

SEC AO2005-001

November 17, 2004

SUBJECT: LOBBYING BY STATE AGENCIES AND THEIR EMPLOYEES

SUMMARY: Actions of state agency employees, regardless of job title, constitute lobbying when that action involves direct communication with a public official in an effort to influence that official's vote regarding the enactment of legislation, covered gubernatorial actions or covered agency actions, and these actions constitute a part of the employee's ordinary and normal job duties.

QUESTION: The State Ethics Commission has requested an Advisory Opinion to provide guidance to state agencies and their employees on what duties will require registration as a lobbyist and lobbyist's principal, notwithstanding employees' titles or directives of constitutional officers.

DISCUSSION: The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act no. 248 of 1991; Section 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

The State Ethics Act provides in relevant part that:

(12) 'Lobbying' means promoting or opposing through direct communication with public officials or public employees:

(a) the introduction or enactment of legislation before the General Assembly or the committees or members of the General

Assembly;

- (b) covered gubernatorial actions;
- (c) covered agency actions; or
- (d) consideration of the election or appointment of an individual to a public office elected or appointed by the General Assembly.

'Lobbying' does not include the activities of a member of the General Assembly, a member of the staff of a member of the Senate or House of Representatives, the Governor, the Lieutenant Governor, or a member of the executive staff of the Governor or Lieutenant Governor acting in his capacity as a public official or public employee with regard to his public duties.

(13) 'Lobbyist' means any person who is employed, appointed or retained, with or without compensation, by another person to influence by direct communication with public officials or public employees: (i) the action or vote of any member of the General Assembly, the Governor, the Lieutenant Governor, or any other statewide constitutional officer concerning any legislation; (ii) the vote of any public official on any state agency, board, or commission concerning any covered agency actions; or (iii) the action of the Governor or any member of his executive staff concerning any covered gubernatorial actions. 'Lobbyist' also means any person who is employed, appointed, or retained, with or without compensation, by a state agency, college, university, or other institution of higher learning to influence by direct communication with public officials or public employees: (i) the action or vote of any member of the General Assembly, the Governor, the Lieutenant Governor, or any other statewide constitutional officer concerning any legislation; (ii) the vote of any public official of any state agency, board, or commission concerning any covered agency actions; or (iii) the action of the Governor or any member of his executive staff concerning any covered gubernatorial actions. 'Lobbyist' does not include:

* * *

- (c) any duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or a political subdivision thereof, or a member of the judiciary when appearing solely on matters pertaining to his office and public duties unless lobbying constitutes a regular and substantial portion of such official's or employee's duties;

If a state agency employee is employed in a management or administrative capacity and on occasion is required to contact a public official to provide that agency's perspective on a matter under consideration, the employee is not employed to lobby. However, if the normal and ordinary job duties of that employee include direct communication on a regular basis such as

weekly, or even twice monthly, the employee and the agency are engaged in lobbying and must register.

The Commission will review lobbyist registration requirements on a case-by-case basis. Although not exhaustive the following examples may be helpful. Monitoring legislation and notification of a supervisor of legislative changes does not in and of itself constitute lobbying. Providing information to members of the General Assembly and other activities necessary to assist with legislative relationships may constitute lobbying, dependent upon the nature and frequency of those activities. Following the budget process does not entail lobbying unless it involves legislative interactions. Handling legislative requests for information is not lobbying unless it involves communications in an effort to influence an official's vote regarding legislation, budgets, appointments, or regulations. Providing input concerning legislation and serving as liaison to legislative committees, subcommittees and members of the General Assembly is a lobbying function.

CONCLUSION: Actions of state agency employees, regardless of job title, constitute lobbying when that action involves direct communication with a public official in an effort to influence that official's vote regarding the enactment of legislation, covered gubernatorial actions or covered agency actions, and these actions constitute a part of the employee's ordinary and normal job duties.

KEY WORDS: lobbying, lobbyist, "regular and substantial"

ANNOTATIONS: 2-17-10(12), 2-17-10(13)(c)
