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FORMAL ADVISORY OPINION – CONFIDENTIALITY WAIVED

February 13, 2015

Ms. Joal H. Broun, Lobbying Compliance Director
Department of the Secretary of State
Lobbying Compliance Division
Raleigh, NC 27626-0622

Re: Sexual Favors or Sexual Acts as a Gift or “Thing of Value”
AO-L-15-001

Dear Ms. Broun:

This is in response to your request for a formal advisory opinion submitted on behalf of the North Carolina Secretary of State (“the Secretary”). You have asked whether consensual “sexual favors or sexual acts” between a lobbyist and a designated individual constitute a gift or “thing of value” that would trigger the gift ban and reporting requirements of the Lobbying Law and whether those activities would fall within the definition of “goodwill lobbying” and trigger the Lobbying Law’s registration obligation. You have made this request in a general and largely hypothetical context, with little or no supporting facts. This response must therefore be likewise limited.

This opinion was adopted by the State Ethics Commission at its February 13, 2015, meeting.¹

Section 120C-303(a)(1) of the Lobbying Law restricts a registered lobbyist from giving a gift to a designated individual unless a gift ban exception applies. “Gift” is defined as “[a]nything of monetary value given or received without valuable consideration...” G.S. 138A-3(15). A lobbyist must report certain “reportable expenditures,” defined to include gifts and “things of value” greater than \$10 per day given to a designated individual or immediate family member.

¹ Please see the enclosure entitled “Formal Advisory Opinions Issued by the State Ethics Commission.” The Secretary has waived confidentiality and requested that this opinion be published in unredacted form. For purposes of context and brevity, the Secretary’s request is incorporated by reference.

Consensual sexual relationships do not have monetary value and therefore are not reportable as gifts or “reportable expenditures made for lobbying” for purposes of the Lobbying Law’s expenditure reporting provisions. See G.S. 120C-402 and G.S. 120C-403.² However, a lobbyist or lobbyist principal’s provision of paid prostitution services by a third party to a designated individual could constitute a gift or thing of value, albeit an illegal one, depending on the particular facts. You have not provided any information that this is an issue in this situation.

You have also asked whether consensual sexual relationships between a person and a designated individual could constitute “goodwill lobbying” and would thereby trigger the lobbyist registration requirements of the Lobbying Law, G.S. 120C-200. It is unclear why you have asked this question, because in the scant factual assumptions provided, you state that your question concerns a relationship between a “lobbyist” and a designated individual, so presumably the person in question is already registered. Indeed, if there were no lobbyist involved, there would be no need to even consider the application of the Lobbying Law’s gift ban or expenditure reporting requirements. However, in order to avoid the need to further address these issues, the Commission will respond to your question.

G.S. 120C-200 requires the registration of a “lobbyist,” which is defined as an “individual who engages in lobbying” and is employed by the lobbyist principal or receives payment for lobbying. G.S. 120C-100(a)(10). “Lobbying” includes both direct lobbying and “developing goodwill through communications or activities, including the building of relationships, with a designated individual ... with the intention of influencing current or future legislative or executive action.” G.S. 120C-100(a)(9). Thus, if the lobbyist does not receive payment from the lobbyist principal for engaging in the sexual relationship which you reference, which the Commission presumes to be the case here, those activities would not constitute goodwill lobbying and would therefore not trigger a registration requirement.

In your December 15, 2014, request for a formal advisory opinion, you requested that the Commission publish this opinion in an unredacted form; thus you have waived confidentiality as provided for in N.C.G.S. § 120C-102(d).³

Please do not hesitate to call the Commission’s staff if you have any questions about the foregoing formal advisory opinion.

² This interpretation does not address the legal, moral, or other ramifications of two adults not married to one another engaging in consensual sexual relations with one another. Such considerations are beyond both the scope of this request and the Commission’s jurisdiction. This is solely an interpretation and application of the Ethics Act and Lobbying Law based on extremely limited information.

³ An individual, State agency, or governmental unit who requests advice or receives advice, including a formal opinion, may authorize the release to any other person, the State, or any governmental unit of the request, the advice, or any supporting documents. N.C.G.S. § 120C-102(d).

Formal Advisory Opinions of the State Ethics Commission
Issued Pursuant to the Lobbying Law

CONFIDENTIALITY WAIVED

Upon the written request of any person, State agency, or governmental unit affected by G.S. Chapter 120C (“the Lobbying Law”), G.S. 120C-102(a1) authorizes the State Ethics Commission (“Commission”) to issue formal advisory opinions “on the meaning and application” of the Lobbying Law and “that person’s, State agency’s or any other governmental unit’s compliance therewith.” All opinions have prospective application only and must relate to real or reasonably anticipated fact settings or circumstances. G.S. 120C-102(a). Formal advisory opinions confer limited civil immunity upon a requester who follows the advice given. G.S. 120C-102(a1).

Once issued by the Commission, formal advisory opinions are normally published in an edited format on the Commission’s website within 30 days of issuance. G.S. 120C-102(c). Requests for advisory opinions, the opinions themselves, and all materials related to the opinions are normally confidential and are not public records. G.S. 120C-102(d). However, requesters, like the Secretary here, may waive confidentiality and permit or direct that the advice and any related documents or other non-privileged information be made public. G.S. 120C-102(d).

The Commission is required to send an unedited copy of each formal advisory opinion to the Secretary of State’s Office at the time the formal advisory opinion is issued to the requester, and the Secretary of State is required to treat the formal advisory opinion as confidential and not a matter of public record. G.S. 120C- 102(d1). In addition, Commission staff is specifically authorized to share all information and documents related to requests for formal advisory opinions with the Secretary of State’s Office. The Secretary of State’s Office is normally required to treat any such information and documents in its possession as confidential and not a matter of public record G.S. 120C-102(d1), but the Secretary is the requester here and has waived confidentiality as noted above.

Specifically, the Secretary has requested that the Commission’s advisory opinion be published in unredacted form. *See* the Secretary’s December 15, 2014, request letter, Conclusion, citing G.S. 120C-102(d). Therefore, confidentiality has been waived, and the Commission will act accordingly.