

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2006-EC-002 Issued February 17, 2006

The Ethics Commission has received a written request for an advisory opinion from Mr. Rex Terry, an attorney seeking an opinion on behalf of one of his clients. In his advisory opinion request, Mr. Terry asks whether a person who might meet the definition of a "lobbyist" under the Disclosure Act for Lobbyists and State and Local Officials (Ark. Code Ann. § 21-8-401 *et seq.*) and who seeks to influence a decision by an Arkansas Agency, board or commission to hire or terminate an employee, is engaged in "lobbying," as that term is defined by Ark. Code Ann § 21-8-402, and whether such activity requires registration pursuant to Ark. Code Ann. § 21-8-601.

The applicable statutes are Ark. Code Ann. §§21-8-402 and 21-8-601. The first of these statutes sets forth the definitions of significant terms and provides, in pertinent part, as follows:

(1) "Administrative action" means any decision on, or proposal, consideration, or making of any rule, regulation, ratemaking proceeding, or policy action by a governmental body.

* * *

(8) "Legislative action" (8) means introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto, or any other official action or nonaction on any bill, ordinance, law, resolution, amendment, nomination, appointment, report, or other matter pending or proposed before a committee or house of the General Assembly, a quorum court, or a city council or board of directors of a municipality.

* * *

(10) "Lobbying" means communicating directly or soliciting others to communicate with any public servant with the purpose of influencing legislative action or administrative action;

(11) “Lobbyist” means a person¹ who:

(A) Receives income or reimbursement in a combined amount of four hundred dollars (\$400) or more in a calendar quarter for lobbying one (1) or more governmental bodies²; or

(B) Expends four hundred dollars (\$400) or more in a calendar quarter for lobbying one (1) or more governmental bodies, excluding the cost of personal travel, lodging, meals, or dues; or

(C) Expends four hundred dollars (\$400) or more in a calendar quarter, including postage, for the express purpose of soliciting others to communicate with any public servant³ to influence any legislative action or administrative action of one (1) or more governmental bodies unless the communication has been filed with the Secretary of State or the communication has been published in the news media. If the communication is filed with the Secretary of State, the filing shall include the approximate number of recipients.

The second provision, Ark. Code Ann. § 21-8-601, sets forth the registration requirements for lobbyists, and specifically states that a “lobbyist shall register within five (5) days after beginning lobbying.” Ark. Code Ann. §§ 21-8-603 and 21-8-604 set forth the filing deadlines and the specific contents for the lobbyist activity reports which are required to be filed monthly for a lobbyist who lobbies members of the General Assembly for any month in which the General Assembly is in session, and otherwise, are required to be filed quarterly.

Based on the facts presented and the applicable law, it is the Commission’ opinion that the activity described—seeking to influence the hiring or firing of an Arkansas agency, board or commission employee—would not require registration or reporting as a lobbyist because such activity does not constitute “lobbying” as that term is defined. More specifically, the decision of a state board or commission to hire or terminate any employee does not constitute either legislative action or administrative action.

¹ The term “person,” as defined in Ark. Code Ann. § 21-8-402 (14) means a business, individual, corporation, union, association, firm, partnership, committee, club, or other organization or group of persons.

² The term “governmental body, ” as defined in Ark. Code Ann. § 21-8-402 (6) means any office, department, commission, council, board, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of the state, municipality, county, school district, improvement district, or any political district or subdivision thereof.

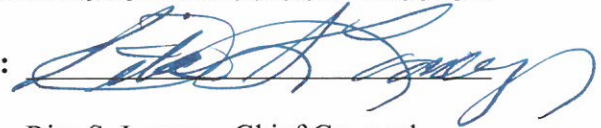
³ The term “public servant,” as defined in Ark. Code Ann. § 21-8-402 (18) means all public officials, public employees, and public appointees.

It is noted that this opinion is being issued based on the provisions set forth above as applied specifically to the activity as described in the request. Conduct by which a registered lobbyist seeks to influence administrative or legislative action is "lobbying" and accordingly, the reporting of such lobbying activity is required by law.

This opinion is issued by the Arkansas Ethics Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2).

ARKANSAS ETHICS COMMISSION

By:



Rita S. Looney, Chief Counsel