



State of North Carolina

Department of Justice
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ATTORNEY GENERAL

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December 23, 2010

Mr. Robert F. Orr
Ms. Jeanette K. Doran
North Carolina Institute for Constitutional Law
333 E. Six Forks Road, Suite 180
Raleigh, NC 27609

Via Hand Delivery

Re: *NCICL v. State of N.C., et al., 10 CVS 10416, Wake County*

Dear Mr. Orr and Ms. Doran:

In compliance with Judge Gessner's Order to provide a "complete explanation of what procedural actions have taken place in regard to any lobbying law violation including fines levied or referrals to the District Attorney of Wake County, arising out of the allegations made by Plaintiff," we have enclosed a copy of Enforcement Order No. 2010-09, Department of the Secretary of State Lobbying Compliance Division and Spirit AeroSystems & J. Michael Mullis and Enforcement Order No. 2010-09, *Nunc Pro Tunc* Amendment, Department of the Secretary of State Lobbying Compliance Division and Spirit AeroSystems, Inc. dba Spirit AeroSystems, North Carolina, Inc. & J. Michael Mullis.

Please contact me if you have questions.

Sincerely,

A handwritten signature in black ink that reads "Melissa H. Taylor".

Melissa H. Taylor
Assistant Attorney General

Enclosures

Department of the Secretary of State
Lobbying Compliance Division

And

Enforcement Order No. 2010-09
Nunc Pro Tunc Amendment

Spirit AeroSystems, Inc. dba Spirit
AeroSystems, North Carolina, Inc. &
J. Michael Mullis

NORTH CAROLINA SECRETARY OF STATE ORDER

In reviewing the North Carolina Secretary of State's Enforcement Order No. 2010-09 in anticipation of a hearing in the Wake County Superior Court scheduled for November 12, 2010, it was observed that an unnecessary word, "exemption," was inadvertently included in Finding of Fact Number 16, Line 4.

This Order amends the Finding of Fact Number 16, Line 4, by deleting the word "exemption" and is executed *nunc pro tunc* to express the intention existing on March 26, 2010. Therefore, Finding of Fact Number 16 now reads as follows:

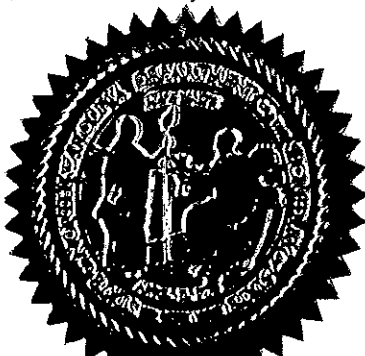
It was later determined by Commerce Department representatives from information gathered from Revenue Department representatives that the answer to the first question was favorable and that construction materials for all GTPA owned facilities were exempt from State and local sales tax.

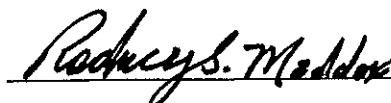
Furthermore, the caption and the footer are also amended *nunc pro tunc* in order to completely identify the enforcement order as intended on March 26, 2010 and shall read as follows: Spirit AeroSystems, Inc. dba Spirit AeroSystems, North Carolina, Inc. and J. Michael Mullis.

NOW, THEREFORE, by the power vested by the Constitution and laws of the State of North Carolina, IT IS ORDERED that this Order shall become final upon entry.

WITNESS MY HAND AND THE OFFICIAL SEAL of the North Carolina

Department of the Secretary of State, this the 10th day of November 2010 *nunc pro tunc* March 26, 2010.





RODNEY S. MADDOX
CHIEF DEPUTY SECRETARY OF STATE
OF NORTH CAROLINA

**Department of the Secretary of State
Lobbying Compliance Division**

And

Enforcement Order No. 2010-09

Spirit AeroSystems & J. Michael Mullis

NORTH CAROLINA SECRETARY OF STATE ORDER

WHEREAS, the Department is a department of the State of North Carolina and the Division is the office therein authorized to register lobbyists and lobbyist principals, to receive and review registrant reports, to enforce Articles 2, 4, 6, and 8 of Chapter 120C of the North Carolina General Statutes, and to impose civil fines and late filing fees, and

WHEREAS, Spirit AeroSystems, Inc., ("Spirit") is a Delaware corporation, d/b/a Spirit AeroSystems, North Carolina, Inc., and in regard to lobbying, the Department has both subject matter and personal jurisdiction over Spirit; and

WHEREAS, J. Michael Mullis ("Mike Mullis"), is a resident of Tennessee and is the president of J.M. Mullis, Inc. ("J.M. Mullis"), a Tennessee corporation, and in regard to lobbying, the Department has both subject matter and personal jurisdiction over Mike Mullis and J.M. Mullis; and

WHEREAS, Robert F. Orr, on behalf of the North Carolina Institute for Constitutional Law filed a formal complaint on July 16, 2009, alleging that Spirit and Mike Mullis violated the Lobbying Act; and

WHEREAS, the Department conducted an inquiry to determine if lobbying occurred by Mike Mullis, on behalf of Spirit, in violation of the Lobbying Act when Spirit had applied to the N.C. Department of Commerce for certain economic development incentive grants, and upon conclusion of the Department's inquiry, the Secretary of State makes the following:

FINDINGS OF FACT

1. Spirit is a global supplier of commercial airplane assemblies and components.
2. J.M. Mullis is a Tennessee based professional project location firm that specializes in representing those in the aerospace industry looking to site or relocate facilities. Mike Mullis is the president of J.M. Mullis and was the contact person for Spirit with state government officials.
3. On June 1, 2009, the Lobbying Compliance Division ("Division") received a public records request from Donald Cowan, on behalf of the NC Institute for Constitutional Law ("NCIC") regarding whether Spirit had registered as a principal and Mike Mullis as its lobbyist. He asked for "copies of all documents relating to lobbyist activity for and on behalf of Spirit Aerosystems."
4. On June 3, 2009, Joal H. Broun, Lobbying Compliance Division Director, responded indicating that the Division did not have any lobbying filings related to Spirit. On that same day, Mr. Cowan asked, "if a principal or lobbyist fails to register lobbying activity, does the Lobbying Compliance Division take action against those individuals?"
5. On June 9, 2009, Mr. Cowan, on behalf of NCIC, sent another email as follows:

Just to be certain, the Secretary of State has no lobbying filings related to Spirit Aerosystems, whether protected as an economic development initiative or not. Is that correct?

Also, if a principal or lobbyist fails to register lobbying activity, does the Lobbying Compliance Division take action against those individuals?
6. On that same date, Director Broun responded:

If there is a complaint that a principal or lobbyist fails to register, the Lobbying Compliance Division opens an investigation and investigates pursuant to Article 6 of the Lobbying Act.

7. On July 16, 2009, Robert Orr, on behalf of NCIC, filed a formal complaint, alleging that Spirit and J.M. Mullis had violated the registration and the reporting portions of the Lobbying Act. He specifically alleged:

- a. That Mr. Mullis and his company attempted to influence then Governor Mike Easley, Secretary of Commerce Jim Fain, and other officials in the Office of the Governor and the Department of Commerce throughout the project location process to receive economic incentives for AeroSystems;
- b. That Mr. Mullis failed to register as a lobbyist as required by N.C. Gen. Stat. §120C-200 or report any lobbying expenditures as required by N.C. Gen. Stat. §120C-400; and,
- c. That Spirit AeroSystems also failed register as a lobbyist's principal pursuant to N.C. Gen. Stat. §120C-26 or file any lobbyist's principal's reports pursuant to N.C. Gen. Stat. §120C-403.

8. Pursuant to law, North Carolina has a set of incentive packages that provides for waivers of some taxes or direct financial grants to a business. For example, Job Development Investment Grant¹ ("JDIG") grants are cash grants to new and expanding businesses.

- a. Criteria for a JDIG grant require that the new or expanding business will provide economic benefits to the State and require the grantee to carry out the project in North Carolina.
- b. The JDIG provides sustained annual grants to new and expanding businesses measured against a percentage of withholding taxes paid by new employees.

¹ N.C. Gen. Stat. §143B-437.50 *et. seq.* (2010).

- c. The Economic Investment Committee created by the General Assembly determines whether an application merits the award of a JDIG.
 - d. The Executive Committee consists of the Secretaries of Commerce and Revenue, Director of the Office of State Budget and Management, and two private sector members appointed by the N.C. General Assembly.
 - e. There is a cap on the amount of each grant as well as the number of grants that the N.C. Department of Commerce can award per year.
 - f. The JDIG Act requires that the recipient business maintain operations at the project location, or at another approved site, for at least 150% of the term of the grant.
 - g. A JDIG includes a claw-back provision to recapture all or part of the grant, at the committee's discretion, if the business fails to remain at the site for the required time.
 - h. The State Attorney General must review, approve, and sign the final JDIG agreement.
9. The One North Carolina Fund² (formerly the Governor's Industrial Recruitment Competitiveness Fund) helps recruit and expand jobs in certain, knowledge-driven industries.
- a. It also provides financial assistance to those businesses or industries deemed vital to a healthy economy that are making significant efforts to expand operations in North Carolina.

² N.C. Gen. Stat. §143B-437.70 *et. seq.* (2010).

- b. The fund currently consists of appropriations made by the N.C. General Assembly that are for companies seeking to undertake new expansion or locate new operations in the state.
 - c. The fund grant awarding process is competitive and the location or expansion must be in competition with another location outside the state.
 - d. For a company to be considered it must agree to meet an average wage test and the local units of government (city or county) must agree to match financial assistance to the company. With this particular incentive, the local government makes the application and the Secretary of Commerce makes the determination.
10. In 2007 and throughout the first five months of 2008, Spirit engaged J.M. Mullis to conduct its national site selection process for a new manufacturing facility. Mike Mullis was Spirit's representative for this site selection project. The Commerce Department, upon learning of the Spirit site selection efforts, contacted Mullis. He already knew the State's economic development incentive packages and its Commerce Department economic development representatives from an earlier site selection process for Boeing Aerospace.
11. During the latter part of 2007, Spirit representatives, including Mullis, had a series of meetings with Commerce Department representatives to discuss the incentives package that North Carolina would offer.
- a. Some of the meetings also involved attendance by the Governor, members of the Cabinet, and community college representatives. In the first five months of 2008, Spirit and the Department of Commerce discussed the terms of the requested incentives as a part of the incentives application process.

- b. The Commerce Department provided a series of visits from Spirit officials to meet with state and local officials so that they could woo Spirit in to filing an application for incentives.
- c. On or about August 17, 2007, then Governor Easley wrote to Mike Mullis, outlining the North Carolina's strengths in order to persuade him to recommend North Carolina as the appropriate site for the manufacturing facility. The signatories for that letter were:
 - i. Erskine Bowles, President, University System of North Carolina
 - ii. Eugene A. Conti, Jr. Vice Chairman, Global TransPark Authority
 - iii. James T. Fain, III, Secretary of Commerce
 - iv. Richard A. Holder, Chairman, Golden Leaf Foundation
 - v. Martin Lancaster, President, North Carolina Community College system

12. During the course of this inquiry, the Division interviewed the following individuals:

- a. Former Secretary of Commerce, James Fain
- b. Former N.C. Department of Commerce General Counsel Donald Hobart
- c. Current Secretary of Commerce J. Keith Crisco

13. The Division reviewed documents provided to it by Spirit, Mr. Orr, and other documents obtained as a part of the inquiry.

14. Only one of these documents presented a hint that lobbying had occurred and the Division investigated further as shown below.

15. On April 25, 2008, Mullis sent an email to Commerce representatives and N.C. Department of Justice attorneys, asking:

Please provide a response to these items-

1. State and local sales tax exemption on all construction materials for all GTPA owned facilities- please confirm that this exemption is in place; or if not, that Commerce and the AG's Office will proceed to get the necessary legislation passed this coming session to grant such an exemption.
 2. Procedure and timing for GTPA to provide a legal description of the approximate 307-acre site.
 3. A copy of the updated Grant Application document between GLF and GTPA. We need a copy of this document.
16. It was later determined by Commerce Department representatives from information gathered from Revenue Department representatives that the answer to the first question was favorable and that construction materials for all GTPA owned facilities were exempt from State and local sales tax exemption. Upon completion of the phase of the inquiry no lobbying was revealed.
17. The Division's review of the documents and the interview results indicate that the communications fell within two categories:
- a. The State wooing Spirit through Mike Mullis by presenting the positive reasons for relocation to North Carolina and Spirit's staff reaction to their visits and meetings with North Carolina officials; and,
 - b. Mike Mullis and the State officials discussing the terms of the JDIG grant application.
18. On May 14, 2008, Governor Mike Easley's office distributed a press release announcing that Spirit would open a manufacturing plant at the N.C. Global TransPark in Kinston. Spirit received grants and indirect incentives from the State³:

³1. Five million dollar grant from the state One North Carolina Fund; and

2. Up to Twenty million dollars in JDIG grants if the company meets the required performance targets for employment and work benefits.

3. A One Hundred Million dollar loan from the Golden Leaf Foundation to the Global TransPark Authority to construct the manufacturing facility itself.

19. The Lobbying Compliance Division was unable to discover any lobbying and only found activities typically present in North Carolina's official incentive grant application and award process.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter of this proceeding and over the lobbyist principals.
2. After reviewing interviews and Spirit documents, the Department concludes that the activities and events that occurred were not lobbying and no violation exists of the Lobbying Act, §120C-200, §120C-206, §120C-402, and §120C-403.
3. The Department finds that the entry of this Final Order is necessary and appropriate, in the public interest, and consistent with the purposes, policies, and provisions of the North Carolina Lobbying Law, as amended.

NOW, THEREFORE, by the power vested by the Constitution and laws of the State of North Carolina,

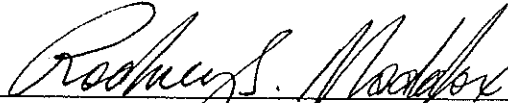
IT IS ORDERED:

That the inquiry into Spirit AeroSystems, Inc. and J. Michael Mullis for unregistered lobbying for the calendar years 2007 and 2008, which were the subject of the Department's inquiry, is hereby closed. In the event that the Department discovers that Mike Mullis or Spirit's material representations are later found to be inaccurate or misleading, the Secretary of State will reopen this inquiry.

This Order shall become final upon entry.

WITNESS MY HAND AND THE OFFICIAL SEAL of the North Carolina Department of the

Secretary of State, this the 26th day of March 2010.



RODNEY S. MADDOX
CHIEF DEPUTY SECRETARY
OF STATE OF NORTH CAROLINA