

ADVISORY OPINION NO. 2005-08

Issued On June 2, 2005 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Registered Lobbyist** seeks clarification of the registration fees required under the 2005 amendments to the Ethics Act.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a registered lobbyist with a business entity that represents several clients. He and another employee of the business ordinarily represent 8 to 10 clients during a registration cycle. The requester asks whether multiple employees of a lobbying firm are each required to pay an additional \$100 for every client they jointly represent.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

Senate Bill 1003, passed during the First Extraordinary Session of the Legislature on January 29, 2005, and Senate Bill 153, passed during the Regular Session of the Legislature on March 16, 2005, amended the West Virginia Governmental Ethics Act. These amendments become effective on July 1, 2005.

W. Va. Code § 6B-3-1, *Definitions*, provides in pertinent part as follows:

As used in this article, unless the context in which used clearly indicates otherwise:

(1) "Compensation" means money or any other thing of value received or to be received by a lobbyist from an employer for services rendered.

(2) "Employer" or "lobbyist's employer" means any person who employs or retains a lobbyist.

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(6) "Lobbying" or "lobbying activity" means the act of communicating 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 of this state; or

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

(7) "Lobbying firm" means any business entity, including an individual contract lobbyist, which meets either of the following criteria:

(A) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of lobbying on behalf of any other person, and any partner, owner, officer or employee of the business entity.

(B) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elected state official, agency official or legislative official for the purpose of lobbying on behalf of any other person.

(8)(A) "Lobbyist" means any individual employed by a lobbying firm or who is otherwise employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of promoting, advocating, opposing or otherwise attempting to influence:

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

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

W. Va. Code § 6B-3-2(a) provides, in pertinent part:

Before engaging in any lobbying activity, or within thirty days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register with the Ethics Commission by filing a lobbyist registration statement. The registration statement shall contain . . . [a]n appended written authorization from each of the lobbyist's employers confirming the lobbyist's employment and the subjects on which the employer is to be represented.

W. Va. Code § 6B-3-3a, *Registration fees*, provides as follows:

(a) Each lobbyist shall, at the time he or she registers, pay the Commission a base

registration fee of one hundred dollars, plus one hundred dollars for each employer represented, to be filed with the initial registration statement and with each new registration statement filed by the lobbyist in subsequent odd numbered years. Whenever a lobbyist modifies his or her registration to add additional employers an additional registration fee of one hundred dollars for each additional employer represented shall be paid to the Commission.

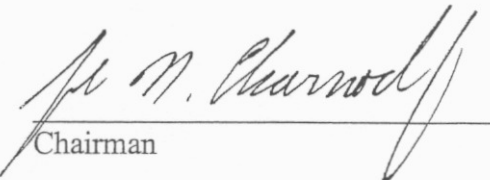
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Pursuant to W. Va. Code § 6B-3-2(a) each "lobbyist" as defined in W. Va. Code § 6B-3-1(8)(A) must register with the Ethics Commission before engaging in any lobbying activity or within thirty days after being employed as a lobbyist, whichever happens first. The definition of "lobbyist" specifically includes "any individual employed by a lobbying firm."

There is nothing in the definition of "lobbying firm" which suggests that those persons employed by a lobbying firm to engage in lobbying on behalf of various clients are not required to file a separate authorization from each client-employer they represent. In accordance with the plain language of the statute, the requester and each employee of his lobbying firm who are required by the Act to register as lobbyists are required to file a separate written authorization with the Commission from each employer they represent, and pay a \$100 fee for each form filed.

Persons who have properly registered as lobbyists for calendar years 2005-2006 prior to July 1, 2005, will be required to pay this additional \$100 fee in the event they commence representing an additional employer on or after July 1, 2005. Otherwise, these new fees will not be applicable until the lobbyist seeks to renew his registration for the 2007-2008 registration cycle.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1, *et seq.*, and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by lobbyists and other persons unless and until it is amended or revoked.


Chairman