



STATE ETHICS COMMISSION

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ROBERT L. FARMER
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EXECUTIVE DIRECTOR

July 12, 2011

The Honorable Thom Tillis
Speaker of the House of Representatives
16 W. Jones Street, Room 2304
Raleigh, North Carolina 27601-1096

Via email

Re: Evaluation of Statement of Economic Interest Filed By Clyde E. Smith, Jr.
Environmental Management Commission

Dear Speaker Tillis:

I am in receipt of Mr. Clyde E. Smith, Jr.'s, 2011 Statement of Economic Interest as an appointee to the Environmental Management Commission ("the Commission"). I have reviewed it for actual and potential conflicts of interest pursuant to Chapter 138A of the North Carolina General Statutes ("N.C.G.S.") also known as the State Government Ethics Act ("SGEA" or "the Act").

I did not find an actual conflict of interest, but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

The Environmental Management Commission is responsible for adopting rules for the protection, preservation and enhancement of the State's air and water resources, including adopting rules and regulations regarding air and water quality standards, emission control standards, and classifications for air contaminant sources. In addition, the Commission has the authority to grant, modify, and revoke permits controlling sources of air and water pollution, oversee and supervise local air pollution control programs, and conduct investigations. The Commission also has the authority to declare, delineate and modify capacity use areas, approve and disapprove applications for and halt dam construction, and has jurisdiction and supervision over the maintenance, operation and inspection of dams. The Commission governs underground storage tanks, including the certification of persons who inspect and test tanks, and has jurisdiction and supervision over oil pollution, dry-cleaning solvent use, contamination and remediation. The Commission administers the State's authority under the federal Clean Water Act, approves Coastal Habitat Protection Plans, and advises and assists local governments regarding floodways.

The Ethics Act establishes ethical standards for certain public servants, including conflict of interest standards. N.C.G.S. §138A-31 prohibits public servants from using their positions for their financial benefit or for the benefit of a member of their extended family or a business with which they are associated. N.C.G.S. §138A-36(a) prohibits public servants from participating in certain official actions from which the public servant, his or her client, a member of the public servant's extended family, or a business or non-profit with which the public servant is associated would receive a reasonably foreseeable financial benefit.

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Mr. Smith fills the role of a person appointed by the House of Representatives on the Commission. He is employed as the general manager of Cleveland County Water. As such, Mr. Smith should exercise appropriate caution in the performance of his public duties should matters involving Cleveland County Water come before the Commission for official action. This would include recusing himself to the extent that those interests would influence or could reasonably appear to influence his actions.

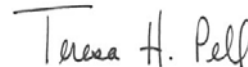
In addition to the conflicts standards noted above, N.C.G.S. §138A-32 prohibits public servants from accepting gifts, directly or indirectly (1) from anyone in return for being influenced in the discharge of their official responsibilities, (2) from a lobbyist or lobbyist principal, or (3) from a person or entity which is doing or seeking to do business with the public servant's agency, is regulated or controlled by the public servant's agency, or has particular financial interests that may be affected by the public servant's official actions. Exceptions to the gifts restrictions are set out in N.C.G.S. §138A-32(e).

Pursuant to N.C.G.S. 138A-15(c), when an actual or potential conflict of interest is cited by the Commission under N.C.G.S. 138A-24(e) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

Finally, the State Government Ethics Act mandates that all public servants attend an ethics and lobbying education presentation. Please review the attached document for additional information concerning this requirement.

Please contact me if you have any questions concerning my evaluation or the ethical standards governing public servants under the State Government Ethics Act.

Sincerely,

A handwritten signature in dark ink that reads "Teresa H. Pell". The signature is written in a cursive, slightly slanted style.

Teresa H. Pell
SEI Attorney

cc: Mr. Clyde E. Smith, Jr.
Mr. Steven T. Smith, Chairman
Ms. Lois Thomas, Ethics Liaison

Attachment: Ethics Education Flyer