

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93 – 34

August 23, 1993

RE: Who is an "executive agency lobbyist" and what expenditures must be reported?

This letter is in response to your June 10, 1993, request for an advisory opinion from the Kentucky Legislative Ethics Commission, and your August 2, 1993, request to the Executive Branch Ethics Commission (the "Commission"). Your request of June 10 was forwarded to the Commission for an opinion. Both requests were reviewed at the August 23, 1993, meeting of the Commission, and the following opinion is issued.

You have several questions relative to "executive branch lobbying". First, you wish to know if a distinction exists between a vendor who is attempting to sell goods and services to the state, and an executive agency lobbyist as defined in Senate Bill 7. And thus, whether the registration and reporting requirements for executive branch lobbyists apply to all entities selling goods or services to the state. In addition, you ask what expenditures made by an executive agency lobbyist must be reported. Your final question pertains to whether a managing partner of a law firm negotiating a personal service contract with the state must register as an executive agency lobbyist.

Senate Bill 7, Section 45(8)(a) (to be codified as KRS 11A.201(8)(a)) defines an "executive agency lobbyist" as:

... any person engaged to influence executive agency decisions or to conduct executive agency lobbying activity as one of his main purposes on a regular and substantial basis.

Senate Bill 7, Section 45(4) (to be codified as KRS 11A.201(4)) defines "engage" as:

...to make any 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 executive agency lobbying.

Senate Bill 7, Section 45(9)(a) (to be codified as KRS 11A.201(9)(a)) defines "executive agency lobbying activity" as:

...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.

Senate Bill 7, Section 52 (to be codified as KRS 11A.236) prohibits employers from compensating executive agency lobbyists on a contingency basis, but it exempts from that prohibition:

...any person ... compensating his sales employees pursuant to an incentive compensation plan, such as commission sales, if the incentive compensation plan is the same plan used to compensate similarly situated sales employees who are not executive agency lobbyists.

The latter provision clearly implies that some sales employees are to be considered executive agency lobbyists. Thus, the Commission concludes that those selling goods and services are not exempt from the provisions of Senate Bill 7.

As a guideline in determining whether such actions are "regular and substantial," the Commission states that, barring other, unusual circumstances, only those who lobby concerning executive agency decisions involving state expenditures of more than \$5,000 per decision will be considered as acting on a "regular and substantial basis" and thus subject to regulation as executive agency lobbyists.

Senate Bill 7, Section 45(2)(a) (to be codified as KRS 11A.201(2)(a)) defines "expenditure" as:

...any of the following that is made to, or for the benefit of an elected executive official, the secretary of a cabinet listed in KRS 12.050, an executive agency official, or a member of the staff of any of the officials listed in this paragraph:

1. A payment, distribution, loan, advance, deposit, reimbursement, or gift of money, real estate, or anything of value, including, but not limited to, food and beverages, entertainment, lodging, transportation, or honoraria;
2. A contract, promise, or agreement to make an expenditure; or
3. The purchase, sale, or gift of services or any other thing of value.

Expenditures that are required to be reported by executive agency lobbyists include any expenses of a lobbyist made to, or for the benefit of, an executive branch employee. This may include refreshments, luncheon, meeting room, travel, and consulting fee expenses paid by the lobbyist. Any expenditure reported by the lobbyist does not have to be reported by the lobbyist's employer. The cost of maintaining an office and support services for an executive agency lobbyist does not have to be reported as an expenditure.

As for your final question as to whether a law firm partner must register as a lobbyist when pursuing a personal service contract, the Commission believes that, if the

activities of the partner or any lawyer exceed the levels in the above guideline, he or she would be required to register.