

ADVISORY OPINION NO. 93-23
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 5, 1993

GOVERNMENTAL BODY SEEKING OPINION

Chairman of a Council of Trade Associations

OPINION SOUGHT

Whether a Council must register a lobbyist to report group entertainment expenditures incurred by the Council as required by the Ethics Act?

FACTS RELIED UPON BY THE COMMISSION

The Council is a qualified tax exempt corporation operated under the provisions of Section 501 (c)(4) of the Internal Revenue Code of the United States and as such is recognized as tax exempt under the tax laws of West Virginia.

Organizations which fall within this section are "social welfare organizations" operating exclusively to further the common good and general welfare of people in a community, including bringing about civic betterment and social improvements. As a tax exempt entity within this category, the Council is expressly prohibited from engaging in most forms of political activities including lobbying activities.

Membership in the Council consists of Trade Associations and affiliated members who are individual companies. The dues of the former are based on the size of the members' operating budget while the latter members pay a flat rate for dues.

The Council has represented to the Commission that it does not engage in prohibited political activity under the Internal Revenue Code or in lobbying activity as defined by the Ethics Act and does not employ any individuals to lobby the Legislature or state agencies on its behalf. Instead, the Council operates as a Council of Trade Associations to provide a forum to coordinate business interests in the public policy arena.

However, the Council does sponsor an annual reception for its members and state government officials. The cost of this reception is defrayed by the Council using a portion of the dues paid to the Council by its members.

Each of the Council's members employ lobbyists who are registered with the West Virginia Ethics Commission to represent the individual interests of each member. Most, if not all, of those registered lobbyists attend the legislative dinner.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-3-1(7)(A) states in pertinent part that... a "lobbyist" means a person who, through communication with a government officer or 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 or any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative action...

West Virginia Code §6B-3-1(6) states in pertinent part that..."lobbying" or "lobbying activity" means the act of communication with a government officer or employee to promote, advocate or oppose or otherwise attempt to influence:

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

(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 §6B-3-1(8) states in pertinent part that "Person" means any individual, partnership, trust, estate, business trust, association, or corporation...

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

West Virginia Code §6B-3-7(2)(A) states in pertinent part that...a person required to register as a lobbyist shall not engage in any activity as a lobbyist before registering as such...

ADVISORY OPINION

Lobbying is broadly defined in the Ethics Act as the act of communicating with a government officer or employee to promote, advocate or oppose or otherwise influence legislation, legislative rule, standard, rate, fee or other delegated action.

West Virginia Code §6B-3-2 requires that any "person" who participates in a lobbying activity must register as a lobbyist and report all expenditures made in furtherance of their lobbying activities. The term "person" is broadly defined to include any individual, partnership, trust, estate, association or corporation.

The Commission has no objection to the Council registering as a lobbyist for the sole purpose of conducting the legislative dinner and reporting the expenditures required to be reported. The Commission notes that the definition of lobbying in the Ethics Act is not necessarily co-extensive with the political activity in which 501 (c)(4) exemption organizations may not engage.

The Council has represented to the Commission that it does not have its own specific, independent legislative agenda and does not engage in lobbying as defined by the Ethics Act. Rather, it operates as a Council of Trade Associations providing a forum for its members to present their individual interests to legislators. The Commission relies on these representations of the Council.

All the Council's member companies employ lobbyists who are registered with the West Virginia

Ethics Commission to represent the individual interests of each member. Reporting by those registered lobbyists of the amount expended at their direction by their respective employers to defray the cost of legislative attendance at the dinner would adequately disclose such expenditures under the requirements of the Ethics Act, (1) if the Council does not in fact engage in any lobbying activities, as defined in the act, and (2) if such reports, taken as a group, disclose the total reportable expenditures.

Caution should be exercised by the Council, its members and their respective lobbyists that the process selected for reporting expenditures does not involve a violation of WV Code §6B-3-6.

This opinion is limited to the facts presented and should not be relied upon by any other person, businesses or association.

Chairman