

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93-64

December 16, 1993

RE: Private agency asks if required to register as employer of executive agency lobbyist.

This opinion is in response to your October 7, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 22 and December 16, 1993, meetings of the Commission, and the following opinion is issued.

You state the relevant facts as follows. Your agency advocates for the interests of children with several state agencies of the executive branch. You receive no state funding, but are attempting to influence the state agencies in their allocation of resources and extent of services for particular programs that benefit poor, minority, or disabled children. Your attempts to influence are targeted at what services will be provided rather than who will be providing the service.

Additionally, you lease a portion of your office building to a state agency. The lease agreement is over \$5000. Your negotiation of this lease agreement is once a year and involves only the time necessary to complete the paperwork. You ask whether the lease arrangement with the state agency requires you to register as an employer of an executive agency lobbyist.

KRS 11A.201(3),(7), and(8)(a) define the following:

(3) "Employer" means any person who engages an executive agency lobbyist;

...

(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;

It appears that your organization's efforts do relate to decisions with regard to spending of state funds through contracts, grants, leases or other financial arrangements. If your efforts are successful, more state funds would flow to the benefit of the group you represent, and perhaps less would flow to other groups competing for state funds. Thus, the Commission requires your organization to register.

Regarding your second issue, negotiations between your agency and the state agency with whom you have a lease agreement are likely to include attempts to influence a state agency with respect to the award of a lease. However, unless the personnel from your agency involved in the negotiations are attempting to influence executive agency decisions as one of their main purposes of employment, they are not required to register as executive agency lobbyists. From the information given to the Commission, it appears in this situation you are not required to register with the Commission.