics and Lobbying Committee

FROM: Terrence D. Sullivan, Committee Counsel

SUBJECT: Additional meeting materials for January 24 meeting

Enclosed are additional materials for your consideration prior to the January 24 meeting.

There are two opinions issued by the Special Ethics Sub-Committee of the North Carolina State Bar on the subject of conflicts of interest where officials' law partners appear before governing bodies on which the officials serve. The first, CPR 290, issued January 14, 1981, said that "[a]n attorney may not appear before the governing board of any county or municipal corporation or represent any county or municipal corporation or its governing board when his partner, associate, or employee is a member of the county or municipal governing board." A revision to the CPR 290 was issued on October 14, 1981. The latter ruling was that an attorney could ethically appear before a county or municipal governing board, or State or Federal legislative body on which his law partner serves providing that the official (1) disclose in writing or in open meeting to that governing body or entity his relationship to the matter involved, (2) refrain from any expression of opinion, public or private, on, or any formal or informal consideration of, the matter involved, including any communication or other form of contact with other members or staff of the governing body or entity concerning that matter, (3) absent himself from all meetings of the governing body or entity during any discussion or hearing of the matter, (4) withdraw from all voting on the matter, with or without the consent of the governing body or entity."

Enclosures

Ethics Committee

CPR 290 Revised

A special sub-committee chaired by J. Guy Revelle, Jr. recommended a revision of CPR 290 which is published below for consideration pursuant to the rules and for adoption by the Council at the January meeting.

The Committee considered two requests for expansion of the list of Designated Areas of Practice. As a result, a sub-committee consisting of Guy Revelle as chairman, Cyrus Lee, Roy W. Davis, Jr., George W. Martin, and Weston P. Hatfield was appointed by the chairman to make a study of the areas of practice now approved for designation by the Council and to recommend any changes or additions which would be in the public interest.

Proposed Opinions

These are proposed opinions issued pursuant to Section D(3) of the Ethics Procedures of the North Carolina State Bar. These procedures were approved by the North Carolina Supreme Court on November 8, 1979 and were published Vol. 26, No. IV of the North Carolina State Bar Quarterly. Any interested person or group may submit a written request to be heard on a written brief with the Council advocating for or against a proposed opinion. Council action on these proposed opinions is scheduled for January 13, 1982. Within 30 days prior to the Council meeting, direct all correspondence to the Ethics Committee, Post Office Box 25850, Raleigh, North Carolina 27611.

Revised Proposed CPR 290
October 14, 1981

Note: Upon request of the Charlotte-Mecklenburg Bar, and attorneys across the state, CPR 290 was referred back to a special sub-committee chaired by J. Guy Revelle, Jr. for further study. The following revision of Proposed CPR 290, which was originally published in Volume 6, Number 1 of The North Carolina Bar Newsletter, is now published for comment before adoption at the January Council Meeting.

An attorney who serves as a member of a county or municipal governing board, or State or Federal legislative body, or any entity thereunder, or committee thereof, shall not hear or consider any matter coming before that governing body or entity in which that member or his firm has a direct or indirect interest.

Pursuant to such prohibition, it shall be unethical for that member to attempt to influence in any way, publicly or privately, the actions or decisions of the governing body or entity or its staff with respect to any matter on which his partner or associate is appearing; and in any situation in which that member's partner or associate is to appear before the governing body or entity on which he serves, that member shall: (1) disclose in writing or in open meeting to that governing body or entity his relationship to the matter involved, (2) refrain from any expression of opinion, public or private, on, or any formal or informal consideration of, the matter involved, including any communication or other form or contact with other members or staff of the governing body or entity concerning that matter, (3) absent himself from all meetings of the governing body or entity during any discussion or hearing of the matter, (4) withdraw from all voting on the matter, with or without the consent of the governing body or entity.

An attorney may not ethically appear before a governing body or entity having as a member his partner, associate or employee unless said partner, associate or employee has fully complied with the four requirements specified above.

If an attorney or his employee serves as a member of a county or municipal governing board, or State or Federal legislative body or any entity thereunder, or committee thereof, it shall be unethical for his partner, associate or employer to represent such governing body or entity.

It is not unethical as such for an attorney whose spouse or relative is on any county or municipal governing board, or State or Federal legislative body, or any entity thereunder, or committee thereof, to appear before or represent that governing body or entity. However, it is unethical for an attorney to use his relationship to a member of any governing board to gain (or retain) employment or obtain favorable decisions. An attorney whose spouse or relative is a member of such governing body or entity must always be sensitive to particular circumstances creating a conflict of interest or impropriety in his representation of or appearance before that governing body or entity. This is especially true if the attorney's spouse is a member thereof because of the very nature of the spousal relationship. The same principles should guide an attorney in deciding whether he may appear before or represent an entity whose decisions are appealable to a governing body of which his spouse or relative is a member.

Proposed CPR 298
October 14, 1981

Representation of Husband and Wife In Negotiating Property Settlement

INQUIRY:

Law firm ABC does a substantial amount of family law. A husband and wife wish to retain Lawyer A of law firm ABC to negotiate a property settlement. Lawyer A clearly explains the problems of representing both husband and wife, after which the husband and wife still want to retain Lawyer A. Lawyer A feels that she can negotiate a property settlement, but she doesn't know whether she should accept employment from the wife and tell the husband he can represent himself if he likes and participate in the negoti-

int, the client has the option of ng his personal attorney or the torney provided by X Corp., Attorney B. X Corp. informs the client that X Corp.'s attorney can provide legal services at a price competitive with or less than customarily charged for bankruptcies, which is true. Attorney B does not represent X Corp. in any manner. Attorney B's only relationship with X Corp. is in providing legal services under the arrangement set out herein.

In the event X Corp.'s client elects to use X Corp.'s attorney, B, then X Corp. instructs C to prepare a draft bankruptcy plan with the client. C is a paralegal and is located in the same office with X Corp. X Corp. provides C access to the client's financial data and computer files, which data is used in the preparation of the draft plan by C.

Attorney B receives the file and the plan. He then determines whether bankruptcy is warranted, the type of bankruptcy proceeding, and the adequacy of the plan. Based on this determination by Attorney B, the client is contacted directly and interviewed by Attorney B. B gives the tion to accept or reject his services a fee mutually agreed upon. This price is in fact substantially less than that currently advertised to other members of the Bar. All fees and costs are paid directly to Attorney B.

C then prepares a final petition under B's supervision. B pays C $200 for C's services. From this $200, C will pay 1/3 of this amount or approximately $66 to X Corp. C has subleasing arrangement with X Corp. by which C pays X Corp. 1/3 of her income as reimbursement for rent, furniture, use of computer time, and office supplies. C receives no salary from X Corp. for performing clerical duties for X Corp. C's sole income is that received from attorneys for the services provided in connection with preparation of the bankruptcy petition, legal research and title searching.

1. Does this arrangment constitute fee splitting?

OPINION:

Yes. DR 3-102(A) forbids a lawyer to share legal fees with a non-lawyer cept under certain circumstances t are not here. Of course, a lawyer may certainly employ a paralegal or other lay person, and it is necessary at times to [illegible] someone on a contractual basis rather than utilizing the services of a regular employee of the lawyer or law firm. Such a person may certainly be compensated for his or her work without violating the prohibition of DR 3-102. However, this arrangement provides that Attorney B will always use C's services for clients forwarded to Attorney B by X Corp. Payment does not depend upon the time or value of the work, but simply on an agreement to pay C a standard amount of the fee received by Attorney B in connection with drafting the bankruptcy plan and advising the client. Such an arrangement falls squarely within the prohibition of DR 3-102.

2. Does this arrangmeent constitute aiding in the unauthorized practice of law?

OPINION:

The Ethics Committee cannot rule on this question. Such a question may be posed to the Unauthorized Practice of Law Committee.

3. Does X Corp.'s representation that the client will be referred to X Corp.'s attorney amount to solicitation by X Corp. for the benefit of Attorney B?

OPINION:

Yes. DR 2-103 forbids a lawyer to request a person to recommend or promote the use of his services or to accept employment when his services have been sought as a result of prohibited conduct. The arrangement here does not fall within the permissible mechanisms for recommendation or referral set out in DR 2-103(D). Attorney B is not in fact X Corp.'s attorney and does not render legal services in any way to X Corp. in this arrangement. The arrangement appears to be one purely and simply of relerral of clients to Attorney B under an agreement between X Corp. and Attorney B.

4. Does the representation by X Corp. that Attorney B will charge a fee less than that currently advertised by other members of the Bar, which is in fact true, constitute solicitation by X Corp. for the benefit of Attorney B?

OPINION:

In an *otherwise proper arrangement*, a statement by someone acting for X Corp. that Attorney B would charge the same or less than other members of the Bar in that area for the services would not constitute solicitation if true. Relevant fee information is the precise kind of information that a prospective client wishes to know and which should be communicated. However, such a statement must be made very carefully, if at all, since there might be individual members of the area Bar charging less for such services even though the prevailing rate might be greater.

Proposed CPR 290
January 14, 1981

A Special Ethics Sub-Committee studied conflict of interest situations. The following CPR overrules all previous Opinions.

An attorney may not appear before the governing board of any county or municipal corporation or represent any county or municipal corporation or its governing board when his partner, associate, or employee is a member of the county or municipal governing board. Neither may an attorney appear before or represent any local governmental entity whose decisions are appealable to the governing board of a county or municipal corporation of which the attorney's partner, associate, or employee is a member.

"It is not unethical as such for an attorney whose spouse or relative is on the governing board of a county or municipal corporation to appear before that governing board, to represent the county or municipal corporation or the governing board, or to appear before or represent a local governmental entity whose decisions are appealable to the governing board of which his spouse or relative is a member. However, it is unethical for an attorney to use his relationship to member of any governing board to gain [or retain] employment or obtain favorable decisions. An attorney whose spouse or relative is on the governing board of a county or municipal corporation must always be sensitive to particular circumstances creating a conflict of interest or impropriety in his representation of or appearance before the governing board. This is especially true if the attorney's spouse is on the governing board because of the very nature of the spousal relationship. The same principles should guide an attorney in deciding whether he may appear before or represent a local governmental entity whose decisions are appealable to a board of which his spouse or relative is a member."

State of North Carolina
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Raleigh 27611

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NOTARIES PUBLIC DEPUTY

January 24, 1986

RESPONSE OF THE SECRETARY OF STATE TO THE LEGISLATIVE RESEARCH COMMISSION COMMITTEE ON LEGISLATIVE ETHICS AND LOBBYING

1. The responsibilities of the Secretary of State under Article 9A, Chapter 120 of the General Statutes of North Carolina are to:
   a. prescribe forms for registration of legislative agents and forms for reporting lobbying expenditures,
   b. receive and hold for public inspection registration forms and letters of authority filed by legislative agents and their employers,
   c. collect and deposit registration fees,
   d. furnish a list of all persons who have registered as a legislative agent and their employers to each member of the General Assembly and the Legislative Library,
   e. receive and hold for public inspection reports of expenditures by legislative agents and employers, and
   f. report apparent violations of the law to the Attorney General for investigation.

2. For each of the last five years:

   a. Number of Registrations*

1981-82	505
1983-84	584
1985-86	666

*Each registration represents one legislative agent and one employer. Since a single registrant may represent more than one employer and a single employer may have more than one legislative agent, the total does not represent the absolute total of individuals in either category.

b. Money expended for lobbying*

1981	unavailable
1982	unavailable
1983	$818,565
1984	560,000
1985	unavailable

*The figures noted were gathered from news reports compiled by reporters. No tabulation of total expenditures or totals within categories has been made by the Department.

c. Fees Collected

1981	$23,650
1982	3,890
1983	25,890
1984	5,095
1985	50,145

d. Approximate Cost

1981	$3,500
1982	1,300
1983	3,500
1984	1,300
1985	4,600

3. The formal and informal checks to assure compliance with the lobbying law are:

a. Registration forms are reviewed for completeness and compliance with the law.
b. Filing of Letters of Authority are monitored to assure that all legislative agents have been properly authorized by their employer.
c. Complaints about unregistered legislative agents are handled either informally by a telephone call to the individual or formally by a request to the Attorney General to investigate.
d. Filing of reports of expenditures are monitored to assure that a timely report is received from each legislative agent and employer.

4. The number and types of apparent violations reported to the Attorney General are shown below:

	UNREGISTERED AGENTS	FAILURE TO FILE REPORT AFTER NOTICE		FAILURE TO PAY LATE FILING FEE	
		AGENTS	EMPLOYERS	AGENTS	EMPLOYERS
1981	1	6	7	13	12
1982	0	2	2	0	0
1983	0	2	7	0	0
1984	0	7	9	4	7
1985	0	0	3	1	8

NORTH CAROLINA GENERAL ASSEMBLY
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December 6, 1985

MEMORANDUM

To: Terrence D. Sullivan
Director of Research

From: Dianne Dunlap
Research Assistant

Subject: Laws governing contributions of gifts to legislators in states contiguous to North Carolina

I have researched the Georgia, South Carolina, Tennessee, and Virginia statutes to determine how four issues are addressed:

1) solicitation of gifts by legislators in exchange for specific legislative action;

2) gifts given by lobbyists in expectation on achieving specific legislative action;

3) solicitation of gifts by legislators other than in exchange for specific legislative action;

4) gifts given by lobbyists for reasons other than to achieve specific legislative action.

Solicitation of gifts by legislators in exchange for specific legislative action--In all four states, this practice is prohibited (Georgia Code §§16-10-2; South Carolina Code §§8-13-420; Tennessee Code §§3-6-108; Virginia Code §§2.1-602).

Gifts given by lobbyists in expectation of achieving specific legislative action--In all four states, this practice is prohibited (Ibid).

Solicitation of gifts by legislators other than in exchange for specific legislative action--None of the four states prohibit this. In Tennessee, however, solicitation of loans from lobbyists is prohibited (Tennessee Code §§3-6-108).

Gifts given by lobbyists for reasons other than to achieve specific legislative action--None of the four states prohibit this. In Tennessee, however, lobbyists are prohibited from making loans to legislators (Tennessee Code §§3-6-108). While gifts are not prohibited, Tennessee and Virginia have gift-reporting requirements for lobbyists (Tennessee Code §§3-6-106; Virginia Code §§2.1-602).

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D-018

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December 9, 1985

MEMORANDUM

To: Terrence D. Sullivan
Director of Research

From: Dianne Dunlap
Research Assistant

Subject: Statutes Regulating Solicitation and Receipt of Gifts by Legislators and Donation of Gifts to Legislators in Other States

Based on tables provided by the Council on Governmental Ethics Laws of the Council of State Governments, I researched the statutes regulating solicitation and receipt of gifts by legislators and donation of gifts to legislators in other states. There is some disparity between the Council's findings and mine.

Attached is a list of issues which would need to be addressed by these statutes and statutory references if these issues are addressed in the statutes of other states.

Also attached are copies of the pertinent statutes.

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Attachments

- Should solicitation of gifts be prohibited?

Statutes prohibiting gift solicitation:

D.C. Code §§1-1456; Iowa Code §§68B.5; Louisiana Revised Statutes §§42.1115; Massachusetts General Laws §§268B §6; Nebraska Revised Statutes §§ 49-1490; Nevada Revised Statutes §§218.942; Oregon Revised Statutes §§244.040

Should donations of gifts be prohibited or restricted?

Statutes prohibiting or restricting donations:

California Government Code §§86203; Connecticut General Statutes §§1-97; D.C. Code §§1-1456; Iowa Code §§68B.5; Louisiana Revised Statutes §§42-1117; Massachusetts General Laws §§268B §6; Michigan Comp. Laws §§4.421; Nebraska Revised Statutes §§49-1490; Nevada Revised Statutes §§218.942; Oregon Revised Statutes §§244.040

- Should receipt of gifts be prohibited or limited?

Statutes prohibiting or limiting receipt of gifts:

California Government Code §§86204; D.C. Code §§1-1456; Iowa Code §§68B.5; Louisiana Revised Statutes §§42.1115; Nebraska Revised Statutes §§49-1490; Nevada Revised Statutes §§218.942; Oregon Revised Statutes §§244.040

- Who should be prohibited/limited from receiving/soliciting gifts?

Statutes prohibiting or limiting certain parties from receiving or soliciting gifts:

Alabama Code §§36-25-6--"public official or employee or his family ..."
California Government Code §§86201--"any state candidate, elected state officer, or legislative official or to an agency official of any agency ..."
Connecticut General Statutes §§1-97--"any state employee, public official, candidate for public office or a member of his staff or immediate family ..."
D.C. Code §§1-1456--"official[s] in the legislative or executive branch or a member of his or her staff ..."
Iowa Code §§68B.5--"an official, employee, local official, local employee, member of the general assembly, candidate, or legislative employee ..."
Kansas Statutes §§46-237--"state officer or employee or candidate for state office ..."
Kentucky Revised Statutes §§6.790--"legislator..."

Louisiana Revised Statutes §§42.1102 and 42.1115--"public employee or an elected official ..."
Massachusetts General Laws §§268B §6--"public official or public employee or member of such person's immediate family ..."
Nebraska Revised Statutes §§49-1490--"an official or any other person on his or her behalf in the legislative or executive branch of state government, or member of an official's immediate family ..."
Nevada Revised Statutes §§218.942--"a member of the legislative branch or a member of his staff or immediate family ..."
Oregon Revised Statutes §§244.040--"public official or candidate for office ..."
Wisconsin Statutes §§19.45--"state public official ..."

- Who should be prohibited/limited from giving gifts?

Statutes prohibiting donations from lobbyists and/or their principals:

California Government Code §§86203; Connecticut General Statutes §§1-97; D.C. Code §§1-1456; Kansas Statutes §§46-237; Massachusetts General Laws §§268B §6; Michigan Comp. Laws §§4.421; Nebraska Revised Statutes §§49-1490; Nevada Revised Statutes §§218.942; Oregon Revised Statutes §§244.040

- What gift receipt limit per legislator should be set and over what time period?

Statutes with gift receipt limits:

$10 per calendar month -- California Government Code §§86203;
$50 per year -- Connecticut General Statutes §§1-97;
$100 per year -- D.C. Code §§1-1456;
$50 per occurrence -- Iowa Code §§68B.5;
$100 per year -- Kansas Statutes §§46-237;
$200 per biennium and 12 months thereafter -- Kentucky Revised Statutes §§6.790;
$100 per year -- Massachusetts General Laws §§268B §6;
$25 per month -- Michigan Comp. Laws §§4.414 and 4.421;
$25 per month --Nebraska Revised Statutes §§49-1490;
$100 per year -- Nevada Revised Statutes §§218.942
$100 per year -- Oregon Revised Statutes §§244.040

- Should there be exclusions from limits?

Statutes with exclusions from limits:

Kansas Statutes §§46-237--"hospitality in the form of food and beverages[,] ... [campaign] contribution[s,] ... commercially reasonable loan[s] ..."

Kentucky Revised Statutes 6.790--"political contribution[s,] ... [expenses associated with] political or testimonial dinners [,]... usual and customary commercial loans ...";

Michigan Compiled Laws §§4.414--"a campaign contribution[,] ... a [commercial] loan[,] ... a gift received from a member of the person's immediate family [within a certain degree of consanguinity,] ... [food] for immediate consumption[,] ... donation[s] to an officeholder expense fund ..."

Nebraska Revised Statutes §§49-1490--"a campaign contribution[,] ... a commercially reasonable loan [,] ... a gift received from a member of the person's immediate family[,] ... [food] for immediate consumption[,] ... admissions to state-regulated industries, facilities or events[,] ... occasional ...transportation within the State ..."

- Should there be additional limits?

Kansas Statutes §§46-237 and Michigan Compiled Laws §§4.414 and 4.421--loans made at rates lower than commercial rates

- Should disclosure of gifts be required by the recipient?

- Should disclosure of gifts be required by the donor?

Lobbyist disclosure required: California Government Code §§86109

- What should the penalties be for violations of gift transaction provisions?

These vary. In Michigan, a lobbyist who knowingly gives a gift valued at more than $3,000 may be found guilty of a felony punishable by a fine of up to $10,000 and/or up to 3 years imprisonment. If the violator is other than an individual (the principal), then fine may be up to $25,000 (Michigan Compiled Laws §§4.421).

- Who will be responsible for regulating gift-giving?

Most states have made provisions for ethics oversight groups to perform investigations, accept disclosure filings, issue advisory opinions, etc.

Additional considerations not addressed by legislation in other states:

If there is a cap on gift-giving, would a lobbyist representing more than one principal be limited to a single contribution or one contribution for each principal represented?

How would solicitation of charitable gifts by officials be treated (contributions to United Way, religious institutions)?

Would gifts solicited on another official's behalf (contributions to an event in someone's honor) be considered gifts to the solicitor or the honoree?

How would sale of merchandise at a cost in excess of its actual value be addressed (Girl Scout Cookies, tickets to functions)?

How would gifts of time be treated (principals' employees donating time to serve at dinners, lobbyists donating legal services)?

D-019

§ 36-25-6. **Offering, receiving, etc., gifts, favors, etc.**

No person shall offer to or give to a public official or employee or his family, and none of the aforenamed shall solicit or receive anything of value, including a gift, favor or service or a promise of future employment, based on any understanding that the vote, official actions, decisions or judgment of the intended recipient or family member would be influenced thereby. Expenses associated with social occasions afforded public officials and employees shall not be deemed a thing of value within the meaning of this section or prohibited hereby. (Acts 1973, No. 1056, p. 1699, § 4; Acts 1975, No. 130, § 1.)

§ 36-25-7. **Solicitation or receipt of money for advice or assistance; receipt of fees for services provided by state; disclosure statement.**

(a) No public official or employee or his family shall solicit or receive any money in addition to that received by the official or employee in his official capacity for advice or assistance on matters concerning the legislature, an executive department or any public regulatory board, commission or other body.

(b) No public official or employee or business with which he is associated shall receive any fee, salary, wages or other compensation for services provided to the state or any of its agencies or to any county, or municipality or instrumentalities thereof unless a disclosure statement provided for in this section shall be filed with the commission by the person rendering the services.

(c) The disclosure statement shall include the following information:

(1) The name of the employer;

(2) The amount of the compensation received for the employment; and

(3) The date of employment. (Acts 1973, No. 1056, p. 1699, § 5; Acts 1975, No. 130, § 1.)

1985 amendments

SEC. 8. Section 86201 of the Government Code is amended to read:

86201. "Gift" as used in this article means a gift made directly or indirectly to any state candidate, elected state officer, or legislative official, or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist.

SEC. 9. Section 86203 of the Government Code is amended to read:

86203. It shall be unlawful for a lobbyist, or lobbying firm, to make gifts to one person aggregating more than ten dollars ($10) in a calendar month, or to act as an agent or intermediary in the making of any gift, or to arrange for the making of any gift by any other person.

SEC. 10. Section 86205 of the Government Code is amended to read:

86205. No lobbyist or lobbying firm shall:

(a) Do anything with the purpose of placing any elected state officer, legislative official, agency official, or state candidate under personal obligation to the lobbyist, the lobbying firm, or the lobbyist's or the firm's employer.

(b) Deceive or attempt to deceive any elected state officer, legislative official, agency official, or state candidate with regard to any material fact pertinent to any pending or proposed legislative or administrative action.

(c) Cause or influence the introduction of any bill or amendment thereto for the purpose of thereafter being employed to secure its passage or defeat.

(d) Attempt to create a fictitious appearance of public favor or disfavor of any proposed legislative or administrative action or to cause any communication to be sent to any elected state officer, legislative official, agency official, or state candidate in the name of any fictitious person or in the name of any real person, except with the consent of such real person.

(e) Represent falsely, either directly or indirectly, that the lobbyist or the lobbying firm can control the official action of any elected state officer, legislative official, or agency official.

(f) Accept or agree to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.

§ 86204. Receipt of unlawful contribution or gift

It shall be unlawful for any person knowingly to receive any contribution or gift which is made unlawful by Section 86202 or 86203.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Cross References

Violation of this section, civil liability, see § 91005.

Notes of Decisions

I. In general

Where a registered lobbyist arranged for a contribution to a state senator, but the check was misplaced by a secretary and not mailed until after the effective date of the Political Reform Act, the prohibitions of that Act applied and the senator was required to return the contribution. (Oct. 1, 1975) 1 FPPC Opin. 135.

Contribution by registered lobbyist to county central committee is unlawful, and it is unlawful for central committee knowingly to receive such contribution. (July 2, 1975) 1 FPPC Opin. 62.

§ 86109. **Periodic reports; persons other than lobbyists; contents**

Every person described in Section 86108 shall file periodic reports containing:

(a) The name, business address and telephone number of the person making the report * * *;

(b) Information sufficient to identify the nature and interests of the filer, including;

(1) If the filer is an individual, the name and address of his employer, if any, or his principal place of business if he is self-employed, and a description of the business activity in which he or his employer is engaged;

(2) If the filer is a business entity, a description of the business activity in which it is engaged;

(3) If the filer is an industry, trade or professional association, a description of the industry, trade or profession which it represents including a specific description of any portion or faction of the industry, trade or profession which the association exclusively or primarily represents and, if the association has no more than fifty members, the names of the members; and

(4) If the filer is not an individual, business entity or industry, trade or professional association, a statement of the person's nature and purposes, including a description of any industry, trade, profession or other group with a common economic interest which the person principally represents or from which its membership or financial support is principally derived.

The information required by this subsection (b) need be stated only in the first report filed during a calendar year, except to reflect changes in the information previously reported.

(c) The total amount of payments to influence legislative and administrative action during the period, and in the case of expenses which benefit in whole or in part any elective state official, legislative official, agency official, state candidate or member of their immediate family, the date and amount of each expense incurred during the period, together with the full name and address of * * * the payee, a specific description of the consideration, if any, for which the expense was incurred and * * *, the full name and official position, if any, of each beneficiary, if the beneficiary is other than the payee or the filer, and the amount paid for each person. In the case of any expense which covers more than one item, all information shall be shown that would be required if a separate expense had been made for each item. The commission may by regulation provide for the reporting of other lobbying expenses.

* * *

(d) The date and amount of each contribution of twenty-five dollars ($25) or more made by the filer to a state candidate, an elected state officer, or a committee supporting such candidate or officer, and the name of the recipient of each contribution;

(e) A specific description of legislative or administrative action which the person making the report has attempted to influence;

(f) The name of each lobbyist employed or retained by the person making the report, together with the total amount paid to each lobbyist and the portion of that amount which was paid for specific purposes, including salary, fees, general expenses and any special expenses;

(g) The name of each business entity retained to lobby by the person making the report, together with the total amount paid to each business entity retained to lobby and the portion of that amount which was paid for specific purposes, including salary, fees, general expenses and any special expenses;

(h) Any other information required by the Commission consistent with the purposes and provisions of this chapter.

(Amended by Stats.1984, c. 161, p. ——, § 4.)

1984 Amendment. Rewrote subd (c), deleted former subds (d) and (e); redesignated former subd (f) as subd. (d) and rewrote the subdivision; redesignated former subds. (g) and (h) as subds. (e) and (f), inserted subd (g), and redesignated former subd (i) as subd (h)

Administrative Code References

Business entities retained to influence legislative or administrative actions, definitions, see 2 Cal.Adm. Code 18619.

Consolidated reporting by lobbyists and their employers, see 2 Cal Adm Code 18622.

Gifts from lobbyists, honoraria, see 2 Cal Adm Code 18623.

Lobbyist employer reporting requirements, see 2 Cal. Adm Code 18620.

Reportable exchanges, see 2 Cal Adm. Code 18650

Law Review Commentaries

Initiative process. (1975) 48 So.Cal L R 922

Political Reform Act: Greater access to initiative process. Roger Jon Diamond, Peter R. diDonato, Patrick J Marley and Patricia V Tubert (1975) 7 Southwestern L R. 453

Proposition 9 Joanne Garvey and Vigo Nielsen, Jr. (1975) 50 S Bar J 254

§ 1-97. **Restrictions on activities of registrants. Contingent fees**

(a) No registrant or anyone acting on behalf of a registrant shall give to any state employee, public official, candidate for public office or a member of his staff or immediate family any gift or gifts that amount to fifty dollars or more in value in the aggregate in any calendar year. Nothing in this section shall be construed to permit any activity prohibited under sections 53a-147 or 53a-148.

(b) No person shall be employed as a lobbyist for compensation which is contingent upon the outcome of any administrative or legislative action.

(c) No lobbyist may: (1) Do anything with the purpose of placing any public official under personal obligation; (2) attempt to influence any legislative or administrative action for the purpose of thereafter being employed to secure its defeat; (3) cause any communication to be sent to any public official in the name of any other individual except with the consent of such individual.

(1977, P.A. 77-605, § 8, eff. Jan. 1, 1978; 1981, P.A. 81-339, § 6, eff. July 1, 1981; 1982, P.A. 82-423, § 5, eff. July 1, 1982.)

§ 1-1456. Prohibited activities.

(a) No registrant or anyone acting on behalf of a registrant shall offer, give, or cause to be given a gift to an official in the legislative or executive branch or a member of his or her staff, that exceeds $100 in value in the aggregate in any calendar year. This section shall not be construed to restrict in any manner contributions authorized in §§ 1-1441 and 1-1443.

(b) No official in the legislative or executive branch or a member of his or her staff shall solicit or accept anything of value in violation of subsection (a) of this section.

(c) No person shall knowingly or willfully make any false or misleading statement or misrepresentation of the facts (relating to pending administrative decisions or legislative actions) to any official in the legislative or executive branch, or knowing a document to contain a false statement (relating to pending administrative decisions or legislative actions), cause a copy of such document to be transmitted to an official in the legislative or executive branch without notifying such official in writing of the truth.

(d) No information copied from registration forms and activity reports required by this chapter or from lists compiled from such forms and reports shall be sold or utilized by any person for the purpose of soliciting campaign contributions or selling tickets to a testimonial or similar fund raising affair or for any commercial purpose.

(e) No public official shall be employed as a lobbyist while acting as a public official, except as provided in § 1-1453. (1973 Ed., § 1-1176; Aug. 14, 1974, 88 Stat. 463, Pub. L. 93-376, title V, § 506; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(q), title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Legislative history of Law 1-79. — See note to § 1-1302.

Legislative history of Law 1-126. — See note to § 1-1302

Legislative history of Law 2-101. — See note to § 1-1301.

68B.5. Gifts solicited or accepted

An official, employee, local official, local employee, member of the general assembly, candidate, or legislative employee shall not, directly or indirectly, solicit, accept, or receive any gift having a value of fifty dollars or more in any one occurrence. A person shall not, directly or indirectly, offer or make any such gift to an official, employee, local official, local employee, member of the general assembly, candidate or legislative employee which has a value in excess of fifty dollars in any one occurrence.

Amended by Acts 1980 (68 G.A.) ch. 1015, § 8.

1980 Amendment: Struck section and inserted a new one.

Notes of Decisions

1. **Construction and application**

Statutory amendment, which provided that statute making it an offense for public officials and employees to accept any gift or gratuity in connection with a business transaction was not applicable to state officials and employees or legislators and their employees, created an arbitrary classification which denied equal protection, though another statute prohibits state officers and employees from giving or accepting gifts with value of more than $25 under any circumstances. State v. Books, 1975, 225 N.W.2d 322.

The acceptance of a trip to a foreign country with expenses paid by the foreign government could likely result in a member of the general assembly being found to have accepted a gift in violation of this section. Such acceptance would, in usual circumstances, not likely be found to constitute a bribe pursuant to § 722.1 and § 722.2. After July 1, 1980, a receipt of such a trip would not likely be found to constitute a violation of ch. 68B.1, as amended, in that such trip would not be "gift". Likewise, in the absence of an agreement or understanding that such trip is given to influence the actions of the legislator, a violation of §§ 722.1 and 722.2 as amended effective July 1, 1980, would not likely be found to have occurred. Op.Atty.Gen. (Bisenius), May 23, 1980.

A determination of whether two or more gifts constitute "one occurrence" as it appears in this section as amended by Acts 1980, ch. 1015, § 8, is to be made by reference to the totality of the circumstances surrounding the gifts in question. If the gifts involved are related to one another, they are likely part of the same occurrence. If the gifts in question are of a similar nature or are related to one another, if the gifts were made in the same or similar setting, if the relationship between the donor and the donee has its roots in the public employment status of the donee rather than in the personal relations between the parties, and if there was a relatively brief period of time separating the gifts in question, such gifts would likely be found to constitute one occurrence. Op.Atty.Gen. (Pope), June 25, 1980.

New bribery §§ 722.1 and 722.2, supplement to Code of Iowa, 1977, are not applicable to spouses of public officials so as to prohibit them from receiving gifts, including brunches and teas, nor does the gift statute (§ 68B.5) prohibit them if the value thereof is not $25 or more. Op.Atty.Gen. (Danker), Jan. 9, 1978.

The governor of the state is an official within the term as defined for purposes of chapter 68B of the statute. Op.Atty.Gen. (Rush), Oct. 5, 1977.

Criminal penalties are not attached to violations of §§ 68B.3 through 68B.6. Id.

Acceptance by legislators of reimbursement of travel, meals and lodging expense from Legis/50 for attendance at a meeting to be held at Clear Lake would not violate this section or § 741.1 where the purposes of the seminar are to assess the goals, activities and results of the MCSP in the Iowa General Assembly, and to examine how a parttime, citizen legislature can improve its procedures and operations in order to translate objectives into meaningful, accountable programs and attendance at the meeting by the legislators and payment of expenses are a matter of contract between the Iowa General Assembly and Legis/50. Op.Atty.Gen. (Nielsen), July 22, 1977.

Distribution of free Grandstand tickets to members by the Iowa State Fair Board does not directly contravene any provision of the Code of

46-237. State officers and employees and candidates for office prohibited from accepting or agreeing to accept certain gifts or favors; exceptions; prohibiting persons with special interests and persons licensed or regulated by state to offer or give certain gifts or favors; exceptions. (a) No state officer or employee or candidate for state office shall accept, or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of $100 or more in any calendar year from any one person known to have a special interest, under circumstances where such person knows or should know that a major purpose of the donor is to influence such person in the performance of their official duties or prospective official duties.

(b) No person with a special interest shall offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality or service having an aggregate value of $100 or more in any calendar year to any state officer or employee or candidate for state office with a major purpose of influencing such officer or employee in the performance of official duties or prospective official duties.

(c) No person licensed, inspected or regulated by a state agency shall offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of $100 or more in any calendar year to that agency.

(d) Hospitality in the form of food and beverages are presumed not to be given to influence a state officer or employee in the performance of such officer's or employee's official duties or prospective official duties, except when a particular course of official action is to be followed as a condition thereon.

(e) Except when a particular course of official action is to be followed as a condition thereon, this section shall not apply to (1) any contribution reported in compliance with the campaign finance act; or (2) a commercially reasonable loan or other commercial transaction in the ordinary course of business.

History: L. 1974, ch. 353, § 23; L. 1983, ch. 172, § 11; July 1.

6.790 Acceptance of additional compensation or gifts for performance of legislative duties prohibited

(1) No legislator shall accept compensation, other than that provided by law for members of the general assembly, for performance of his legislative duties. No person, other than state officials or employes performing their duties in making payments to members of the general assembly as provided by law, may pay or offer to pay any person any compensation for performance of his legislative duties.

(2) No legislator shall solicit, accept, or agree to accept, gifts, loans, gratuities, discounts, favors, or services having an aggregate value of $200 or more during a biennial period and twelve (12) months thereafter from any one person known to have legislative interests, under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence him in the performance of his official duties.

This subsection does not appiy to:

(a) Any political contribution, including the purchase of tickets to, or advertisements in journals, for political or testimonial dinners, if such contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the donor is to substantially influence the member in the performance of his official duties

(b) A usual and customary commercial loan made in the ordinary course of business.

(3) A legislator may accept contributions from private sources for use in defraying the expenses necessarily related to the adequate performance of his legislative duties, but any legislator accepting such contributions shall file, at such time, in such manner, and in such detail, as the board may prescribe, a written statement with the board describing the amount of such contributions and the uses to which they are put

HISTORY: 1976 S 56, § 9, eff. 6-19-76

Penalty, 6 990(5)(6)

CROSS REFERENCES

Public officer's duty to account for gifts or gratuities. 63 Am Jur 2d, Public Officers and Employees § 338

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237

§ 1101. Declaration of policy

A. Whereas the people of the state of Louisiana have in Article X, Section 21 of the Louisiana Constitution mandated that the legislature enact a code of ethics for officials and employees of this state and its political subdivisions, the legislature does hereby enact a Code of Governmental Ethics.

B. It is essential to the proper operation of democratic government that elected officials and public employees be independent and impartial; that governmental decisions and policy be made in the proper channel of the governmental structure; that public office and employment not be used for private gain other than the remuneration provided by law; and that there be public confidence in the integrity of government. The attainment of one or more of these ends is impaired when a conflict exists between the private interests of an elected official or a public employee and his duties as such. The public interest, therefore, requires that the law protect against such conflicts of interest and that it establish appropriate ethical standards with respect to the conduct of elected officials and public employees without creating unnecessary barriers to public service. It is the purpose of this Chapter to implement these policies and objectives.

Acts 1979, No. 443, § 1, eff. April 1, 1980.

Section 2 of Acts 1979, No. 443 (§ 1 of which amended and reenacted this Chapter) provided as follows:

"Section 2. Transfer of functions

"A. Effective April 1, 1980, all rights, powers, responsibilities, and duties of the Louisiana Commission on Governmental Ethics shall be transferred to the Commission on Ethics for Public Employees. All resources available on such date to the Louisiana Commission on Governmental Ethics shall be transferred to and henceforth shall be vested in and be exercised by the Commission on Ethics for Public Employees pursuant to the provisions of this Chapter.

"B. Effective April 1, 1980, all rights, powers, responsibilities, and duties of the Louisiana Board of Ethics for State Elected Officials shall be transferred to the Board of Ethics for Elected Officials. All resources available on such date to the Louisiana Board of Ethics for State Elected Officials shall be transferred to and henceforth shall be vested in and be exercised by the Board of Ethics for Elected Officials pursuant to the provisions of this Chapter."

Section 5 of Acts 1979, No. 443 repealed Const.1921, Art. XIX, § 27, made statutory by Art. XIV, § 16 of the 1974 Constitution. The repealed section had pertained to governmental ethics.

Cross References

Purchase and sale of land by public bodies, see R.S. 38:2211.1.

State contracts, grounds for debarment from consideration for award, see R.S. 89:1672.

State mineral board, applicability of this chapter.

Law Review Commentaries

Louisiana's Industry Inducement Laws, William V. Redmann, 15 La. Bar J. 173 (1967).

Work of the Louisiana appellate courts for 1974-1975 term: Administrative law and procedure. Paul R. Baier, 36 La.L.Rev. 464 (1976).

Notes of Decisions

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1. Validity

The Constitution does not prohibit the legislature from enacting a Code of Ethics (see R.S. 42:1101 et seq.) which regulates the conduct of persons other than public servants. Anzelmo v. Louisiana Com'n on Ethics for Public Employees, App.1 Cir.1983, 435 So.2d 1082, writ denied 441 So.2d 1220.

The title to the Code of Governmental Ethics (R.S. 42:1101 et seq.) gives fair notice of the contents of the body and, with respect to prohibitions against improper dealings between a public servant and members of his immediate family, is not violative of LSA-Const.Art. 3 § 15, which requires a brief title indicative of object. Anzelmo v. Louisiana Com'n on Ethics for Public Employees, App.1 Cir.1983, 435 So.2d 1082, writ denied 441 So.2d 1220.

The code of governmental ethics is not unconstitutional by virtue of its criminal provisions and such sanctions are not violative of due process. Kane v. Louisiana Commission on Governmental Ethics, 1967, 250 La. 855, 199 So.2d 900.

The code of ethics for governmental affairs affords due process to employees and other persons called for investigation, in view of procedural safeguards and review granted. Womack v. Louisiana Commission on Governmental Ethics, 1967, 250 La. 833, 199 So.2d 891.

2. In general

In ordering member of Board of Cosmetology to either divest herself of her interest in a beauty salon or to resign from the Board, Ethics Commission did not go beyond letter of the law to some vague and undefined spirit. Hill v. Commission on Ethics For Public Employees,

App. 1 Cir.1983, 442 So.2d 592, writ granted 444 So.2d 1217.

Legislature, in amending and reenacting Code of Governmental Ethics, effective April 1, 1980, did not inadvertently repeal Code as it had existed prior to April 1, 1980, and in so doing create "immunity" for those who had violated provisions of old Code, but provided for uninterrupted and unimpeded transition from old Code to new Code. Commission on Ethics for Public Employees v. IT Corp., App.1982, 423 So.2d 695, appeal after remand 453 So.2d 251.

State Code of Governmental Ethics (R.S. 42:1101 et seq.) could not be applied to conduct occurring before its effective date, April 1, 1980. Bodet v. Broussard, App.1981, 407 So.2d 810, writ denied 410 So.2d 1133.

Since individual failed to perform any of the duties regularly performed by other members of the Tax Commission although he drew his salary as such during entire period, such individual's discharge was proper since he had violated former R.S. 42:1117, providing that no member of any board or commission should receive compensation other than that to which he was duly entitled from the government, and former R.S. 42:1120 (see, now, R.S. 42:1161) imposing penalties on head of each state agency who knowingly had employees on payroll where they were not rendering services for which they were being paid. In re Theriot, App.1972, 257 So.2d 770.

Under Code of Government Ethics, acts of employees of Wild Life Commission are not attributable to members of Commission. In re Banquet, App.1966, 184 So.2d 288, writ denied 249 La. 198, 186 So.2d 157.

Each alleged instance of violation of Code of Government Ethics must be adjudged in light of its own particular facts and circumstances, provisions of code, and any other pertinent laws or statutes. Id.

The civil service law LSA-Const.1921, Art. 14, § 15 (see, now, LSA-Const. Art. 10, § 1 et seq.) and the code of ethics for governmental affairs both affected classified employees, but in different manner and there was no conflict between the two acts. Womack v. Louisiana Commission on Governmental Ethics, 1967, 250 La. 833, 119 So.2d 891.

A principal of a school under the jurisdiction of the Board of Elementary and Secondary Education cannot at the same time serve as a board member. Op.Atty.Gen., No. 75-177, March 6, 1975.

3. Purpose

Code of ethics for governmental affairs has as its purpose and policy the implementation of enumerated ethical objectives designed to protect integrity of state government and to facilitate recruitment and retention of qualified personnel by prescribing essential restrictions against conflicts of interest in state government without creating unnecessary barriers to public service. Womack v. Louisiana Commission on Governmental Ethics, 1967, 250 La. 833, 199 So.2d 891.

Code of Government Ethics was intended to protect against conflicts of interest in governmental affairs and establish by law appropriate ethical standards by which propriety of action by public servants is to be adjudged. In re Buquet, App.1966, 184 So.2d 288, writ denied 249 La. 198, 186 So.2d 159.

4. Injunction

Where, although college dean was subject to jurisdiction of Commission on Governmental Ethics for that which he did personally vis-a-vis officially, there was no evidence in record that Commission was interested in college dean for anything other than his official activities, no error occurred in granting preliminary injunction halting Commission's conducting of proceedings against college dean. Good v. Louisiana Commission on Governmental Ethics, App.1979, 370 So.2d 123, writ denied 371 So.2d 836.

Trial judge did not improperly hear application for preliminary injunction to halt Commission on Governmental Ethics from conducting any proceedings against college dean, where pleading with attachment which led to granting of preliminary injunction was verified. Id.

Industry members of Milk Commission, alleging that Commission on Governmental Ethics acted ultra vires in determining that they were in violation of the Code of Ethics because they possessed the very statutory qualifications which made them eligible for membership on Milk Commission, were not precluded from seeking injunctive relief on ground that they failed to exhaust their administrative remedies through a public hearing, and exception of prematurity to petition for injunctive relief was not sustainable, since it would have been a vain and useless thing to require industry members to undergo a public hearing when that hearing would not have settled irreconcilable conflicts between legislative expressions. Louisiana Milk Commission v. Louisiana Commission on Governmental Ethics, App. 1974, 298 So.2d 285.

The Commission on Governmental Ethics acted ultra vires in determining that members of the Milk Commission who were producers, handlers, retailers or otherwise engaged in the dairy industry, albeit qualified under R.S. 40:940.16, were in violation of the Code of Ethics and were required to either resign or divest themselves of any economic interest in dairy industry and preliminary injunction should have issued against a public hearing ordered by the Commission on Governmental Ethics, where subjection of industry members to such a hearing solely upon ground that each of them possessed statutory

qualifications for office would cause irreparable injury. Id.

Petition alleging that the Commission of Governmental Ethics acted ultra vires in determining that industry members on the Milk Commission were in violation of the Code of Ethics because they possessed the very statutory qualifications which made them eligible for membership on the Milk Commission was sufficient to sustain a cause of action for injunctive relief. Id.

5. Review

Commission on Governmental Ethics lacked jurisdiction to hear appeal by employee of Department of Health and Human Resources who was dismissed by assistant secretary for Office of Family Services where the employee's request for appeal was not filed within 30-day period following his dismissal as required by former R.S. 42:1121, governing time limits for appeals from administrative disciplinary decisions. Baloney v. DHHR, Office of Family Services, App. 1978, 364 So.2d 203.

Where trial court's judgment did not state that code of governmental ethics was unconstitutional in part, but reasons for judgment stated that Louisiana Commission on Governmental Ethics had no jurisdiction over persons who were not state employees or officials and that the failure to make LSA-Const.1921, Art. 19, § 27 (see, now, LSA-Const. Art. 10, § 21) applicable to other persons was a fatal omission that deprived the commission of jurisdiction over plaintiff, reviewing court presumed that code was declared unconstitutional in part. Kane v. Louisiana Commission on Governmental Ethics, 1967, 250 La. 855, 199 So.2d 900.

State Commission on Governmental Ethics, and individual members thereof, were entitled to a suspensive appeal from injunction whereby district judge, although no property right of any kind was involved, effectively restrained execution and enforcement of the Code of Ethics for Governmental Affairs. Womack v. Louisiana Commission on Governmental Ethics, 1967, 250 La. 37, 193 So.2d 777.

6. Persons subject to law

The Code of Governmental Ethics (R.S. 42:1101 et seq.) clearly applies to persons other than public employees as well as public employees and is not subject to a strict construction. Anzelmo v. Louisiana Com'n on Ethics for Public Employees, App.1 Cir.1983, 435 So.2d 1082, writ denied 441 So.2d 1220.

The behavior of those in the private sector who participate in unethical conduct with public servants may be regulated by the Code of Governmental Ethics (R.S. 42:1101 et seq.). Anzelmo v. Louisiana Com'n on Ethics for Public Employees, App.1 Cir.1983, 435 So.2d 1082, writ denied 441 So.2d 1220.

Provisions of the Code of Ethics (R.S. 42:1101 et seq.) not only regulate the conduct of public employees, but also regulate the conduct of elected officials and persons other than public servants. Anzelmo v. Louisiana Com'n on Ethics for Public Employees, App.1 Cir.1983, 435 So.2d 1082, writ denied 441 So.2d 1220.

Louisiana Commission on Governmental Ethics has jurisdiction over "other persons" than state employees including one alleged to have made gift or compensation for services to state employee. Kane v. Louisiana Commission on Governmental Ethics, 1967, 250 La. 855, 199 So.2d 900.

Individuals charged with responsibility of expending public funds received by associations which have as primary source of income dues paid from public funds by public officials or agencies as membership subscriptions are subject to Code of Governmental Ethics. Op.Atty. Gen., No. 75–952, July 17, 1975.

Assessors and deputy assessors were not covered by 1964 "Code of Ethics". Op.Atty.Gen., Dec. 31, 1964.

7. Louisiana State University

Advisory Opinion No. 36 of the Louisiana Commission on Government Ethics did not prohibit outside employment on the part of Louisiana State University personnel except when such employment would interfere with the duties owed the university or prevent an employee from performing the services to the university for which he was being paid. Op.Atty.Gen., Jan. 15, 1974.

Const.1921, Art. 12, § 7 (repealed; see, now, LSA-Const. Art. 8, § 7) prohibited the legislature or any of its agencies, boards or commissions, including the Louisiana Commission on Governmental Ethics, from intruding into the administrative affairs of Louisiana State University or attempting to exercise any control over said university. Id.

The commission on governmental ethics, within its jurisdiction, had authority over all colleges and universities in Louisiana except Louisiana State University. Id.

8. Parish government

Though only the State Commission on Governmental Ethics can enforce the provisions of the State Code of Governmental Ethics, parish was not prohibited from having parish code of conduct and having it enforced by parish government or its designated agency. Bodet v. Broussard, App.1981, 407 So.2d 810, writ denied 410 So.2d 1133.

9. Dock board

Ethical standards for public servants contained in the code of governmental ethics (R.S. 42:1101 et seq.) are applicable to Dock Board members. Board of Com'rs of Port of New Orleans v. Louisiana Com'n on Ethics for Public

Employees, App.1982, 416 So.2d 231, writ denied 420 So.2d 248.

10. Violations

This section establishes an objective rather than subjective standard of conduct, and actions prohibited by that standard are sufficient to violate this section. Glazer v. Commission on Ethics for Public Employees, App.1982, 417 So.2d 456, reversed on other grounds 431 So.2d 752.

§ 1102. Definitions

Unless the context clearly indicates otherwise, the following words and terms, when used in this Chapter, shall have the following meanings:

(1) "Action of a governmental entity" means any action on the part of a governmental entity or agency thereof including, but not limited to:

(a) Any decision, determination, finding, ruling, or order, including the judgment or verdict of a court or a quasi-judicial board, in which the governmental entity or any of its agencies has an interest, except in such matters involving criminal prosecutions.

(b) Any grant, payment, award, license, contract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act with respect thereto; and in which the governmental entity or any of its agencies has an interest, except in matters involving criminal prosecutions.

(c) As the term relates to a public servant of the state, any disposition of any matter by the legislature or any committee thereof; and as the term relates to a public servant of a political subdivision, any disposition of any matter by the governing authority or any committee thereof.

(2) "Agency" means a department, office, division, agency, commission, board, committee, or other organizational unit of a governmental entity. For purposes of this Chapter, "agency of the public servant" and "his agency" when used in reference to the agency of a public servant shall mean:

(a) For public servants in the twenty principal departments of the executive branch of state government, the office in which such public servant carries out his primary responsibilities; except that in the case of the secretary, deputy secretary, or undersecretary of any such department and officials carrying out the responsibilities of such department officers it shall mean the department in which he serves; and except that in the case of public servants who are members or employees of a board or commission or who provide staff assistance to a board or commission, it shall mean the board or commission.

(b) For the governor and lieutenant governor, it shall mean the executive branch of state government.

(c) For public servants in the office of the governor or the lieutenant governor it shall mean their respective offices.

(d) For public servants in the legislative branch of state government, it shall mean the agency or house of the legislature by which a public employee is employed and the legislative branch in the case of legislators.

(e) For public employees, except judges, of the supreme court, courts of appeal, district courts, and other courts authorized by Article V of the Constitution of 1974, it shall mean the court in which the public employee serves and any other court in which decisions of that court may be reviewed.

(f) For public servants of political subdivisions, it shall mean the agency in which the public servant serves, except that for members of any governing authority and for the elected or appointed chief executive of a governmental entity, it shall mean the governmental entity. Public servants of political subdivisions shall include, but shall not be limited to, elected officials and public employees of municipalities, parishes, and other political subdivisions; sheriffs and their employees; district attorneys and their employees; coroners and their employees; and clerks of court and their employees.

The ethics body may adopt rules and regulations to provide for the application of this definition.

(3) "Agency head" means the chief executive or administrative officer of an agency.

(4) "Assist" means to act in such a way as to help, advise, furnish information to, or aid a person with the intent to assist such person.

(5) "Board" means the Board of Ethics for Elected Officials.

(6) "Commission" means the Commission on Ethics for Public Employees.

(7) "Compensation" means any thing of economic value which is paid, loaned, granted, given, donated, or transferred or to be paid, loaned, granted, given, donated, or transferred for or in consideration of personal services to any person.

(8) "Controlling interest" means ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds twenty-five percent of any legal entity.

(9) "Elected official" means any person holding an office in a governmental entity which is filled by the vote of the appropriate electorate. It shall also include any person appointed to fill a vacancy in such offices.

(10) "Ethics body" means the board or commission.

(11) "Governing authority" means the body which exercises the legislative functions of a political subdivision.

(12) "Governmental entity" means the state or any political subdivision which employs the public employee or employed the former public employee or to which the elected official is elected, as the case may be.

(13) "Immediate family" as the term relates to a public servant means his children, brothers, sisters, parents, spouse, and the parents of his spouse.

(14) "Legislator" means any person holding office in the Senate or the House of Representatives of the Louisiana Legislature which is filled by the vote of the appropriate electorate.

(15) "Participate" means to take part in or to have or share responsibility for action of a governmental entity or a proceeding, personally, as a public servant of the governmental entity, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or the failure to act or perform a duty.

(16) "Person" means an individual or legal entity other than a governmental entity, or an agency thereof.

(17) "Political subdivision" means any unit of local government, including a special district, authorized by law to perform governmental functions.

(18) "Public employee" means anyone, whether compensated or not, who is:

(a) An administrative officer or official of a governmental entity who is not filling an elective office.

(b) Appointed by any elected official when acting in an official capacity, and the appointment is to a post or position wherein the appointee is to serve the governmental entity or an agency thereof, either as a member of an agency, or as an employee thereof.

(c) Engaged in the performance of a governmental function.

(d) Under the supervision or authority of an elected official or another employee of the governmental entity.

A public employee shall be in such status on days on which he performs no services as well as days on which he performs services. The termination of any particular term of employment of a public employee shall take effect on the day the termination is clearly evidenced.

(19) "Public servant" means a public employee or an elected official.

(20) "Responsibility" in connection with a transaction involving a governmental entity means the direct administration or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through or with others or subordinates, to effectively direct action of the governmental entity, as the case may be, in respect to such transaction.

(21) "Substantial economic interest" means an economic interest which is of greater benefit to the public servant or other person than to a general class or group of persons, except:

(a) The interest that the public servant has in his position, office, rank, salary, per diem, or other matter arising solely from his public employment or office.

(b) The interest that a person has as a member of the general public.

(22)(a) "Thing of economic value" means money or any other thing having economic value, except promotional items having no substantial resale value and food, drink, or refreshments consumed by a public servant, including reasonable transportation and entertainment incident thereto, while the personal guest of some person, and includes but is not limited to:

(i) Any loan, except a bona fide loan made by a duly licensed lending institution at the normal rate of interest, any property interest, interest in a contract, merchandise, service, and any employment or other arrangement involving a right to compensation.

(ii) Any option to obtain a thing of economic value irrespective of the conditions to the exercise of such option.

(iii) Any promise or undertaking for the present or future delivery or procurement of a thing of economic value.

(b) In the case of an option, promise, or undertaking, the time of receipt of the thing of economic value shall be deemed to be, respectively, the time the right to the option becomes fixed, regardless of the conditions to its exercise, and the time when the promise or undertaking is made, regardless of the conditions to its performance.

(c) Things of economic value shall not include salary and related benefits of the public employee due to his public employment or salary and other emoluments of the office held by the elected official.

(23) "Transaction involving the governmental entity" means any proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other such particular matter which the public servant or former public servant of the governmental entity in question knows or should know:

(a) Is, or will be, the subject of action by the governmental entity.

(b) Is one to which the governmental entity is or will be a party.

(c) Is one in which the governmental entity has a direct interest. A transaction involving the agency of a governmental entity shall have the same meaning with respect to the agency.

(24) "Service" means the performance of work, duties, or responsibilities, or the leasing, rental, or sale of movable or immovable property.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1980, No. 838, § 1; Acts 1983, No. 403, § 1.

1980 **Amendment**: Added par. (24), defining "Service".

1983 **Amendment**: In par. (22), inserted "promotional items having no substantial resale value and" following "except".

Subparagraph designations and redesignation of former subparagraphs as items in par. (22) as amended in 1983 were supplied on authority of R.S. 24:253.

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½. Validity

Terms "services" and "thing of economic value" within R.S. 42:1111 and 42:1112 providing that no public servant shall receive anything of economic value for services rendered during his public service unless the services are neither performed for nor compensated by person from whom public servant would be prohibited from receiving a gift and that no public servant shall participate in transactions involving the governmental entity with any person who owes anything of economic value to the public servant and is in position to directly affect economic interests of public servant are not unconstitutionally vague. Glazer v. Commission on Ethics for Public Employees, App.1982, 417 So.2d 456, reversed on other grounds 431 So.2d 752.

1. State employee

Although private corporation, which entered into contract with State Department of Natural Resources to conduct feasibility study for regional hazardous waste disposal facility, timely submitted its feasibility study by September 20, 1979, and corporation's real estate option to buy recommended site became effective on September 25, 1979, where corporation was not paid by state for its services until October 9, 1979, it was still "state employee" within meaning of former R.S. 42:1111 (see, now, this section) on date real estate option became effective and therefore acquired "personal substantial economic interest" in its contract in violation of former R.S. 42:1112 (see, now, R.S. 42:1112 and 42:1123). Commission on Ethics for Public Employees v. IT Corp., App.1982, 423 So.2d 695, appeal after remand 453 So.2d 251.

Private corporation's execution of contract with State Department of Natural Resources to conduct feasibility study for regional hazardous waste disposal facility constituted "performance of a state function under authority of the laws of this state" within meaning of former R.S. 42:1111 (see, now, this section) defining "state employee," thereby subjecting corporation to jurisdiction of Commission on Ethics for Public Employees. Id.

"State employee" as defined in former R.S. 42:1111 (see, now, this section) included private corporations as well as individuals and, therefore, private corporation which had been awarded contract by State Department of Natural Resources to conduct feasibility study for regional hazardous waste disposal facility could be subject to jurisdiction of Commission on Ethics for Public Employees. Id.

Louisiana Commission on Governmental Ethics has jurisdiction over "other persons" than state employees, including one alleged to have made gift or compensation for services to state employee. Kane v. Louisiana Commission on Governmental Ethics, 1967, 250 La. 855, 199 So.2d 900.

Where subpoena issued by Commission on Governmental Ethics was addressed to person as member of Financial Assistance Commission, the investigation had nothing to do with such person's functions and duties as member of Legislature and he was a "state employee" with respect to the investigation. Womack v. Louisiana Commission on Governmental Ethics, 1967, 250 La. 833, 199 So.2d 891.

There was no conflict between provisions of LSA-Const.1921, Art. 19, § 27 and former R.S. 42:1111 and 42:1119 (see, now, R.S. 42:1102 and this section) governing Commission on Governmental Ethics, with respect to its jurisdiction over state elected officials serving as members of a board in capacity of "state employee." Id.

2. Transactions

Leases from state for water bottoms for oyster fishing which were held by corporations of which Wild Life Commission member was stockholder as well as those owned in indivision with members of his family were "transactions" within provision of former R.S. 42:1111 (see, now, this section) defining "transaction involving the state." In re Buquet, App.1966, 184 So.2d 288, writ denied 249 La. 198, 186 So.2d 159.

3. Participate

Code of Government Ethics prohibited contract between state official and board or commission he served as member only where conflict of interest existed and member personally participated in transaction as state employee acting on behalf of state in manner set forth in definition of "participate" under former R.S. 42:1111 (see, now, this section). In re Buquet, App.1966, 184 So.2d 288, writ denied 249 La. 198, 186 So.2d 159.

4. Dock board

Ethical standards for public servants contained in the code of governmental ethics (R.S. 42:1101 et seq.) are applicable to Dock Board members. Board of Com'rs of Port of New Orleans v. Louisiana Com'n on Ethics for Public Employees, App.1982, 416 So.2d 231, writ denied 420 So.2d 248.

5. Evidence

In proceeding wherein Commission on Ethics for Public Employees found that Mineral Board member, whose corporation had done business with seven companies holding mineral leases with state, had violated Code of Governmental Ethics provisions, including provision of R.S. 42:1112 that no public servant was to participate in transactions involving the governmental enti-

ty with any person owing anything of economic value to the public servant and in a position to directly affect economic interests of public servant, evidence sufficiently established that member violated such provision, despite absence of any evidence of specific transactions by Board involving such lessees after adoption of the Code. Glazer v. Commission on Ethics for Public Employees, App.1982, 417 So.2d 456, reversed on other grounds 431 So.2d 752.

6. Licenses

Since, under unambiguous wording of R.S. 42:1152 legislature limited governmental actions which Commission on Ethics for Public Employees can cancel or rescind to "contract[s]," it is beyond power and authority of Commission to cancel or rescind any "license." Commission on Ethics for Public Employees v. IT Corp., App. 1982, 423 So.2d 695, appeal after remand 453 So.2d 251.

Permits granted by the Environmental Control Commission to private corporation, which had been awarded contract by State Department of Natural Resources to conduct feasibility study for regional hazardous waste disposal facility, relative to hazardous waste facility corporation was planning to construct on site which it had recommended to Department in feasibility study were "license[s]" within meaning of par. (1)(b) of this section and, as such, were immune from either cancellation or rescission by Commission on Ethics for Public Employees on account of corporation's alleged violation of Code of Governmental Ethics. Id.

PART II. ETHICAL STANDARDS FOR PUBLIC SERVANTS

§ 1111. Payments from nonpublic sources

A. Payments for services to the governmental entity. No public servant shall receive any thing of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position.

B. Finder's fees. No public servant shall receive any thing of economic value from a person to whom the public servant has directed business of the governmental entity.

C. Payments for nonpublic service.

(1) No public servant shall receive any thing of economic value for any service, the subject matter of which:

(a) Is devoted substantially to the responsibilities, programs, or operations of the agency of the public servant and in which the public servant has participated; or

(b) Draws substantially upon official data or ideas which have not become part of the body of public information.

(2) No public servant and no legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, shall receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are:

(a) Bona fide and actually performed by the public servant or by the entity;

(b) Not within the course of his official duties;

(c) Not prohibited by R.S. 42:1112 or by applicable laws or regulations governing nonpublic employment for such public servant; and

(d) Neither performed for nor compensated by any person from whom such public servant would be prohibited by R.S. 42:1115(A)(1) or (B) from receiving a gift.

D. Payments for future services. No public servant shall receive, directly or indirectly, any thing of economic value during the term of his public service in consideration of personal services to be rendered to or for any person subsequent to the term of such public service; however, a public servant may enter into a contract for prospective employment during the term of his public service unless otherwise prohibited by R.S. 42:1116.

E. Payments for rendering assistance to certain persons.

(1) No public servant, and no legal entity of which such public servant is an officer, director, trustee, partner, or employee, or in which such public servant has a substantial economic interest, shall receive or agree to receive any thing of economic value for

assisting a person in a transaction, or in an appearance in connection with a transaction, with the agency of such public servant.

(2)(a) No elected official of a governmental entity shall receive or agree to receive any thing of economic value for assisting a person in a transaction or in an appearance in connection with a transaction with the governmental entity or its officials or agencies, unless he shall file a sworn written statement with the board prior to or least ten days after initial assistance is rendered.

(b) The contents of the sworn written statement required by this Subsection shall be prescribed by the board and such statement shall be a public record.

(c) The board shall review all sworn statements filed in accordance with this Subsection. If the board determines that any such sworn statement is deficient or may suggest a possible violation of this Part, it shall, within ten days of the receipt of such statement, notify the elected official filing the statement of its findings. Such notification shall be deemed confidential and privileged and shall only be made public in connection with a public hearing by the board for an alleged violation of this Part where such would be relevant to the alleged violation for which the elected official is being investigated.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1983, No. 403, § 1; Acts 1983, No. 697, § 1.

1983 Amendments: Acts 1983, No. 403, § 1, in subpar. C(2)(d) inserted "(A)(1) or (B)" following "R.S. 42:1115".

Section 2 of Acts 1983, No. 403 provides:

"The provisions of this Act and the provisions of the Act which originated as [House Bill No. 787 of the 1983 Regular Session] [Acts 1983, No. 697] if enacted, shall both be given effect. The provisions of this Act shall not supersede the provisions of the introductory paragraph of R.S. 42:1111(C)(2) as amended by the Act which originated as [House Bill No. 787 of the 1983 Regular Session] [Acts 1983, No. 697], if enacted; the provisions of that Act shall not supersede the provisions of R.S. 42:1111(C)(2)(d) as contained in this Act."

Acts 1983, No. 697, § 1, in subpar. C(2) inserted following "No public servant" the words "and no legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent," and inserted "or by the entity" in subpar. C(2)(a).

Notes of Decisions

½. Validity

The terms "services" and "things of economic value," as found in provisions of this section and R.S. 42:1112 prohibiting public servants from receiving anything of economic value for or in consideration of services rendered, are not unconstitutionally vague or overbroad. Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

Terms "services" and "thing of economic value" within this section and R.S. 42:1112 providing that no public servant shall receive anything of economic value for services rendered during his public service unless the services are neither performed for nor compensated by person from whom public servant would be prohibited from receiving a gift and that no public servant shall participate in transactions involving the governmental entity with any person who owes anything of economic value to the public servant and is in position to directly affect economic interests of public servant are not unconstitutionally vague. Glazer v. Commission on Ethics for Public Employees, App.1982, 417 So.2d 456, reversed on other grounds 431 So.2d 752.

1. In general

Provisions of subpar. C(2)(d) of this section and R.S. 42:1115(A) operates to prohibit any public servant from receiving anything of economic value for or in consideration of services rendered to or for any person if such public servant knows or reasonably should know that such person has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency. Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

Research corporation with which private corporation subcontracted to do certain work in conjunction with contract awarded private corporation by State Department of Natural Resources to conduct feasibility study for regional hazardous waste disposal facility was "state employee" within meaning of former R.S. 42:1111

Note 1

(see, now, R.S. 42:1102) for purpose of charge that private corporation, as an "other person" violated R.S. 42:1101 et seq. by paying, transferring, or delivering to research corporation a thing of economic value which, as state employee, research corporation was prohibited from receiving by Code where record showed that research corporation was then under contract with Department to manage several significant aspects of Department's hazardous waste program. Commission on Ethics for Public Employees v. IT Corp., App.1982, 423 So.2d 695, appeal after remand 453 So.2d 251.

"State employee" as defined in former R.S. 42:1111 (see, now, R.S. 42:1102) included private corporations as well as individuals and, therefore, private corporation which had been awarded contract by State Department of Natural Resources to conduct feasibility study for regional hazardous waste disposal facility could be subject to jurisdiction of Commission on Ethics for Public Employees. Id.

Ethical standards for public servants contained in the code of governmental ethics (R.S. 42:1101 et seq.) are applicable to Dock Board members. Board of Com'rs of Port of New Orleans v. Louisiana Com'n on Ethics for Public Employees, App.1982, 416 So.2d 231, writ denied 421 So.2d 248.

Where state police sergeant was suspended less than two years after the first of the alleged violations of former R.S. 42:1113 and 42:1114 (see, now, this section and R.S. 42:1115), prohibiting state employee from receiving gift or compensation from person who conducted activities regulated by employee's agency, and dismissal the following year was based upon the same conduct, action by division of state police to enforce was timely commenced. McNabb v. Louisiana Dept. of Public Safety, Division of State Police, App.1971, 250 So.2d 150.

State police sergeant's failure to disclose to head of his agency the services and compensation he received as result of his outside employment with construction companies violated former R.S. 42:1113 and 42:1114 (see, now, this section and R.S. 42:1115) prohibiting state employee from receiving gift or compensation from person who conducts operations which are regulated by such employee's agency, as against police sergeant's contention that division of state police was only concerned with enforcement of laws and did not "regulate" the operations of the pipeline construction companies. Id.

Where association has as its primary source of income dues paid from public funds by public officials or agencies as membership subscriptions, employment of state employee or official by association, or representation of association by state employee or official, is violative of outside compensation and conflict-of-interest provisions of R.S. 42:1112, 42:1113, and 42:1143 (see, now, R.S. 42:1112 and this section). Op.Atty. Gen., No. 75-952, July 17, 1975.

2. Purpose

Primary objective of the Code of Ethics for Governmental Employees (R.S. 42:1101 et seq.) is not to apprehend and punish persons guilty of public wrongdoing, but to prevent public officers and employees from becoming involved in conflicts of interest. Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

3. Receiving anything of economic value

Subsection C(2)(d) of this section, prohibiting public servants from receiving anything of economic value for or in consideration of services rendered, must be read as prohibiting conflicts of interest in ordinary as well as in special business deals and, hence, as prohibiting arms-length transactions in any conflict of interest situation. Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

A public official may not receive anything of economic value for or in consideration of services rendered to any person who does business with his government agency. Id.

4. Conflict of interest

A "conflict of interest" as envisioned by the Code of Ethics for Governmental Employees (R.S. 42:1101 et seq.) is a situation which would require an official to service two masters, presenting a potential, rather than an actuality, of wrongdoing. Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

Conduct of individual in permitting his wholly owned and controlled corporation to sell steel to state mineral lessees while he was a member of the State Mineral Board amounted to a sale of steel by individual under the Code of Ethics for Governmental Employees and, as such, amounted to a "conflict of interest" for which the Commission on Ethics for Public Employees was authorized to impose sanctions. Id.

5. Powers of commission

Authority was vested in the Commission on Ethics for Public Employees to notify customers of corporation wholly owned and controlled by public official that any payment by them to that official for services rendered was violative of the Code of Ethics for Governmental Employees. Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

6. Boards and commissions

Legislative authorization for those engaged in the mining industry to serve on the State Mineral Board does not implicitly permit an industry figure to serve regardless of any conflicts of interest he may have that are in violation of the Code of Ethics for Governmental Employees (R.S. 42.1101 et seq.). Glazer v. Commission on

Ethics for Public Employees, Sup.1983, 431 So.2d 752.

7. Corporations

Separate corporate entity privilege contained in LSA-C.C. art. 435 does not permit a public official to use a corporation wholly owned and controlled by him to do that which is expressly prohibited by the Code of Ethics for Governmental Employees. (R.S. 42:1101 et seq.). Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

No proper use or function is served when separate corporate capacity is used to thwart the strong public interests embodied in the proscriptions of the Code of Ethics for Governmental Employees (R.S. 42:1101 et seq.). Id.

8. Remand

A remand was necessary in order to have the Commission on Ethics for Public Employees support its order removing a member of the State Mineral Board for a conflict of interest, with no possibility of reappointment for at least four years, with facts and articulated reasons and for an explanation as to why a suspension from the State Mineral Board, with reinstatement conditioned upon elimination of the conflict of interest, would not be a more effective or appropriate sanction. Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

§ 1112. Participation in certain transactions involving the governmental entity

A. No public servant, except as provided in R.S. 42:1120, shall participate in a transaction in which he has a personal substantial economic interest of which he may be reasonably expected to know involving the governmental entity.

B. No public servant, except as provided in R.S. 42:1120, shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any of the following persons has a substantial economic interest:

(1) Any member of his immediate family.

(2) Any person in which he has a substantial economic interest of which he may reasonably be expected to know.

(3) Any person of which he is an officer, director, trustee, partner, or employee.

(4) Any person with whom he is negotiating or has an arrangement concerning prospective employment.

(5) Any person who is a party to an existing contract with such public servant, or with any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, or who owes any thing of economic value to such public servant, or to any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, and who by reason thereof is in a position to affect directly the economic interests of such public servant.

C. Every public employee, excluding an appointed member of any board or commission, shall disqualify himself from participating in a transaction involving the governmental entity when a violation of this Part would result. The procedures for such disqualification shall be established by regulations issued pursuant to R.S. 42:1134(1).

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1983, No. 697, § 1.

1983 Amendment: Rewrote par. B(5) which, prior thereto, read:

"(5) Any person who is a party to an existing contract with such public servant or who owes any thing of economic value to such public servant and who by reason thereof is in a position to affect directly the economic interests of such public servant."

Notes of Decisions

½. Validity

This section, allowing all public employees to disqualify themselves from participation in any matter when a violation of Ethics Code would result but requiring members of boards to resign or divest when a violation would result, does not violate the equal protection clause of either U.S.

Note ½

C.A. Const. Amend. 14 or L.S.A.-Const. Art. 1, § 3 in that there is a rational relationship to state interest of avoiding conflicts of interest. Hill v. Commission on Ethics For Public Employees, App. 1 Cir.1983, 442 So.2d 592, writ granted 444 So.2d 1217.

The terms "services" and "things of economic value," as found in provisions of this section and R.S. 42:1111 prohibiting public servants from receiving anything of economic value for or in consideration of services rendered, are not unconstitutionally vague or overbroad. Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

Words "in a position to directly affect" within par. B(5) of this section providing that no public servant shall participate in transactions involving the governmental entity with any person who owes anything of economic value to the public servant and is in position to directly affect economic interests of public servant are not unconstitutionally vague. Glazer v. Commission on Ethics for Public Employees, App.1982, 417 So.2d 456, reversed on other grounds 431 So.2d 752.

Terms "services" and "thing of economic value" within this section and R.S. 42:1111 providing that no public servant shall receive anything of economic value for services rendered during his public service unless the services are neither performed for nor compensated by person from whom public servant would be prohibited from receiving a gift and that no public servant shall participate in transactions involving the governmental entity with any person who owes anything of economic value to the public servant and is in position to directly affect economic interests of public servant are not unconstitutionally vague. Id.

This section did not deny equal protection to member of Mineral Board, though another statute mandated that all public employees, except appointed board members, were to disqualify themselves from participation in any matter where Code of Governmental Ethics would be violated. Id.

1. Validity of prior law

Provisions of former R.S. 42:1117 (see, now, this section) that no member of appointed board or commission shall "participate" in any transaction involving such board or commission or in which he has a "substantial personal economic interest" was not unconstitutionally vague or overly broad in its terms. State Mineral Bd. v. Louisiana Commission on Governmental Ethics, App.1978, 367 So.2d 1188, writ denied 368 So.2d 1097.

2. In general

Where association has as its primary source of income dues paid from public funds by public officials or agencies as membership subscriptions, employment of state employee or official by association, or representation of association by state employee or official, is violative of outside compensation and conflict-of-interest provisions of former R.S. 42:1112, 42:1113, and 42:1143 (see, now, this section and R.S. 42:1111). Op.Atty.Gen., No. 75-952, July 17, 1975.

2.5. Purpose

Primary objective of the Code of Ethics for Governmental Employees (R.S. 42:1101 et seq.) is not to apprehend and punish persons guilty of public wrongdoing, but to prevent public officers and employees from becoming involved in conflicts of interest. Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

3. Evidence

In proceeding wherein Commission on Ethics for Public Employees found that Mineral Board member, whose corporation had done business with seven companies holding mineral leases with state, had violated Code of Governmental Ethics provisions, including provision of this section that no public servant was to participate in transactions involving the governmental entity with any person owing anything of economic value to the public servant and in a position to directly affect economic interests of public servant, evidence sufficiently established that member violated such provision, despite absence of any evidence of specific transactions by Board involving such lessees after adoption of the Code. Glazer v. Commission on Ethics for Public Employees, App.1982, 417 So.2d 456, reversed on other grounds 431 So.2d 752.

4. State employee

Although private corporation, which entered into contract with State Department of Natural Resources to conduct feasibility study for regional hazardous waste disposal facility, timely submitted its feasibility study by September 20, 1979, and corporation's real estate option to buy recommended site became effective on September 25, 1979, where corporation was not paid by state for its services until October 9, 1979, it was still "state employee" within meaning of former R.S. 42:1111 (see, now, R.S. 42:1102) on date real estate option became effective and therefore acquired "personal substantial economic interest" in its contract in violation of former R.S. 42:1112 (see, now, this section and R.S. 42:1123). Commission on Ethics for Public Employees v. IT Corp., App.1982, 423 So.2d 695, appeal after remand 453 So.2d 251.

"State employee" as defined in former R.S. 42:1111 (see, now, R.S. 42:1102) included private corporations as well as individuals and, therefore, private corporation which had been awarded contract by State Department of Natural Resources to conduct feasibility study for regional hazardous waste disposal facility could be

subject to jurisdiction of Commission on Ethics for Public Employees Id.

5. Conflict of interest

The Ethics Commission did not err in finding that member of Board of Cosmetology, who also had an interest in a beauty salon, had an impermissible conflict of interest. Hill v. Commission on Ethics For Public Employees, App. 1 Cir.1983, 442 So.2d 592, writ granted 444 So.2d 1217.

Conduct of individual in permitting his wholly owned and controlled corporation to sell steel to state mineral lessees while he was a member of the State Mineral Board amounted to a sale of steel by individual under the Code of Ethics for Governmental Employees and, as such, amounted to a "conflict of interest" for which the Commission on Ethics for Public Employees was authorized to impose sanctions. Glazer v. Commission on Ethics for Public Employees, Sup. 1983, 431 So.2d 752.

A "conflict of interest" as envisioned by the Code of Ethics for Governmental Employees (R.S. 42:1101 et seq.) is a situation which would require an official to service two masters, presenting a potential, rather than an actuality, of wrongdoing. Id.

6. Corporations

No proper use or function is served when separate corporate capacity is used to thwart the strong public interests embodied in the proscriptions of the Code of Ethics for Governmental Employees (R.S. 42:1101 et seq.). Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

Separate corporate entity privilege contained in LSA-C.C. art. 435 does not permit a public official to use a corporation wholly owned and controlled by him to do that which is expressly prohibited by the Code of Ethics for Governmental Employees (R.S. 42:1101 et seq.). Id.

7. Boards and commissions

As result of membership on the Board of Cosmetology and her position as owner operator of a beauty salon, individual was in violation of this section. Hill v. Commission on Ethics For Public Employees, App. 1 Cir.1983, 442 So.2d 592, writ granted 444 So.2d 1217.

In ordering member of Board of Cosmetology to either divest herself of her interest in a beauty salon or to resign from the Board, Ethics Commission did not go beyond letter of the law to some vague and undefined spirit. Hill v. Commission on Ethics For Public Employees, App. 1 Cir.1983, 442 So.2d 592, writ granted 444 So.2d 1217.

Legislative authorization for those engaged in the mining industry to serve on the State Mineral Board does not implicitly permit an industry figure to serve regardless of any conflicts of interest he may have that are in violation of the Code of Ethics for Governmental Employees. (R.S. 42:1101 et seq.) Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

§ 1113. Prohibited contractual arrangements

A. No public servant, excluding any legislator and any appointed member of any board or commission and any member of a governing authority of a parish with a population of ten thousand or less, or member of such a public servant's immediate family, or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.

B. Other than a legislator, no appointed member of any board or commission, member of his immediate family, or legal entity in which he has an economic interest shall bid on or enter into or be in any way interested in any contract, subcontract, or other transaction which is under the supervision or jurisdiction of the agency of such appointed member.

C. No legislator, member of his immediate family, or legal entity in which he has a controlling interest shall bid on or enter into or be in any way interested in any contract, subcontract, or other transaction involving the legislator's agency.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1984, No. 830, § 1.

1984 Amendment: In subsec. A, inserted "and any member of a governing authority of a parish with a population of ten thousand or less".

In subsec. A as amended in 1984, "or" was inserted following "ten thousand or less,", "a" was inserted following "member of such" and "that" was substituted for "which" following "transaction" on authority of R.S. 24:253.

Cross References

Public printing contracts, interest of state officials prohibited, see R.S. 43:12.

Notes of Decisions

In general 1
Validity ½

Note ½

½. Validity

R.S. 42:1113, 42:1114, and 42:1119 of the Code of Governmental Ethics adequately provide a person of fair intelligence with fair notice of what conduct is prohibited or required and are not unconstitutionally vague. Anzelmo v. Louisiana Com'n on Ethics for Public Employees, App.1 Cir.1983, 435 So.2d 1082, writ denied 441 So.2d 1220.

1. In general

Provisions of the Code of Ethics (R.S. 42:1101 et seq.) not only regulate the conduct of public employees, but also regulate the conduct of elected officials and persons other than public servants. Anzelmo v. Louisiana Com'n on Ethics for Public Employees, App.1 Cir.1983, 435 So.2d 1082, writ denied 441 So.2d 1220.

Leasing of state-owned water bottoms for oyster fishing from Wild Life Commission by member of Commission did not per se violate Code of Government Ethics. In re Buquet, App.1966, 184 So.2d 288, writ denied 249 La. 198, 186 So.2d 159.

§ 1114. Financial disclosure

A. Other than a legislator, each public servant and each member of his immediate family who derives any thing of economic value, directly, through any transaction involving the agency of such public servant or who derives any thing of economic value of which he may be reasonably expected to know through a person which (1) is regulated by the agency of such public servant, or (2) has bid on or entered into or is in any way financially interested in any contract, subcontract, or any transaction under the supervision or jurisdiction of the agency of such public servant shall disclose the following:

(1) The amount of income or value of any thing of economic value derived;

(2) The nature of the business activity;

(3) Name and address, and relationship to the public servant, if applicable; and

(4) The name and business address of the legal entity, if applicable.

B. Each legislator and each member of his immediate family who derives anything of economic value, directly, through any transaction involving the legislator's agency or who derives anything of economic value of which he may be reasonably expected to know through a person which has bid on or entered into or is in any way financially interested in any contract, subcontract, or any transaction involving the legislator's agency shall disclose the following:

(1) The amount of income or value of anything of economic value derived;

(2) The nature of the business activity;

(3) The name and address, and relationship to the legislator, if applicable; and

(4) The name and business address of the legal entity, if applicable.

C. The disclosure statements required in this Section shall be filed each year with the appropriate ethics body by May 1 and shall include such information for the previous calendar year. Such statements shall be a matter of public record.

Acts 1979, No. 443, § 1, eff. April 1, 1980

Notes of Decisions

1. Validity

R.S. 42:1113, 42:1114, and 42:1119 of the Code of Governmental Ethics adequately provide a person of fair intelligence with fair notice of what conduct is prohibited or required and are not unconstitutionally vague. Anzelmo v. Louisiana Com'n on Ethics for Public Employees, App.1 Cir.1983, 435 So.2d 1082, writ denied 441 So.2d 1220.

2. In general

Provisions of the Code of Ethics (R.S. 42:1101 et seq.) not only regulate the conduct of public employees, but also regulate the conduct of elected officials and persons other than public servants. Anzelmo v. Louisiana Com'n on Ethics for Public Employees, App.1 Cir.1983, 435 So.2d 1082, writ denied 441 So.2d 1220.

§ 1114.1. [Blank]

A section designated as R.S. 42:1114.1 was enacted by Acts 1982, No. 747, § 2. The section was redesignated as R.S. 42:1124 on authority of R.S. 24:253.

§ 1115. Gifts

A. No public servant shall solicit or accept, directly or indirectly, any thing of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person:

(1) Has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency, or

(2) Is seeking, for compensation, to influence the passage or defeat of legislation by the public servant's agency.

B. No public employee shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public employee knows or reasonably should know that such person:

(1) Conducts operations or activities which are regulated by the public employee's agency.

(2) Has interests which may be substantially affected by the performance or nonperformance of the public employee's official duty.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1983, No. 403, § 1.

1983 Amendment: In subsec. A, designated pars. (1), inserted ", or" at the end of par. (1) and added par. (2).

Notes of Decisions

Construction and application ¾
Evidence 2
Powers of commission 4
Prescription 3
Regulation by employee's agency 1
Validity ½

½. Validity

Phrase "interest which may be substantially affected by" within subsec. B(2) of this section, providing that no public employee shall solicit or accept anything of economic value from any person if the public employee knows or reasonably should know that such person has interests which may be substantially affected by performance or nonperformance of public employee's official duty, is not unconstitutionally vague. Glazer v. Commission on Ethics for Public Employees, App.1982, 417 So.2d 456, reversed on other grounds 431 So.2d 752.

¾. Construction and application

Provisions of subsec. A of this section and R.S. 42:1111(C)(2)(d) operates to prohibit any public servant from receiving anything of economic value for or in consideration of services rendered to or for any person if such public servant knows or reasonably should know that such person has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency. Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

A public official may not receive anything of economic value for or in consideration of services rendered to any person who does business with his government agency. Id.

1. Regulation by employee's agency

State police sergeant's failure to disclose to head of his agency the services and compensation he received as result of his outside employment with construction companies violated former R.S. 42:1113 and 42:1114 (see, now, R.S. 42:1111 and this section), prohibiting state employee from receiving gift or compensation from person who conducts operations which are regulated by such employee's agency, as against police sergeant's contention that division of state police was only concerned with enforcement of laws and did not "regulate" the operations of the pipeline construction companies. McNabb v. Louisiana Dept. of Public Safety, Division of State Police, App.1971, 250 So.2d 150.

2. Evidence

Where record did not reflect that operations or activities of individual from whom state police officer solicited a loan were regulated by officer's agency nor did it reflect any interest which he might have had and which might have been affected by officer's performance or nonper-

Note 2

formance of his official duties, and record was further barren of any proof that officer's application to such individual for loan amounted to a favor, finding by governmental ethics commission that solicitation of loan by officer from individual amounted to violation of former R.S. 42:1114 (see, now, this section) was without evidentiary support. In re Coppola, App.1971, 256 So.2d 798, application denied 260 La. 1120, 258 So.2d 375, appeal after remand 270 So.2d 190, writ issued 272 So.2d 372.

3. Prescription

Where state police sergeant was suspended less than two years after the first of the alleged violations of former R.S. 42:1113 and 42:1114 (see, now, R.S. 42:1111 and this section), prohibiting state employee from receiving gift or compensation from person who conducted activities regulated by employee's agency, and dismissal the following year was based upon the same conduct, action by division of state police to enforce former R.S. 42:1113 and 42:1114 was timely commenced. McNabb v. Louisiana Dept. of Public Safety, Division of State Police, App. 1971, 250 So.2d 150.

4. Powers of commission

Authority was vested in the Commission on Ethics for Public Employees to notify customers of corporation wholly owned and controlled by public official that any payment by them to that official for services rendered was violative of the Code of Ethics for Governmental Employees. Glazer v. Commission on Ethics for Public Employees, Sup.1983, 431 So.2d 752.

§ 1116. Abuse of office

No public servant shall use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to provide himself, any other public servant, or other person with any thing of economic value. This Section shall not be construed to limit that authority authorized by law, statute, ordinance, or legislative rule in carrying out official duties.

Acts 1979, No. 443, § 1, eff. April 1, 1980.

§ 1117. Illegal payments

No public servant or other person shall give, pay, loan, transfer, or deliver or offer to give, pay, loan, transfer, or deliver, directly or indirectly, to any public servant or other person any thing of economic value which such public servant or other person would be prohibited from receiving by any provision of this Part.

Acts 1979, No. 443, § 1, eff. April 1, 1980.

Notes of Decisions

1. In general

Research corporation with which private corporation subcontracted to do certain work in conjunction with contract awarded private corporation by State Department of Natural Resources to conduct feasibility study for regional hazardous waste disposal facility was "state employee" within meaning of former R.S. 42:1111 (see, now, R.S. 42:1102) for purpose of charge that private corporation, as an "other person" violated R.S. 42:1101 et seq. by paying, transferring, or delivering to research corporation a thing of economic value which, as state employee, research corporation was prohibited from receiving by Code where record showed that research corporation was then under contract with Department to manage several significant aspects of Department's hazardous waste program. Commission on Ethics for Public Employees v. IT Corp., App.1982, 423 So.2d 695, appeal after remand 453 So.2d 251.

§ 1118. Influencing action by legislature or governing authority

No public servant shall solicit or receive any thing of economic value, directly or indirectly, for, or to be used by him or a member of his immediate family principally to aid in, (1) the accomplishment of the passage or defeat of any matter affecting his agency by the legislature, if his agency is a state agency, or by the governing authority, if his agency is an agency of a political subdivision, or (2) the influencing, directly or indirectly, of the passage or defeat of any matter affecting his agency by the legislature, if his agency is a state agency, or by the governing authority, if his agency is an agency of a political subdivision.

Acts 1979, No. 443, § 1, eff. April 1, 1980.

§ 1119. Nepotism

A. No member of the immediate family of an agency head shall be employed in his agency.

B. No member of the immediate family of a member of a governing authority or the chief executive of a governmental entity shall be employed by the governmental entity, except that any local school board may employ any member of the immediate family of any board member or of the superintendent as a classroom teacher provided that such family member is certified to teach. Each member of a local school board which employs a member of the immediate family of a school board member or the superintendent shall recuse himself from any decision involving the promotion or assignment of teaching location of the employee.

C. (1) Any person serving in public employment on the effective date of this Section, whose employment is in violation of this Section, may continue in such employment and the provisions of this Section shall not be construed to hinder, alter, or in any way affect normal promotional advancements in public employment for such employee.

(2) The provisions of this Section shall not prohibit the continued employment of any public employee nor shall it be construed to hinder, alter, or in any way affect normal promotional advancements for such public employee where a member of public employees' immediate family becomes the agency head of such public employee's agency, provided that such public employee has been employed in the agency for a period of at least one year prior to the member of the public employee's immediate family becoming the agency head.

(3) The provisions of the Section shall not apply to pilots appointed by the governor pursuant to R.S. 34:943, 34:992, 34:1043, and 34:1072.

D. A willful violation of this Section shall subject the agency head, member of the governing authority, or chief executive, as the case may be, the public employee having authority to hire and fire the employee, the immediate supervisor of the employee, and such employee, to disciplinary action and penalties provided by this Chapter.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1982, No. 640, § 1.

1982 Amendment: In subsec. B, inserted ", except that any local school board may employ any member of the immediate family of any board member or of the superintendent as a classroom teacher provided that such family member is certified to teach", and added the second sentence.

Senate Bill No. 327 of the 1982 Regular Session Acts 1982, No. 640, amending and reenacting subsec. B, having been submitted to the governor and no action having been taken within the time provided by the Constitution, said bill became law without the governor's approval.

Notes of Decisions

1. Validity

R.S. 42:1113, 42:1114, and 42:1119 of the Code of Governmental Ethics adequately provide a person of fair intelligence with fair notice of what conduct is prohibited or required and are not unconstitutionally vague. Anzelmo v. Louisiana Com'n on Ethics for Public Employees, App.1 Cir.1983, 435 So.2d 1082.

2. In general

Provisions of the Code of Ethics (R.S. 42:1101 et seq.) not only regulate the conduct of public employees, but also regulate the conduct of elected officials and persons other than public servants. Anzelmo v. Louisiana Com'n on Ethics for Public Employees, App.1 Cir.1983, 435 So.2d 1082.

§ 6. Gifts from legislative agents

Gifts from legislative agents.

No legislative agent shall knowingly and wilfully offer or give to a public official or public employee or a member of such person's immediate family, and no public official or public employee or member of such person's immediate family shall knowingly and wilfully solicit or accept from any legislative agent, gifts with an aggregate value of one hundred dollars or more in a calendar year.

Added by St.1978, c. 210, § 20.

1978 Enactment. St.1978, c. 210, § 20, an emergency act, was approved June 5, 1978.

Section 22 of St. 1981, c. 210 made this section effective Jan. 1, 1979.

Cross References

Similar restriction against legislative agents, see c. 3, § 43.

Library References

Bribery ⇐1(2).
C.J.S. Bribery §§ 1, 3.

§ 7. Penalties for violation of confidentiality and for perjury

Penalties for violation of confidentiality and for perjury.

Any person who violates the confidentiality of a commission inquiry under the provisions of paragraph (*a*) of section 4 of this chapter shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

Any person who wilfully affirms or swears falsely in regard to any material matter before a commission proceeding under paragraph (*c*) of section 4 of this chapter, or who files a false statement of financial interests under section 5 of this chapter shall be punished by a fine of not more than one thousand dollars or by imprisonment in a state prison for not more than two and a half years, or both.

Added by St.1978, c. 210, § 20.

1978 Enactment. St.1978, c. 210, § 20, an emergency act, was approved June 5, 1978.

Section 22 of St. 1978, c. 210 made this section effective Nov. 1, 1978.

Library References

Officers ⇐121.
Perjury ⇐8, 41.

Sec. 4. (1) "Gift" means a payment, advance, forbearance, or the rendering or deposit of money, services, or anything of value, the value of which exceeds $25.00 in any 1-month period, unless consideration of equal or greater value is received therefor. Gift does not include:

(a) A campaign contribution otherwise reported as required by Act No. 388 of the Public Acts of 1976, as amended, being sections 169.201 to 169.282 of the Michigan Compiled Laws.

(b) A loan made in the normal course of business by an institution as defined in section 5 of Act No. 319 of the Public Acts of 1969, as amended, being section 487.305 of the Michigan Compiled Laws, a national bank, a branch bank, an insurance company issuing a loan or receiving a mortgage in the normal course of business, a premium finance company, a mortgage company, a small loan company, a state or federal credit union, a savings and loan association chartered by this state or the federal government, or a licensee as defined by Act No. 27 of the Public Acts of the Extra Session of 1950, as amended, being sections 492.101 to 492.141 of the Michigan Compiled Laws.

(c) A gift received from a member of the person's immediate family, a relative of a spouse, a relative within the seventh degree of consanguinity as computed by the civil law method, or from the spouse of the relative.

(d) A breakfast, luncheon, dinner, or other refreshment consisting of food and beverage provided for immediate consumption.

(e) A donation to an officeholder expense fund otherwise reported as required by Act No. 388 of the Public Acts of 1976, as amended, being sections 169.201 to 169.282 of the Michigan Compiled Laws.

(2) "Immediate family" means a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes.

(3) "Loan" means a transfer of money, property, or anything of ascertainable value in exchange for an obligation, conditional or not, to repay in whole or in part.

P.A.1978, No. 472, § 4, Imd. Eff. Oct. 19.

4.421 Violations, penalties

Sec. 11. (1) A person shall not be employed as a lobbyist agent for compensation contingent in any manner upon the outcome of an administrative or legislative action. A person who knowingly violates this subsection is guilty of a felony and if the person is an individual shall be punished by a fine of not more than $10,000.00, or imprisoned for not more than 3 years, or both, and if the person is other than an individual shall be punished by a fine of not more than $25,000.00.

(2) A lobbyist or lobbyist agent or anyone acting on behalf of a lobbyist or lobbyist agent shall not give a gift or loan, other than a loan made in the normal course of business by an institution as defined in section 5 of Act No. 319 of the Public Acts of 1969, as amended, a national bank, a branch bank, an insurance company issuing a loan or receiving a mortgage in the normal course of business, a premium finance company, a mortgage company, a small loan company, a state or federal credit union, a savings and loan association chartered by this state or the federal government, or a licensee as defined by Act No. 27 of the Public Acts of the Extra Session of 1950, as amended. For the purpose of this section, a preferential interest rate shall not be given solely on the basis of the credit applicant being a public official or a member of the public official's immediate family. A person who gives a gift in violation of this subsection is guilty of a misdemeanor if the value of the gift is $3,000.00 or less, and shall be punished by a fine of not more than $5,000.00, or imprisoned for not more than 90 days, or both, and if the person is other than an individual the person shall be fined not more than $10,000.00. A person who knowingly gives a gift in violation of this subsection and the value of the gift is more than $3,000.00 is guilty of a felony and if the person is an individual shall be punished by a fine of not more than $10,000.00, or imprisoned for not more than 3 years, or both, and if the person is other than an individual shall be punished by a fine of not more than $25,000.00.

(3) Information copied from registration forms or activity reports required by this act or from lists compiled from the forms or reports may not be sold or utilized by any person for any commercial purpose. A person who violates this subsection is subject to a civil penalty of not more than $1,000.00.

(4) A public official, other than an individual who is appointed or elected to a board or commission and is not an ex officio member or prohibited by law from having other employment, shall not accept compensation or reimbursement, other than from the state, for personally engaging in lobbying. A person who violates this subsection is guilty of a misdemeanor and shall be punished by a fine of not more than $1,000.00, or imprisoned for not more than 90 days, or both.

P.A.1978, No. 472, § 11

Historical Note

Prior Laws:

P.A.1917, No. 214, §§ 8, 10.
C.L.1948, §§ 4.408, 4.410.
C.L.1970, §§ 4.408, 4.410.

Library References

Statutes ⇨24

C.J.S. Statutes § 6.

49-1490. Principal or lobbyist; gift to legislative or executive official; unlawful; penalty; solicitation of gifts; unlawful; penalty; gift, defined. (1) A principal, lobbyist, or anyone acting on behalf of either shall not give a gift to any official or member of any official's staff in the executive or legislative branch of state government, or member of an official's immediate family. Any person who knowingly gives a gift in violation of this subsection shall be guilty of a Class III misdemeanor.

(2) An official or any other person on his or her behalf in the legislative or executive branch of state government or a member of such official's staff or immediate family shall not solicit or accept a gift in violation of subsection (1) of this section. Any person who knowingly solicits or accepts a gift in violation of this subsection shall be guilty of a Class III misdemeanor.

(3) As used in sections 49-1480 to 49-1492, gift shall mean a payment, subscription, advance, forbearance, honorarium, campaign contribution from a lobbyist, or the rendering or deposit of money, services, or anything of value, the value of which exceeds twenty-five dollars in any one-month period, unless consideration of equal or greater value is received therefor. Gift shall not include:

(a) A campaign contribution otherwise reported as required by law, except as otherwise provided in this subsection;

(b) A commercially reasonable loan made in the ordinary course of business;

(c) A gift received from a member of the person's immediate family, a relative, or from the spouse of any such relative;

(d) A breakfast, luncheon dinner, or other refreshments consisting of food and beverage provided for immediate consumption;

(e) Admissions to state-regulated industries, facilities, or events; or

(f) The occasional provisio of transportation within the State of Nebraska to an officeholder.

Source: Laws 1976, LB 987, § 90; Laws 1977, LB 41, § 53; Laws 1979, LB 162, § 5; Laws 1981, LB 134, § 4.

218.942 Unlawful acts.

1. A lobbyist shall not knowingly or willfully make any false statement or misrepresentation of facts:

(a) To any member of the legislative branch in an effort to persuade or influence him in his official actions.

(b) In a registration statement or report concerning lobbying activities filed with the director.

2. A lobbyist shall not give to a member of the legislative branch or a member of his staff or immediate family gifts that exceed $100 in value in the aggregate in any calendar year.

3. A member of the legislative branch or a member of his staff or immediate family shall not solicit anything of value from a registrant or accept any gift that exceeds $100 in aggregate value in any calendar year.

4. A person who employs or uses a lobbyist shall not make that lobbyist's compensation or reimbursement contingent in any manner upon the outcome of any legislative action.

5. Information copied from registration forms and activity reports filed with the director or from lists compiled from such forms and reports must not be sold or used by any person for the purpose of soliciting campaign contributions or selling tickets to a testimonial or similar fundraising affair or for any commercial purpose.

6. Except as provided in subsection 7, a member of the legislative or executive branch of the state government and an elected officer or employee of a political subdivision shall not receive compensation or reimbursement other than from the state or the political subdivision for personally engaging in lobbying.

7. An elected officer or employee of a political subdivision may receive compensation or reimbursement from any organization whose membership consists of elected or appointed public officers.

8. A lobbyist shall not instigate the introduction of any legislation for the purpose of obtaining employment to lobby in opposition thereto.

(Added to NRS by 1975, 1173; A 1977, 1530; 1979, 1324)

218.944 Penalties. Any person subject to any of the provisions contained in NRS 218.900 to 218.944, inclusive, who refuses or fails to comply therewith is guilty of a misdemeanor.

(Added to NRS by 1975, 1174)

54-05.1-05. Invitations and gifts to legislators.

1. When any lobbyist invites a legislator to attend a function sponsored in whole or in part by the lobbyist or the principal, the lobbyist shall, upon the request of the legislator, supply the legislator with the true or estimated cost of the gratuity and allow the legislator to attend the function and pay his own share of the expenses.
2. When any lobbyist offers a gift of a non-information-bearing nature to a legislator, the lobbyist shall, upon the request of the legislator, supply the legislator with the true or estimated cost of the gratuity and allow the legislator to pay the cost of and receive the gift.

Source: S.L. 1975, ch. 465, § 5.

244.040 Code of Ethics. (1) No public official shall use his official position or office to obtain financial gain for himself, other than official salary, honoraria or reimbursement of expenses, or for any member of his household, or for any business with which he or a member of his household is associated.

(2) No public official or candidate for office or a member of his household shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of $100 from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has any official position or over which the official exercises any authority.

(3) No public official shall solicit or receive, either directly or indirectly, and no person shall offer or give to any public official any pledge or promise of future employment, based on any understanding that such public official's vote, official action or judgment would be influenced thereby.

(4) No public official shall further his personal gain through the use of confidential information gained in the course of or by reason of his official position or activities in any way.

(5) No person shall offer during any calendar year any gifts with an aggregate value in excess of $100 to any public official or candidate therefor or a member of his household if the person has a legislative or administrative interest in a governmental agency in which the official has any official position or over which the official exercises any authority. [1974 s.s. c.72 §3; 1975 c.543 §2]

19.45. Standards of conduct

(1) The legislature hereby reaffirms that a state public official holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust. This subchapter * * * does not prevent any * * * state public official * * * from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this state.

The legislature further recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that citizens who serve as state public officials * * * retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for * * * state public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material; and that state public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of this subchapter.

(2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for * * * an organization with which he or she is associated.

(3) No person * * * may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person * * *, directly or indirectly, anything of value if it could reasonably be expected to influence * * * the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of * * * the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

(4) No state public official may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person * * *, if the information has not been communicated to the public or is not public information.

(5) No state public official may use or attempt to use his public position to influence or gain unlawful benefits, advantages or privileges for himself or others.

(6) No state public official, member of a state public official's immediate family, nor any organization with which the state public official or a member of the official's immediate family owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than $3,000 within a 12-month period, in whole or in part derived from state funds unless the state public official has first made written disclosure of the nature and extent of such relationship or interest to the board and to the department acting for the state in regard to such contract or lease. Any contract or lease entered into in violation of this subsection may be voided by the state in an action commenced within 3 years of the date on which the ethics board, or the department or officer acting for the state in regard to the allocation of state funds from which such payment is derived, knew or should have known that a violation of this subsection had occurred. This subsection does not affect the application of s. 946.13.

(7)(a) No state public official who is identified in s. 20.923 may represent a person * * * for compensation before a department or any employe thereof, except:

1. In a contested case which involves a party other than the state with interests adverse to those represented by the state public official; or

2. At an open hearing at which a stenographic or other record is maintained; or

3. In a matter that involves only ministerial action by the department; or

4. In a matter before the department of revenue or tax appeals commission that involves the representation of a client in connection with a tax matter.

(b) This subsection does not apply to representation by a state public official acting in his or her official capacity.

(8) Except in the case where the state public office formerly held was that of legislator, legislative employe under s. 20.923(6)(f), (g) or (h), chief clerk of a house of the legislature, sergeant at arms of a house of the legislature or a permanent employe occupying the position of auditor for the legislative audit bureau:

(a) No former state public official, for 12 months following the date on which he or she ceases to be a state public official, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employe of the department with which he or she was associated as a state public official within 12 months prior to the date on which he or she ceased to be a state public official.

(b) No former state public official, for 12 months following the date on which he or she ceases to be a state public official, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employe of a department in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding which was under the former official's responsibility as a state public official within 12 months prior to the date on which he or she ceased to be a state public official.

(c) No former state public official may, for compensation, act on behalf of any party other than the state in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former official participated personally and substantially as a state public official.

(9) The attorney general * * * may not engage in the private practice of law during the period in which he or she holds that office. No justice of the supreme court and no judge of any court of record may engage in the private practice of law during the period in which he or she holds that office.

(9m) No state public official or state employe who is employed in a state position full-time at an annual salary in excess of * * * the current salary for * * * the office of legislator established under s. 20.923 (2) may hold any other position from which he or she receives income from the state exceeding $5,000 per year. No department may employ any * * * individual in violation of this subsection. Every department shall annually check to assure that no employe of the department violates this subsection. Any employe who is found in violation of this subsection shall be required to accept a termination or reduction in salary sufficient to bring the employe into compliance. This provision does not apply to those state public officials or state employes who accept other state employment during a period they are not receiving a full-time salary.

(10) This section does not prohibit a legislator from making inquiries for information on behalf of a person * * * or from representing a person * * * before a department if he or she receives no compensation therefor beyond the salary and other compensation or reimbursement to which the legislator is entitled by law, except as authorized under sub. (7).

(11) The legislature recognizes that all state public officials and employes should be guided by a code of ethics and thus:

(a) The administrator of the * * * division of merit recruitment and selection in the department of employment relations shall, with the board's advice, adopt rules to implement a code of ethics * * * for classified and unclassified state employees * * * except state public officials * * * subject to this subchapter, unclassified personnel in the university of Wisconsin system * * * and officers and employes of the judicial branch.

(b) The board of regents of the university of Wisconsin system shall establish a code of ethics for * * * unclassified personnel in that system who are not subject to this subchapter.

Deletions are indicated by asterisks * * *

(c) The supreme court shall promulgate a code of judicial ethics for officers and employes of the judiciary and candidates for judicial office which shall include financial disclosure requirements. All justices and judges shall, in addition to complying with this subchapter, adhere to the code of judicial ethics.

Source:

St.1971, § 11.05.
L.1973, c. 90, § 1e.
L.1973, c. 334, §§ 33, 57(4).
L.1977, c. 29, § 105m, eff. July 1, 1977.
L.1977, c. 196, § 130(2), eff. Feb. 16, 1978.
L.1977, c. 223, §§ 4, 5, eff. April 7, 1978.
L.1977, c. 277, §§ 22 to 26, eff. July 1, 1978.
L.1977, c. 419, § 5, eff. May 27, 1978.
L.1977, c. 447, § 36, eff. July 9, 1978.
L.1979, c. 120, §§ 4, 5, eff. March 1, 1980.
1983 Act 27, §§ 112, 2200(15)(a)3, eff. July 2, 1983.
1983 Act 166, §§ 7, 16, eff. March 28, 1984.

1979 Legislation:

Laws 1979, c. 120, § 4 repealed former subsec. (11)(c) providing that counties and municipalities could establish codes of ethics including requirements that local officials and candidates identify their economic interests.

See, now, § 19.59.

1977 Legislation:

Laws 1977, c. 418, § 923(14)(a) provides:

"If 1977 Assembly Bill 349 is enacted without change insofar as it affects proposed section 19.45(7) of the statutes, as affected by senate amendment 12, then the following shall supersede the text of proposed section 19.45(7)(a) of the statutes in that bill:

"19.45(7)(a) No state public official who is identified in s. 20.923 may represent a person or organization for compensation before a department or any employe thereof, except:

"1. In a contested case which involves a party other than the state with interests adverse to those represented by the state public official; or

"2. At an open hearing at which a stenographic or other record is maintained; or

"3. In a matter that involves only ministerial action by the department; or

"4. In a matter before the department of revenue or tax appeals commission that involves the representation of a client in connection with a tax matter."

Laws 1977, c. 277, § 45(2) provides:

"Section 19.45(8)(a) and (b) of the statutes, as repealed and recreated by this act, applies only to a former state public official who ceases to be a state public official after the effective date of this act."

1973 Legislation:

See note preceding § 19.41.

Cross References

Bids and bidding, state contracts, see § 16.75.

Administrative Code References

Requests for written advice, see section Eth 3.30.

University of Wisconsin faculty and academic staff code of ethics, see section UWS 8.01 et seq.

Law Review Commentaries

Powers of attorney general in Wisconsin. Scott Van Alstyne and Larry J. Roberts. 1974 Wis.L.Rev. 721.

Notes of Decisions

1. In general

A county board lacks authority to establish a county code of ethics ordinance prohibiting county officers from acting as agents or attorneys for an entity other than the county in connection with any transaction involving the county in which such officers participate during the course of their service for a period of 12 months after leaving county service. Op.Atty.Gen., May 24, 1978.

The duty to file a statement of economic interest as required by ordinance, is not one "required by law" within the meaning of St.1975, § 59.10, although if the ordinance was adopted as a rule pursuant to St.1975, § 59.04, the county board could proceed against a supervisor for violation of the county code of ethics. Op.Atty. Gen., April 28, 1977.

Article 1, § 2 of the Wisconsin constitution is not violated where a fine is levied and imprisonment provided on failure to pay the fine, when "fine" is used in the context of an ordinance and should be considered a forfeiture. Id.

A county is not a sovereign and may not, therefore, provide that violation of its code of ethics ordinance is punishable by fine or imprisonment, although imprisonment may ultimately result from failure to pay a forfeiture. Id.

A county board may provide that violation of its ordinance is punishable by forfeiture. Id.

The governor has broad discretion in expenditure of monies from the contingent fund, whose appropriations are made in St.1975, § 20.525, so long as the expenditures are for business-related as opposed to personal items or services and subject to the public purpose doctrine. Op.Atty. Gen., Feb. 4, 1977.

SESSION 19 85 T-103D 4/17/86

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE GIFT GIVING AND RECEIPT OF GIFTS IN LOBBYING.

The General Assembly of North Carolina enacts:

Section 1. A new G.S. 120-47.5A is added to Article 9A of Chapter 120 of the General Statutes to read:

"§ 120-47.5A Lobbying gifts--(a) No member, member-elect, or member-designate or employee of the General Assembly or presiding officer of either house thereof shall solicit, accept, or agree to accept any economic opportunity, gift, loan, gratuity, discount not available to the general public other than a discount available to State employees, honorarium, service, other thing of value, or any combination thereof having an aggregate value of twenty-five dollars ($25.00) or more in any calendar year from any legislative agent, an agent's employer or retainer, any official legislative liaison personnel designated pursuant to G.S. 120-47.8(6), or the personnel's employing agency, department, or institution.

(b) No legislative agent, an employer or retainer of a legislative agent, any official legislative liaison personnel designated pursuant to G.S. 120-47.8(6), or the personnel's employing agency, department, or institution, shall offer, pay,

give or make any economic opportunity, gift, loan, gratuity, discount not available to the general public other than a discount available to State employees, honorarium, service, other thing of value, or any combination thereof having an aggregate value of twenty-five dollars ($25.00) or more in any calendar year to anyone prohibited from receiving these gifts by subsection (a) of this section.

(c) This section shall not apply to:

1) any contribution to a political committee, candidate, or referendum committee accepted and accounted for pursuant to G.S. 163-278.8 or under the Federal Election Campaign Act (2 U.S.C. § 431 et seq.);

2) provision of food and beverages for the individual's immediate personal consumption;

3) provision of occasional lodging and transportation within the State;

4) admission to State-sponsored industries, facilities or events, or to collegiate athletic facilities or events;

5) commercially reasonable transactions;

6) honoraria in amounts not to exceed two hundred dollars ($200.00) per event as payment for speaking at any event, participating in a panel or seminar, or engaging in any similar activity;

7) reasonable expenses for admission, food, travel, lodging, and scheduled entertainment received in exchange for, or in addition to honoraria for, speaking at any event, participation in a panel or seminar, or

engaging in any similar activity in North Carolina or its contiguous states."

Sec. 2. G.S. 120-47.8(6) is amended by adding the following sentence at the end to read: "However, all legislative liaison personnel and their departments and agencies shall be subject to the provisions of G.S. 120-47.5A."

Sec. 3. This act shall become effective January 1, 1987.

Section-by-Section Analysis -- A BILL TO BE ENTITLED AN ACT TO REGULATE THE GIFT GIVING AND RECEIPT OF GIFTS IN LOBBYING.

Section 1 of this bill adds a new statute, G.S. 120-47.5A Lobbying Gifts, to Article 9A of Chapter 120 of the General Statutes. In Section 2, G.S. 120-47.8(6) is amended. Section 3 is the ratification clause.

Subsection (a) limits members, members-elect or -designate, and employees or presiding officers of the General Assembly in soliciting, accepting or agreeing to accept a broadly defined variety of gifts from legislative agents or liaison personnel and/or their employers. Legislators are allowed to receive gifts up to a twenty-five dollar ($25.00) value annual limit in the aggregate from a single legislative agent, official legislative liaison personnel, or employer or retainer.

Subsection (b) limits legislative agents and liaison personnel and/or their employers in giving gifts to members, members-elect or -designate or employees or presiding officers of the General Assembly. Legislative agents, legislative liaison personnel or their employers would be allowed to give to each legislator gifts up to a twenty-five dollar ($25.00) value annual limit in the aggregate.

Subsection (c) excludes certain items and acts from coverage by the statute. The excluded items are: political contributions, food and beverages for the individuals immediate personal consumption, occasional lodging and transportation within the state, admission to State-run functions, to collegiate athletic facilities or events, commercially reasonable transactions, honoraria in amounts not to exceed two hundred dollars ($200.00), and, personal expenses associated with participation in meetings in North Carolina and contiguous states.

Under G.S. 120-47.9(a) Violation of the new G.S. 120-47.5A is a misdemeanor punishable by a fine not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000), or imprisonment not to exceed two years, or both. In addition, a legislative agent convicted of that violation would be barred for two years from acting as a legislative agent.

Section 2 amends G.S. 120-47.8(6), which deals with the regulation of legislative liaison personnel. The added sentence brings legislative liaison personnel under the coverage of the new G.S. 120-47.5A.

Section 3 makes the act effective upon ratification.

SESSION 19 85 T-136 4/11/86

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN AND CLARIFY THE LAW ON LOBBYING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.1 is amended in

(a) Subdivision (1) by inserting "per diem," after the word "reimbursement," and before the word "loan"; and

(b) Subdivision (2) by rewriting the first sentence to read: "The term 'legislative agent' means any person who is employed or retained, with compensation, by another person to give facts or arguments to any member, member-elect, or member-designate of the General Assembly on or concerning any bill, resolution, nomination, report or claim pending before or to be introduced in the General Assembly.".

Sec. 2. G.S. 120-47.2 is amended by

(a) rewriting the catchline to read "Registration of legislative agents"; and

(b) rewriting the first sentence of subsection (a) to read:

"For each employer or retainer, every person employed or retained as a legislative agent before engaging in any activities as a legislative agent shall register with the Secretary of State either for a single calendar year

of the legislative biennium or for both calendar years of the legislative biennium.

Sec. 3. G.S. 120-47.3 is amended to read:

§ 120-47.3. Registration fee.

Every person employing or retaining a legislative agent shall pay to the Secretary of State a registration fee of fifty dollars ($50.00) to register for a single calendar year or one hundred dollars ($100.00) for both calendar years of the legislative biennium.

A separate registration, together with a separate registration fee as indicated above, shall be required for each person for whom the legislative agent acts.

The registration fee may be paid by either the employer or retainer or the legislative agent.

Fees so collected shall be deposited in the General Fund of the State.

Sec. 4. G.S. 120-47.5 is amended by:

(a) rewriting the catchline to read "Prohibited activities"; and

(b adding the following subsections:

"(c) No partnership or corporation shall be employed or retained or continued to be employed or retained as a legislative agent if a member, member-elect or member-designate of the General Assembly is a partner in or employee of that partnership or a co-employee or co-owner of that corporation.

(d) No individual shall be employed or retained or continued to be employed or retained as a legislative

agent if he is in partnership with or a co-owner or co-employee of a corporation, whose stock is not publicly traded, with a member, member-elect or member-designate of the General Assembly unless that individual appears before the General Assembly solely on behalf of his own interests or those of the partnership or corporation.

(e) No spouse of a member, member-elect or member-designate of the General Assembly shall be employed or retained or continued to be employed or retained as a legislative agent."

Sec. 5. G.S. 120-47.6 is rewritten to read:

"G.S. 120-47.6. Statements of legislative agents' expenses.

Each legislative agent shall file with the Secretary of State not later than 30 days after the final adjournment of the regular session of the General Assembly held that year a report with respect to each person employing or retaining him. The report shall set forth the expenditures to date made in representing his employer or retainer before members, members-elect, and members-designate of the General Assembly.

The report shall contain the total of all expenditures made or incurred by the legislative agent in each of the following categories:

(1) transportation and related travel,

(2) lodging,

(3) entertainment, including food and refreshments,

(4) contributions made, paid, incurred or promised, directly or indirectly which were not included in subsections 1 through 3 above, but excluding contributions reported under Article 22A of Chapter 163A of the General Statutes.

The report shall contain with respect to each expenditure having a cash equivalent value of twenty-five dollars ($25.00) or more, its date and amount, to whom paid, and the name of the legislator receiving or to be benefited by the expenditure, provided, however, that if the number of legislators in the group benefiting from the expenditure exceeds ten, the names of the individuals in the group need not be listed.

A legislative agent need not report unreimbursed personal living and travel expenses and office expenses.

A legislative agent employed or retained by more than one person shall list the proportional amount of those expenditures in each category made or incurred on behalf of each employer or retainer.

In lieu of individual reports, a corporation or partnership, employed or retained as a legislative agent, may file one report for each employer or retainer showing expenditures made or incurred by all of that corporation's or partnership's partners, employees or officers on behalf of that employer or retainer.

Each legislative agent shall file an updated report by January 15 of the following year showing expenditures made or incurred between the filing of the initial report and December 31.

Reports under this section shall be made whether or not expenditures are made.

All reports shall be in such form as shall be prescribed by the Secretary of State and shall be open to public inspection. When a legislative agent fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the agent of his delinquency and the penalties provided by law. Within 20 days of the receipt of such letter, the agent shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of fifty dollars ($50.00). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report shall result in revocation of any and all registrations of a legislative agent under this Article. No legislative agent may register or reregister under this Article until he has fully complied with this section.

Sec. 6. G.S. 120-47.7 is rewritten to read:

"G.S. 120-47.7. Statements of employer expenses.

Each person employing or retaining a legislative agent shall file with the Secretary of State not later than 30 days after the final adjournment of the regular session of the General Assembly held that year a report with respect to each legislative agent employed or retained. The report shall set forth the expenditures to date made or incurred in connection with the legislative agent's activities.

The report shall contain the total of all expenditures made or incurred in each of the following categories:

(1) transportation and related travel,

(2) lodging,

(3) entertainment, including all food and refreshments,

(4) compensation to legislative agents,

(5) contributions made, paid, incurred or promised, directly or indirectly which were not included in subsections 1 through 4 above, but excluding contributions reported under Article 22A of Chapter 163A of the General Statutes.

The report shall contain with respect to each expenditure having a cash equivalent value of twenty-five dollars ($25.00) or more its date and amount, to whom paid, and the name of the individual receiving or to be benefited by the expenditure, provided, however, that if the number of legislators of the group benefiting from the expenditure exceeds ten, the names of the individuals in the group need not be listed.

Personal living and travel expenses and office expenses for which the legislative agent was not reimbursed need not be reported.

In the category of compensation to legislative agents it shall not be necessary to report the full salary or any portion thereof of a legislative agent who is a full-time employee or is annually retained by the reporting employer.

If a corporation or partnership is employed or retained as a legislative agent its employer or retainer may file one

report showing the expenditures made or incurred by all legislative agents of that corporation or partnership.

Each employer or retainer shall file an updated report by January 15 of the following year showing expenditures made or incurred between the filing of the initial report and December 31.

Reports under this section shall be made whether or not expenditures are made.

All reports shall be in such form as shall be prescribed by the Secretary of State and shall be open to public inspection. When an employer or retainer fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the employer or retainer of his delinquency and the penalties provided by law. Within 20 days of the receipt of such letter, the employer or retainer shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of fifty dollars ($50.00). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.

Sec. 7. G.S. 120-47.8(6) is amended by inserting a period after the words "personnel with the Secretary of State", deleting the rest of the sentence, and adding the following: "In addition, those official legislative liaison personnel who are not permanent full-time state employees shall be considered as 'legislative agents' and shall comply with all provisions of this Article relating to legislative agents."

Sec. 8. This act shall become effective January 1, 1987.

Section-by-Section Analysis -- A BILL TO BE ENTITLED AN ACT TO STRENGTHEN AND CLARIFY THE LAW ON LOBBYING.

This bill amends Article 9A, Lobbying, of Chapter 120 of the General Statutes.

Section 1, Subsection (a) amends G.S. 120-47.1, definitions, by including "per diem" expenses in the definition of "compensation". Subsection (b) amends G.S. 120-47.1 by rewriting the first sentence of the definition of "legislative agent" so as to include persons who 1) engage in lobbying activities at times other than "during any regular or special session [of the General Assembly]" (as present statute now indicates) or 2) lobby concerning "nominations".

Section 2 rewrites the first sentence of G.S. 120-47.2, on legislative agent registration, to allow either annual or biennial registration of legislative agents.

Section 3 rewrites G.S. 120-47.3, on registration fees, by deleting some ambiguous language and setting forth the legislative agent registration fees due. The fee for annual registration would be fifty dollars ($50.00) and biennial registration would be one hundred dollars ($100.00) (now there is a seventy-five dollar ($75.00) fee for the biennial registration.)

Section 4 adds to G.S. 120-47.5, which covers activities prohibited by legislative agents, language that prohibits the following business entities and individuals from being legislative agents:

1. partnerships and corporations if a legislator is a partner, co-employee or co-owner of that partnership or corporation;

2. a partner, co-owner or co-employee of a legislator unless the individual appears solely on behalf of his own interests, or those of the partnership or corporation whose stock is not publicly-traded;

3. a legislator's spouse.

Section 5 rewrites G.S. 120-47.6, which deals with legislative agents' expense reports. The reporting of expenditures "made in representing" the employer or retainer before the legislature would be required. Other specific changes from the present statute include:

1. requirement of biannual (rather than annual) reports;

2. requirement that individual expenditures of $25 or over be enumerated rather than all expenditures in a

category if total categorical expenditures exceed $25;

3. requirement that enumeration of individual expenditures of $25 or over include "the name of the individual receiving or to be benefited by the expenditure" in addition to "to whom paid". An exception is made to this listing requirement when more than 10 legislators benefit from a single expenditure (e.g., a party);

4. modifications in the reporting categories for the sake of clarity, including the combination of "food" and "entertainment" into one category;

5. proviso that expenses for which the legislative agent is not reimbursed (e.g. mortgage payments, meals, and other personal living and travel expenses not reimbursed need not be reported;

6. stipulation that when several individuals in a single firm are retained as legislative agents by the same principal, the individuals may file one report for that principal.

Section 6 rewrites G.S. 120-47.7, which deals with employers' expense reports. The reporting required would be of expenditures made "in connection with" the legislative agents' activities. Other specific changes from the present statute include:

1. requirement of biannual (rather than annual) reports;

2. requirement that individual expenditures of $25 or over be enumerated rather than all expenditures in a category if total categorical expenditures exceed $25;

3. requirement that enumeration of individual expenditures of $25 or over include "the name of the individual receiving or to be benefited by the expenditure" in addition to "to whom paid". (For example, if a legislative agent took out a legislator for an expensive dinner, "to whom paid" would be the "Kanki" and "the name of the individual receiving or to be benefited by the expenditure" would be "Legislator Doe".) An exception is made to this listing requirement when a large number of legislators benefit from a single expenditure (e.g., a party);

4. modifications in the reporting categories for the sake of clarity, including the combination of "food" and "entertainment" into one category;

5. proviso that expenses for which the legislative agent is not reimbursed (e.g. mortgage payments, meals, and other personal living and travel expenses need not be reported;

6. stipulation that when an employer employs or retains several individuals in a single firm as legislative agents, the employer may file one report for that firm.

Section 7 amends G.S. 120-47.8(6) to delete the requirement that the Governor, the Council of State and appointed department heads of State departments, agencies and institutions file accountings of monies expended in influencing legislation, other than the salaries of regular full-time employees and to specify that official legislative liaison personnel who are not permanent full-time state employees shall be considered as legislative agents and comply with all the provisions of the Article relating to legislative agents.

Section 8 makes the act effective January 1, 1987.