

ARKANSAS ETHICS COMMISSION

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Opinion No. 92-EC-001

March 26, 1992

Ms. Catherine L. Hughes
General Counsel
Acxiom Corporation
301 Industrial Boulevard
Conway, AR 72032-7103

Dear Ms. Hughes:

On February 14, 1992, this office received your request for an official opinion under authority of Initiated Act 1 of 1988 and Initiated Act 1 of 1990.

Your question, paraphrased, is:

(1) Suppose an Arkansas business concern has among its many employees professionals who occasionally have discussions with government officials about various matters affecting the business. Such discussions are within the scope of the employee's job but are not a primary function of the job. The employees, as a general rule, do not accept or expend any money on or for their dealings with the public officials but do receive a salary for their jobs. Are these employees "lobbyists" even though their contacts with government officials are infrequent and incidental to their primary job functions?

Before I respond to what I believe to be your real question, let me address the connection between business contacts and "lobbying". As the statutes themselves make clear, and as prior interpretations of ethics law have opined: every business or professional "contact" with or "discussion" with a government servant is not "lobbying". Lobbying, specifically, is when a

person communicates with a public servant "with the purpose of influencing legislative or administrative action". The statutes exempt from this definition the public servant's "ministerial action". Thus, contacts which seek to persuade a public servant to perform ministerial functions only is not lobbying.

Now, as to your primary question:

ACA §21-8-402 (11) describes a "lobbyist" as:
". . . a person who:

(A) Receives income or reimbursement in a combined amount of two hundred fifty dollars (\$250) or more in a calendar quarter for lobbying one (1) or more governmental bodies; or

(B) Expends two hundred fifty dollars (\$250) 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 two hundred fifty dollars (\$250) or more in a calendar quarter, including postage, for the express purpose of soliciting others to communicate with any public servant 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, the filing shall include the approximate number of recipients.

ACA §21-8-402 (10) describes "lobbying" as:

". . . communicating directly or soliciting others to communicate with any public servant with the purpose of influencing legislative action or administrative action;"

Clearly, the statute's language reveals that it is the purpose of contacts and communication with public officials which is the focus of our disclosure statutes. This language appears to be obvious and understood by you. But as you mention in other parts of your letter, there have been opinions issued by the Arkansas Attorney General's office, prior to the creation of the Arkansas Ethics Commission, which sought to define a lobbyist but which seem to have confused rather than clarified the issue for you.

Following is key language from opinions which interprets "lobbying" or "lobbyist":

Opinion No. 89-E-7: "The act does not require that a portion of a person's salary be earmarked as compensation for lobbying. . . if a person is compensated in excess of \$250 per calendar quarter, and periodic lobbying is an inherent part of his job, he is receiving income for lobbying. There is no provision for prorating amounts attributable to lobbying"

Opinion No. 89-E-14: ". . . when a representative of a business contacts an entity of state government for the purpose of influencing an administrative action the (business) representative is engaging in lobbying--whether the representative is required to register as a lobbyist . . . is contingent upon whether the person receives or expends \$250 in a calendar quarter for lobbying."

"The facts of each particular case must be reviewed to determine if lobbying has actually occurred . . ."

Opinion No. 89-E-24: ". . . (The Attorney General) has previously opined that a salaried individual who is periodically required to engage in lobbying activities is required to register as a lobbyist (cites opinion No. 89-E-7). The Act does not require that a portion of a person's salary be earmarked as compensation for lobbying in order for the person to be considered a lobbyist. Therefore, if a salaried employee is compensated in excess of \$250 per calendar quarter and engages in periodic lobbying, then the employee is required to register as a lobbyist."

The Commission has to agree with the wording of these former opinions and readopts them. We do believe, however, that the final sentence cited above of opinion No. 89-E-24 is somewhat confusing. We believe, further, that none of the opinions go far enough in defining for salaried private employees when they become lobbyists in connection to their jobs. You may, however, examine the

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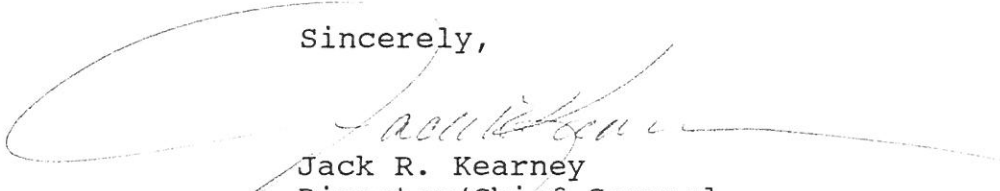
underlined portions of each opinion excerpt to see what we find to be key language.

It is not our belief that the language of Initiated Act 1 of 1988 renders every salaried employee who anticipates he or she may have occasion to petition a government representative for some form of relief a "lobbyist". It is not the mere possibility that one could have cause to attempt to influence public servants which makes one a lobbyist. Instead, the statutes require only those persons who are actively engaged in attempts to influence legislative or administrative action to register as lobbyists. Admittedly this may create a problem for a person who receives a salary in excess of two hundred fifty dollars (\$250) per quarter, and his job makes it probable that at some point he or she might attempt to influence administrative action. But there is no date deadline for filing as a lobbyist. One may file at any time he or she become active in lobbying.

Thus, we believe the better interpretation of the statute is this: Any employee, or other person, whose job or profession requires him or her to occasionally attempt to influence administrative or legislative action, should register as a lobbyist. Any employee or other person whose job or profession does not require him or her to have such contacts with governmental servants, but who may have occasion to attempt to influence administrative or legislative action as an incident to or in furtherance of his or her job or profession, must register only when that occasion arises.

In other words, if the employee's job entails attempts to influence administrative or legislative action as an integral part of his or her overall duties, then that person is obviously a paid lobbyist. If, however, the contacts are truly "incidental"--that is, not required and not anticipated--there would be no need to register and report until an actual lobbying effort is undertaken.

Sincerely,



Jack R. Kearney
Director/Chief Counsel

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