
Coates' Canons Blog: State Ethics and Lobbying Laws – When Do They Apply to Local Government Lobbying?

By Norma Houston

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Two related chapters in the North Carolina General Statutes govern the spending of money to

influence state officials. The State Government Ethics Act (**G.S. Chapter 138A**) sets ethical standards for the state officials themselves, and the lobbying laws (**G.S. Chapter 120C**) govern interactions between these officials and those who seek to influence their decision-making – in short, lobbying.

Increasingly, cities and counties in North Carolina spend public money (see this recent **post** and this **one**), and even hire lobbyists, to influence officials in the executive and legislative branches of state government. This post explains how the Ethics Act and lobbying laws apply to those efforts.

What are the State Government Ethics Act and lobbying laws?

The Ethics Act sets standards of conduct for those state officials and employees it covers in all three branches of state government. These standards include publically disclosing their economic interest, participating in mandatory ethics education, and avoiding conflicts of interest. They are also prohibited from accepting certain gifts from lobbyists and their clients. State officials covered under the Ethics Act include a number of officials in the executive branch, all members of the General Assembly (and candidates for legislative office) as well as most legislative staff.

Lobbyists and the clients they lobby for (called a “lobbyist principal”) are also subject to requirements and prohibitions under both the Ethics Act and lobbying laws. They must register with the Secretary of State’s Office and report lobbying expenditures, and they are prohibited from engaging in a variety of activities including giving gifts to state officials and employees covered under the Ethics Act except under very limited circumstances.

Do the Ethics Act and Lobbying Laws Apply to Local Governments?

Generally speaking, “no.” Local government officials and employees are not categorically covered under the Ethics Act and are generally exempt from the lobbying laws when they lobby on behalf of their local government. (**G.S. 120C-700(3)**) Because of this general exemption, local governments are not subject to most of the requirements and prohibitions of these laws. For example, local governments are not required to register with the Secretary of State’s Office when they lobby members of the General Assembly, they are not required to report their lobbying expenditures to the Secretary of State (with two narrow exceptions that are discussed at the end of this post), and they are not subject to the gift ban.

Some local officials and employees might find themselves individually covered under the Ethics Act if, in addition to their local government responsibilities, they serve in a separate capacity in a state office that is covered under the Act. This

occurs most commonly when a local government official or employee serves on a state board or commission that is covered under the Ethics Act, such as the State Board of Transportation, the Governor's Crime Commission, or a community college or university board of trustees. In these instances, while the individual local government official or employee is covered under the Ethics Act (and thus individually subject to its requirements and prohibitions), the unit of local government that he or she serves does not become covered.

Most local governments belong to associations that employ lobbyists, such as the NC League of Municipalities, the NC Association of County Commissioners, and the NC School Boards Association. These associations themselves become lobbyist principals when they hire or employ lobbyists, and thus are subject to the requirements and prohibitions of the Ethics Act and lobbying laws. Local governments do not, however, become lobbyist principals simply by being members of these associations – the Ethics Act and lobbying laws apply only to the association itself, not to its members.

Local Government Lobbyists – When Lobbying Laws *DO* Apply

Despite these general exemptions, there are two instances where local governments may find themselves subject to the Ethics Act and lobbying laws.

The first instance arises when a local government hires an outside lobbyist who is not an employee of the local government. If a local government hires a lobbyist (usually either on contract or retainer), the local government becomes a lobbyist principal and is subject to all the requirements and restrictions of the Ethics Act and lobbying laws like any other lobbyist principal. The local government must register as a lobbyist principal with the Secretary of State's Office, report its lobbying expenditures, and becomes subject to prohibitions such as the gift ban. Under the gift ban, the local government cannot give gifts to state officials and employees covered under the Ethics Act unless the item is either not a gift as defined under the Ethics Act or falls under one of the Act's narrow exemptions to the gift ban.

If the local government has hired a lobbyist and thus become a lobbyist principal, it can still spend public funds on some lobbying activities, but it must be careful about how and on what it spends those taxpayer dollars. It could, for example, still spend public funds to send the city manager and council members to Raleigh to talk to legislators. What the local government cannot do if it has hired a lobbyist (and thus become a lobbyist principal) is spend public funds on a prohibited gift to persons covered under the Act (including legislators and most legislative employees), such as taking its Senator or Representative to lunch and picking up the tab with public funds (lunch is a "gift" under the Ethics Act). And, the local government will have to report its lobbying expenditures to the Secretary of State's Office.

Local governments may have individuals working with them under contract who they don't think of as lobbyists, but who may inadvertently engage in activities that trigger the lobbying laws. The general local government exception under Chapter 120C applies only to local officials and employees, not independent contractors or consultants (for purposes of state lobbying laws, city and county attorneys who work on retainer are considered employees of their local government client and are covered under the local government lobbying exemption). For example, if a local government has hired an engineering firm to design a waste treatment system and the engineering firm also assists the local government in securing state environmental permits, the local government and its engineer should be careful about the nature of the engineer's interactions with any DENR officials who are covered under the Ethics Act. Providing factual information or answering questions about the permit application would not be considered lobbying; advocating on behalf of the local government and seeking to influence DENR officials' decision-making on the permit might be considered lobbying. If this happens, the engineer would be required to register as a lobbyist and the local government would then become a lobbyist principal.

There are other restrictions in addition to the gift ban that might apply to local governments that have hired a lobbyist. Local governments that are lobbyist principals should contact the **State Ethics Commission** for more information about the obligations and prohibitions of the Ethics Act and lobbying laws.

A second instance that may trigger the Ethics Act and lobbying laws arises where a local government employee's principal job duties – either in his or her job description or in practice – include lobbying members of the General Assembly and legislative staff on behalf of the local government. (**G.S. 120C-502**) These employees are referred to as local government liaisons. While the term "principal job duties" is not defined, it can be assumed that an employee will fall into this category if he or she spends a majority of his or her time engaged in lobbying activities. Incidental or occasional interactions with legislators and legislative staff would not trigger the provisions of this law, nor does lobbying executive

branch officials.

Local government liaisons are subject to some, but not all, of the requirements of the Ethics Act and lobbying laws. They must (1) register with the Secretary of State's Office; (2) report expenses related to lobbying state legislators and/or legislative employees (but not executive branch officials); and (3) comply with the gift ban.

The requirements and restrictions imposed on local government liaisons apply *only* to the employee, *not* the local government itself. Unlike a local government that has hired a lobbyist, a local government that employs a liaison does *not* become a lobbyist principal. For example, while a local government liaison cannot buy lunch for a member of the General Assembly (that would be a prohibited gift), the manager or a governing board member may do so, and may pay for lunch with public funds (a local government that hired a lobbyist could not pay for a legislator's lunch with its public funds).

Do these laws apply to lobbying members of Congress or federal officials?

No. The State Government Ethics Act and state lobbying laws apply only to interactions with *state* officials, not federal (there are federal laws that govern lobbying federal officials). If a local government has hired a lobbyist to advocate for its interests *only* on Capitol Hill, the local government does not become a lobbyist principal under state law, and is not subject to the requirements and prohibitions of the Ethics Act and state lobbying laws. Similarly, if a local government employee's primary job duties include lobbying federal, but not state, officials, that employee will not be a local government liaison under state law and is not subject to the state registration and reporting requirements or the gift ban when interacting with state officials, including members of the General Assembly or legislative staff.

Two Reporting Requirements That *DO* Apply

There are two situations that may subject a local government to the state lobbying law's reporting requirements, even if it has not hired a contract lobbyist and become a lobbyist principal, or even if it does not employ a local government liaison. A local government must report expenditures if it spends (1) more than \$200 in a calendar quarter lobbying an individual covered under the Ethics Act; or (2) more than \$200 for an individual covered under the Ethics Act to attend a conference, meeting, or similar event (referred to as a "scholarship"). (**G.S. 120C-800**) The law does not prohibit these activities; it just requires that funds spent under these circumstances be reported to the Secretary of State's Office.

Where Do I Get More Information?

The Ethics Act and lobbying laws are complex, and violating these laws can result in serious consequences. The **State Ethics Commission** can provide information about these laws and their requirements and prohibitions, and also maintains a list on its **website** of all persons and state boards and commissions covered under the Ethics Act. The **Secretary of State's Office** can provide information about lobbying registration and expenditure reporting requirements, including expenditure reporting forms.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=138A
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=120C
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=120C-700
- www.ethicscommission.nc.gov/
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=120C-502
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=120C-800
- www.ethicscommission.nc.gov/coverage/default.aspx
- www.secretary.state.nc.us/lobbyists/