

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 04-30

September 30, 2004

RE: Are campaign contributions required to be reported by executive agency lobbyists as expenditures or financial transactions?

DECISION: No.

This opinion is issued in response to your July 15, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 30, 2004 meeting of the Commission and the following opinion is issued.

You state relevant facts as follows. Previously you requested advice from the Commission staff as to whether or not an executive agency lobbyist or legislative agent could make campaign contributions to state candidates. You were informed by the Commission's General Counsel that an executive agency lobbyist could make campaign contributions to state candidates who are currently employed within the executive branch, but not to candidates who are general assembly members. You also were informed that, as a registered lobbyist, you are not required to report any campaign contributions to an elected executive branch official. You are concerned that you may be incorrect in your thinking, and ask whether campaign contributions need to be reported within section "C" or "D" of the Updated Registration Statement for executive agency lobbyists. You state further that executive agency lobbyists ("EALs") for your corporation did not make any contributions on behalf of the corporation.

As you have noted in your request, KRS 11A. 010(5), which defines "gift" as provided below, does not include campaign contributions, but specifically excludes them.

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, or door prizes available to the public;

Additionally, KRS 11A.201(2) and (5), which define “expenditure” and “financial transaction” (for executive agency lobbying purposes) as provided below, do not include or exclude campaign contributions.

(2)(a) "Expenditure" means any of the following that is made to, or for the benefit of an elected executive official, the secretary of a cabinet listed in KRS 12.250, an executive agency official, or a member of the staff of any of the officials listed in this paragraph:

1. A payment, distribution, loan, advance, deposit, reimbursement, or gift of money, real estate, or anything of value, including, but not limited to, food and beverages, entertainment, lodging, transportation, or honoraria;
2. A contract, promise, or agreement to make an expenditure; or
3. The purchase, sale, or gift of services or any other thing of value.

(b) “Expenditure” does not include a contribution, gift, or grant to a foundation or other charitable organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. "Expenditure" does not include the purchase, sale, or gift of services or any other thing of value that is available to the general public on the same terms as it is available to the persons listed in this subsection. "Expenditure" does not include a payment, contribution, gift, purchase, or any other thing of value that is made to or on behalf of any elected executive official, the secretary of a cabinet listed in KRS 12012.250, an executive agency official, or any member of the staff of any of the officials listed in this paragraph who works for a state agency for which the executive agency lobbyist is not registered to influence;

...

(5)(a) "Financial transaction" means a transaction or activity that is conducted or undertaken for profit and arises from the joint ownership, or the ownership, or part ownership in

common of any real or personal property or any commercial or business enterprise of whatever form or nature between the following:

1. An executive agency lobbyist, his employer, a real party in interest, or a member of the immediate family of the executive agency lobbyist, his employer, or a real party in interest; and

2. Any elected executive official, the secretary of a cabinet listed in KRS 12.250, an executive agency official, or any member of the staff of any of the officials listed in this subparagraph.

(b) "Financial transaction" does not include any transaction or activity described in paragraph (a) of this subsection if it is available to the general public on the same terms;

EALs are required to report expenditures made to or on behalf of a state elected or appointed official or staff member employed by a state agency for which the EAL is registered to lobby, and they also are required to report financial transactions conducted or undertaken for profit between the lobbyist, or a family member, and an elected or appointed official or staff member of the official, unless the financial transaction is available to the general public on the same terms.

A campaign contribution does not appear to be a financial transaction because it is not a transaction or activity undertaken for profit from the ownership of property between an EAL and an executive official who is a candidate. Thus, the question that needs to be answered by the Commission is whether or not a campaign contribution falls under the definition of expenditure.

Expenditures made to or on behalf of executive branch officials that need to be reported include gifts of money, as well as other things of value listed above. However, the definition of gift in KRS 11A010(5), above, specifically excludes campaign contributions as gifts. Thus, campaigns of executive branch employees and officials are not prohibited by law from accepting campaign contributions from individuals registered as EALs. Consequently, the Commission believes that although campaign contributions may be made for the benefit of an executive branch employee's or official's campaign, because campaign contributions are not considered to be gifts to the executive branch official, they would not be considered expenditures and would not need to be reported by an EAL on his Updated Registration Statement.

Campaign contributions by EALs would be required to be disclosed, however, pursuant to laws governing elections administered by the Registry of Election Finance.

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Also, the Commission reminds you that any payments, contributions, gifts, purchases or other things of value that are made to or on behalf of a state official are not considered expenditures by an EAL if the EAL is not registered to lobby the state agency for which the state official works, and thus would not be reported on the EAL's Updated Registration Statement. Only when an EAL is registered to lobby the agency of the official would the expenditures made on behalf of an official be reportable.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: James W. Willhite