ADVISORY OPINION NO. 2010-07

Issued On March 4, 2010 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A registered **Lobbyist** asks whether she is required to register as a lobbyist on behalf of a non-profit organization if she volunteers her lobbying services to the non-profit without compensation.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a registered lobbyist with the State of West Virginia Ethics Commission on behalf of multiple clients. As part of her lobbying services, she makes expenditures on behalf of her clients, and interacts with members and staff of the Legislature regarding issues of concern. The Requester is compensated by each of these clients, and has filed the appropriate Representation Forms with the Ethics Commission in accordance with W. Va. Code § 6B-3-2. She has also filed the required Lobbyist Activity Reports reflecting the activity and expenditures, if any, she has made on behalf of each client. W. Va. Code § 6B-3-4.

In addition to her compensated clients, the Requester has volunteered her services to a non-profit organization. The Requester maintains that she receives no compensation for her services to the non-profit organization and has made no expenditure on their behalf. She states that her total services volunteered to the non-profit has totaled no more than one hour per week during the current Regular Session of the 2010 Legislature.

In addition to the Requester's volunteer work, the non-profit employs its own compensated lobbyist who is registered with the Ethics Commission pursuant to W. Va. Code § 6B-3-2. This registered lobbyist makes all expenditures on behalf of the non-profit organization, and is responsible for filing the required Lobbyist Activity Reports.

The Requester seeks an opinion regarding whether she is required to formally register as a lobbyist for the non-profit organization, and file Lobbyist Activity Reports reflecting her activity with the organization.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-3-2 reads, in relevant part:

> (a) 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[.]
. . .

(b) Any lobbyist who receives or is to receive compensation from more than one person for services as a lobbyist shall file a separate notice of representation with respect to each person compensating him or her for services performed as a lobbyist.

W. Va. Code § 6B-3-1(8) defines “Lobbyist” as:

(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**:

. . .

(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.

(v) 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. The Commission may promulgate a legislative rule to require registration and reporting by persons who would otherwise be exempt under this subparagraph, if it determines that such rule is necessary to prevent frustration of the purposes of this article. Any person exempt under this subparagraph may, at his or her option, register and report under this article.
> . . .

(emphasis added)

ADVISORY OPINION

Government regulation of individuals who seek to influence legislation is a balance between First Amendment Constitutional rights and the interests of equal access to government.[1] On the one hand, individuals seeking to persuade their representatives on legislative matters should not be restrained by a government. On the other, prior corruption and misconduct by public officials has necessitated imposition of some regulation in order to promote public confidence in the integrity of the system.

The Legislature attempted to balance these competing interests by imposing lobbying registration requirements upon persons who receive compensation and expend money on behalf of clients who seek to influence legislation. The Legislature, however, carved out exemptions from registration for individuals who neither receive compensation nor expend money on behalf of a client. W. Va. Code § 6B-3-1(8)(B)(iv) & (v). In particular, W. Va. Code § 6B-3-1(8)(B)(v) provides, in pertinent part:

> 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.

Based upon this language, it would seem that an individual who receives no compensation and makes no expenditures while lobbying on behalf of non-profit entity, would be exempt from the registration and reporting requirements.

However, there are some exceptions to this general exemption. In Advisory Opinion 90-177, the Commission was asked whether a volunteer member of a non-profit organization is required to register if he receives no compensation, but expends money

[1] The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the government for redress of grievances." Similarly, Article III, Section 7 of the Constitution of West Virginia states: "No law abridging the freedom of speech . . . shall be passed[.]"; and Article III, Section 16 provides that "The right of the people to assemble in a peaceable manner, to consult for the common good, to instruct their representatives, or to apply for redress of grievances shall be held inviolate."

lobbying. The Commission held that “if the representative of the non-profit organization makes expenditure on behalf of any legislator he or she must register as a lobbyist and file an expenditure report.”

Further, the statutory definition of “lobbyist” additionally contains the following provision:

> (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**:

W. Va. Code § 6B-1-8(B)(emphasis added).

This caveat is significant to the question presented herein. Specifically, the Requester represents other clients for compensation, and is required to register on behalf of these paying clients. Therefore, she currently engages in activities which subject her to the registration and reporting requirements of W. Va. Code § 6B-3-2.

Therefore, based upon the foregoing, the Commission finds that the Requester, a registered lobbyist who additionally volunteers her lobbying services to a non-profit organization without compensation, is required to register and file the appropriate Lobbyist Activity Reports on behalf of the non-profit.

In reaching this conclusion, the Commission is mindful of the First Amendment protections, and the need for limited intrusion into an individual’s right to advocate for her own causes and beliefs. However, there is a difference between an individual’s right to petition the government, and the advocacy of a paid lobbyist (who may make expenditures on public officials). The Legislature has determined that the protection of the integrity of the governmental process requires individuals who are paid to advocate on behalf of a client to register as lobbyists.

The Commission finds that it would frustrate the intent and purpose of the registration requirement to allow a **registered** lobbyist to omit identifying her non-paying clients.

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 other public agencies unless and until it is amended or revoked, or the law is changed.

/s/ R. Kemp Morton, Chairman
R. Kemp Morton, Chairman