



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 81-11

### Requirements for Registration as a Lobbyist

A private, non-profit corporation which serves as a major information clearinghouse on criminal justice issues has asked whether its activities make it a lobbyist required to register under the Code of Ethics for Lobbyists, Chapter 10, Part II, General Statutes. A review of the corporation's activities indicates some of them amount to lobbying. The corporation and some of its representatives may be lobbyists.

The corporation carries out its purposes in several ways. It maintains a library of material concerning criminal justice, including up-to-date information on new developments and research in the field. It produces publications of its own, such as a directory of services available to criminal justice clients -- accused, prisoners, probationers, victims, potential victims, the families of all of these, etc; newsletters highlighting national and State criminal justice issues; a citizens' guide to the General Assembly; and so forth. The corporation also conducts studies, mainly funded by Federal grants, into various aspects of the criminal justice system in Connecticut; for example, the extent of mental illness and retardation within State correctional facilities. It provides a variety of educational services to members of the executive and legislative branches of government, to community groups, and to interested citizens throughout the State. Because of its capabilities and expertise, it serves as the coordinating arm of an association of more than two dozen social service agencies which provide services to criminal justice clients, convening the association's periodic meetings, providing it technical assistance, and speaking on the association's behalf when appropriate.

With regard to matters which are closely related to lobbying, the corporation monitors criminal justice bills in the General Assembly keeping a record of their status and of the voting record of legislators on them. It also attempts to stay abreast of any Federal criminal justice legislation which could affect Connecticut. It often provides information to General Assembly members and committees, sometimes upon request and sometimes testifying voluntarily at public hearings. This year the Judiciary Committee of the General Assembly has taken advantage of the store of information at the corporation's disposal and of the expertise of the personnel associated with it by having the corporation present two seminars which focused on key criminal justice issues being discussed by the legislature. One was open to the legislative leadership. The other was made available to the entire General Assembly. In these and other communications with members and agencies of the General Assembly the corporation attempts to provide facts needed to weigh all sides of a particular issue to ensure that legislative action affecting the criminal justice system can be taken in the light of all available pertinent

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information, and its implications and ramifications can be understood. Although the corporation may present a variety of opinions to provide a complete picture concerning a criminal justice issue, in any discussion points of view can and do emerge.

A "lobbyist" includes "a person who in lobbying and in furtherance of lobbying makes or agrees to make expenditures ...[of] three hundred dollars or more in any calendar year...." Subsection 1-91(l), General Statutes. (The threshold is raised to \$500 effective July 1, 1981. Section 1(1), Public Act No. 81-339.) There are exceptions to the definition, most of which are more likely to apply to individuals who represent the corporation rather than to the corporation. A corporation is a "person" for purposes of the definition. Subsection 1-91(n), id. "Lobbying" means "communicating directly or soliciting others to communicate with any official or his staff in the legislative or executive branch of government for the purpose of influencing any legislative or administrative action." Subsection 1-91(k), id. Both "legislative" and "administrative" action are defined in the Code of Ethics for Lobbyists. Subsections 1-91(j), 1-91(a), respectively, id. The former is all-encompassing, including action, or non-action, of any kind regarding any matter within the official jurisdiction of the legislature.

The basic question in deciding whether the corporation is lobbying when it supplies information to a legislator or legislative agency is whether the purpose of the corporation in supplying the information is to influence legislative action. As an example, if the corporation is asked to supply a specific document, or all the information it has on a criminal justice issue, in responding precisely to the question it probably is neither lobbying nor acting in furtherance of lobbying. On the other hand, if it were to supply more than was requested, because it felt that what was requested would present too narrow a viewpoint on the matter, it would appear to be lobbying. If a legislative proposal exhibited a bias or a lack of understanding of a particular issue, and the corporation presented to the committee having jurisdiction over the bill all the information on the subject, it probably would have done this to influence the committee's or the General Assembly's actions. Thus, it would be lobbying. Additional guidance concerning this somewhat subjective area is contained in Ethics Commission Advisory Opinion No. 78-13, 40 Conn. L.J. No. 8, p. 11. If the corporation in a calendar year spends three hundred dollars or more (five hundred dollars or more effective July 1, 1981) in lobbying and in furtherance of lobbying, it is a lobbyist. Subsection 1-91(l), id.

An individual who in lobbying and in furtherance of lobbying receives or agrees to receive compensation, reimbursement, or both totalling three hundred dollars or more (five hundred dollars or more effective July 1, 1981) in a calendar year is also a lobbyist.

Subsection 1-91(1), General Statutes. Therefore, some of those who represent the corporation, including employees of the corporation, also may be lobbyists if they meet the financial threshold.

In computing whether the corporation or any individual representing it meets the financial threshold for registration, all items required to be reported in a lobbyist's financial report pursuant to section 1-96, General Statutes and sections 1-92-43 and 1-92-49, Regulations of Connecticut State Agencies are to be considered expenditures, compensation, or reimbursement for purposes of determining whether the threshold is met or exceeded. Section 1-92-43, Regulations of Connecticut State Agencies. In the case of individuals employed by the corporation whose lobbying on its behalf is only part of their duties, they and the corporation should count toward the threshold and report, if required to register, a prorated amount based on the value of the time devoted to lobbying. Subsection 1-96(b), General Statutes; subdivision 1-92-48 (2), Regulations of Connecticut State Agencies.

The Code of Ethics for Lobbyists provides several situations in which persons representing the corporation may not have to register as lobbyists even though they represent the corporation before legislative or executive officials or agencies. Anyone who confines his lobbying solely to formal appearances before public sessions of governmental agencies, under the circumstances set forth in subsection 1-91(1)(4), General Statutes, is not a lobbyist. An in-house, part-time lobbyist who spends no more than five hours in a calendar year in furtherance of lobbying, and who meets the other provisions of subsection 1-91(1)(7), General Statutes, also is not a lobbyist. Some persons testifying on behalf of the corporation may qualify as expert witnesses. Expert witnesses may avoid registration and reporting, although their compensation and reimbursement, combined, received for what would otherwise be lobbying meets or exceeds the financial threshold for registration, if they fulfil the requirements of section 1-92-44, Regulations of Connecticut State Agencies. In each case above, when an individual is excused from registration by the Code, the compensation and reimbursement paid the person by the corporation is to be included in determining whether the corporation meets the financial threshold for registration; if the corporation is required to register, the compensation and reimbursement is to be reported in its periodic financial reports. Section 1-92-44, subdivision 1-92-49(4), Regulations of Connecticut State Agencies.

With regard to studies and reports compiled and produced by the corporation and then used in lobbying or in furtherance of lobbying, the amount to be reported depends upon the purpose of the study or the report. For example, if a study is conducted under a Federal grant and copies of it thereafter are passed out incident to lobbying, the value to be included in the corporation's financial reports, if it is a registrant, is merely the cost of

the actual copies. On the other hand, if a study is made to be used in the corporation's efforts to influence administrative or legislative action, then the entire cost of the study is reportable as a lobbying expenditure. The same reasoning would apply, for example, in the case of a seminar presented to the legislative leadership at the request of a legislative committee if its purpose were to influence legislative action. The cost of material specially prepared for the seminar is reportable. Material acquired or prepared for other purposes but utilized in the seminar is not, except for the cost of any copies handed out. The value of the services of those who prepare or present the seminar would be calculated according to rules given above concerning individuals who assist the corporation in its lobbying efforts. If the seminar were prepared and presented to give a purely neutral, objective view, none of the cost of the material or personnel involved would be attributable to lobbying. If, as no doubt is inevitable, the corporation's views are introduced in discussion, that much of the seminar involves lobbying. The proportional value of the compensation or reimbursement received from the corporation by the individuals presenting the seminar should be included in a registrant's financial report.

The corporation states that it sometimes speaks on behalf of an association of social service agencies which provide services to criminal justice clients. On some occasions the speaking may amount to lobbying. If the corporation is lobbying on behalf of itself as well as the association, it is satisfactory for the costs of the lobbying to be reflected in the corporation's financial reports. If the corporation lobbies on behalf of the association alone, then the costs of those lobbying activities accumulate toward the threshold for a possible second registration of the corporation, as a lobbyist on behalf of the association. The association would also have to register only if its expenditures for lobbying and in furtherance of lobbying, including reimbursement of such expenditures made in its behalf by the corporation, meet or exceed the threshold for registration.

By order of the Commission,

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Dated 30 June 1981