

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 99-51
December 10, 1999

RE: Must individuals register as executive agency lobbyists?

DECISION: Yes.

This opinion is in response to your November 18, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 10, 1999, meeting of the Commission and the following opinion is issued.

You request a formal, written opinion from the Commission on whether the individuals in the following circumstances should be registered as executive agency lobbyists:

- 1) *You are an employee of a university whose time and services are loaned to a partnership that contracts with the state (for more than \$5,000). Part of your job includes negotiating rates and contracts with the state and attempting to influence executive branch agency decisions. Should this person be registered as a lobbyist?*
- 2) *You are employed by a company that contracts with a partnership that contracts with the state to do business. Part of your job includes negotiating rates and contracts with the state and attempting to influence executive branch agency decisions. Should this person be registered as a lobbyist?*
- 3) *You are a board member of a partnership formed to do business with the state. You are not an employee of the partnership, nor does your board description include lobbying. However, board members are employees of the owners of the partnership. If a board member attempts to negotiate rates and contracts with the state or attempts to influence executive branch agency decisions, should this person be registered as a lobbyist?*

KRS 11A.201(8) provides:

(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 substantial basis.

ADVISORY OPINION 99-51

December 10, 1999

Page Two

(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;

Employees of universities who attempt to influence executive agency decisions in their fiduciary capacities, as representatives of their respective universities, are not considered executive agency lobbyists. However, the Commission believes that, if a university employee, in his attempts to influence executive agency decisions, is acting as a representative for a partnership, rather than for a university, then he is not exempt from the requirements of registering as an executive agency lobbyist. Thus, if a university employee is on loan to a partnership, and is not acting as a representative for the university in his attempts to influence executive agency decisions through negotiating rates and contracts with the state, then he must register as an executive agency lobbyist.

If you are engaged by a partnership to negotiate rates and contracts with the state and attempt to influence executive agency decisions, you are required to register as an executive agency lobbyist regardless of whether you are paid by a company contracting with the partnership or by the partnership itself. The company which pays your salary would be considered your employer and the partnership on whose behalf you are lobbying would be the real party in interest.

Finally, if, as a board member of a partnership formed to do business with the state, you are paid by the owners of the partnership to act on behalf of the partnership, then you must register as an executive agency lobbyist if you attempt to influence executive agency decisions in negotiations of rates and contracts with the state. Advisory Opinion 94-11 (a copy of which is enclosed), issued by the Commission, provides that, although volunteer lobbyists are not compensated by the association they represent, they are paid by their employers to act on behalf

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 99-51

December 10, 1999

Page Three

of the association, and thus must register as executive agency lobbyists. Similarly, as a board member, you may not be paid by the partnership, but are paid by the employers of the partnership to represent the partnership in lobbying activity; thus, you must register as an executive agency lobbyist.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Bertie Oldham Salyer, M.A., A.M.E.

Enclosure: Advisory Opinion 94-11