

Lobbying, Legislators, and Public Servants

State Government Ethics Act

Lobbying Reforms

- Closed “goodwill loophole”
- Established regulation of Executive Branch lobbying
- For lobbyists: quarterly reporting for everything [unless you have a reportable expenditure relating to legislative action while the General Assembly is in session- then monthly]
- Restrictions on behavior

Definition of Lobbying

- Generally speaking
 - Swaying the position of a legislator or public servant is lobbying
 - Becomes lobbying that can be regulated when a person is paid to advocate the opinion of another

Definition of Lobbying

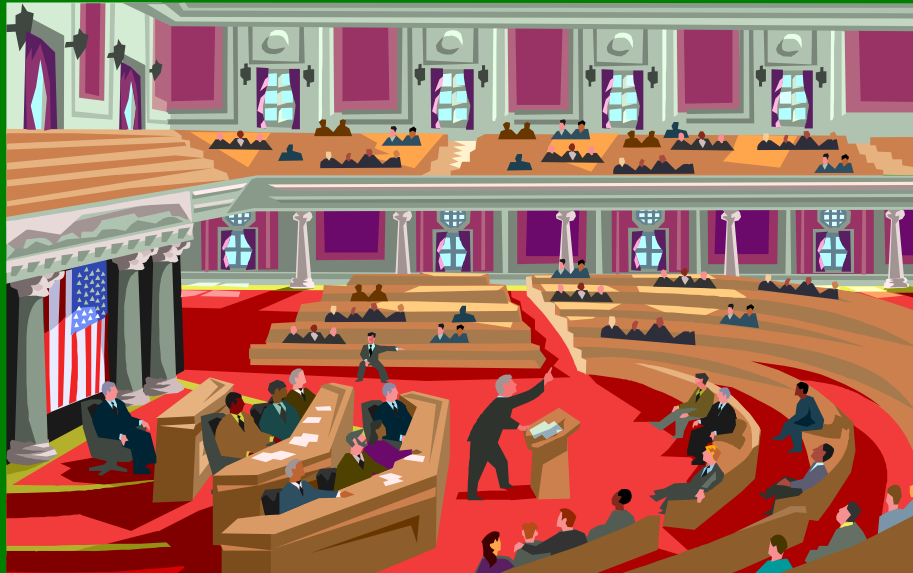
- North Carolina's definitions
 - Direct Lobbying – “Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person’s immediate family.”
 - Goodwill Lobbying – “Developing goodwill through communications or activities, including the building of relationships, with a designated individual [a legislator, legislative employee, or public servant] or that person’s immediate family with the intention of influencing current or future legislation or executive action, or both.”

Definition of Lobbying

- Lobbying specifically does not include “communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both”

Legislative Action

- A little more intuitive: the influences and actions it takes for an idea to become law



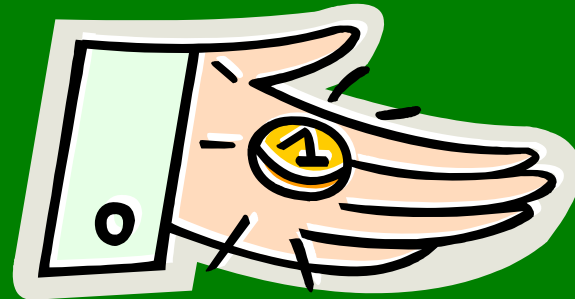
Executive Action

Specifically, Executive Action is

- The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for a proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. (see G.S. Chapter 120C-100(5))
- Also (somewhat) intuitive:
 - Executive Action consists of all that is done to establish/set any policy, regulation, rule, or request for proposal or invitation for bid by a public servant acting in their official capacity. This does not include the implementation of or the application of a policy or rule. (see 120C-100 (3)a-e for what EA does *not* encompass.)

Solicitation of Others

- Basic Concept – a person spending money to influence legislative or executive action by asking members of the general public to directly communicate with or contact legislators, public servants or legislative employees to advocate the solicitor's position
- “Solicitation of others” does not include communications made by the person to the person's stockholders, EEs, board members, officers, subscribers



Who is a Lobbyist?

An individual who engages in lobbying and meets any of the following criteria:

- i. Is employed by a person for the intended purposes of lobbying

(remember “person” is broadly defined to include individuals, entities, associations, organizations and groups of persons acting together 138A-3(27))

- ii. Represents another person, but is not directly employed by that person, and receives financial compensation

Who is a Lobbyist?

- iii. Contracts for economic consideration for the purpose of lobbying
- iv. Is employed by a person and a significant part of that employee's duties include lobbying (direct and goodwill lobbying) and that employee's actual duties in any 30-day period included 5% or more of direct lobbying

The term "lobbyist" does not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter.

Who is a Lobbyist?

Simply put, a lobbyist is someone paid to advocate for the position, interest, or idea of another person/entity/organization/etc.

The lobbyist has to represent someone – the lobbyist's principal.

Who is not a Lobbyist?

- Individual solely expressing personal opinion, or stating facts, and/or recommendations on legislative or executive action to a DI and not acting as a lobbyist (= not being paid by a person)
- Person appearing before a board, committee, etc. (members include DI) at board's request or invitation and does no other lobbyist actions with respect to the legislative or executive action for which the person appeared
- An elected or appointed official or employee of the State, the United States, a local governmental agency (such as a county, city, school district) when appearing/acting solely in connection with their public duties –(if not a legislative liaison personnel)

Who is not a Lobbyist?

- A person performing professional services in drafting bills, or in advising and rendering opinions to clients, or to DIs on behalf of clients, as to the construction and effect of proposed or pending legislative or executive action where the professional services are not otherwise connected with the legislative or executive action
- Recognized news medium employees while acquiring and publishing news and commentary on news as part of their jobs

Who is not a Lobbyist?

- DI while acting in his/her official capacity
- Person responding to a DI's inquiries and does nothing else as a lobbyist regarding the inquiry
- A Political Committee as defined in NCGS 163-278.6(14) and its employees or contractors, (incl. PACs, except for a PAC under the control and direction of a DI)

What is a Lobbyist Principal?

The person on whose behalf the lobbyist advocates. (Remember “person” is broadly defined.) If the lobbyist is paid by a law firm, consulting firm or other entity retained by the person to lobby, the principal is the person whose interests the lobbyist represent when lobbying.

EXCEPTION: LP does not include State agencies, entities who designate registered liaison personnel.



Liaison Personnel

- Liaison Personnel - 120C-100(a)(8); 120C-500
 - State employee or officer whose principal duties include lobbying DIs (PS, L, Lees) for legislative action designated by State agencies, State constitutional officers, including boards, departments, constituent institutions of UNC, all governmental units (except local units of government)
 - No state funds can be used to contract with or hire an independent lobbyist to lobby for legislative action

Liaison Personnel

- Each board, department, division, agency, and other units of government in executive branch which does lobby for legislative action, or which anticipates or plans to lobby for legislative action must designate one
- Limited to two per board, department, division, agency, and other units of government in executive branch.

Liaison Personnel

- If a board, division, etc. does not lobby for legislative action, or anticipate or plan to do so, it does not need to designate a legislative liaison; - if the board, division, etc. is part of a larger department that has designated a legislative liaison personnel this designated personnel will be deemed to be the legislative liaison personnel for the internal board or division until the board or division designates its own legislative liaison.

What Effect Does All This Have?

- Lobbyist, Lobbyist Principals and Legislative Liaison Personnel can NOT give GIFTS, directly or indirectly, to Legislators, Leg. EEs or Public Servants (DIs) unless the gift meets an exemption under 138A-32(e). (**NOTE: This is where NCGS Chapter 120C meets NCGS Chapter 138A: “Lobbying” restrictions become part of “Ethical Standards”**)
- No nominal value exception - if what you are giving has any monetary value it is a gift unless the DI paid FMV or printed face value for it or it is one of the non-gift items listed in 138A-3(15) a. – e.

Additional Requirements, Prohibitions, and Restrictions

If You Are A Lobbyist

- You must identify yourself and the principal(s) whose interest you will be representing in the communication to the DI BEFORE engaging in the communication. 120C-200(e)
- You cannot accept a fee contingent upon the outcome of the lobbying 120C-300(a)
 - Exception for lobbyists who are also sales people doing business with the state whose regular compensation agreement includes commission based on the sales 120C-300(b)

Additional Requirements, Prohibitions, and Restrictions

- You (and your LP) cannot attempt to influence the action of a DI by the promise of financial support to the DI or by the threat of financial support to their opposition 120C-301(b) (=bribery)
- You cannot give campaign contributions to legislators, PS = Council of State Officers, or their campaign committees. 120C-302
 - Exception – can give to your own campaign
- You cannot “bundle” contributions from multiple contributors and give to a legislator, PS = Council of State Officers, or their campaign committees, or to candidates for the GA, members of the GA, or their campaign committees. 120C-302(b)
 - This includes collecting, taking possession of, transferring, or delivering collected contributions to an intended recipient.

Additional Requirements, Prohibitions, and Restrictions

- You cannot be appointed to boards that govern an area that affects a principal which you are currently represent or have represented within the last 120 days – conflict of interest. 120C-304(e)
- You cannot currently be a legislator, a Council of State officer, or a Head of a principal State Department. 120C-304(a), (b) and (c)

Additional Requirements, Prohibitions, and Restrictions

- You cannot have been a legislator, Council of State officer, or a Head of a principal State Department within the last 6 months. 120C-304(a), (b) and (c)
- You cannot be named as the treasurer for any candidate for public office, political committee or referendum committee (NCGS 163-278.6(19)), or as an assistant campaign treasurer for the election of a member of the General Assembly (legislator or legislative candidate) or a Council of State officer (candidate or current Council of State officer). 120C-304(d)

Additional Requirements, Prohibitions and Restrictions

- Lobbyists cannot directly or indirectly (through another) allow a DI or a DI's immediate family member to use your cash or credit for the purpose of lobbying unless you are present at the time of the expenditure. 120C-305

Additional Requirements, Prohibitions and Restrictions

- Lobbyist must register with the Secretary of State's office per 120C-200 and pay a fee
- Lobbyist and Lobbyist Principals must file the required reports with the Secretary of State's Office per 120C-400 et. Seq.

Reportable Expenditures

- NCSG 120C-100(A)(12)
- **Any thing of value greater than \$10** per calendar day directly or indirectly made to, at the request of, for the benefit of, or on behalf of the DI or the DI's immediate family members
 - In determining the \$10 for a calendar day you add together all amounts that you gave to the DI and his/her immediate family – i.e. you paid for two parking fees at \$7.00 each, one for DI and one for DI's spouse, the same day – greater than \$10.00 and is a reportable expenditure



Reporting Responsibilities for Persons Who Are Not Lobbyist, Lobbyist Principals, Solicitors or Legislative Liaisons

- **800(e) – This reporting section does not apply to the following:**
 1. Lawful Campaign contributions
 2. Gifts to DI from extended family
 3. Gifts associated with DI or DI's immediate family's employment (immediate family = spouse, child residing in house and extended family residing in house. 138A-3(17))
 4. Gifts, other than food, beverage, travel and lodging given by someone who is not a US citizen or NC resident given during a ceremonial presentation or as a custom
 5. A thing of value paid for by the State

State Ethics Commission

- The State Ethics Commission is responsible for identifying and maintaining a list of public servants affected, and a list of non-advisory boards
- Check the list often
- Advisory opinions



Advisory Opinions

- The State Ethics Commission issues written Advisory Opinions (AO) to any person affected by 120C when such are requested in writing and relate to real or reasonably anticipated fact settings or circumstances (no AO issued on hypotheticals)
 - AOs have prospective application only
 - AOs provide civil immunity regarding the specific facts and circumstances addressed in the AO to the requestor from the Ethics Commission and if a DI, from the DI's employing entity if the advise given in the AO was followed. AOs do not provide immunity from the Secretary of State's Office or from other investigative or enforcement agencies, nor do they include immunity from criminal investigation or prosecution.

Advisory Opinions

- Requests for AOs, AOs and all materials related thereto are confidential and not a matter of public record.
- Redacted AOs will be published annually by the State Ethics Commission, and possibly more often.

Violations and Enforcement

120C-600,601,602 and 603

- Class 1 misdemeanor for failing to register as a lobbyist, lobbyist's principal, or solicitor
- Class 1 misdemeanor for prohibition violation, possibly
- If convicted, then cannot lobby for 2 years from date of conviction
- Otherwise, subject to a civil fine of up to \$5,000 per violation

Violations and Enforcement

120C-600,601,602 and 603

- State Ethics Commission enforces Articles 1, 3, 5, and 7 of NCGS 120C
- Secretary of State's Office enforces Articles 2, 4 and 8 of NCGS 120C
- Article 6 of NCGS outlines the powers and duties of the State Ethics Commission, the Secretary of State's Office, punishments for violations and when the DA and the AG offices become involved

Practicum 1

I am a lobbyist who attended college with a member of the North Carolina General Assembly, and our friendship has continued. We both plan to attend the ACC tournament in Tampa, Florida. If I offer my friend, and he accepts, a ride from the airport to his hotel in my rental vehicle, does this in any way violate the Ethics Act and/or the Lobbying Law? If not, must this be reported to the Secretary of State's office?

Practicum 2

I am an Executive Director of an association which is planning to host a legislative reception at the North Carolina General Assembly. My association is not a lobbyist principal but many of the sponsors within my association are lobbyist principals. If I invite all members of the General Assembly, and if the reception is open to the general public, am I or my association in violation of the restrictions pursuant to Chapter 120C? I might add that even though my association considers this a public event, there is a charge of \$50 per person to attend the reception.

Practicum 3

You are a state organization with local branches. The state organization has a lobbyist, making it a lobbyist principal. Local branches aren't legal independent entities. The local Asheville branch wants to have a breakfast for legislators. If only local funds are used, is this a problem?

Practicum 4

I am a public servant who works in the Governor's office. I am having several friends over at my residence for an ACC tournament party. A lobbyist friend of mine, who owns a restaurant, has offered to prepare and cook the hamburgers and side dishes for the gathering. Is this a violation of the Ethics Act? If not, must it be reported? It should be noted that I am providing all of the food and drink, and my lobbyist friend is simply offering his culinary skills by cooking. Is this a problem?

Thank you for your patience and
continued public service.

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