

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93-54

October 18, 1993

RE: Lobbying registration questions concerning advertising and press issues

This opinion is in response to your September 13, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 18, 1993, meeting of the Commission, and the following opinion is issued.

You represent a press association and its member newspapers. As such, you have several questions concerning executive agency lobbying relative to registration and advertising. First, you wish some clarification of Section 51 of Senate Bill 7 (codified as KRS 11A. 231). This section lists some activities which are excepted from the executive agency lobbying registration requirements. Specifically you want to know what "advertising statements" includes and if other media and advertising services, in addition to newspapers, are included in the exception.

The facts you provide relative to your second question are as follows. A press service provides a clipping and news release mailing service to state agencies. The amount charged for this service depends on the newspaper articles requested by the agency and the frequency of mailing news releases. You state it may take a year or more to reach a \$5,000 expenditure level. You ask if the \$5,000 per decision is limited to a specific time frame. If not, you ask whether the press service must register as an executive agency lobbyist if, after several years, the amount of expenditures by the agency for this service reaches \$5,000.

Your final question pertains to advertising agencies who seek state contracts. You wish to know if an advertising agency interested in a contract of over \$5,000 sought through bidding procedures is required to register as a lobbyist to legally discuss the bidding specifications. Additionally, is the advertising agency awarded the contract required to register as a lobbyist?

KRS 11A. 231(1)(b) states:

(1) KRS 11A.211 and 11A.216 do not apply to efforts to influence executive agency decisions or conduct executive agency lobbying activity by any of the following:

...

(b) News, editorial, and advertising statements published in newspapers, journals, or magazines, or broadcast over radio or television;

Advertising statements include any form of advertisements made by any one attempting to influence an executive branch employee. As provided in the statute cited above,

these advertising statements include those published in newspapers, journals, magazines, or broadcast on radio or television. Public agencies (state, federal, local) are not considered executive agency lobbyists according to KRS 11A.201(8)(b) which states:

(b) "Executive agency lobbyist" does not include an elected or appointed officer or employee of a federal or state agency, state college, state university, or political subdivision who attempts to influence or affect executive agency decisions in his fiduciary capacity as a representative of his agency, college, university, or political subdivision;

Therefore, public agencies which advertise employment openings and bid notices are not required to register with the Commission.

Concerning your second question, the Commission concludes that if a vendor is attempting to influence an executive agency decision and cannot determine if the total amount of the contract sought will exceed \$5,000, the vendor should register as an executive agency lobbyist. The Commission expands upon the \$5,000 per decision requirement issued in Advisory Opinion 93-34 (a copy of which is enclosed) to mean \$5,000 per decision per year. However, officials of the press service are not required to register if the influencing of state-agency decisions is not one of the main purposes of their employment (See KRS 11A.201(8)(a) below). The Commission believes the phrase "as one (1) of his main purposes on a regular and substantial basis" modifies "engaged to influence executive agency decisions" as well as "to conduct executive agency lobbying activity,".

KRS 11A.201(8)(a) and (9)(a)-(b) provide the following definitions:

(8)(a) "Executive agency lobbyist" means any person engaged to influence executive agency decisions or to conduct executive agency lobbying activity as one (1) of his main purposes on a regular and substantial basis.

(9)(a) "Executive agency lobbying activity" means contacts made to promote, oppose, or otherwise influence the outcome of an executive agency decision by direct communication with an elected executive official, the secretary of any cabinet listed in KRS 12.250, any executive agency official, or a member of the staff of any one of the officials listed in this paragraph.

(b) "Executive agency lobbying activity" does not include any of the following:

1. The action of any person having a direct interest in executive agency decisions, if the person acting under Section 1 of the Kentucky Constitution, assembles together with other persons for their common good, petitions any person listed in paragraph (a) of

- this subsection for the redress of grievances or other proper purposes;
2. Contacts made for the sole purpose of gathering information contained in a public record; or
 3. Appearances before public meetings of executive agencies;

The Commission believes that submission of a bid or response to a request for proposal is not executive agency lobbying. Similarly, an advertising agency that contacts a state agency for the sole purpose of gathering information about bidding specifications is not engaged in executive agency lobbying (see exception number 2 above). However, if discussions between the advertising agency and the state agency are not covered by the above exceptions and if the advertising agency has engaged a person to attempt to influence the state agency relative to the contract under bid as one of the main purposes of his employment, the person engaged should register as an executive agency lobbyist. The advertising agency also should register as the employer of the executive agency lobbyist.

The award of a contract does not in itself require registration. The decision whether to register should be based on the law and interpretation stated above.