

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93-52

September 20, 1993

RE: Who is an executive agency lobbyist?

This opinion is in response to your August 3, 1993, request for an advisory opinion from the Kentucky Legislative Ethics Commission. Your request was forwarded to the Executive Branch Ethics Commission (the "Commission") on September 8, 1993. This matter was reviewed at the September 20, 1993, meeting of the Commission, and the following opinion is issued.

You have two questions concerning the definition of "executive agency lobbyist". First, you wish to know whether persons and companies who hold personal service contracts with the Kentucky Retirement Systems to advise the Systems' Board of Trustees are considered executive agency lobbyists. These individuals or companies may be hearing officers, investment advisors, actuaries, outside legal counsel, real estate managers, medical examiners, and others. Secondly, you ask whether entities who contact the Retirement Systems in order to be considered for providing investment or other services are considered executive agency lobbyists. These entities are attempting to influence the Retirement Systems to contract or do business with them.

The Commission considered the following definitions in reviewing this request:

(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(9) defines "executive agency lobbying activity" as:

(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.

KRS 11A.201(7) defines "executive agency decision" as:

(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;

The Commission believes that individuals and companies who hold personal service contracts with the state and are advising the Retirement Systems under the terms of their contract are not engaged in executive agency lobbying activity and thus, are not executive agency lobbyists. However, the advice given by the individual or company must be within the scope of the service they are to provide to the Retirement Systems. If the individual or company is providing recommendations to the Retirement Systems which are not within the scope of the contract such as attempting to influence the Retirement Systems for renewal of a contract, then the individual or company is considered an executive agency lobbyist. If a determination cannot easily be made as to whether the individual's or company's activities are lobbying, the individual or company should register as an executive agency lobbyist.

Also, any individual or company attempting to influence the Retirement Systems to contract or do business with them concerning executive agency decisions of over \$5,000 per decision is considered an executive agency lobbyist. Advisory Opinion 93-34 (a copy of which is enclosed) also addresses the issue of who is considered an "executive agency lobbyist."