
ADVISORY OPINION 94 - 53

September 13, 1994

RE: Must investment firm employee register as executive agency lobbyist?

DECISION: Yes

This opinion is in response to your September 1, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 13, 1994, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed by a securities and investment banking firm. A division of the firm is responsible for structuring, managing, and ultimately buying a negotiated tax-exempt or taxable municipal bond issue and in turn selling those bonds to both institutional and retail customers. Your firm receives a fee for this service which is usually paid out of the bond issue proceeds.

As a representative of your firm, you meet with employees of bond-issuing state agencies and attempt to secure business for your firm. You ask whether you or your firm is required to register as executive agency lobbyists.

KRS 11A.201(7), (8) and (9) provide:

(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;

(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.

(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;

(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 your firm, in its contacts through you, is attempting to influence executive agency decisions involving state expenditures. Thus, the Commission believes you and other firm employees who similarly contact state officials on such matters should register as executive agency lobbyists. Your firm should register as the employer of the lobbyists.

Please find enclosed Advisory Opinion 93-73 issued on November 22, 1993, which may provide some additional guidance on this matter.