



LEGISLATIVE ETHICS COMMITTEE

COMPLAINT FORM

Date Received:
Case Number:

The Legislative Ethics Committee has the authority to investigate complaints against legislators for alleged violations of matters covered by Chapter 138A of the North Carolina General Statutes (“The State Government Ethics Act) or Article 14 of Chapter 120 (Legislative Ethics Act).

CONTACT INFORMATION

(Please Type or Print clearly)

The State Government Ethics Act requires that a complaint contain the name, address, and telephone number of the person filing the complaint. The Legislative Ethics Committee cannot accept anonymous complaints.

Printed Name: Bob Hall, aka Robert H. Hall, a registered voter in Orange County
Address: 5706 Old Stony Way, Durham, NC 27705
Telephone No: (919) 489-1931

NATURE OF THE COMPLAINT

The Legislative Ethics Committee only has jurisdiction over legislators. It does not have jurisdiction over legislative employees, public servants, or judicial officers.

1. Identify the person who you believe may have violated specific provisions of the State Government Ethics Act or the Legislative Ethics Act: Name: NC Senator Philip E. Berger
Office of the person against whom this complaint is filed: State Senator & Senate President Pro Tem
2. Provide the date(s) the alleged violation occurred: August 2016 through December 2019
3. Please provide a concise statement of the nature of your complaint **and** specific facts indicating that a violation of Chapter 138A (the State Government Ethics Act) *or* Chapter 120 (the Legislative Ethics Act) of the North Carolina General Statutes has occurred. Please provide as much detail as possible and attach any documentation you have that supports your claim.

According to NCGS 138A-31 (“Use of public position for private gain”), a state legislator “shall not knowingly use [his or her] public position in an official action or legislative action that will result in financial benefit” specifically for the legislator or the legislator’s family members.

According to NCGS 138A-3(56), “official action” is defined as “Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.”

Based on the definition above, “official action” would include a legislator’s decisions involved in the submission of a document to the Legislative Services Office, such as an invoice or claim for per diem expenses. If a legislator decided to manipulate his or her submission for per diem expenses solely to gain additional financial benefit for the legislator, then it seems reasonable that the Legislative Ethics Committee would take action to enforce the ethical standards in the State Government Ethics Act and censure the legislator’s “use of public office for private gain.”

Similarly, it seems reasonable that the Legislative Ethics Committee would take enforcement action against a legislator’s decision to manipulate the expenses on a campaign-finance report that the legislator caused to be submitted to the State Board of Election in order to gain additional financial benefit for himself. Such official action taken by the legislator is an apparent use of his public position for private gain. It is self-dealing, unethical and corrupt.

I am filing this complaint regarding what appears to be the unethical and corrupt conduct of Sen. Phil Berger in manipulating submissions to the State Board of Elections in order to personally gain tens of thousands of dollars for himself. Upon information and belief, here is a statement of the facts as I know them:

- On May 19, 2016, Philip E. Berger and his wife Patricia H. Berger purchased a townhouse at 1535 Yarborough Park Drive, Raleigh, for \$250,000. On the same day, Sen. and Mrs. Berger signed a Deed of Trust with NewBridge Bank for a mortgage loan of \$224,910 for the YPD townhouse.
- On June 25, 2016, Sen. Berger’s attorney Steven B. Long filed Articles of Organization with the NC Secretary of State for YPD Properties, LLC. Its principal office is located at Sen. Berger’s law firm office address in Eden. In subsequent annual filings with the Secretary of State, Philip E. Berger is identified as YPD’s manager and YPD’s business is described as “property management.”
- On August 8, 2016, the Philip E. Berger Committee (Sen. Berger’s campaign committee) began sending payments to YPD Properties, LLC. Campaign finance reports that Sen. Berger authorized for submission to the State Board of Elections for activity up to Dec. 31, 2019, show that monthly payments to YPD continued to Dec. 5, 2019; they are most often labeled as payments for “Rent.”
- From August 8, 2016 through December 5, 2019, Sen. Berger’s campaign has sent a total of \$73,500 to YPD Properties, LLC, which Sen. Berger owns. Even though payments are labeled for “Rent,” the payments are for the YPD property that the Bergers own and do not rent. In fact, their mortgage agreement says they may not rent out the property. By authorizing the submission of deceptive campaign reports, Sen. Berger has taken official action in his position as a legislator to use his campaign to transfer money through an intermediary to benefit himself financially.
- The self-dealing arrangement is made plain on the Statements of Economic Interests that Sen. Berger has filed since 2017. Sen. Berger lists himself as “Member/Manager” of YPD Properties, LLC and also says he pays taxes for his income from YPD Properties.
- On December 5, 2019, Sen. and Mrs. Berger sold the Yarborough Park Drive townhouse for \$330,000 to T. Tate Apodaca, a lobbyist and son of lobbyist and former state Senator Tom Apodaca. That’s \$80,000 more than the \$250,000 the Bergers’ paid for the townhouse in 2016, but the \$330,000 price is comparable to other sales in the YPD townhouse development at the time.
- On September 26, 2019, Sen. and Mrs. Berger purchased a condominium in Raleigh – Unit 726 at 400 W. North Street – for \$370,000. On December 31, 2019, they paid off the mortgage loan for the Yarborough Park Drive townhouse and have now moved into the North Street condo.

Through his official action of authorizing the submission of campaign reports that mask profit-taking as expenditures for rent, Sen. Berger has, in my view, unethically transferred \$73,500 of his campaign donors’ money to himself, in apparent violation of NCGS 138A-31. Whether or not Sen. Berger’s actions violate any of the campaign finance laws in NCGS Chapter 163 is not the subject of this complaint nor the purview of the Legislative Ethics Committee. (I discuss issues related to

campaign finance law below in response to #6.) This complaint focuses solely on apparent violations of the ethical standards set forth in NCGS Chapter 138A.

There may be a second violation of NCGS 138A. Because these cleverly manipulated “rent” payments provided Sen. Berger with \$73,500 toward the \$250,000 purchase price of the YPD townhouse, his actual cost was closer to \$176,500. Consequently, when lobbyist Tate Apodaca paid \$330,000 for the townhouse, he helped Sen. Berger reap a profit in excess of \$150,000 (\$330,000 minus \$176,500), which is far above the \$80,000 average market price increase from 2016 to 2019 for properties in that development – and, therefore, arguably a handsome gift from the lobbyist, in violation of NCGS 138A-32. While this conclusion may seem like a stretch of the law, it’s important for the Committee to recognize that the public perception of Sen. Berger’s profit-taking, with the help of a lobbyist, can harm the reputation of all legislators if corrective action is not taken.

The statement of facts above are supported by public documents that I can furnish if the Committee has difficulty downloading them. Here are the relevant links:

- Campaign finance reports for Sen. Berger:
<https://cf.ncsbe.gov/CFOrgLkup/DocumentGeneralResult/?SID=STA-C0854N-C-001&OGID=1159>
- Wake County property records: <http://services.wakegov.com/booksweb/genextsearch.aspx>
Purchase of Yarborough Park Drive townhouse:
<http://services.wakegov.com/booksweb/DocView.aspx?DocID=110188364&RecordDate=05/19/2016>
Sale of Yarborough Park Drive townhouse:
<http://services.wakegov.com/booksweb/DocView.aspx?DocID=110866979&RecordDate=12/05/2019>
Purchase of condo at 400 W. North Street, Unit 726:
<http://services.wakegov.com/booksweb/DocView.aspx?DocID=110831103&RecordDate=09/30/2019>
- Terms of the Mortgage Agreement for the Yarborough Park Drive townhouse (see p. 13):
<http://services.wakegov.com/booksweb/DocView.aspx?DocID=110188365&RecordDate=05/19/2016>
- Articles of incorporation and annual reports for YPD Properties, filed with NC Secretary of State:
https://www.sosnc.gov/online_services/search/Business_Registration_Results
- Statements of Economic Interests for Philip E. Berger Sr.: <https://et.ncsbe.gov/Search?id=SEI>

4. If possible, check the statutory provision you believe has been violated (*check all that apply*):

Chapter 138A: the State Government Ethics Act

✓ Use of public position for private gain (§138A-31)

✓ (Possibly) Receipt of a prohibited gift (§138A-32)

Conflict of interest while taking legislative action (§138A-37)

5. Provide the names of other persons who may have information that would support your allegations.

Possibly confer with State Ethics Commission Executive Director Kathleen Edwards on the interpretation of “official action” in NCGS 138A; and with attorney Lindsey Wakely at the State Board of Elections on formal Advisory Opinions and state statutes that address personal use of campaign money, in contrast to email guidance. Examine the documents referenced in my statement of facts in #3 above. Ask anyone on the street if it’s ethical for a legislator to have campaign reports submitted with contrived expense entries for the purpose of transferring money into the legislator’s pocket.

6. State whether the individuals and conduct complained of have been the subject of a prior complaint or proceeding of any kind. If so, state the place where the prior complaint was filed and its current status.

I [filed a complaint](#) with the State Board of Elections on November 5, 2019, calling for an investigation of Sen. Phil Berger’s apparent violation of NCGS 163-278.16B by using his campaign funds to

purchase a Raleigh townhouse. I do not know the current status of that complaint because State Board investigations are confidential. In response to my complaint, Sen. Berger's attorney Steven Long told the media that Berger's use of a LLC to pay himself for his townhouse was legal because the executive director of the State Board said it complied with state law. However, then-executive director Kim Strach did not provide him with an official Advisory Opinion that would protect such transactions from prosecution. Rather, she simply sent Mr. Long an [email in July 2016](#) stating that *"there are no statutes in Chapter 163 that define the type of entity that may act as a landlord for a candidate or other political committee. Therefore, there is no prohibition against paying the LLC, even if the property owners are Senator and Mrs. Berger."*

Importantly, on November 12, 2019, Karen Brinson Bell, the current executive director of the State Board of Elections, issued a [formal Advisory Opinion](#) regarding a different kind of self-dealing which states, *"There is no part of N.C.G.S. § 163-278.16B that authorizes a candidate to pay himself or herself for his or her own 'services' to the campaign."* Chapter 163 also states that funds in a campaign account shall not go to the candidate's heirs upon the death of a candidate. The General Assembly did not intend for politicians to enrich themselves with their campaign donors' money; in fact, NCGS 163-278.16B was adopted precisely to stop that practice.

Even if Kim Strach's 2016 email (or Mr. Long's subsequent telephone call with State Board staff) provides a temporary safe harbor for Sen. Berger in regard to NCGS Chapter 163, it does not provide immunity from Chapter 138A. Sen. Berger's decision to create a LLC and then submit contrived campaign finance reports in order to pay himself tens of thousands of dollars via the LLC is an apparent corrupt and unethical use of his office for personal financial gain. It's the type of manipulative, self-serving "official action" that the Legislative Ethics Commission should declare unethical and stop before more legislators follow its model to enrich themselves.

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SWORN COMPLAINT

I hereby swear or affirm, under penalty of perjury and other penalties established by NC law, that the information provided in this complaint is true, correct, complete, and of my own personal knowledge, or if not, I believe the information to be true based upon: research described above.

Signature

Date:

STATE OF NORTH CAROLINA
COUNTY OF _____

SWORN TO (or affirmed) and subscribed before me this day by: _____

Signature

Date: _____

Official Signature of Notary Public: _____

(Official Seal)

Typed or Printed Notary Name: _____

My Commission Expires: _____