

ADVISORY OPINION NO. 90-200
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON FEBRUARY 7, 1991

GOVERNMENTAL BODY SEEKING OPINION

A Non-profit Association

OPINION SOUGHT

Whether members of a non-profit Association should register as lobbyists with the Ethics Commission before attending various legislative functions?

FACTS RELIED UPON BY THE COMMISSION

During the current legislative session, several members of a non-profit Association will attend various public legislative functions, including many of the committee meetings. The members will attend on their own time and provide for their own transportation. The extent of the Association's involvement will center around observing the legislative process and answering legislators' questions about proposed legislation.

The members of the non-profit Association are not paid employees of the Association, nor are they compensated in any way for these activities.

The Association also plans to distribute a coffee cup to various individuals including legislators, which bears the Association's logo. This cup is of nominal value.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-3-1(7)(A) states in pertinent part that... "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 or this state; 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 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 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... 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...

(iv) 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...

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...

ADVISORY OPINION

A lobbying activity is simply defined 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.

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

However, the Act establishes several categories of lobbyists who are exempt from registration. One such category contained in subsection 6B-3-1(7)(B)(iv) provides 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.

Therefore, the members of the non-profit Association who limit their lobbying activities to no more than twenty days during the regular legislative session and are not compensated for such activities would not be required to register as lobbyists.

Public Meetings

Another category of lobbyists established by the Act who are exempt from registration is contained in subsection 6B-3-1(7)(B)(i). This section provides that persons who limit their lobbying activities to appearing before **public sessions** of committees of the Legislature are exempt from registering.

Therefore, if the members of the Association limit their lobbying activities to attending or appearing before public sessions of the Legislature they would not be required to register as lobbyists.

Other Lobbying Activities

Another category of individuals who do not have to register or report as lobbyists is established in subsection 6B-3-1(7)(B)(iii). This subsection states that persons who lobby **without**

compensation or other consideration for acting as a lobbyist and makes no expenditures for or on behalf of any government officer or employee in connection with such lobbying are exempt from the registration requirements. The purpose of this exemption is to permit and encourage citizens of this State to exercise their constitutional right to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances.

The facts provided by the requestor indicate that the members will attend the legislative functions on their own time and provide for their own transportation. These members are not employees of the Association and will not be compensated in any way for these activities. The Commission assumes that no expenditure is made by the individual Association members on behalf of any legislator.

Therefore, it is not necessary for the members of the Association to register as lobbyists since the extent of the Association's members involvement will center around observation of the legislative process and answering questions about proposed legislation while attending public sessions of committees of the legislature. Further, the members are not employees of the Association and are not compensated by the Association for attending these functions.

However, the Commission would note that pursuant to subsections 6B-3-2 and 6B-3-4 of the Ethics Act, the appropriate Association representative should, prior to the distribution of the coffee cups, register as a lobbyist with the Ethics Commission and report the expenditures incurred by the Association for the gifts.

Chairman