

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93 – 75

November 22, 1993

RE: Lobbying questions concerning the regional airport authority of Louisville and Jefferson County

This opinion is in response to your October 28, 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 state the relevant facts as follows. You are the general counsel for the Regional Airport Authority of Louisville and Jefferson County (the "Authority"). The Authority was created by a Special Act of the Kentucky General Assembly in 1928 and now is governed by KRS Chapter 183. According to KRS 183.132, the Authority is a "body politic and corporate with the usual corporate attributes, and in its corporate name may sue and be sued, contract and be contracted with and do all things reasonable or necessary to effectively carry out the duties prescribed by statute."

The Authority is composed of an eleven member board appointed according to KRS 183.132(6). The members of the board receive no compensation for their service to the Authority. As part of the Louisville Airport Improvement Program (the "LAIP"), the Authority and its staff occasionally communicate with executive branch agencies regarding the financing of LAIP.

You present the following questions concerning the applicability of KRS 11A.201 et seq. to the Authority:

- 1) Is the Authority a "political subdivision" for purposes of KRS 11A.201(8)(b)?
- 2) Are the Authority's unpaid board members "engaged" by the authority so that they could be considered executive agency lobbyists for purposes of the Act?
- 3) Does the Act's definition of "person" include political subdivisions of the Commonwealth, such as cities, counties and other governmental bodies created pursuant to state statute, like the Authority?
- 4) Assuming the Authority constitutes a "political subdivision" for purposes of the Act, does the Act's definition of "employee" include:
 - (a) the Authority's board members who are not officers;
 - (b) the Authority's general manager and other staff members; and
 - (c) those persons who are engaged to represent the Authority professionally (such as the Authority's independent CPA's, retained outside general counsel and outside engineering firms)?

KRS 11A.201(8)(b) provides:

(8)(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;

KRS 11A.201(4) and (13) define:

(4) "Engage" means to make any arrangement, and "engagement" means 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 any executive agency lobbying activity;

(13) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in concert;

The Commission notes that in Attorney General Opinion OAG 65-237 the Lexington-Fayette County air board is a political subdivision of the Commonwealth. Therefore, the Commission believes the Regional Airport Authority of Louisville and Jefferson County, a similar organization under statute, is a political subdivision of the Commonwealth. The appointed board members and employees of the Authority who attempt to influence or affect executive agency decisions as representatives of the Authority are not considered executive agency lobbyists. Additionally, unpaid board members are not considered executive agency lobbyists because they receive no compensation for their service, and thus, are not "engaged" to influence executive agency decisions.

The Commission concludes those persons who are engaged to represent the Authority, such as independent CPA's and outside general counsel, are not considered employees of the Authority. Therefore, they should register with the Commission as executive agency lobbyists if they are attempting to influence executive agency decisions.

Regarding your inquiry as to the definition of "person", the Commission believes the terms "organization, or group of persons acting in concert" include cities, counties, and other governmental entities. However, these political subdivisions of the Commonwealth are exempted as executive agency lobbyists in KRS 11A.201(8)(b) above.