

ADVISORY OPINION NO. 93-25

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 1, 1993

GOVERNMENTAL BODY SEEKING OPINION

A County Officer

OPINION SOUGHT

Whether a government official is required to register as a lobbyist when the lobbying activities performed relate to the official's governmental agency or policies affecting such agency and do not specifically and uniquely affect the individual public official?

FACTS RELIED UPON BY THE COMMISSION

Near the end of the regular session of the Legislature, an amendment was introduced to the Education Funding Bill which, if enacted into law, would have resulted in a reduction of local funding to the nine libraries within West Virginia that operate under special acts of the Legislature.

As part of his duties as the chief financial officer of a County Library System and on behalf of the other eight libraries involved, the requestor attempted to meet with individual members of the Senate and House education committees to discuss the financial impact of the amendment on those libraries as well as seeking to make informational presentations at the public hearings of those committees held on the Education Funding Bill.

Since those committees and the conference committee on the bill often met in the evenings and on weekends, the requestor's efforts to discuss the amendment with the appropriate legislators involved day, evening and weekend hours. However, the requestor did not receive any additional compensation for the time spent outside his normal work schedule. Further, other than incidental expenses for correspondence, long distance phone calls to other libraries involved, etc., no funds were expended in this informational effort.

The requestor expects the supporters of the amendment to seek to reintroduce the proposed amendment at the next session of the Legislature and he will resume his efforts against their proposal at that time.

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 of any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative action...

West Virginia Code §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 set forth in this article, unless such persons engage in activities which would otherwise subject them to the registration and reporting requirements:

(i) persons who limit their lobbying activities to appearing before public sessions of committees of the legislature, or public hearings of state agencies, are exempt...

(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...

West Virginia Code §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...

ADVISORY OPINION

A lobbying activity is broadly defined in the Ethics Act as the act of communicating with a government officer or employee to promote, advocate, 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 such lobbying activities.

However, the Ethics Act establishes several categories of lobbyists which are exempt from the registration requirements. One such category is a person who lobbies without compensation or other consideration for acting as a lobbyist, when such person makes no expenditures for or on behalf of any government official in connection with such lobbying.

The Commission established in Advisory Opinion #90-159 that public officials and employees are compensated for their service and receive no specific "compensation" for engaging in lobbying activities.

Although public servants may be required to participate in a certain amount of lobbying activity, this does not trigger the registration and reporting requirements established by the Ethics Act provided the activities are considered part of their official duties and are performed on behalf of their governmental agency. Such activities relate to the public servant's governmental agency or policies affecting such agency and do not specifically and uniquely affect the individual public official or employee.

Therefore, it would not be necessary for the requestor to register as a lobbyist with the Ethics Commission provided the lobbying activities are performed on behalf of his governmental agency.

The Commission notes that this result is contingent on the fact that the requestor makes no expenditures for or on behalf of any government official in connection with the lobbying activity.

Vice Chairman