

ADVISORY OPINION NO. 89-35

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

An Executive Director of a lobbying corporation

OPINION SOUGHT

"Am I correct to presume that since this entity is a corporation and thus, by definition in the law, a "person", it must also register as a lobbyist and file the appropriate reports as a corporation in addition to my registration and reports as an individual lobbyist?"

OTHER FACTS RELIED UPON BY THE COMMISSION

The Executive Director will register as a lobbyist under the Governmental Ethics Act as soon as the regulations for doing so are in place.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-3-1(7)(A) states that "lobbyist" means a person who, through communication with a government officer or employee, promotes, advocates or opposes or otherwise attempts to influence:

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

(2) 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 6B-3-1(8) states in pertinent part that "person" means any individual, partnership, or corporation...

West Virginia Code 6B-3-1(7)(B)(iv) states that persons who lobby on behalf of a non-profit 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 a 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.

West Virginia Code 6B-3-3 states in pertinent part that each lobbyist shall, at the time he or she registers, submit to the commission a recent photograph of the lobbyist of a size and format as determined by rule of the commission, together with the name of the lobbyist's employer, a brief biographical description, and any other information the lobbyist may wish to submit, not to exceed fifty words in length. Such photograph and information shall be published at least annually in a booklet form by the commission for distribution...

West Virginia Code 6B-3-2(a) states in pertinent part that 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, signed under oath or affirmation. The registration statement shall contain such information and be in such form as the ethics commission may prescribe by legislative rule...

West Virginia Code 6B-3-4(a) states in pertinent part that a lobbyist shall file with the commission reports of his lobbying activities, signed under oath or affirmation by the lobbyist. Lobbyists who are required under this article to file copies of their registration statements with the clerks of the respective houses of the Legislature shall also contemporaneously file copies of all reports required under this section with the clerks. The reports shall be made in the form and manner prescribed by legislative rule of the commission...

#### ADVISORY OPINION

Subsection 6B-3-2(a) speaks to lobbyist registration and subsection 6B-3-4(a) speaks to lobbyist reporting. Both provisions use the term "lobbyist" when setting forth the requirements for their subsection.

Lobbyist is defined in subsection 6B-3-1(7)(A) in pertinent part as a person who communicates with a government officer or employee to promote, advocate, oppose or otherwise attempt to influence the legislator in some manner.

"Person" is broadly defined to include any corporation. (See, West Virginia Code 6B-3-1(8)).

However, it is apparent that after reviewing the many provisions in subsection 6B-3-1(7) that the legislature uses "lobbyist" to mean an individual person when referring to the reporting and registering requirements.


This is further evidenced in subsection 6B-3-3 which requires a "lobbyist" at the time he or she registers to submit a recent photograph, the name of the lobbyist's employer, and a brief biographical description of the lobbyist. Thus, it is apparent that lobbyist refers to an individual person and not a corporation or other entity in the registration requirements.

Furthermore, the Commission would note that certain persons are excluded from the term "lobbyist" pursuant to subsection 6B-3-1(7)(B)(iv). Such persons who lobby without compensation on behalf of a non-profit organization and who restrict their lobbying activities to not more than twenty days or parts thereof during the regular session of the legislature are exempt from registration and reporting requirements.

However, the Commission is directed to promulgate a legislative rule to require registration and reporting by persons who would otherwise be exempt if it determines that such a rule is necessary to prevent frustration of this article. (See West Virginia Code 6B-3-1(7)(B)(iv)).

The Commission may by legislative rule require an individual lobbyist and the corporation or organization for which he or she works to register and report if it becomes evident that the lobbyist is trying to shield his or her expenses by attributing them to the corporation (which may not be required to register or report) when such would defeat the intent and purpose of the statute.

Although not specifically asked the Commission would note with reference to this corporation it is assumed to be a non-profit organization, but its lobbyist (executive director) receives compensation for his lobbying activities. Therefore, as the executive director has previously noted in his request, he is not exempt from registering and reporting as a lobbyist, even if he restricts his lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature pursuant to West Virginia Code 6B-3-1(7)(B)(iv).

  
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Chairman