

ADVISORY OPINION NO. 90-177

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Nonprofit Nonpartisan Corporation

OPINION SOUGHT

Whether the volunteer members of a nonprofit Corporation who contact members of the executive and legislative branches of government on behalf of this nonprofit Corporation are required to register as lobbyists?

OTHER FACTS RELIED UPON BY THE COMMISSION

The membership of the nonprofit Corporation is comprised principally of chief executive officers of major corporations throughout the state and represents a diversity of the economic sector. It is supported financially by the membership and the members do not receive any compensation from the Corporation for their work.

The mission of the Corporation is to improve the economy of the State and the quality of life for the citizens through the attraction of job creating capital investment in the State. A second focus of the Corporation's is to insure school students receive the quality education demanded for today's jobs.

One of the roles which the Corporation plays is to provide support to the State administration on programs and issues with regard to economic development and education. They also seek to have input on State programs which affect economic development and education.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-3-1(7)(A) states in pertinent part that...a "lobbyist" means a person who, through communication with a government officer of employee, promotes, advocates or opposes or otherwise attempts to influence:

(i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the legislature...,

(ii) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative or quasi-legislative action to be taken or withheld by any executive Department.

West Virginia Code Section 6B-3-2 states in pertinent part that...before engaging in any lobbying activity...a lobbyist shall register with the Ethics Commission by filing a lobbyist registration

statement...

West Virginia Code Section 6B-3-1(7)(B) states in pertinent part that...the term "lobbyist" shall not include the following persons, who shall be exempt from the registration and reporting requirements...unless such persons engage in activities which would otherwise subject them to the registration and reporting requirements:

(iii) Persons who lobby without compensation or other consideration for acting as lobbyists, when such persons **make no expenditure** for or on behalf of any government officer or employee in connection with such lobbying, are exempt. The exemption...is intended to permit and encourage citizens of this state to exercise their constitutional rights to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances. Accordingly, such persons may lobby without incurring any registration or reporting obligation... The Commission may promulgate a legislative rule to require registration and reporting by persons who would otherwise be exempt...if it determines that such rule is necessary to prevent frustration of the purpose of this article...

West Virginia Code Section 6B-3-1(7)(B)(iv) states in pertinent part that...persons who lobby on behalf of a nonprofit organization with regard to legislation, without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature, are exempt.

ADVISORY OPINION

It would not be a violation of the Ethics Act for volunteer members of a nonprofit Organization to contact individual members of the Legislature concerning pending legislative action on behalf of the Corporation as long as they follow the procedures outlined below in this opinion.

Pursuant to subsection 6B-3-2 of the Ethics Act, any person who participates in a lobbying activity as defined in subsection 6B-3-1(7)(A) of the Ethics Act must register as a lobbyist.

The Act establishes several categories of lobbyists who are exempt from registration. One such category includes persons who lobby on behalf of a nonprofit organization with regard to legislation, **without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature.**

The Commission has previously determined when interpreting the phrase "without compensation" that it includes persons such as in this instance who do not receive any compensation on behalf of the Corporation.

Pursuant to subsection 6B-3-1(7)(B)(iv) any person who lobbies on behalf of a non-profit organization and limits his or her activities to less than twenty days or parts thereof during the legislative session is not required to register as a lobbyist. There is no limitation on expenditures in this provision.

The main question addressed by the Ethics Commission when issuing this opinion is whether a person who lobbies for a non-profit organization less than 20 days but has unlimited expenditures is exempt from the lobbyist registration and reporting requirements. Subsection 6B-3-1(7)(B) of the Ethics Act provides that certain people shall be exempt from the registration and reporting requirements set forth in the Act, unless such persons **engage in**

activities which would otherwise subject them to the registration and reporting requirements. The Commission has determined that it is implicit in this subsection that any person who makes an expenditure on behalf of a Legislator must register as a lobbyist since such expenditures would subject them to the reporting requirements.

Therefore, if the representative of the non-profit organization makes expenditures on behalf of any legislator he or she must register as a lobbyist and file an expenditure report.

However, if the volunteer members of the nonprofit Corporation do not make any expenditures on behalf of legislators it is not necessary for them to register as lobbyists in order to contact Legislators to discuss pending legislative action or requests for action on behalf of the Corporation.

The Commission would also remind the members who lobby on behalf of the nonprofit Corporation that they must limit their lobbying activities to no more than twenty days or parts thereof during any regular legislative session to fall within this exemption.

Chairman