

State of South Carolina

State Ethics Commission

COMMISSIONERS

JAMES H. BURNS, 2nd DISTRICT, CHAIR
SHERRI A. LYDON, MEMBER AT LARGE,
VICE CHAIR
FRANCIS E. GRIMBALL, 1st DISTRICT
SANDY TEMPLETON, 3rd DISTRICT



COMMISSIONERS

JAMES I. WARREN, III, 4th DISTRICT
TWANA BURRIS-ALCIDE, 5th DISTRICT
REGINA HOLLINS LEWIS, 6th DISTRICT
JULIE J. MOOSE, 7th DISTRICT
THOMAS M. GALARDI, MEMBER AT LARGE

5000 THURMOND MALL, SUITE 250
COLUMBIA, S.C. 29201

HERBERT R. HAYDEN, JR.
EXECUTIVE DIRECTOR

SEC AO2014-003

May 21, 2014

SUBJECT: Lobbying and social media

SUMMARY: An advocate of a lobbyist's principal is a lobbyist if the person is employed, appointed, or retained to influence legislators by posting messages on legislators' Facebook pages, or other social media platforms, seeking legislators' support or opposition to the introduction or enactment of legislation.

QUESTION: A lobbyist's principal asks the State Ethics Commission to define clearly what qualifies as direct lobbying via electronic/social media and what activity and communication is allowed or not allowed by the Commission without being required to register as a lobbyist.

DISCUSSION: This opinion is rendered in response to a request by New Morning Foundation. 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.

Section 2-17-10(12) provides in part:

"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;
- (d) consideration of the election or appointment of an individual to a public office elected or appointed by the General Assembly.

Section 2-17-10(13) provides in part:

"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 action. ... Lobbyist does not include:

- (a) an individual who receives no compensation to engage in lobbying and who expresses a personal opinion on legislation, covered gubernatorial actions, or covered agency actions to any public official or public employee;

Section 2-17-10(14) provides:

'Lobbyist's principal' means the person on whose behalf and for whose benefit the lobbyist engages in lobbying and who directly employs, appoints, or retains a lobbyist to engage in lobbying. However, a lobbyist's principal does not include a person who belongs to an association or organization that employs a lobbyist, nor an employee, officer, or shareholder of a person who employs a lobbyist. If a membership association or organization is a lobbyist's principal, the association or organization must register and report under the provisions of this chapter. A person is considered a lobbyist's principal only as to the public office or public body to which he has authorized, pursuant to this chapter, a lobbyist to engage in lobbying."

A lobbyist's principal requested an informal opinion on lobbying and social media. This is a matter of first impression for the Commission; therefore, an informal opinion request became a formal opinion request. The lobbyist's principal asks about an "advocate" for a non-profit lobbyist's principal who posts on legislators' Facebook pages. The post might only be the advocate's position on specific legislation or the post might seek the support or opposition of the legislator on specific legislation. The question posed is does that activity make the advocate a lobbyist?

Posting a personal opinion on a legislator's Facebook page about legislation without more is not lobbying. It is direct communication in much the same way that sending an e-mail or a letter to a legislator is direct communication. Beyond the direct communication a person must promote or oppose the introduction or enactment of legislation before the General Assembly. Seeking the legislator's support of or opposition to specific legislation is lobbying.

The definitions of lobbyist and lobbyist's principal both provide that in order to be a lobbyist an individual must be employed, appointed or retained to influence by direct communication the action or vote of any member of the General Assembly. An individual may be lobbying in the broadest sense, but unless he has been employed, appointed or retained to lobby, then he is not a lobbyist.

CONCLUSION: An advocate of a lobbyist's principal is a lobbyist if the person is employed, appointed, or retained to influence legislators by posting messages on legislators' Facebook pages, or other social media platforms, seeking legislators' support or opposition to the introduction or enactment of legislation.

KEY WORDS: lobbying, lobbyist's principal, lobbyist
--

ANNOTATIONS: Sections 2-17-10(12), (13) and (14)
