

## MEMORANDUM

TO: Council Committee on Lobbying  
Council Members Greene, Hill, Verkerk and Wiggins

FROM: Ralph D. Karpinos, Town Attorney

SUBJECT: Information Related to Petition from Coalition of Neighbors Near Campus

DATE: January 28, 2004

The purpose of this memorandum is to provide background information for the Committee's initial meeting, scheduled for February 2, 2004, that may be of some assistance to the Committee.

## BACKGROUND

On January 12, 2004, the Council received a petition from Elaine Barney, representing the Coalition of Neighbors Near Campus (the Petition). A copy of the Petition is attached. (Attachment 1) The Petition was placed on the Council agenda for its Planning Retreat on January 15. At that retreat the Council established this Committee to consider the Petition.

## THE PETITION

The Petition asks the Council to:

1. "Recognize that these meetings (between University of North Carolina representatives and Council members) are lobbying efforts and are a de facto end run around the open meetings law."
2. "Cease all such meetings until the Council can adopt a policy dealing with such concerted efforts by developers to attempt to influence the Council outside the public process."
3. "Recognize that those UNC officials participating in this effort are acting as paid lobbyists and that the **town should adopt a regulation requiring registration of lobbyists** and the disclosure of their activity similar to that of Madison, WI." (Emphasis added.)

Further, the Petition states: "We recognize that the Council may have no binding authority over what may be construed as social activities of its members. However the **Council can establish ethical guidelines.**" (Emphasis added.)

## PETITION ISSUES

Attached is background information pertaining to the two principle requests in the Petition for long-term policy action:

1. Enactment of a Lobbying Ordinance; and,
2. Enactment of Ethical Guidelines for Town Elected Officials.

### 1. Lobbying Ordinance.

Attachments 2, 3, and 4 are materials related to the ordinance enacted in Madison, Wisconsin, including a copy of their ordinance (2), some explanatory materials from that City (3), and an article from the **Durham Morning Herald** (4).

Attachments 5 and 6 are materials related to the ordinance in Cincinnati, Ohio, including a copy of their ordinance (5) and a handbook from the Cincinnati City Clerk explaining their registration system (6).

Attachment 7 is information related to the North Carolina law governing registration of lobbyists in the N.C. General Assembly.

Attachment 8 is an article published in the **American Law Reports** that addresses some of the legal issues that have been considered by the courts in litigation pertaining to lobbying statutes and ordinances, including Constitutional issues pertaining to the right of free speech and the right to petition government, and the issue of whether such regulations are an unlawful regulation of the practice of law.

I have made inquiries to the International Municipal Lawyers Association staff and through their attorneys' List-serve seeking information on other lobbying ordinances and will provide to the Committee any information I receive in response.

### 2. Ethical Guidelines.

The second proposal in the Petition (which did not receive much immediate public attention) was the proposal that the Council establish ethical guidelines governing its own activity. The Petition notes the limited role the Council as a whole would have in regulating the behavior of its own members. Establishing such guidelines, however, is an additional way to address some of the concerns raised by the Petition.

Materials that may be considered in relation to this suggestion are attached. These include:

An excerpt from **Ethics, Conflicts and Offices: A Guide for Local Officials** (Bell, Institute of Government, UNC-CH), Attachment 9.

An excerpt from **Conflicts of Interest in Land Use Management Decisions**, (Owens, Institute of Government, UNC-CH), Attachment 10.

An excerpt from **Introduction to Zoning**, 2<sup>nd</sup> Ed. (Owens, Institute of Government), Attachment 11.

### CURRENT LAW AND REGULATIONS

Certain other current provisions of State Law and Town Ordinance may be considered as being relevant to the issues raised by the Petition. These include:

1. The limitations on campaign contributions and the requirements for disclosure by Town elected officials of business and property holdings in the Town Code. (Attachment 12)
2. The requirements in the Town Code and State Law for elected officials to not participate in a vote when they have certain conflicts. (Discussed in book excerpts referenced above.)
3. The requirements, found in Court decisions, that Council members not participate where they have an undue bias and the associated standards recommended on how to avoid such bias or the appearance of such bias. (Mentioned in book excerpts referenced above.)
4. The guidance provided by some of these same book excerpts and by my previous memoranda that, based on Court decisions, Council members refrain from communication, outside of the formal public hearing process, with applicants as well as citizens pertaining to pending applications where the permits are being considered in a quasi-judicial proceeding. This includes master plans, development plans and special use permits.
5. The rule in the Town Code against an official accepting any gift, favor, or thing of value that could influence that person. (Attachment 13, Town Code Sec. 14-55.)
6. Other restrictions established by State law, including:
  - a. N.C.G.S. 14-234, prohibiting public officials from benefiting from public contracts; (Attachment 14)
  - b. N.C.G.S. 133-32, prohibiting the receipt by a public official of a gift or favor from any contractor who has a contract with the official's governmental agency; (Attachment 15)
  - c. N.C.G.S. 14-234.1, prohibiting the personal use of confidential information to gain a pecuniary benefit. (Attachment 16)

### DISCUSSION

There are a number of issues that should be considered in regard to any proposed new lobbying ordinance or ethical guidelines, depending on what is ultimately proposed by the Committee and considered by the Council. Some of the issues include the following:

## 1. Lobbying Registration.

- a. The ALR article identifies the most frequently raised legal issues pertaining to lobbying regulations, including freedom of speech, freedom to petition the government, and the unauthorized regulation of the practice of law. All of these seem to be issues that can be addressed in a way that would allow establishment of a lawful ordinance, if the Committee and Council determine that such an ordinance is needed.
- b. With respect to whether the Council has the legal authority under State Law to enact a lobbying ordinance, I am not aware of any legal challenge that has been brought against any municipality in North Carolina on such a basis. However, I have also not yet found any municipality in North Carolina that has such an ordinance. I have searched the codes of several of North Carolina's larger municipalities.
- c. There may be further issues raised with respect to any ordinance which would purport to regulate the activity of State employees, particularly in light of a general principle that statutes are not considered applicable to the State unless the authorizing law expressly says they are.

Normally, general statutes do not apply to the State unless the State is specifically mentioned therein. *Yancey v. Highway and Public Works Comm'n*, 222 N.C. 106, 22 S.E.2d 256 (1942); *Davidson County v. City of High Point* 354 S.E.2d 280 (N.C.App.,1987).

(According to the attached **Durham Morning Herald** article, the Madison, Wisconsin ordinance does not apply to University of Wisconsin representatives.)

- d. There is one specific provision of the Town Charter<sup>1</sup> which includes language that might support such an ordinance, in general. Section 3.5 of the Charter provides, in part, that the Town Council may enact ordinances "to preserve or promote . . . better government. . ." However this Charter provision (Attachment 17) contains no clear authority to govern the activity of state officials.
- e. General statutory law for Cities and Towns in North Carolina, located principally in Chapter 160A of the State's General Statutes, includes the general police power which could be cited as additional authority on the subject of lobbying in general, but I have not yet identified any statutory support on the specific subject of making such rules applicable to the State.

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<sup>1</sup> The Town Charter is an act of the General Assembly establishing the Town as a municipal corporation and includes the powers and duties specifically granted to the Town of Chapel Hill.

- f. Elected and appointed officials and employees of the State, the United States and local governments are expressly exempted from the provisions of the North Carolina General Assembly's Lobbying Statutes. However, state agencies are required by this law to list with the Secretary of State their legislative liaisons.

## 2. Ethics Guidelines.

- a. Reasonable guidelines established by the Council to guide the behavior of its own members that are not inconsistent with other rules established by statute or case law would not likely pose any significant issue, so long as they are understood by all Council members to be only in the nature of guidelines. Thus, for example, the Council might agree to enact a guideline stating that individual Council members should not accept a lunch invitation from a party who has a pending rezoning application before the Council, or to only do so if the Council member pays for his/her own meal and/or is accompanied by a member of the Town staff.
- b. Reasonable adjustments to Section 14-55 of the Town Code might be considered to set a dollar amount of a meal or the value of an offered free ticket to an athletic or cultural event.
- c. A few years ago the Council adopted a set of ethical standards for its advisory boards. (Attachment 18) The Council might consider a further set of rules for Council behavior. Other excerpts from the **Bell** and **Owens** books cited above (Attachment 19 ) includes some examples of Ethics Policies.

## CONCLUSION

The subjects of the Petition, including proposals for lobbying regulations and ethical guidelines, are subjects for the Committee to consider. Please let me know what I can do to be of assistance. (If I receive any further information I will provide it prior to or at the Committee's meeting on February 2.)

cc: W. Calvin Horton, Town Manager