

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93-55

October 18, 1993

RE: Are design engineers and right of-way agents executive agency lobbyists?

This opinion is in response to your September 20, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 18, 1993, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The electric utility for which you work frequently relocates electric lines, poles, and other facilities to facilitate construction of roadways. Much of this work is reimbursed by the Transportation Cabinet and is in excess of \$5,000. Your company's design engineers and right-of-way agents negotiate with the Transportation Cabinet the amount of reimbursement your company will receive. You ask if this is considered executive agency lobbying and if your engineers and right-of-way agents are lobbyists.

KRS 11A.201(8)(a) defines an "executive agency lobbyist" as:

(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.

Additionally, KRS 11A.201(7) defines an "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;

In Advisory Opinion 93-41 (a copy of which is enclosed), "other financial arrangement" is interpreted to mean any arrangement whereby funds of an executive branch agency are distributed or allocated to the benefit of any person, company, or organization seeking such funds. The Commission believes the reimbursement of funds made by the Transportation Cabinet constitute an expenditure of funds with respect to an "other financial arrangement".

Therefore, if the engineers and right-of-way agents are attempting to influence the Transportation Cabinet relative to the reimbursement, and this is one of the main purposes of their employment, they are considered lobbying the executive branch and as executive agency lobbyists must register with the Commission. However, those design engineers and right-of way agents involved in these negotiations whose employment does not involve attempting to influence executive agency decisions as one of its main purposes are not considered executive agency lobbyists and are not required to register.

