

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94 - 11

February 3, 1994

RE: Must volunteers, if paid by nonprofit organizations on behalf of the association, register as executive agency lobbyists?

DECISION: Yes

This opinion is in response to your January 11, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 3, 1994, meeting of the Commission, and the following opinion is issued.

You present several scenarios on which you request guidance as to who should register as an executive agency lobbyist and who must register as an employer. The scenarios all involve a state-wide association of nonprofit healthcare organizations (the "association").

You present the facts of the first situation as follows. Representatives of organizations that comprise the association volunteer to lobby state officials on issues vital to the healthcare industry on behalf of the association. These volunteers lobby on their organization's time and are compensated for their actual lobbying expenses by the association. The lobbying issues involved include broad public items such as mandatory seat belt laws, as well as items particular in nature, such as funding for a particular Medicaid benefit.

You ask: If they are not compensated for their activities, are they required to register as executive agency lobbyists? If the volunteer members are required to register as executive agency lobbyists, then is the association required to register as the employer of an executive branch lobbyist? If the association is required to register as an employer, then, since the members are lobbying on behalf of the association which represents all of the member organizations of the association, is the association required to list all of the individual organizations as the real parties in interest? Or is the individual organization which employs the volunteer employee the only organization which must be listed as a real party in interest?

KRS 11A.201(8)(a) defines:

(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.

KRS 11A.201(4) defines:

(4) "Engage" means to make any arrangement, and "engagement" means arrangement, whereby an individual is employed or retained for compensation to act for or on behalf of an employer to influence executive agency decisions or to conduct any executive agency lobbying activity;

KRS 11A.201(7) defines:

(7) "Executive agency decision" means a decision of an executive agency regarding the expenditure of funds of the state or of an executive agency with respect to the award of a contract, grant, lease, or other financial arrangement under which those funds are distributed or allocated;

KRS 11A.211(1)(b) provides:

(1) Each executive agency lobbyist and employer shall file with the commission within ten (10) days following the engagement of an executive agency lobbyist, an initial registration statement showing all of the following:

(a) The name, business address, and occupation of the executive agency lobbyist;

(b) The name and business address of the employer or of the real party in interest on whose behalf the executive agency lobbyist is acting, if it is different from the employer. However, if a trade association or other charitable or fraternal organization that is exempt from federal income taxation under Section 501(c) of the Internal Revenue Code is the employer, the statement need not list the names and addresses of every member of the association or organization, so long as the association or organization itself is listed;

Although the "volunteer" lobbyists are not compensated by the association, they are paid by their employers to act on behalf of the association. The lobbyists' organizations are the real parties in interest on whose behalf the association is lobbying. Therefore, the "volunteer" lobbyists are "engaged", and must register with the Commission if they are attempting to influence executive agency decisions involving state expenditures of at least \$5,000 per year. Those decisions which are broad public issues and do not involve the expenditure or budgetary allocation of state funds are not executive agency decisions.

The organizations allowing their representatives to lobby on behalf of the association are compensating their employees on behalf of the association. Thus, the association must register as the employer of an executive agency lobbyist and the organization for which the executive agency lobbyist works should be listed as the real party in interest. As provided above, the statement need not list every member of the association as long as the association itself is listed.

Additionally, you ask: *If an association employs an administrative assistant and volunteer student intern, who occasionally lobby state officials, must they register as executive agency lobbyists and must the association register as the employer?* The intern receives reimbursement for his actual expenses, but is not compensated by the association.

The administrative assistant must register with the Commission if he contacts state officials, on a regular basis, to attempt to influence executive agency decisions involving state expenditures of more than \$5,000 per year. The Commission believes "on a regular basis" involves two or more contacts by the lobbyist with state officials or their staff within a 12-month period.

The student, although not compensated, is employed by the association through a learning contract and thus, is considered engaged if acting on behalf of the association to influence executive agency decisions. The student intern must register if his activities fall within the guidelines above.

Your final question involves volunteer workers and board members of nonprofit organizations who occasionally contact state officials or employees on behalf of their nonprofit organizations. You ask: *Is the volunteer required to register as an executive agency lobbyist? Is the nonprofit corporation required to register as the employer of an executive agency lobbyist?*

If the volunteer is not employed or compensated to act on behalf of the nonprofit organization for which he is lobbying, the volunteer is not required to register with the Commission as an executive agency lobbyist. However, the Commission encourages such individuals to register with the Commission if they are attempting to influence executive agency decisions on behalf of an organization.

