

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93-73

November 22, 1993

RE: Securities firm asks if it or its brokers are executive agency lobbyists

This opinion is in response to your October 27, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 22, 1993, meeting of the Commission, and the following opinion is issued.

You provide the relevant facts as follows. You are employed by a securities firm that provides financial advice on structuring municipal bond issues at the state and local level. After an issue has been structured, your firm underwrites the bonds, either through a competitive or negotiated sale, and maintains a secondary market on the bond issues. You are in frequent contact with several state agencies and respond to Requests for Proposals for managing of competitive and negotiated bond issues. You ask if your firm's employees who interact with state agencies are considered executive agency lobbyists. Also, you ask whether a broker for your firm who executes stock and bond transactions for an investment officer of a state agency must register as a lobbyist.

KRS 11A.201(7), (8)(a) and (9)(a) provide:

(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.

(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.

As stated in Advisory Opinion 93-54 (a copy of which is enclosed), the Commission believes responding to a Request for Proposals ("RFP") by itself is not executive agency lobbying.

However, you have described a broad scope of activities. You are a "major provider of financial advice" with respect to restructuring bond issues at the state level. You are in "frequent contact" with various state agencies.

The Commission believes your firm is likely to influence state decisions as to whether to issue bonds and as to what the fees paid to your firm and others will be. Thus, the Commission believes your firm and your firm's employees who contact the state on such matters are involved in lobbying and should register.

As to your second question, a broker in your firm who only executes stock and bond transactions as ordered by a state investment officer is not required to register. However, if the broker attempts to influence the state's investment decisions, the broker should register.