



## STATE ETHICS COMMISSION

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ROBERT L. FARMER  
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September 28, 2011

The Honorable Beverly Perdue  
Governor of North Carolina  
20301 Mail Service Center  
Raleigh, NC 27699-0301

*Via email*

Re: Evaluation of Statement of Economic Interest Filed By Mr. Jonathan K. Bivens  
Prospective Appointee – Sedimentation Control Commission

Dear Governor Perdue:

Our office is in receipt of Mr. Jonathan K. Bivens' 2011 Statement of Economic Interest as a prospective appointee to the **Sedimentation Control Commission** ("Commission"). We 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").

**We 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 Sedimentation Control Commission was established to develop and administer a comprehensive State erosion and sedimentation control program. The Commission also assists local and state governmental agencies in developing erosion and sedimentation control programs, and prepares publications and other materials dealing with sedimentation control techniques.

The Ethics Act establishes ethical standards for certain public servants, including conflict of interest standards. 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. 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.

Mr. Bivens will fill the role of a person nominated by the Carolinas Branch of the Associated General Contractors of America on the Commission. He is a Vice President with S. T. Wooten Corporation, a construction company that is subject to the rules and regulations of the Commission. As such, he has the potential for a conflict of interest. In light of this interest, Mr. Bivens should exercise appropriate caution should S. T. Wooten Corporation come before the Commission for official action. This would include recusing himself to the extent that this interest would influence or could reasonably appear to influence his actions.

In addition to the conflicts standards noted above, 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 gift rule are set out in G.S. 138A-32(e).

The Honorable Beverly Perdue

September 28, 2011

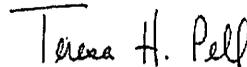
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Pursuant to 138A-15 (c): When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(e) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and 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,



Teresa H. Pell  
SEI Attorney

THP:bc

cc: Mr. Jonathan K. Bivens

Enclosure: Ethics Education Flyer