

STATE OF NORTH CAROLINA

SPECIAL REVIEW

INTERIM REPORT

NORTH CAROLINA STATE ETHICS COMMISSION

RALEIGH, NORTH CAROLINA

SEPTEMBER 2008

OFFICE OF THE STATE AUDITOR

LESLIE W. MERRITT, JR., CPA, CFP

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AUDITOR'S TRANSMITTAL

The Honorable Michael F. Easley, Governor
The Honorable Roy Cooper, Attorney General
Robin P. Pendergraft, Director, State Bureau of Investigation
C. Colon Willoughby, Jr., Wake County District Attorney
Members of the North Carolina General Assembly
Members of the North Carolina State Ethics Commission

Ladies and Gentlemen:

Pursuant to North Carolina General Statute § 147-64.6, we initiated a special review of the North Carolina State Ethics Commission. A summary of relevant facts gathered to this date as well as our initial recommendations for corrective action are contained in this interim report.

Copies of this interim report have been provided to the Governor, the Attorney General and other appropriate officials in accordance with North Carolina General Statute § 147-64.6 (c) (12) which requires the State Auditor to provide written notice of apparent instances of violations of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee.

The Office of the State Auditor considers this an interim report and will continue to seek to complete the next phase of this investigation upon access to all relevant information. Once the Office of the State Auditor is able to exercise the full scope of the authority and access granted to it in Article 5A of Chapter 147 of the North Carolina General Statutes and is therefore able to conclude this review, a final report will be completed.

Respectfully submitted,

Leslie W. Merritt, Jr.

Leslie W. Merritt, Jr., CPA, CFP
State Auditor

September 18, 2008

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INTRODUCTION

The Office of the State Auditor received several allegations through the State Auditor's Hotline involving noncompliance with the North Carolina State Ethics Commission's (Ethics Commission) internal operating, administrative, and personnel policies.

Our special review of these allegations included the following procedures:

- Examination of various Ethics Commission internal operating policies and other documentation.
- Review of management study, *Staffing Analysis of the North Carolina State Ethics Commission*, prepared by the North Carolina Office of State Budget and Management, and management consultant study, *Organizational Climate Study of the North Carolina Ethics Commission*, prepared by the North Carolina Office of State Personnel.
- Discussions with complainants, Office of State Budget and Management staff, Office of State Personnel management, and others independent of the Ethics Commission.

This interim report presents the results of our special review. The review was conducted pursuant to North Carolina General Statute §147-64.6 rather than a financial statement audit or review. The Office of the State Auditor performs a periodic fiscal control audit of the North Carolina Department of Administration, which is the parent agency of the Ethics Commission.

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ORGANIZATION OVERVIEW

On August 4, 2006, the Governor signed the “State Government Ethics Act” into law. The Ethics Act (North Carolina General Statute § 138A) and the Lobbying Law (North Carolina General Statute § 120C) created the North Carolina State Ethics Commission (Ethics Commission). The Ethics Commission’s overall mission is to protect the public interest and maintain the public trust by helping covered¹ persons identify, address, and avoid conflicts of interest and the appearances of conflict of interest as they perform their duties. The number of covered persons was greatly expanded by the Ethics Act with the inclusion of elected legislators and their staff and judicial officers. The Ethics Commission accomplishes its mission primarily through evaluating Statements of Economic Interest, providing advisory opinions, education, enforcement, and investigation efforts.

The Ethics Commission consists of eight members, four appointed by the Governor and four appointed by the General Assembly. Members serve four-year terms beginning January 1, 2007, except for the initial staggered terms of one, two, three, and four years.

In addition, the Ethics Commission employs professional and clerical staff, including an Executive Director who serves at the pleasure of the Ethics Commission. Currently, these nine staff members handle the day-to-day duties and responsibilities mandated by the Ethics Act and Lobbying Law. The Ethics Commission is a state agency operating within the framework of the North Carolina Department of Administration.

¹ N.C.G.S. § 138A-3(10) Covered Person – A legislator, public servant, or judicial officer, as identified by the Ethics Commission under N.C.G.S. § 138A-11.

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FINDINGS AND RECOMMENDATIONS

1. THE ETHICS COMMISSION REFUSED TO COMPLY WITH NORTH CAROLINA GENERAL STATUTE §147-64.7 WHICH MANDATES THE STATE AUDITOR RECEIVE “READY ACCESS TO PERSONS . . . AND RECORDS.”

North Carolina General Statute § 147-64.7 outlines the State Auditor’s “Authority” as follows:

“(a) Access to Persons and Records—

(1) The Auditor and the Auditor’s authorized representatives shall have ready access to persons and may examine and copy all books, records, reports, vouchers, correspondence, files, personnel files, investments, and any other documentation of any State agency.”

Courtesy notification of the State Auditor’s investigation was given to the North Carolina State Ethics Commission (Ethics Commission) Chairman on June 17, 2008. Investigators contacted the Ethics Commission’s Executive Director and Assistant Director on June 25, 2008 in an attempt to schedule interviews and obtain documentation. First, the Ethics Commission management cited “scheduling problems” as a reason to delay interviews. Subsequently, the Executive Director refused to make individuals or records available. The State Auditor made repeated requests via telephone, letter, and e-mail for interviews and records. However, the Ethics Commission repeatedly denied access.

In addition, investigators attempted to obtain documentation, including back-up files of a public records request log and e-mails, from the North Carolina Office of Information Technology Services (ITS). Among its duties, ITS acts as a data warehouse for state agencies, including the Ethics Commission. As such, ITS maintained the Ethics Commission back-up data that would have assisted in verifying or refuting allegations made by the complainants. However, the Ethics Commission sought to block auditor access to these records as well.

The Ethics Commission is a state agency and all its staff members are state employees. Therefore, the Ethics Commission is required to comply with the “ready access” law. As of today, the Executive Director has refused to provide access to all persons and records in the Ethics Commission office. In our opinion, this refusal of access to persons and records is inconsistent with clear statutory law and is incompatible with cooperation and transparency.

RECOMMENDATION

The Ethics Commission and Ethics Commission staff should comply with the provisions of North Carolina General Statute § 147-64.7 regarding the State Auditor’s Authority and access to persons and records in a manner that promotes cooperation and transparency.

2. THE ETHICS COMMISSION HAS NOT ESTABLISHED SUFFICIENT ADMINISTRATIVE OR OPERATING POLICIES.

Based on information secured from various sources, the Ethics Commission has inadequate operating policies and has not established written policies or procedures addressing basic human resource practices. A January 2008 management study (*Staffing Analysis of the North Carolina State Ethics Commission*) issued by the North Carolina Office of State Budget and Management (State Budget) questioned the adequacy of operating procedures. Specifically, the study cited the Ethics Commission's lack of "service statements for its various duties and responsibilities that fully define what the tasks are, how the work should be performed, and what the expected outcomes of each task/duty are." State Budget representatives concluded that the failure to establish these procedures contributed to "a significant backlog . . . equal to more than two staff years of work."

Based upon concerns expressed by Ethics Commission staff to the North Carolina Office of State Personnel (OSP), the OSP Director hired a consultant to evaluate the Ethics Commission personnel and management practices. On June 11, 2008, the OSP consultant released a report titled *Organizational Climate Study of the North Carolina Ethics Commission*. This study catalogued the lack of personnel policies, work flow issues, communication barriers, and an "autocratic" organizational climate with a lack of trust and respect. Specifically, the report cited examples such as "no request/approval process for use of leave, unclear compensatory practices, non-existent performance management program, and no disciplinary procedure or complaint/grievance procedure." Despite the absence of these personnel policies, Ethics Commission management has taken disciplinary action against at least two employees.

Although these two prior external reviews each reported a lack of policies and procedures, Ethics Commission management still has not addressed these concerns as of September 2008. Management's failure to establish adequate policies and procedures has impacted morale and rendered employees unable to determine job expectations or address concerns.

RECOMMENDATION

The Ethics Commission should prioritize the establishment of policies and procedures. In addition, the Ethics Commission should work with the Office of State Personnel to ensure compliance with state and federal law and to promote a positive work environment. Training should be provided to supervisors and managers to address the communication, trust, and organizational climate issues addressed in the OSP report.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

3. THE ETHICS COMMISSION DID NOT FOLLOW ITS EXISTING POLICIES AND PROCEDURES REGARDING VIEWING OF STATEMENTS OF ECONOMIC INTEREST.

On October 11, 2007, the Lieutenant Governor's General Counsel arrived at the Ethics Commission office without prior notice to view the Lieutenant Governor's complete Statement of Economic Interest (SEI) file. While no formalized set of written policies has been established (See Finding 2, page 6), the Assistant Director previously prepared general office procedures and distributed them to staff via e-mail. These e-mail procedures state:

"Persons who do not make advance requests and just drop by the office may not obtain the SEI at that time. No exceptions. But, if someone drops by to request an SEI, please request that they [sic] to provide the information listed above and tell them that we will let them know within 24 hours when the requested SEI(s) will be available for review or when copies will be provided."

The General Counsel, upon arrival at the Ethics Commission office, was informed by the Office Assistant of the normal procedures for viewing SEI's. The Office Assistant told the General Counsel that the Ethics Commission staff would retrieve the files and contact him later when the files were ready for review. The General Counsel agreed with these instructions and returned to the Lieutenant Governor's office. According to the General Counsel, either the Assistant Director or the SEI Coordinator/Administrative Chief (at the Assistant Director's direction) immediately called the General Counsel to return to the Ethics Commission to review the documents on the same day, October 11, 2007. The Assistant Director allowed the General Counsel, who had requested no special treatment, to view all documents alone in a vacant room with the door closed – which had never been allowed to occur at any prior time.

In early August 2008, the Executive Director and Assistant Director confirmed to a newspaper reporter that no one else had been allowed to review original SEI's alone in a closed office. They also denied telling employees not to allow viewing SEI's without supervision. Further, the Assistant Director said that there was "no written or oral policy" prohibiting this action. These statements do not agree with other information secured during this investigation.

Multiple complainants informed us that Ethics Commission management repeatedly stressed that SEI's should not be viewed without supervision. Further, the e-mail policies which the Assistant Director wrote and distributed indicate:

- *SEIs are public records. The (law) requires that we allow requesters to review those records and obtain copies:*
 1. *It requires that we permit records "to be inspected and examined at reasonable times and under **reasonable supervision** [emphasis added]."*

FINDINGS AND RECOMMENDATIONS (CONTINUED)

In addition, we learned that the Executive Director and Assistant Director conducted a private ethics training session for the Lieutenant Governor. The Lieutenant Governor's General Counsel informed us that the Lieutenant Governor requested the private session but did not specify who should conduct the session. He said the Lieutenant Governor's chief of staff and he also attended this private session. (The General Counsel had previously attended one of the public, group ethics training sessions.) The other 11,000 state employees, legislators, and lobbyists who were required by the Ethics Act to receive ethics training all received training in public, group settings with training provided by the Ethics Commission Education Director.

Given the two special exceptions involving the Lieutenant Governor, it appears that Ethics Commission management displayed special treatment through the inconsistent application of operating procedures. As the state agency responsible for educating, reviewing, and investigating ethical acts by state officials, the Ethics Commission must remain above reproach and ensure the equitable treatment of all officials.

RECOMMENDATION

Ethics Commission management should establish complete, written procedures outlining instructions for day-to-day processes to ensure the consistent application of policies and promote an effective work flow. The Ethics Commission should adhere to established policies in all situations to avoid the appearance of favoritism. If an exception to procedure must be made, the Ethics Commission should adequately document the reason for the departure from normal policy.

4. THE ETHICS COMMISSION ASSISTANT DIRECTOR DELETED INFORMATION FROM THE PUBLIC RECORDS REQUEST LOG DURING THE COURSE OF THIS INVESTIGATION.

The Office Assistant maintained a digital log (*Document Request Table*) documenting requests for SEI's. After the General Counsel's visits to the Ethics Commission on October 11, 2007, the Office Assistant entered the following into the log:

"Copies/Review all of Bev Perdue's file.

Reviewed files in (Education Director's) office alone with door closed."

We obtained a copy of the Document Request Table which included the above statements. Following the State Auditor's June 17, 2008 notification of investigation to the Ethics Commission Chairman, interview of the Lieutenant Governor's General Counsel on June 26, 2008, and the Executive Director's seizure of the Office Assistant's nine steno pads on June 27, 2008, we were informed that the Assistant Director deleted information regarding the General Counsel's visit to the Ethics Commission office. In early August 2008, the Assistant Director acknowledged to a newspaper reporter that she deleted the statement "Reviewed files in (Education Director's) office alone with door closed." According to the

FINDINGS AND RECOMMENDATIONS (CONTINUED)

newspaper article, she “discovered the log entry roughly four months ago [in April or May 2008] . . . and removed it because it was not the place for such comments.”² Further investigation is required to verify the Assistant Director’s claims and reveal all the relevant facts in this matter.

North Carolina General Statute § 147-64.7A details that anyone who attempts to “*hinder or obstruct the State Auditor or the State Auditor’s designated representative in the performance of their duties, shall be guilty of a Class 2 misdemeanor.*” Intentionally deleting or altering records during the course of an investigation may violate this statute.

RECOMMENDATION

Ethics Commission management or staff should not delete or alter information that may be subject to audit or investigation. In addition, management should establish formal, written guidelines that address appropriate documentation, public records information, and proper maintenance of records.

5. THE ETHICS COMMISSION EXECUTIVE DIRECTOR TERMINATED AN EMPLOYEE WHO WAS RELEVANT TO THIS INVESTIGATION DURING THE COURSE OF THIS INVESTIGATION.

On several occasions, the Executive Director confronted the Office Assistant and questioned her as to whether she had communicated with State Auditors. On June 27, 2008 (10 days following notification of the investigation), the Executive Director demanded and then confiscated nine steno pads maintained by the Office Assistant. The Office Assistant reportedly purchased these steno pads at her own expense. When confiscating these steno pads, the Executive Director reportedly declared to the Office Assistant that they were “public records.”

These steno pads contain information relevant to this investigation. The steno pads were confiscated during the course of the investigation and after the Ethics Commission was notified of the investigation.

On July 24, 2008, a newspaper reporter visited the Ethics Commission and interviewed Ethics Commission staff regarding these and other related matters. Shortly following the reporter’s visit and inquiries, the Executive Director terminated the Office Assistant. This termination occurred during the course of our investigation and after notification of our investigation. The Office Assistant stated that, when she asked the Executive Director the reason for her termination, the Executive Director replied, “You know why.” In addition, the Office Assistant’s termination letter does not cite a reason for her dismissal.

² “Auditor probes Ethics agency.” *The News and Observer*, August 8, 2008.

FINDINGS AND RECOMMENDATIONS (CONCLUDED)

North Carolina General Statute § 126-85(a) provides state employees with protection from retaliation as follows:

“No head of any State department, agency, or institution or other State employee exercising supervisory authority shall discharge, threaten, or otherwise discriminate against a State employee regarding the State employee’s compensation, terms, conditions, location, or privileges of employment because the State employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in N.C. General Statute 126-84.”

RECOMMENDATION

The thorough and full completion and conclusion of this investigation should be met with transparency and cooperation by the Ethics Commission management.

ISSUES FOR FURTHER INVESTIGATION/REVIEW

In the history of the Office of the State Auditor and in the history of inter-agency cooperation in North Carolina state government, we know of no situation in which a state agency refused to cooperate, refused access to persons and records, and filed a lawsuit to block access and transparency as has occurred during the course of this investigation under North Carolina General Statute § 147-64.6.

There are important questions that must be fully reviewed and resolved with full disclosure. That disclosure to any investigative authority must include, but is not limited to, ready access to interview persons and to review books, records, logs, e-mails, notes, notebooks, and any other documentation relevant to this investigation. This will ensure that transparency and taxpayer interests and confidence are honored. Those questions that remain are, but are not limited to:

I. Potential Special Treatment

1. Was special treatment offered and on what basis?
2. If so, at whose authority and direction?
3. Why? For what purpose or to what end?
4. Was special treatment offered in any other instances? To whom? Why?

II. Integrity of Documents and Evidence

1. Was the alteration/deletion of information during the course of this investigation related to the investigation?
2. If so, at whose authority and direction?
3. Why? For what purpose or to what end?
4. Were other documents and evidence deleted or altered?

III. Termination of Employee during course of Investigation

1. Was the termination of an employee during the course of this investigation related to the investigation?
2. If so, at whose authority and direction?
3. Why? For what purpose or to what end?

Due to the unusual nature of the course of events and multi-faceted circumstances surrounding this investigation, this report is published at this juncture as an interim report. The Office of the State Auditor reserves the right and has the statutory duty to update this report and to continue to ensure that these matters are fully investigated and resolved so that the interests and confidence of the taxpayers of North Carolina are fully honored.

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OSBM

**Staffing Analysis of the North Carolina
State Ethics Commission**

Management Study

January 2008



Prepared By:

Office of State Budget and Management

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INTRODUCTION

Scope of Study

In a September 11, 2006, letter to the North Carolina State Ethics Commission¹, the State Budget Director committed the Office of State Budget and Management (OSBM) to conduct a staffing analysis of the Commission to determine the appropriate staffing requirements based on the workload generated by the newly enacted State Government Ethics Act (G. S. 138A, effective January 1, 2007) and Lobbying Law (G. S. 120C, effective January 1, 2007). Both statutes were amended by S.L. 2007-347 (HB 1110) and S.L. 2007-348 (HB 1111) in August 2007.

Methodology

In order to conduct the staffing analysis, the OSBM study team performed the following tasks:

- Examined and analyzed the organizational structure of the Commission,
- Analyzed employees time and resource allocation data provided by management and staff,
- Interviewed all Commission employees,
- Reviewed the statutory requirements of the State Government Ethics Act (Ethics Act) and Lobbying Law, and
- Analyzed various other data.

BACKGROUND

In January 1977, Governor Hunt issued an executive order creating the North Carolina Board of Ethics, which established jurisdiction over employees in the Governor's office, department heads and their chief assistants, employees in exempt policy-making positions, and appointees to non-advisory boards and commissions. The Board's main duties and responsibilities in 1977 were reviewing Statements of Economic Interest (SEIs), rendering advisory opinions, and investigating complaints. The Board did not have the power to issue sanctions against public officials found in violation of the executive order. With only minor changes, Governor Martin issued his own executive order establishing a Board of Ethics in January 1985 and amended the order in 1990 to include all members of boards, commissions, and councils within the executive branch. When Governor Hunt returned to office in 1993, he again established the Board of Ethics with his own executive order with substantially no changes. In early 1998, Governor Hunt revised his ethics executive order, greatly expanding the Board's powers and duties, particularly in the areas of ethics education, financial disclosure, evaluation, and enforcement. The executive order's "rules of conduct" were also expanded: directing public officials to avoid "even the appearance of a conflict of interest." Governor Easley's 2001 executive order established the Board of Ethics that retained the powers and authority previously established by Governors Hunt and Martin.

Prior to January 1, 2007, the Board of Ethics was the State's primary conflict of interest "watchdog" for high-level employees and appointees in the executive branch of State government. The Board's overall mission was to protect the public interest and maintain the public trust by helping public officials and members of boards and commissions avoid conflicts of interest and the appearance of conflicts of interest as they performed their public duties. The Board pursued its duties primarily through education, evaluation, and enforcement.

The Ethics Act and the Lobbying Law created the State Ethics Commission with an overall mission of protecting the public interest and maintaining public trust, by helping covered persons² identify, address, and avoid conflicts of interest and appearances of conflict of interest as they perform their duties throughout the State. The number of covered persons was greatly expanded with the inclusion of elected legislators and their staff and judicial officers. The Commission accomplishes its mission primarily through evaluating SEIs, providing advisory opinions.

¹ Hereafter, the North Carolina State Ethics Commission will be referred to as "the Commission".

² Covered Persons include certain elected officials, judicial officers and employees, State employees, and appointees to non-advisory state boards and commissions. The Commission's web site <http://www.ethicscommission.nc.gov/cpersons.htm> provides details on the groups and names of persons covered by the Ethics Act and Lobbying Law.

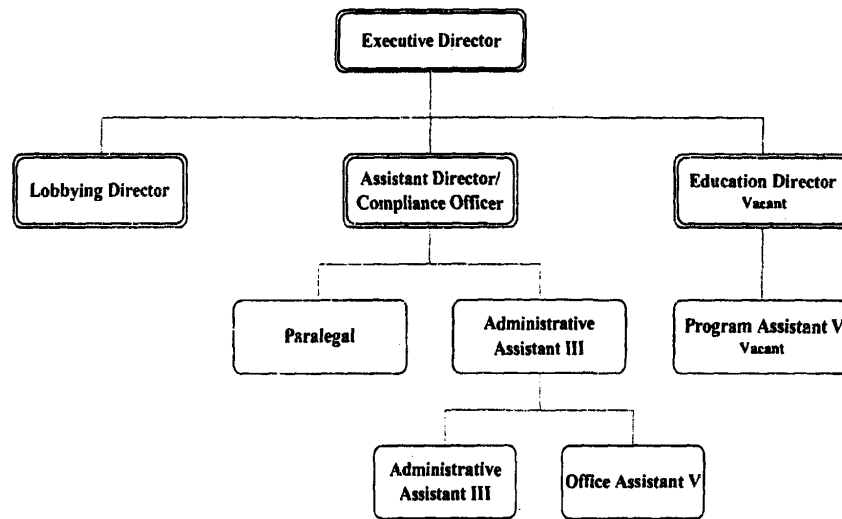
education, enforcement, and investigation efforts. Appendix A shows the obligations of all persons covered by the Ethics Act.

Organizational Structure and Program Process

The Commission has eight members that are appointed by the Governor and the General Assembly.³ Further, the Commission is supported by nine staff members that handle the day-to-day duties and responsibilities mandated by the Ethics Act and Lobbying Law. Two of the staff positions are currently vacant. Exhibit 1 depicts the organizational structure of the Commission's staff and their direct lines of supervision.

Exhibit 1

STATE ETHICS COMMISSION STAFF



November 1, 2007

The primary duties and responsibilities of the Commission staff are to:

- 1) Review and approve SEIs submitted by covered persons.
- 2) Evaluate and respond to requests for advisory opinions.
- 3) Educate all covered persons and persons that report directly to covered persons about the requirements of the State Ethics Act and Lobbying Law, and
- 4) Enforce the requirements of the statutes and investigate complaints of ethics violations by covered persons.

The staff also performs a number of other duties related to the overall operation of the Commission, including preparing for and participating in Commission meetings, monitoring and interacting with the General Assembly, answering telephone calls, responding to e-mail inquiries, managing the office, and supervising the Commission staff. Table 1 on page 3 shows all of the duties and responsibilities of the Commission's staff and brief descriptions of their duties and responsibilities. However, these descriptions are not based on measurable service statements of OSBM's Results Based Budgeting process.

³ Of the eight members, four are appointed by the Governor and four are appointed by the General Assembly—two based upon the recommendation of the Speaker of the House of Representatives and two based upon the recommendation of the President Pro Tempore of the Senate.

Table 1

Duties and Responsibilities of the Staff of the State Ethics Commission

Duties/Responsibilities	Description	FTE ^a
Statements of Economic Interest (SEIs) forms	Review SEIs for completeness, research information reported, review applicable General Statutes, answer questions via telephone, e-mail, and walk-ins, and generate correspondence to filers.	2.27
Education	Provide education presentations for all covered persons and others that are required to comply with the Ethics Act and Lobbying Law.	1.82
Advisory Opinions--Ethics and Lobbying	Review, research, and respond to requests from covered persons regarding conflicts of interest and/or compliance with the Ethics Act and Lobbying Law.	1.80
Commission meetings	Prepare for and participate in Commission meetings.	.73
Office Support	Answer and route telephone calls, handle incoming and outgoing mail, and assist senior staff with special projects.	.48
Management, supervision, & human resources	Oversee office operations, supervise administrative staff, interact with contractors, and manage human resource activities.	.43
Commission e-mail	Receive, review, and route e-mail messages to appropriate staff, draft responses for some e-mail requests, and maintain files of e-mail messages.	.25
Complaints	Receive, review, and acknowledge receipt of complaints, route to appropriate senior staff, maintain tracking system for complaints, and handle correspondence related to complaints.	.22
Legislative interaction	Appear before various legislative committees, meet with legislative staff, and monitor ethics and lobbying related bills in the General Assembly.	.16
Commission newsletter & web site	Prepare newsletter and create and maintain updates for web site.	.16
Implement new Ethics Commission	Acquire office space and equipment, advertise for and hire additional staff, develop a start-up budget, and handle other Commission operations.	.15
Database management	Develop and maintain various databases related to education, SEIs, advisory opinions, list of covered persons, and other Commission information.	.18
Rules and rulemaking	Prepare Commission rules, review and comment on rules proposed by the Department of the Secretary of State, and attend public hearings related to rules.	.11
Public record requests	Handle requests for copies of public records, supervise public review of records, and invoice and receive payments for copies of public records.	.11
Reporting	Prepare, review, revise, and submit reports to Fiscal Research and Joint Subcommittee on General Government, Budget. Prepare the Commission's annual report.	.05
Coordination with the Department of the Secretary of State	Interact with the Department of the Secretary of State on issues related to advisory opinions, education, and rulemaking.	.04
Other	Respond to media inquiries, publication of Commission "Law Book", etc	.04
Total FTEs		9.00

^a Full Time Equivalent is based on staff estimates for 8 months--January 1 through August 31, 2007

Source: OSBM's analysis of data provided by the Commission

All persons holding covered positions on January 1, 2007 were required to file SEIs by March 15, 2007. Further, persons appointed, employed, or needing a certificate of election after January 1, 2007, had to file SEIs and have them evaluated by the Commission prior to taking their respective positions. Persons who fail to file their SEIs on time are subject to sanctions and fines. The SEIs require covered persons to disclose financial and personal interests that will enable them to avoid conflicts of interest or potential conflicts of interest between their private interest and public duties. The SEIs also enable persons who appoint, elect, hire, supervise, or advise covered persons to be aware of and avoid conflicts of interest for covered persons.

All covered persons, registered lobbyists, and lobbyist principals can request an advisory opinion from the Commission. The Commission's opinions address specific questions about the meaning and application of the State Ethics Act and Lobbying Law, along with requesters' compliance with the statutes. The requests must be in writing (regular mail or e-mail) and related to real or reasonably anticipated facts or circumstances. Depending upon the requesters needs, the Commission's response can be a formal (written) or an informal (oral) opinion.

The Commission's education program includes developing and implementing educational programs for all legislators, legislative employees, public servants and their immediate staff, lobbyists, and lobbyist principals. The education presentations cover the requirements of the Ethics Act and the Lobbying Law, and provide the initial mandatory education for all covered persons. Biennial refresher courses are required for all covered persons. The education program also includes producing periodic newsletters and providing information about State laws, rules, procedures, and other information relevant to the Ethics Act and Lobbying Law. Additionally, the Commission must identify and publish at least quarterly a listing of the names and positions of all persons subject to the Ethics Act.

In its enforcement capacity, the Commission is responsible for interpreting, investigating, and enforcing the Ethics Act and Lobbying Law. The Commission has the authority to pursue fines and/or sanctions against person who fail to file their SEIs on time or file improperly. Further, it may pursue criminal actions against any person who conceals, fails to disclose required information, or knowingly provides false or misleading information to the Commission. Additionally, the Commission may investigate complaints of unethical conduct by covered persons and legislative employees to determine the applicability to the Ethics Act and Lobbying Law or criminal laws, and whether legal actions should be taken.

RESULTS

The Ethics Act and Lobbying Law greatly increased the workload of the newly created Ethics Commission. The Commission's predecessor, the North Carolina Board of Ethics, had some of the same duties and responsibilities; however, they were not as comprehensive and did not include as many covered persons as the Commission. For example, the Ethics Act and Lobbying Law covers about twice as many persons, have enforcement authority for SEIs, and have a gift ban that the Board of Ethics did not cover. Further, the ethics requirements of the Lobbying Law were not covered by the Board of Ethics. The Commission is also providing significantly more advisory opinions under the Ethics Act and Lobbying Law than the Board of Ethics. With each of the added or expanded responsibilities, the Commission was faced with expanding its staff to meet the increased demands and new enforcement requirements of the Ethics Act and Lobbying Law, providing ethics training for about 10,000 persons, and familiarizing new staff with their respective duties.

Statements of Economic Interest

The expanded reporting requirements and enforcement authority granted the Commission for the SEIs probably increased its workload the most. The number of covered persons required to submit SEI more than doubled with the inclusion of the legislature, legislative employees, and judiciary as well as a significant increase in the number of university and community college boards of trustees. Table 2 shows the added

Table 2

Comparison of Statement of Economic Interest Requirements for the Ethics Board and the Ethics Commission

Board of Ethics	Ethics Commission
Covered Persons – approximately 2,000	Covered Persons – 4,367
Executive branch employees	Constitutional officers and employees
Governor's appointees to University System Board of Trustees	All members of the University of North Carolina System Board of Governors and the 16 universities' Board of Trustees
Governor's appointees to Community College System Boards of Trustees	All voting members of the State Board of Trustees of the Community College System and the Boards of Trustees of the 58 community colleges
Governor, House, & Senate appointees to covered Boards & Commissions	All members of covered Boards & Commissions
	Legislators
	Legislative employees
	Justices, judges, district attorneys, & clerks of court

Source: State Government Ethics Act

requirements for SEIs for the Commission. Previously, covered persons in the executive branch and persons appointed by the governor only had to submit the completed SEI forms when they were first employed or appointed by the governor. The Board's staff performed limited reviews and verifications of the information reported. Also, the Board had no enforcement authority relative to assessing fines or penalties. In subsequent years covered persons could submit supplemental SEIs that only showed changes from the previous year or a "no change" SEIs and the Board's staff did not have to review them or send confirmation letters for the supplemental and no change SEIs.

As of January 1, 2007, there were 4,367 covered persons who were required to file SEIs with the Commission. As of August 31, 2007, the Commission staff had completed its review, research, and approval for 624 (14.2%) of the 4,367 SEIs. For the remaining 3,743 SEIs, the Commission staff had reviewed them for completeness and followed up with the filers to get additional information for the incomplete ones, but the staff still had to thoroughly review, research, and approve them. Based on the time spent reviewing and approving the 624 SEIs, OSBM projects that it will take 17.6 months of staff time, at the present rate of review, to complete the review and approval of the August 31, 2007 backlog of 3,743 SEIs. In addition to the SEIs that were initially submitted by persons covered by the Ethics Act and Lobbying Law, the Commission received several hundred additional SEIs from covered persons that were elected, appointed, or hired during 2007.

While the staff's workload for processing the SEIs was very large for 2007, the workload for subsequent years should decrease because all of the in depth research will not be necessary if filers have little or no change in their financial and personal holdings. The Commission had planned to allow filers who have little or no change in their financial and personal holdings to submit a "short SEI form" in subsequent years rather than the lengthy multi-question forms. However, Section 34 of S.L. 2007-348, requires all filers to respond to all of the SEI questions annually. Thus, the Commission is currently requiring all filers to submit the "long SEI form" annually even if they have little or no change in their financial and personal interest. Further, there will continue to be new covered persons (elected, appointed, or employed) whose SEIs will require more time to review and research as well as the previous filers who have significant changes in their financial and personal holdings in subsequent years. At this point, it is not possible to project how much the SEI workload may decrease in future years.

Advisory Opinions

The staff issues two types of advisory opinions—formal and informal. The formal advisory opinions are the ones in which the requestors ask the Commission to provide written letters relative to whether their personal or business activities or future actions comply with the requirements of the Ethics Act or Lobbying Law. Informal advisory opinions are requests related to the requestors' compliance with the Ethics Act and Lobbying Law, but they are only asking for a verbal opinion. On the average, it takes the Commission staff more than five times as much time to complete a formal advisory opinion as it does for an informal opinion.

The Commission staff had expected the number of advisory opinion requests from legislatures and lobbyists to decline with the adjournment of the legislature; however the number of opinion requests remained about the same throughout 2007. They also noted that the number of questions and the complexity of the questions in the more recent requests have increased. For example, earlier opinion requests usually had two to three questions, whereas some of the recent requests have had several pages of questions. According to the Commission's staff, their review and response to advisory opinions have proven to be very time consuming—ranging from less than an hour for the simple informal request to as much as 15 days for the formal requests with multiple questions and complex issues. Table 3 shows the status of the advisory opinions received by the Commission as of August 31, 2007. Based on the time expended during the first 8 months of 2007 in reviewing advisory opinions, OSBM projects that it will take nearly 8 months of staff time to complete the review and approval of the August 31, 2007 backlog of pending advisory opinions. Further, the Commission received additional requests for opinions after August 31, which added to the staff's workload. The Commission staff anticipates that the number of requests for advisory opinions will increase in future years and based on their experience thus far, the complexity of the requests will also increase as more covered persons, lobbyists, and lobbyist principals come to realize the protection that these legal

Table 3
Status of Advisory Opinions as of August 31, 2007

Advisory Opinions	Received	Completed	Pending
Formal	111	23	88
Informal	778	517	261
Total	889	540	349

Source: OSBM's analysis of data provided by the Commission

opinions can offer them relative to not being fined, sanctioned, or disciplined for violating the Ethics Act and Lobbying Law. The Commission is also required to publish a summary of all advisory opinions annually.

Ethics Education

With the enactment of the Ethics Act and Lobbying Law in January 2007, the Commission's staff was faced with developing and providing ethics and lobbying education presentations to an estimated 10,000 covered persons and their immediate staff, legislative employees, lobbyists, and lobbyist principals. All "public servants" and their immediate staff, legislators, and legislative employees must participate in the ethics and lobbying portions of the

education presentations within specific timeframes. The presentations are optional for others, such as lobbyists and lobbyist principals. Judicial officers are not covered by the education requirements of the Ethics Act and Lobbying Law. Table 4 shows the timeframes in which all covered persons must participate in educational presentations. The initial ethics presentations consisted of a 2-hour presentation. All covered persons are required to attend refresher presentations every two years thereafter. All newly elected, re-elected, appointed, or employed persons are required to receive the initial 2-hour education presentations within three to six months. The

Table 4
Educational Conditions and Timeframes for Covered Persons

Covered Persons	Education	Condition	Timeframe
Legislators	Ethics	Election, re-election, or appointment	Within 3 months
	Lobbying	Election, re-election, or appointment	Within 6 months
Legislative Employees	Ethics	Appointment or employment	Within 3 months
	Lobbying	Appointment or hiring	Within 6 months
Public Servants & Immediate Staff ^a	Ethics	Election, re-election, appointment, or employment	Within 6 months
Public Servants	Ethics	Held office or position as of January 1, 2007	Within 12 months
Public Servants	Lobbying	Election, re-election, appointment, or hiring	Within 6 months
Lobbyists and Lobbyist Principals	Ethics	Optional	
Judicial Officers ^b	Not required		

^a Immediate staff are individuals who report directly to a public servant

^b Justices, judges, district attorneys, and clerks of court

Source: State Government Ethics Act and Lobbying Law

educational responsibilities of the Commission also include (1) preparing quarterly newsletters, (2) developing educational information for the Commission's web site, and (3) preparing other educational information, such as lists of "Frequently Asked Questions" related to SEIs, advisory opinions, lobbying, and complaints.

During the first 10 months of 2007, the Commission provided education presentations to over 11,000 covered persons, direct report employees, lobbyists, and lobbyist principals. With the resignation of the Education Director on August 31, 2007, the Commission's Executive Director and other staff assumed the responsibility for completing the scheduled education presentations for the remainder of 2007. During the first 8 months, the presentations were offered at multiple locations and usually in relatively small group settings across the State. Most of the education presentations that were provided during the last 4 months of 2007 were offered in a large auditorium setting in Raleigh or via the Information Highway Distance Education program on community college campuses across the state. As of November 1, 2007, there were still 1,144 covered persons who were required to attend an education presentation by the end of 2007. There were also an unknown number of lobbyists, lobbyist principals, and other persons that were expected to register for the remaining scheduled education presentations. All registrations for the education presentations were scheduled by calling or e-mailing the Education Program Assistant.

Because the requirement for attending an education presentation is on a 2 year cycle, the Commission's education workload for 2008 should not be as great as it was for 2007. However, the Commission will still need to provide presentations to all persons that are newly elected, re-elected, appointed, or employed during 2008. For the next several years, the Commission will probably have an uneven education workload. Even with the additional educational duties and responsibilities, the overall time required of the Education Director and Education Program Assistant should be less because of (1) the opportunity to reach large groups via the Information Highway Distance Education program on community college campuses, (2) offering on-line registration, and (3) the decrease in the demand for educational presentation in the future.

Investigation and Enforcement

The Commission has major investigation and enforcement responsibilities under the Ethics Act and Lobbying Law, including the investigation of complaints filed by citizens. The Commission's enforcement role consists of ensuring all persons who are subject to any parts of the Ethics Act and Lobbying Law comply with these statutory requirements. The Commission is also tasked with receiving complaints⁴ that allege unethical conduct by covered persons and legislative employees and investigating the complaints. In initiating an investigation, the Commission and its staff investigates the following types of complaints:

- The application or alleged violation of the Ethics Act or Lobbying Law,
- The application or alleged violation by legislators of Part 1 of Article 14 of Chapter 120 of the General Statutes (Code of Legislative Ethics), and
- Alleged violations of the criminal law by a covered person in the performance of that individual's official duties.

While the Commission had received relatively few complaints as of August 31, 2007, the staff anticipates that the number of complaints will increase as the public becomes more aware of the complaint process. In addition, to investigating complaints, the Commission staff is responsible for pursuing all complaints that it considers to have merit through one of three prosecutorial steps; (1) an administrative hearing, (2) the Legislative Ethics Committee, or (3) the Judicial Standards Commission. Because of the expected increase in the number of complaints and the need to prosecute some complaints, the staff anticipates an increased workload in this area.

Other Duties

In addition to the primary duties of the Commission previously addressed, there are a wide range of other duties that command the time and attention of the Commission staff. These include,

- Preparing for and participating in Commission meetings,
- Answering and handling phone calls and e-mails,
- Overseeing office operations,
- Managing human resource activities,
- Receiving, reviewing, and acknowledging receipt of complaints,
- Interacting with the General Assembly and monitoring ethics and lobbying related bills,
- Preparing newsletters and maintaining Commission's web site,
- Developing and maintaining various Commission databases,
- Preparing Commission rules,
- Interacting with the Department of the Secretary of State on rules and other issues,
- Handling requests for copies of public records and media inquiries, and
- Preparing and submitting various reports.

While each of these duties may seem minor in themselves, when considered as a whole, they require the equivalent of more than three staff positions during the first 8 months of 2007.

There are additional tasks that the Commission had not undertaken at the time of OSBM's analysis. Specifically, the Commission is required to publish a summary of all advisory opinions which are issued each year, as well as, edited copies of each issued opinion. Another task that the Commission had not started was identifying and publishing a list of all boards and commissions that must comply with the Ethics Act. The 270 boards and commissions that were previously subject to Governor Easley's 2001 executive order are the only ones currently required to comply with the Ethics Act. The Commission must review the purpose and mission of all State boards and commissions to determine whether they are subject to the Ethics Act. The review includes the 270 boards and commissions currently subject to the Act, about 30 newly created boards and commissions, and about 500 advisory boards to determine whether they are subject to the Ethics Act. Because these tasks had not been performed by the Commission's staff or included in duties and responsibilities reported in Table 1 on page 3 at the time of OSBM's analysis, OSBM could not quantify the amount of time the Commission's staff will have to devote to these

⁴ Sworn and signed complaints to the Commission can come from individuals, public servants, or any person responsible for the hiring, appointing, or supervising a public servant.

additional tasks. The Commission's Executive Director believes that, in addition to eliminating the workload backlog and accomplishing all of the Commission's duties, it is also important to reduce the time in which it takes the Commission to review and approved SEIs, respond to requests for advisory opinions, and investigate complaints.

Work Backlog and Overtime

During the first 8 months of 2007, the Commission's senior management accrued a considerable amount of overtime. Further, because of the increase in the number of persons covered by the Ethics Act and Lobbying Law, the Commission's administrative staff developed a significant backlog in its workload, especially in the review and approval of SEIs. Senior management also had a backlog related to reviewing and responding to requests for advisory opinions. Our analysis of the time and resource allocation data provided by the Commission's staff indicate that workload backlog and overtime accrued during the first 8 months of 2007 amounted to 2.7 FTEs of additional staffing that the Commission needed to keep up with its overall workload during this period. Table 5 shows the details regarding the workload backlog and overtime.

Table 5

Workload Backlog and Accrued Overtime

Task	Number of	FTE ^a
Workload Backlog:	Months	
Statements of Economic Interest	17.99	1.47
Lobbying Advisory Opinions	6.07	.51
Ethics Advisory Opinions	.84	.07
Overtime:	Hours	
Executive Director	505	.29
Assistant Director/Compliance Officer	411	.23
Lobbying Director	115	.07
Education Director	133	.08
Total		2.72

^a FTEs based on 1,760 available work hours per year.

Source: OSBM's analysis of Commission data

Much of the 2.7 FTEs of additional staffing needs are attributable to the increased responsibilities of reviewing, researching, and approving SEIs and providing education presentation during 2007. However, the workload for these two areas in future years should decrease. The in depth research performed on SEIs during 2007 will not be necessary if filers have little or no change in their personal and financial holdings in subsequent years. Because educational requirements are required biennially, the demand for education presentations will be significantly less in 2008. Further, using the Information Highway Distance Education program and online registration for ethics education will also decrease the educational demands for the two educational staff positions. Conservatively, the workload for reviewing and approving SEIs and providing ethics education should decrease by .30 and .20 FTEs, respectively. Also, the duties and responsibilities related to "implementing new Ethics Commission" that was reported by the Commission staff should not be necessary in subsequent years. Thus, the Commission should realize about two-thirds of a staff year decrease in its workload in these areas. Table 6 shows the projected decrease in the Commission's workload for future years in these areas.

Table 6

Decreases in Commission Workload

Duties/Responsibilities	FTE ^a
Review and approval of SEIs	.30
Ethics education	.20
Start new Ethics Commission	.15
Total	.65

^a Full Time Equivalent

Source: OSBM's analysis of Commission data

According to the Commission's senior staff, there are other duties and responsibilities that are reflected in the time and resource data provided by the Commission staff in Table 1 on page 3 that will require additional staffing resources or realignment of its current staffing duties and responsibilities. For example:

- The number and complexity of advisory opinion requests are expected to increase in the future, which will require more time of the Commission's legal staff.
- The number of complaints and investigations are also expected to increase, which will have to be handled by the Commission's legal staff, and eventually have to be pursued through the administrative hearings process, the Legislative Ethics Committee, or the Judicial Standards Commission.
- Much of the information supporting the Commission's advisory opinion decisions and SEIs research have not been entered in the Commission database, and will require staff time to enter all of the information in the database.

Further, the Commission's requirement to prepare an annual summary of the advisory opinions it issues and edit all issued opinions for publication and review all boards and commissions to determine whether they are subject to the requirements of the Ethics Act will also require additional staffing resources. The Commission was fully staffed as

of August 31, 2007; however, the two positions that were responsible for the education program are currently vacant. Further, the wide range of other duties that many of the staff routinely performs takes time away from the Commission's primary responsibilities of reviewing and approving SEIs, evaluating and responding to requests for advisory opinions, providing education presentations, investigating complaints, and enforcing the requirements of the Ethics Act and Lobbying Law.

CONCLUSIONS

As a result of the Ethics Act and Lobbying Law, the workload for the Ethics Commission increased significantly in 2007. Thus, the Commission's staff was unable to keep up with the work; resulting in a significant backlog in the review and approval of SEIs and responding to requests for advisory opinions. The backlog was equal to more than two staff years of work. The Commission's senior managers also accrued two-thirds of a staff year in overtime during the first 8 months of 2007. In contrast, the workloads for other areas are projected to decrease or will no longer be necessary beyond 2007. The decreased workload equals about two-thirds of a staff year. Table 7 shows that the immediate need for additional staff is two FTEs.

While the number and complexity of advisory opinion requests may increase in future years, it is too early to determine the extent that the Commission's workload may increase. It is also too early to know the staff time necessary for the overall complaint process and the number of complaints that the Commission may have to investigate and pursue through administrative hearings, the Legislative Ethics Committee, or the Judicial Standards Commission. Similarly, the time needed for summarizing and publishing issued advisory opinions and reviewing the missions of all boards and commissions can not be quantified. While the Commission's senior manager's predicted increased workload may be valid, the amount of additional staff time required cannot be quantified until the Commission can show that the numbers of advisory opinions and complaints have increased and document the time needed to review the missions of all boards and commissions. Currently, the Commission does not have defined service statements for its various duties and responsibilities that fully define what the tasks are, how the work should be performed, and what the expected outcomes of each task/duty are. Service statements would be extremely beneficial to the Commission in quantifying its overall workload, especially for its primary duties, and the corresponding staff time needed for each duty. This type of information would provide the Commission with information to justify additional staff which it may needed in the future. Because the Commission's actual workload experience was limited to 8 months for this study, a second staffing analysis should be performed during late 2008.

RECOMMENDATIONS

OSBM recommends that the Ethics Commission fill the two vacant education positions which will free up the time of other staff who are currently handling the education duties. In filling the Education Director's position, OSBM recommends that the Commission consider classifying the position as a lawyer/educator so that time not spent on educational matters can be applied toward handling advisory opinions, complaints, and other legal issues. OSBM also recommends that the Commission request two additional positions from the General Assembly through the budgetary process. These positions should be a lawyer and a paralegal. Further, OSBM recommends that the Commission prepare service statements for all of its duties that fully define what the duties are, how the work is performed, and the outcome of each duty which will provide the Commission with management tools to better quantify its overall workload and justify future staffing needs. OSBM also recommends that a second staffing analysis of the Commission be performed in late 2008.

Table 7

Net Staffing Needs

Staffing Needs	FTEs
Increase:	
Backlog for SEIs	1.47
Backlog Lobbying Advisory Opinions	.51
Backlog Ethics Advisory Opinions	.07
Overtime	.66
Total Increase	2.72
Decrease:	
Review and approval of SEIs	.30
Ethics education	.20
Start new Ethics Commission	.15
Total Decrease	.95
Net Increase	2.07

Source: OSBM's analysis of Commission data

ACKNOWLEDGEMENTS

OSBM wishes to express its appreciation to the management and staff of the North Carolina State Ethics Commission for their cooperation during the performance of this study.

North Carolina State Ethics Commission

Obligation of Officials and Employees
Covered by the State Government Ethics Act

Public Officials and Employees Subject to Chapter 138A (State Government Ethics Act)	Ethical Standards (Conflict Provisions)	Gifts from Lobbyists	Gifts from "Interested Persons"	Disclosure (Statements of Economic Interest)	Inquiries and Complaints	Full Hearings of Complaints	Advisory Opinions	Mandatory Education	Consequences/ Penalties
Judicial Officers	•			•	•				•
Legislatures	•	•		•	•		•	•	•
Legislative Employees	•	•			•		•	•	•
"Public Servants"									
Constitutional Officers and their	•	•	•	•	•	•	•	•	•
Chief Deputies/Administrative Assistants	•	•	•	•	•	•	•	•	•
Confidential Assistants/Secretaries	•	•	•	•	•	•	•	•	•
Governor's Office Employees	•	•	•	•	•	•	•	•	•
Exempt Employees Designated by Governor	•	•	•	•	•	•	•	•	•
Heads of Principal Departments and their	•	•	•	•	•	•	•	•	•
Chief Deputies/Administrative Assistants	•	•	•	•	•	•	•	•	•
Confidential Assistants/Secretaries	•	•	•	•	•	•	•	•	•
Exempt Employees and their Secretaries	•	•	•	•	•	•	•	•	•
Judicial Employees	•	•	•	•	•	•	•	•	•
Boards and Commissions									
Voting members of Non-Advisory boards	•	•	•	•	•	•	•	•	•
State Ethics Commission Members	•	•	•	•	•	•	•	•	•
UNC System									
Board of Governors -- Voting Members	•	•	•	•	•	•	•	•	•
President and Vice-Presidents	•	•	•	•	•	•	•	•	•
Chancellors & Vice Chancellors of all Institutions	•	•	•	•	•	•	•	•	•
Trustees--Voting Members of all Institutions	•	•	•	•	•	•	•	•	•
NC Community College System (NCCCS)									
State Board -- Voting Members	•	•	•	•	•	•	•	•	•
President & Chief Financial Officers of NCCCS	•	•	•	•	•	•	•	•	•
President, Chief Financial Officer of each College	•	•	•	•	•	•	•	•	•
Trustees -- Voting Members of each College	•	•	•	•	•	•	•	•	•
Other Public Servants									
Contract Employees working in or against covered positions	•	•	•	•	•	•	•	•	•

Revised 11-19-06

Source: North Carolina State Ethics Commission

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**ORGANIZATIONAL CLIMATE STUDY
NORTH CAROLINA ETHICS COMMISSION**

**PREPARED BY
DIANNE SORTINI
HUMAN RESOURCES CONSULTANT
June 11, 2008**

Purpose:

This proposal outlines the recommendations suitable for the identification and implementation of methodologies necessary to identify and address key issues creating barriers to the success of the Ethics Commission initiatives. Ultimately, the purpose of this organizational study is to identify root causes for employee dissatisfaction and explore alternative organizational realignments that will result in more productive, effective and efficient processes as well as utilization of individuals and their respective skills.

The following conclusions and recommendations are based on information and perspectives gathered through a series of meetings with the executive, professional and administrative employees of the Commission; a review of the current structure of the Commission as well as an overview of individual responsibilities of all current employees.

Conclusions:

Lack of Infrastructure - While basic procedures exist for day to day processes, there are no internal policies or procedures addressing or clarifying essential human resource practices. Specific examples include no request/approval process for use of leave, unclear compensatory practices, non-existent performance management program and no established disciplinary procedure or complaint/grievance procedure.

Work Flow Issues - Based on discussions with several of the staff members, there appear to be redundancies in the day to day work procedures. Simplistic tasks such as filing are reported to have to go through approval of both the supervisor and administration before being completed. Other processes (particularly with the evaluation of SEIs) are reviewed, edited and revised multiple times - significantly slowing the notification process. It is not determined whether these issues are a result of performance or control factors.

Competency Factors - Primarily within the administrative support group there are deficiencies in training/education and coaching on critical skills necessary to perform at an acceptable or exceptional level. This may be attributed in part to turnover, inexperienced staff and a lack of supervisory experience. There are no clearly defined goals and/or responsibilities. Without an established performance management program, employees are unable to determine the expectations for successfully meeting or exceeding organizational expectations.

Limited Resources - As evidenced by the OSBM study conducted in January 2008, there is a need for additional staffing. I agree this is critical to relieving the sense of being overwhelmed with the workload and positively impact the efficient delivery of services to clients. However, the current office space is inadequate and additional staffing will add to this housing challenge. It is further concluded that there is an imbalance in workloads and responsibilities between the Assistant Director/Compliance Officer position and that of the Lobbying Director position. While both positions are classified and compensated at the same level, the Director/Compliance Officer position has been assigned responsibility for oversight of the majority of the department's day to day activities (particularly with Education and the SEI responsibilities).

Communication Barriers - Throughout the assessment, non-existent and/or negative

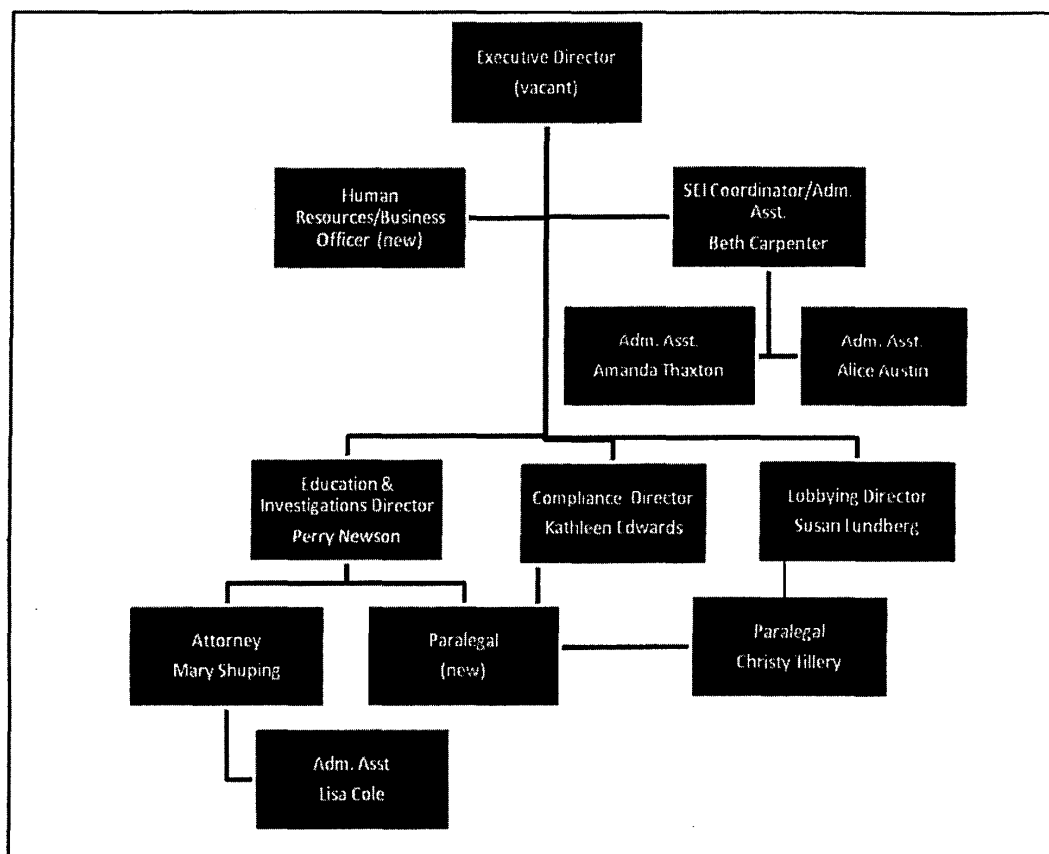
Communication was the constant theme raised by all members of the Commission. Trust, respect, empowerment, sharing of information/knowledge, and inclusion in decision making are believed by most interviewed to be non-existent within the Commission. Currently, there are no scheduled meetings between the professional level positions (management) and staff. Interactions occur primarily when there is disagreement or dissatisfaction with a decision or when there is a perceived slight. Unacceptable performance and/or behavioral issues on the part of staff members are not addressed in a timely or appropriate manner which often results in frustration on the part of both management and employee.

Organizational Climate - Based on the above conclusions, it is determined that the department is somewhat hierarchical and/or autocratic in nature. Leaders and employees demonstrate little trust and confidence in others. Employees, in particular, do not believe they have a means of having their job related concerns or issues addressed adequately.

Proposal for Organization Realignment:

As referenced earlier, the scope of responsibilities and workload has reached a point where significant change is necessary to successfully meet the challenges, goals and expectations of the Ethics Commission. Further, it has been determined that the current staffing, assignments and relationships within the Commission are inadequate to meet these challenges. The current employees of the Commission have expertise and skills in specific areas; however, there are opportunities to better link skills and abilities with positions, as well as recruit for additional talent to create the ideal organization for the purpose of meeting the long term goals of the Commission. The following structure is proposed for consideration:

Option A:



Justification:

- As a result of insufficient staffing, vacancies and workloads there have been setbacks particularly within the Education Unit. This area is the backbone of the organization and if appropriately staffed would have a direct impact on the work and success of the entire Commission. The current Executive Director has

expertise and interest in this arena. Further, his credentials fulfill the recommendation for an attorney/educator referenced in the OSBM Management Study conducted in January 2008.

- Currently, human resources functions such as performance management, budget, Beacon, discipline, leave issues (FMLA, Workers Comp, etc.) benefits, etc. are provided on a limited basis as additional assignments to available staff. A number of these responsibilities have been delegated to the Compliance Director impacting on time needed for legal matters. With the anticipated growth of the Commission, these responsibilities will increase and potentially become more complex. There is a definitive need for expertise both in the HR arena and in overseeing the day to day operations such as processing of SEIs, etc.
- It is recommended that the support staff, including the current supervisor position, report directly to the HR/Business Officer position to enable the director level positions to function primarily on their areas of legal responsibility.
- The existing paralegal position is insufficient to support the needs of the professional staff. The addition of a second paralegal position would provide both the legal and administrative personnel with much needed assistance.
- As funds become available, additional attorney positions would be warranted (see OSBM Management Study).

Option B:

The current Executive Director, Perry Newson, would remain in the position, with Mary Shuping assuming the Education Director position. There would be a need to add an additional attorney position (new) to the Education unit. All remaining positions (existing and new) should remain as stipulated in the above organizational chart.

Justification

- While "Option A" best reflects the "ideal organization", this option would provide a means for meeting the critical need for efficient and effective management of the support staff through the HR/Business Officer position. Further, this option would give relief to the legal staff by eliminating supervisory responsibilities from current duties.

The above is a simplistic view of what the basic organizational structure(s) would look like. All of the positions referenced above are SPA (Subject to the State Personnel Act). Therefore, Option A in particular should be reviewed by the Office of State Personnel to identify any potential classification and/or salary issues that may need to be resolved prior to implementation.

Intermediate Steps:

- 1) Due to recent interpersonal and business communication concerns raised by Ethics employees, there have been several one-on-one meetings with the consultant. To address these concerns, an initial meeting attended by the immediate supervisor and the support staff convened on May 21, 2008. This initial meeting resulted in the group proposing an internal communication plan for review and approval of management. Additional meetings will be facilitated addressing trust and respect issues.
- 2) The consultant, along with the Executive Director are scheduling a facilitated retreat for the professional staff in July to begin the process of proactively identifying key issues impacting success, identify and

develop collaborative strategies for improvement of targeted issues.

Additional recommendations:

- a) Management should reinstitute collaboration meetings on a scheduled basis between current directors and include other employees on an as needed basis.
- b) General staff meetings should be on a regularly scheduled basis (monthly).
- c) Staff should limit email communications to only that which is necessary.
- d) The consultant, in collaboration with Ethics staff and OSP staff, should develop and distribute employee relations policies and procedures to ensure compliance with state and federal law. Training and coaching should also be provided to supervisors and managers in the implementation of such policies and procedures.

ORDERING INFORMATION

Copies of this report may be obtained by contacting the:

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