

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 95-9**

March 23, 1995

RE: Does the term "lobbyist" in KRS 11A.040(7) refer to executive agency lobbyists as well as legislative agents?

DECISION: Yes.

This opinion is in response to your March 6, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 23, 1995, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You have reviewed the Commission's Advisory Opinion 94-64 which states, in part:

"The Commission believes in KRS 11A.040(7) the term "lobbyist" applies to executive agency lobbyists as well as legislative agents."

By previous letter to the Commission dated February 14, 1995, you indicate you do not agree with the Commission's interpretation that "lobbyist" in KRS 11A.040(7) means an executive agency lobbyist. In your March 6, 1995, letter to the Commission you request the Commission to issue an advisory opinion which explains the Commission's legal basis for its belief that "lobbyist" in KRS 11A.040(7) does refer to executive agency lobbyists.

When the original KRS 11A was enacted in 1992, the term "lobbyist" commonly referred to individuals who are now referred to as "legislative agents." Legislative agents are hired by individuals or entities to attempt to influence legislation which is before the legislative branch.

The 1992 statute included KRS 11A.010(11) which states:

'Lobbyist' means any person employed as a legislative agent or legislative counsel to promote, oppose, or act with reference to any legislation which affects, or may affect, private pecuniary interests, as distinct from those of the whole people.

This definition is important later in Chapter 11A because KRS 11A.040(7) states that:

A former public servant shall not act as a lobbyist or lobbyist's principal for a period of one (1) year after the latter of:

(a) The date of leaving office or termination of employment; or

(b) The date the term of office expires to which the public servant was elected.

Violation of KRS 11A.040(7), which became effective July 14, 1992, is a Class D felony.

At a special legislative session held in 1993 the General Assembly passed a bill which established the Legislative Ethics Code and the Kentucky Legislative Ethics Commission. That Code uses the term "legislative agent" instead of "lobbyist." In the same bill containing the Legislative Ethics Code, the General Assembly, in its 1993 Special Session, passed provisions which establish registration and reporting requirements for those engaged to influence decisions of the executive branch. These provisions used the term "executive agency lobbyist" and became part of KRS Chapter 11A.

You assert that, if the Legislature had intended KRS 11A.010(11) to mean "executive agency lobbyist" and KRS 11A.040(7) to apply to "executive agency lobbyists," it could have amended those statutes to clearly reflect that intention.

The Commission agrees that the language in KRS 11A.040(7) is not as clear as it could be. However, the Commission believes that the only rational interpretation of the term "lobbyist" in the amended KRS Chapter 11A is that it includes executive agency lobbyists.

KRS 11A.010 specifically states that the definitions listed are to be "used in this chapter, unless the context otherwise requires." The Commission believes the context of KRS 11A.040(7), as amended, which provides a post-employment prohibition for a public servant employed by the executive branch of state government, requires that the term "lobbyist" refer to those who lobby the executive branch as well as those who lobby the legislative branch.

KRS 11A is entitled the "Executive Branch Code of Ethics" and it sets ethical limits for executive branch employees. In the original KRS 11A, the legislature set a wide boundary in prohibiting conflicts of interest when it prohibited former executive-branch employees from lobbying even a different branch, the legislature, for one year. At that time, there was no regulation of executive-branch lobbying in the law.

Later, when the legislature created within KRS Chapter 11A a new body of regulation concerning executive branch lobbying, it did not change the definition of lobbyist in Chapter 11A. However, the potential conflict of a former executive-branch employee lobbying the executive branch is obviously greater than if he were to lobby the legislative branch. Even

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though the legislature did not go back and change the definition of "lobbyist," we believe it clearly intended to prohibit the greater potential conflict in lobbying the executive branch. To hold otherwise, we believe, would be to use a technicality to create an absurdity.

Therefore, the Commission is of the opinion that a former executive branch employee may not register or act an executive agency lobbyist for a period of one year after leaving state employment.

EXECUTIVE BRANCH ETHICS COMMISSION

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BY: Livingston Taylor, Chairman