

ADVISORY OPINION NO. 90-159

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON OCTOBER 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

A City Staff Attorney

OPINION SOUGHT

Whether members of a City Council or a Mayor must register as lobbyists in order to contact Legislators to discuss pending legislative action or requests for action on behalf of the City?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Mayor and City Council members occasionally contact certain members of the Legislature to discuss pending legislation or requests for legislative action on behalf of the City.

The requestor states that the Council members and the Mayor receive salaries for job performance but are not specifically compensated by the City for any lobbying activity.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 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 or quasi-legislative action to be taken or withheld by any executive Department.

West Virginia Code Section 6B-1-3 states in pertinent part that a "Public Official" means any person who is elected and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to (i) contracting for, or procurement of, goods or services, (ii) administering or monitoring grants or subsidies, (iii) planning or zoning, (iv) inspecting, licensing, regulating or auditing any person, or (v) any other activity where the official action has an economic impact of greater than a **de minimis** nature on the interest or interests of any person.

West Virginia Code Section 6B-3-1(7)(A)(iii) states in pertinent part that...persons who lobby **without compensation or other consideration** for acting as a lobbyist, when such persons make no expenditures for or on behalf of any government officer or employee in connection with such lobbying, 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

It would not be a violation of the Ethics Act for City Council members or the Mayor to contact individual members of the Legislature concerning pending legislative action on behalf of the City as long as they follow the procedures outlined below in this opinion.

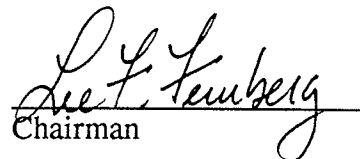
Pursuant to subsection 6B-3-2 of the Ethics Act, any person who participates in a lobbying activity as defined in subsection 6B-3-1(7)(A) of the Ethics Act must register as a lobbyist.

The Act establishes several categories of lobbyists which are exempt from registration. One such category contained in subsection 6B-3-1(7)(A)(iii) 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 officer or employee in connection with such lobbying.

The Commission assumes that no expenditure is made by the Mayor or Council Members for or on behalf of the Legislators during the course of lobbying.

The Commission has determined when interpreting this subsection that although the City Council members and the Mayor are compensated for their service, those officials do not receive specific "**compensation**" for lobbying activities as meant by the Ethics Act.

Therefore, it is not necessary for the members of a City Council or a Mayor to register as lobbyists in order to contact Legislators to discuss pending legislative action or requests for action on behalf of the City, since the public officials only receive compensation for their employment and **not** for lobbying activities.


Chairman