

ARKANSAS ETHICS COMMISSION

2020 WEST THIRD, SUITE 300
LITTLE ROCK, AR 72205
(501) 324-9600

JACK R. KEARNEY
Director/Chief Counsel
MACK R. KOONCE
Commission Chairman



Commissioners:
MARY LYNN REESE
KERRY F. PENNINGTON, M.D.
RONALD A. MAY
JEROME GREEN

Opinion No. 91-EC-009

August 3, 1992

The Arkansas Ethics Commission has met with and fielded inquiries from public officials, candidates, lobbyists, and political action committee officials to determine what practical concerns are of the most urgent need for guidance. The Commission, on its own initiative, is issuing interpretive opinions to frequently raised questions.

A hypothetical executive of a company has as his "primary responsibility" conducting "public relations" with local public officials (Mayor, City Council, County Judge, etc.). Further, the executive's salary is more than two hundred fifty dollars (\$250.00) per quarter. Your specific questions have been paraphrased as follows:

1. Under the present Act (Initiated Act 1 of 1988) must I file reports with the Secretary of State?

The Attorney General has opined, on numerous occasions, that an employee whose duties require him to occasionally or frequently lobby public officials, must register as a lobbyist. Two of those Attorney General opinions are 89-E-7 and 89-E-26, which this Commission accepts as controlling here.

The second aspect of the question deals with whether the executive must register and file reports with the Secretary of State. The answer to this part of your question may be found in ACA § 21-8-602.

(a) A lobbyist who lobbies public servants of state government shall register and make other filings with the Secretary of State.

(b) A lobbyist who lobbies public servants of municipal government shall register and make other filings with

the city clerk or recorder of the municipality, as the case may be.

(c) A lobbyist who lobbies public servants of county government or any government body not otherwise covered by this section shall register and make other filings with the county clerk of the county.

(d) A lobbyist who lobbies public servants of a governmental body covering a district which includes all or part of more than one (1) county shall file with the Secretary of State and the county clerk of his principal place of business or residence within the state; and

(e) A lobbyist who would be required to register and file with more than one (1) public official under this section may, in lieu of registering with each public official, register and make other filings with the Secretary of State, and the county clerk of his or her principal place of business or residence within the state.

Under the dictates of this statute, the executive mentioned would register with the Municipal Clerk or recorder if he lobbies the Mayor or City Council; he would register with the County Clerk if he lobbies the County Judge or other county officials. Except for his registration with a local public official, rather than the Secretary of State, the dictates of the law would be followed as though the executive were lobbying state government officials.

Opinion request number two and three paraphrased are:

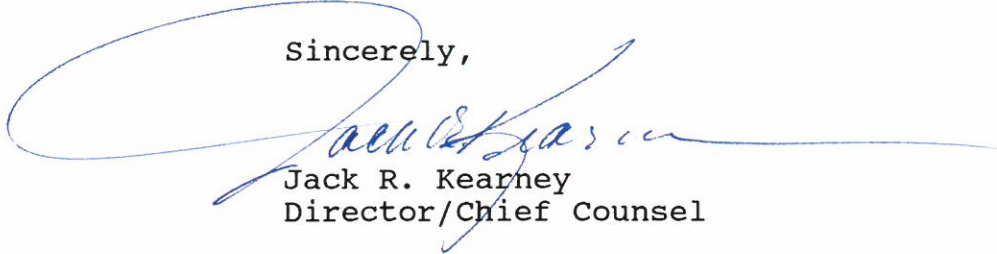
2. If the executive expends twenty five dollars (\$25.00) visiting with local officials, must he file a report for each quarter in which he did so?

3. If he were discussing local business matters with these local officials (i.e. Chamber of Commerce matters) over lunch, and paid for the lunch, would this be considered a lobbying act?

The answer to questions two and three would be yes, if he lobbied the officials mentioned. The determination of whether lobbying occurred would depend upon whether the expenditure mentioned was (a) on behalf of the public official and (b) whether the occasion of the visit is to influence legislative or administrative action. Attorney General's opinions #89-E-6 and 89-E-14 express, in large measure, the proper interpretation of what "lobbying" is and what expenditures must be reported. Opinion No. 1 of 89-E-14 states that whether particular contacts between business and government officials is considered a "lobbying act" will vary depending on the circumstances of the contact. (The Arkansas Ethics Commission adopts this opinion.)

The presumption would be that in any contact between a lobbyist and a public official wherein the lobbyist paid the costs of meals, that the contact was a lobbying act. Attorney General opinion #89-E-6 (4) opines that, there are occasions when a (registered) lobbyist may expend monies on public officials when he is not lobbying. (Again this opinion is accepted by this Commission.) However, the Arkansas Ethics Commission -- should the situation become relevant -- would view quite skeptically any expenditure by a lobbyist on a public official who may be the subject of his lobbying, if either claimed that the expenditure was not reportable as a lobbying act. Circumstances and other evidence could show that such an occasion was, in fact, not a lobbying contact.

Sincerely,



Jack R. Kearney
Director/Chief Counsel

JRK/at