

ADVISORY OPINION NO. 2005-21

Issued on January 5, 2006 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Private Company** asks if its employees must register as lobbyists if the employees spend a day at the State Capitol during the Legislative Session.

FACTS RELIED UPON BY THE COMMISSION

An industry's trade association is planning a "Day at the Capitol." For this day industry representatives are being encouraged to travel to the State Capitol to observe the Legislative process and to interact with Legislators.

The requester, a private company, intends to send its employees. While at the Capitol the employees will call on their respective legislators to ask for their support on anticipated legislation which will impact the industry.

The company's employees will be paid their regular rate of pay for attending. They are not required to take a vacation day. The employees are sales representatives. Normally as part of their regular job duties the employees would not have contact with legislators or other public officials for the purpose of discussing or influencing legislation. Further, the employees would not normally in the course of their regular duties make expenditures on public officials. The company has a registered lobbyist.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W.Va. Code § 6B-3-1(6) reads:

"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.

W.Va. Code § 6B-3-1(8) reads in relevant part:

(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.

(B) The term "lobbyist" does not include the following persons, who are exempt from the registration and reporting requirements set forth in this article, unless they 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.

(ii) Persons who limit their lobbying activities to attending receptions, dinners, parties or other group functions and make no expenditure in connection with such lobbying are exempt.

...

(iv) Persons who lobby without compensation or other consideration, other than reimbursement for reasonable travel expenses, for acting as lobbyists, who are not employed by a lobbying firm or lobbyist employer, and whose total expenditures in connection with lobbying activities do not exceed one hundred fifty dollars during any calendar year, are exempt. The exemptions contained in this subparagraph and in subparagraph (ii) are 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 under this article. Any person exempt under this subparagraph or subparagraph (ii) may at his or her option register and report under this article.

...

W.Va. Code § 6B-3-4(c) reads in part:

Except as otherwise provided in this section, each report filed by a lobbyist shall show the total amount of all expenditures for lobbying activities made or incurred by [or] on behalf of the lobbyist during the period covered by the report....

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A lobbyist is defined in part as any individual employed by a lobbying firm or who otherwise contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly with any elective state official, agency official or legislative official for


the purpose of promoting or otherwise attempting to influence legislation. Pursuant to the cited definition, receiving compensation to lobby may in certain instances trigger the lobbyist registration requirements under the Ethics Act.

The employees in question are part of the company's sales force. Their normal job duties do not involve communicating with public officials for the purpose of influencing legislation. The employees will be paid their regular rate of pay for attending the "Day at the Capitol." The percentage of their annual salary attributable to one day spent at the State Capitol is *de minimis*. When the job responsibilities of the employees are examined, it is clear that they are primarily employed and compensated to sell the company's products. The requirement that they spend a day at the State Capitol is only incidental to their regular job duties. Based upon the facts and circumstances presented, it is the opinion of the Commission that the employees do not fall within the classification of persons who are required, pursuant to the Ethics Act, to register as lobbyists.

The Commission notes that while the employees do not have to register as lobbyists, if they make expenditures on public officials, for instance taking a legislator to lunch, then the company's registered lobbyist should report the expenditure. W.Va. Code § 6B-3-4(c) requires a lobbyist to report expenditures made either by them, or on their behalf, for lobbying activities. Where, as in the present case, a company sends their employees to the Capitol as part of an organized event, and expenditures are made by the employees on public officials, then the company's lobbyist should report these expenditures.

In conclusion, it is the opinion of the Ethics Commission that employees of a private company who are either required or encouraged by their employer to spend a day at the Capitol during the Legislative Session, and are paid their regular rate of pay for that day, are not required to register as lobbyists when lobbying is not part of the employee's regular job duties. However, expenditures made on public officials, if any, should be reported by the company's registered lobbyist.

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. In accordance with W.Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed.


Chairman