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April 21, 2008

Ms. Susan Valauri, President
North Carolina Professional Lobbyists Association
Post Office Box 905
Raleigh, North Carolina 27602

Re: Advisory Opinion Concerning Lobbyist Involvement in Campaigns pursuant to N. C.
Gen. Stat. § 163-278.23

Dear Ms. Valauri:

I am in receipt of your letter dated February 28, 2008, in which you request an opinion on behalf of the North Carolina Professional Lobbyists Association ("NCPLA"). As stated in your letter, the 2007 North Carolina General Assembly recodified the restrictions on lobbyist campaign contributions as N.C. Gen. Stat. § 163-278.13C. In order to provide guidance to members of your Association on the scope of these restrictions, you have posed several questions for consideration. The questions you posed and my responses to them are as follows:

1. May a lobbyist make recommendations to a third party regarding contributions to a legislative or executive branch candidate or candidate political committee? And, if "yes," may such a recommendation include a specific recommended contribution amount?

N.C. Gen. Stat. § 163.278.13C provides that a lobbyist may not make contributions "to a candidate or candidate campaign committee" when the candidate is a legislator or a public servant. Additionally, it provides that a lobbyist may not collect and/or deliver multiple contributions to candidates or their committees for those candidates defined in (a)(1) and (2). There are no provisions that restrict a lobbyist from making recommendations to third parties about possible contributions and the amounts of those contributions. However, N.C. Gen. Stat. § 163-278.13B provides additional restrictions while the North Carolina General Assembly ("General Assembly") is in regular session. During regular sessions of the General Assembly, a lobbyist may not solicit a contribution from any individual or political committee on behalf of a limited contributee, which for purposes of this statute includes a member or candidate for the Council of State or a member or candidate for the General Assembly. Therefore, it is our opinion that a lobbyist could make recommendations to a third party regarding contributions including specific amounts, but the lobbyist could not solicit a third party

on behalf of the candidate during a regular session of the General Assembly. As the terms "recommend" and "solicit" are not defined by statute, in order to provide clarity, I have defined them, by drawing on dictionary definitions, as follows:

- **"recommend" - Upon being asked, provide another with a suggestion about possible recipients and amounts of contributions.**
 - **"solicit" - To request a contribution.**
2. So long as a lobbyist does not physically collect contributions from multiple contributors, take possession of such contributions, or physically transfer or deliver the collected contributions, does N.C. Gen. Stat. § 163-278.13C(b) allow a lobbyist to make recommendations to multiple third parties regarding contributions to a particular legislative or executive branch candidate or candidate committee?

For the reasons outlined in question one, the answer is "yes" with the same restrictions during regular sessions of the General Assembly.

2(a). If "yes", may the lobbyist attend a fundraising event for a legislative or executive branch candidate in which more than one of the above third parties contributes to the candidate (again assuming the lobbyist does not physically collect contributions from the contributors, take physical possession of such contributions, or physically transfer or deliver such contributions)?

The lobbyist could attend a fundraising event as long as the lobbyist did not make a monetary contribution or give anything of value. This would include payment of admission to the event.

3. So long as a lobbyist does not physically collect contributions from multiple contributors, take possession of such contributions, or physically transfer or deliver the collected contributions, does N.C. Gen. Stat. § 163-278.13C(b) allow a lobbyist to solicit multiple third parties to make contributions to a particular legislative or executive branch candidate or candidate committee?

Except when the General Assembly is in regular session, a lobbyist is not prohibited from soliciting multiple third parties to make contributions to a particular legislative or executive branch candidate or candidate committee. Under the statute, the lobbyist could not collect contributions from multiple contributors and transfer or deliver the collected contributions. While the General Assembly is in regular session, lobbyists are prohibited from soliciting third parties to make contributions on behalf of legislative or executive branch candidates.

4. When a principal is associated with a PAC, may a lobbyist employed by that principal communicate to a candidate or campaign committee that the PAC has decided to contribute to the candidate and the amount of the contribution? Does it matter to the answer whether the PAC checks are cut and mailed from a location separate from the lobbyist directly to the candidate or committee(i.e. the lobbyist never takes possession)?

N.C. Gen. Stat. § 163-278.13C does not prohibit a lobbyist from communicating with a candidate or campaign committee on any subject. Therefore, a lobbyist would be permitted to communicate to a candidate that the PAC they are associated with intends to make a contribution to that candidate's campaign. As long as the lobbyist doesn't take possession of multiple checks and deliver them to the candidate or campaign committee, the location where the checks were cut or mailed from would not be relevant. As has been stated above, there are prohibitions on soliciting contributions from individuals and other political committees on behalf of legislative and executive branch candidates while the General Assembly is in regular session.

5. Does N.C. Gen. Stat. § 163-278.13C allow a lobbyist or employee of a principal to host or organize a fundraiser for a candidate?

N.C. Gen. Stat. § 163-278.13C does not address the activities of a lobbyist's principal or an employee of a principal. It only addresses a registered lobbyist as defined by Chapter 120C of the General Statutes. While the General Assembly is in regular session, a lobbyist's principal is included in the definition of "limited contributor" and is subject to the same limitations as a lobbyist. At times when the General Assembly is not in regular session, a lobbyist is prohibited from making contributions to legislative and executive branch candidates who meet the definitions referenced in N.C. Gen. Stat. § 163-278.13C(a) (1) & (2). The definition of "contribution" includes "anything of value whatsoever" given to a candidate in support of their nomination or election. Therefore, a lobbyist could not spend any of their own funds in organizing or hosting a fundraiser. This would include but not be limited to invitations, catering expenses, entertainment, or anything purchased for the event. If there were any rental expenses associated with the location of the event, the lobbyist could not provide payment to anyone for those costs.

Often fundraisers are held at the homes of a host. It has been the position of this office not to place a fair market value on a home if that home is not rented for similar events. It is difficult, however, to host an event and not incur any expenses for that event. If a lobbyist were to pay for anything it would be considered an in-kind contribution which would violate N.C. Gen. Stat. § 163-278.13C.

6. Can a lobbyist or employee of a principal set up a meeting with a third party and a candidate for the purpose of that third party giving the candidate a contribution? Can the lobbyist or employee of a principal attend the meeting? If so, can the lobbyist or employee of a principal do so with multiple but separate third parties?

While the General Assembly is in regular session, a lobbyist is prohibited from making and bundling contributions. Activities outside of those two prohibitions are not addressed by N.C. Gen. Stat. § 163-278.13C and are therefore not subject to regulation by the State Board of Elections. Planning and attending meetings (while the General Assembly is not in regular session) between potential contributors and candidates is not prohibited. Therefore, the number of meetings organized or third parties involved would not be relevant.

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7. How do the statutes limit campaign involvement by a lobbyist or employee of a principal? Can the lobbyist or employee of a principal serve as campaign manager or county chair for a candidate? Can the lobbyist or employee of a principal volunteer to make calls or put a yard sign up for a candidate? Give strategic advice to a candidate?

Lobbyists may not make contributions, therefore any activities that would involve giving anything of value to a legislative or executive branch candidate or their committee as defined by N.C. Gen. Stat. § 163-278.13C(a)(1) & (2) would not be allowed. Providing volunteer services to a candidate is not considered a contribution under N.C. Gen. Stat. § 163-278.6(6) and would be allowed. Volunteer services could include making calls (if expenses were not incurred) and putting up yard signs for a candidate. As long as the lobbyist does not normally charge candidates for strategic advice, such advice could be given without violating any statute in Chapter 163 of the General Statutes.

This opinion is based upon the information provided in your letter of February 28, 2007. If the information should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,


Gary O. Bartlett

cc: Julian Mann, III, Codifier of Rules