ADVISORY OPINION NO. 2012-18

Issued On March 1, 2012 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Registered Lobbyist** asks whether she must register as a lobbyist on behalf of a client who has retained her to assist with bidding on a State contract.

FACTS RELIED UPON BY THE COMMISSION

A private business is seeking to bid on a State contract. It has hired the Requester to provide assistance to it during this process. Her assistance includes, in part, communicating with the State Agency Officials about the procurement process and the contract in question. Additionally, if her client is the successful bidder, then the Requester will continue to consult with the business for purposes of assisting it in fulfilling its responsibilities under the contract.

For this client, the Requester does not communicate with State Officials or Members of the Legislature on its behalf for purposes of attempting to influence the passage or defeat of any legislation, rule or regulation. She states that if she was ever asked by the client to perform these functions, then she would immediately register as a lobbyist on behalf of the client.

The Requester has other clients for whom she lobbies. She is currently registered as a lobbyist on behalf of these clients.

CODE PROVISIONS AND LEGISLATIVE RULE RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-3-1(8)(A) 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:
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> > (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:

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Pursuant to the Ethics Act, persons who are compensated to communicate with State Officials or Members of the Legislature for the purpose of attempting to influence the passage or defeat of legislation or legislative rules are required to register as a lobbyist.[1] Here, the Requester has a client who has retained her to advise it on the State procurement process and to serve as its liaison to a State Agency during its efforts to be the successful bidder on a State contract.

The Commission finds that pursuant to the plain language of the Ethics Act, the purposes for which the Requester has been hired by this particular client do not constitute "lobbying" as defined in the Ethics Act. Specifically, the purposes for which she is communicating with State Officials do not relate to the passage or defeat of legislation or rules, but the procurement process. While both the Requester and the client must follow all applicable State procurement laws, she is not required to register as a lobbyist on the client's behalf. Of course, as the Requester is aware, if her client requests that she communicate with State Officials or Members of the Legislature in regard to the passage or defeat of Legislation or Rules, then she must register as a lobbyist on behalf of this client.

The fact that she is registered as a lobbyist on behalf of other clients does not change this analysis. Persons with consulting businesses may offer a variety of services to private or public clients. The fact that they lobby for some clients does not trigger the lobbyist registration requirement in regard to their other clients so long as they clearly are not lobbying on their behalf. In contrast, in A.O. 2010-07, the Commission ruled that a registered lobbyist was required to register on behalf of a non-profit for which she communicated with Members of the Legislature. Hence, even if she was lobbying for

[1] There are various exceptions in the Ethics Act governing who must register as a lobbyist. For example, a person who only renders assistance in drafting legislation does not have to register as a lobbyist so long as he or she does not directly communicate with members of the legislature. W.Va. Code§ 6B-3-1(8)(A)(ix). Nevertheless, all the laws governing who must register as a lobbyist and the exceptions therein are not addressed in this opinion as they are not relevant to the question before the Commission.

the non-profit for free, still she had to register on its behalf because she was already a registered lobbyist. W.Va. Code § 6B-3-1(8)(8). Here, the analysis is different as the Requester is not lobbying on behalf of the client who has hired her to assist it in bidding on a State contract, i.e. she is not promoting the passage or defeat of legislation for the client in question.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.* and W.Va. Code§ 61-10-15, 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
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