

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93-58

October 18, 1993

RE: Application of Executive Agency Lobbyist Laws to the Petroleum Storage Tank
Environmental Assurance Fund Commission

This opinion is in response to your September 23, 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 state the relevant facts as follows. Your office, which represents the Kentucky Petroleum Storage Tank Environmental Assurance Fund Commission ("KPSTE AFC"), seeks an opinion on two issues relating to the KPSTE AFC. The first issue concerns owners or operators who seek financial assistance to pay for the costs of corrective action due to a storage tank release. Controversies arise concerning the eligibility of an owner or operator's participation in the program and also over the eligibility of certain costs for payment by the KPSTE AFC. One of the statutory responsibilities of the KPSTE AFC is to hear complaints regarding the payment of claims from the fund. The KPSTE AFC wishes to know if the owners or operators of the petroleum storage tanks who appear before the KPSTE AFC to present their cases are considered "executive agency lobbyists" under KRS Chapter 11A.

Your second inquiry pertains to those KPSTE AFC members who by statute are representatives of their industry and also may be registered executive agency lobbyists for their organizations. These members are approached by members of their own trade organizations regarding decisions of the KPSTE AFC and eligibility for reimbursement. You wish to know if the contacts made to a KPSTE AFC member by members of his own trade organization are considered executive agency lobbying activity and if the trade-organization members are executive agency lobbyists.

KRS 11A.201(8)(a) and (9)(a) and (b) provide:

(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 in most cases an owner or operator who comes before the KPSTE AFC regarding the payment of a claim does not fall under the statutory definition of an executive agency lobbyist. Lobbying "on a regular and substantial basis" would have to be "one of his main purposes" of employment for him to be considered a lobbyist. (The Commission has concluded that lobbying is not on a "substantial" basis unless it concerns an executive agency decision involving expenditure of more than \$5,000 of state funds per year.) Also, if his appearances before the KPSTE AFC were only at public meetings, he would not be considered a lobbyist. In addition, if he assembled with others to petition for redress of a common grievance, he would not be considered a lobbyist.

Concerning your second inquiry, if trade organization members or others approach KPSTE AFC commissioners in an effort to influence KPSTE AFC decisions, they would be engaged in lobbying and required to register, unless one of the above-stated exceptions applies.