



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 80-13

Requirements for Registration as a Lobbyist

The State Ethics Commission has been asked whether persons who lobby under the circumstances set forth below must register with the Commission as lobbyists in order to comply with the Code of Ethics for Lobbyists, Chapter 10, Part II, General Statutes. Each of the persons is employed by or has a substantial financial interest in one of several businesses engaged in a particular trade. The businesses have formed a trade association, the officers of which are persons with a substantial financial interest in, or are employees of, the member businesses. The trade association has retained a lobbyist who is registered with the Commission, as is the association. Additional lobbying on behalf of the trade association is carried on by the persons each of whom is employed by, or has a substantial financial interest in, one of the businesses of which the trade association is comprised. These persons are paid nothing by the association for their lobbying. Some of the lobbying is done during the normal working hours of those who are employees of the member businesses. To illustrate the situation with a hypothetical example: a small bank belongs to a small bank association, with several members, which is registered as a lobbyist and retains a paid lobbyist; the president and part owner of the small bank, who is an unpaid officer of the association, also lobbies on behalf of the association; he receives from the association no compensation for his lobbying.

If they meet the financial threshold, and no exception applies, the persons described above, and the bank president in the hypothetical example, would be communicator lobbyists. Subsection 1-91(1), General Statutes; section 1-92-41, Regulations of Connecticut State Agencies. The financial threshold is met by the receipt, or the expectation of the receipt, of \$300 or more in a calendar year in compensation, reimbursement, or both for lobbying or in furtherance of lobbying. Subsection 1-91(1), above. In the case of an individual whose lobbying is incidental to his regular employment, compensation to be counted toward the \$300 threshold is determined by the pro rata value of the compensation earned while lobbying or conducting activities in furtherance of lobbying. Subsection 1-96(b), General Statutes; section 1-92-43, Regulations of Connecticut State Agencies. A communicator lobbyist who meets the financial threshold and to whom no exception applies must register as a lobbyist with the Ethics Commission, subsection 1-94(a), General Statutes, and file with the Commission periodic financial reports concerning lobbying activities, section 1-96, General Statutes.

Although it is never stated expressly, the statutory scheme described above contemplates that the compensation and reimbursement which accumulate toward the threshold for registration are compensation and reimbursement paid by the client, the person on whose behalf the lobbying is

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said to be performed. Connecticut's lobbying act is not designed to look behind a lobbying organization to identify the persons who are members the organization. State Ethics Commission Advisory Opinion No. 78-17, 40 Conn. L.J. No. 8, p. 14.

That Advisory Opinion considered a trade association that had, in fact, an identity clearly separate from its members. The association had interests that would not always coincide with those of all its membership. It employed a paid staff which worked full time for the association. The association was sufficiently large that positions which it adopted, while intended to be generally beneficial to the trade in which its members were engaged, often would not support the business interests of a portion of its members. The ordinary contribution of a trade association member to the development of an association position on proposed legislation addressed in the Opinion fitted within the assumptions of the lobbying statute. When an association, or its members' activities, does not the Ethics Commission need not ignore reality.

The instant trade association scarcely has an existence independent of its member businesses. A person from one of the member businesses who lobbies on behalf of the association as a practical matter is lobbying essentially directly for the benefit of his or her own business. The pro rata amount of compensation the person receives from his or her business based on the value of the time devoted to lobbying amounts to compensation received for lobbying not only within the letter of the lobbying statute but within the spirit of the law as well. If the pro rata amount received or to be received during the calendar year equals or exceeds in value \$300, the person is a lobbyist and must register unless an exception to the definition of "lobbyist", such as the five-hour threshold for those who receive no compensation or reimbursement specifically for lobbying (subsection 1-91(1)(7), General Statutes) is applicable. The registrant should file periodic financial reports concerning lobbying activities. Section 1-96, General Statutes.

The receipt reported by a communicator lobbyist in his financial report is an expenditure by the person on whose behalf the lobbying is done. It has been decided that, on the facts given, the persons above are lobbying essentially directly for the businesses with which they are associated. Their businesses are the client lobbyists, the ones on whose behalf the lobbying is performed. Therefore, if a business pays a communicator lobbyist associated with it compensation, reimbursement, or both amounting to \$300 or more in a calendar year, the business must register, unless some exception is applicable, and file periodic financial reports. (By analogy, if in the situation described in 78-17 a member firm had lobbied for an issue on which the firm and the trade association were in agreement it would appear that, as in the instant case, the individual business should register, if the requisite threshold is passed and no exception applies.) The trade association, having held itself out as a person and having paid its retained lobbyist more than \$300 during the year for his lobbying activities, must also register. It might be possible, within the statute and Commission regulations and through special arrangements with the Ethics Commission on a case-by-case basis, to report in the association's financial report the expenditures of compensation and

reimbursement made by the individual business belonging to the association. In that event, registration and financial reporting by the individual businesses might be avoided. One of the purposes of the Code of Ethics for Lobbyists is to make available to the General Assembly and to the public the value of the effort expended in attempting to influence official action. Relating to this trade association the lobbying efforts of a person from a member business would satisfy that purpose in the simplest way, whether the trade association is a sham formed for the purpose of evading the lobbying statute or, as in the present case, one established for sound reasons such as efficiency in representing the interests of its members but, in its officers and its lobbying activities, not having an identity for purposes of the lobbying statute that is really independent from those of its members.

Insofar as Ethics Commission Advisory Opinion 78-8, 39 Conn. L.J. No. 48, p. 22, is inconsistent with the foregoing, it is overruled.

By order of the Commission,

Thomas J. Lynch

Rev. Thomas J. Lynch
Chairman

Dated June 6, 1980

