

# ARKANSAS ETHICS COMMISSION

2020 WEST THIRD, SUITE 300  
LITTLE ROCK, AR 72205  
(501) 324-9600  
FAX: (501) 324-9603

**JACK R. KEARNEY**  
Director

**MARY LYNN REESE**  
Commission Chairman



Commissioners:  
**KERRY F. PENNINGTON, M.D.**  
**RONALD A. MAY**  
**JEROME GREEN**  
**NORTON WILSON**

Opinion #93-EC-004

June 21, 1993

Mr. Kenneth Smith  
Appraiser Licensing & Certification Board  
2725 Cantrell Road, Suite 202  
Little Rock, AR 72202

Dear Mr. Smith:

On April 30, 1993, 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) Are either lobbying or conflict of interest problems created if a director or other staff member of a state agency attempts to persuade a single legislator, a legislative committee or the full General Assembly for or against legislation, amendments or provisions of legislation which might affect the state agency or its operations? (2) Does it matter if the director or staff member is acting at the request or direction of its Board of Directors or its Chairman?

Arkansas law, generally, defines as a lobbyist any person who attempts to influence legislative or governmental administrative action. If there were no other conditions written into the law, the activity you describe may have required your registration as a lobbyist and a detailed accounting of your lobbying activity. But because there is a recognized right in our form of government for citizens to petition their government, there is a threshold of activity which, when surpassed, requires an individual to register his status as a lobbyist and disclose his lobbying activity. The threshold under Arkansas law is the expenditure of two hundred

Mr. Kenneth Smith  
June 21, 1993  
Page 2

fifty dollars (\$250.00) in a calendar quarter for the express purpose of lobbying.

In addition to this monetary threshold, there are some common-sense and practical exceptions to the lobbyist registration requirement. Among those exceptions are those for the news media and editorial commentary, lobbying on behalf of a tax exempt church, testifying at legislative, judicial, or administrative hearings, assisting in the drafting of legislation, administrative regulations or the costs of demonstrations in an attempt to sell goods or services to governmental agencies. Though there are conditions under which a public servant may be required to register as a lobbyist, one of the more common-sense and practical exceptions to the registration requirements is for the public servant when he is acting in his official capacity.

Our statutes provide:

"21-8-601. Registration required--Exceptions--Termination.

(a)(1) A lobbyist shall register within five (5) days after beginning lobbying.

(2) A lobbyist shall not be required to register if he or she engages in no lobbying other than the following activities:

. . . . .

(C) Action in a person's official capacity as a public servant. However, a public servant shall be required to register as a lobbyist if he or she:

(i) Receives income from a nongovernmental person in excess of two hundred fifty dollars (\$250) in a quarter for lobbying; or

(ii) Expends or is reimbursed in excess of two hundred fifty dollars (\$250), regardless of the source, in a quarter for lobbying, excluding the cost of informational material and personal travel, lodging, meals, and dues;"

We consider that any agency employee, or other public servant, acting on behalf of the interests of his or her agency, is free to advise, consult, testify, encourage or object to legislation or administrative regulations which affect the agency. We deem such action as being within the public servant's official capacity. You

Mr. Kenneth Smith  
June 21, 1993  
Page 3

should pay particular attention to subparagraph (c)(i) and (c)(ii), as it sets specific conditions under which even a public official must register as a lobbyist. It is important that every public official recognize that, should his or her lobbying activity require the expenditures or reimbursement of more than two hundred fifty dollars (\$250.00) in a calendar quarter, then he or she must register as a lobbyist.

(2) We do not believe it necessary that a public employee have the written permission or instructions from his superiors in order to carry out his or her public duties. We do believe, that an employee must be representing the interest of his agency in order to take advantage of the registration exemption. Should some question arise as to whether an employee was lobbying for some personal interest or for some other interest unrelated to his or her public duty, all of evidence regarding the nature of his lobbying efforts would be considered.

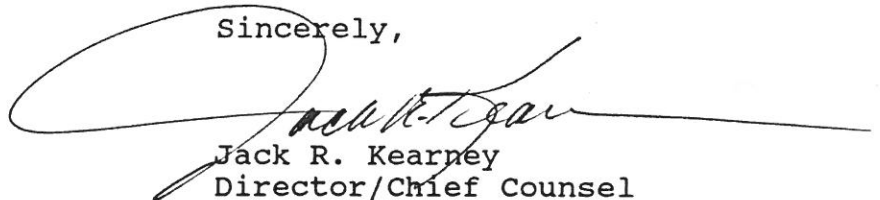
Any lobbying effort by the public employee which is contrary to his or her public duty may require not only that he or she register as a lobbyist but may require other conflict of interest disclosures.

In summation, a public employee or other public servant may, within limits, lobby for or against legislation or administrative action that affects his or her public duty or that of the agency that employs him or her without the necessity of registering as a lobbyist.

If he or she expends in excess of two hundred fifty dollars (\$250.00) in the lobbying effort, then he or she must register. If the public servant lobbies for his personal or other interests, he will be required to register as a lobbyist provided his/her actions otherwise meet the criteria for registration.

The actions you describe in your letter of inquiry do not appear to require your registration as a lobbyist.

Sincerely,



Jack R. Kearney  
Director/Chief Counsel

JRK/at