

**NEW YORK
TEMPORARY STATE COMMISSION
ON REGULATION OF LOBBYING**

OPINION NO. 29 (79-10)

FACTS

Questions have arisen from time to time as to the appropriate interpretation of "expenses" relative to the kinds of items that must be reported and the specificity required. Of particular concern has been the need for reporting details of "overhead."

ISSUES

1. What must be reported in periodic and annual reports under "any other expenses paid or incurred," (§§ 8, 9 and 10 of the Act)?
2. May these items be reported in the aggregate; if not, in what detail?

DISCUSSION

Section 8(b) 5(i) of the Act requires qualifying lobbyists to report "the salary in full or that portion attributable to lobbying activities, fees and reimbursement of expenses paid to the lobbyist and *any other expenses* paid or incurred by the lobbyist for the purpose of lobbying." Subsection (ii) requires reporting in detail expenses over fifty dollars, to whom paid and for what purpose. If such expense is more than fifty dollars on behalf of any one person, that person shall be named. Expenses under fifty dollars may be listed in the aggregate. Sections 9 (public corporations) and 10(d) (annual reports, clients) have identical or virtually identical language.

Section 3(f) of the Act defines "expenses" as "money paid, loans made, goods given, services rendered or any other benefits for which a recipient would or could be expected to pay money," but not campaign contributions. Also excluded under § 8(b), 9(b) and 10(d) are food, lodgings, travel and costs not in excess of \$500 annually for reproducing and/or mailing written communications.

Other expenses beyond salary, fees and reimbursement paid or incurred by the lobbyist, public corporation or client for lobbying must be included in respective reports. All expenses over \$50 must be reported and detailed. Only expenses of \$50 or less may be listed in the aggregate. Overhead expenses shall include rent, heat, light, equipment rental and disposables attributable to lobbying activity.

Fees and salaries are income and are separate from expenses. A fee is payment for services under a retainer. A salary is payment for services under employment. The client must separately report lobbying fees, expenses and reimbursement of expenses paid. The lobbyist must report lobbying fees (income) and all expenses including overhead whether or not billed to the client as well as reimbursement received.

As examples, assume the following:

Example 1: First quarter fee for lobbying services is \$10,000 with lobbyist's reportable expenses of \$2,000. The lobbyist bills client, as previously contracted, for \$10,000 fee. Lobbyist would separately report a \$10,000 fee (income), \$2,000 expenses and no reimbursement. Client's Annual Report would include only payment of \$10,000 fee.

Example 2: Lobbyist bills client, as previously contracted, for \$10,000 fee *and* reportable expenditures of \$2,000. Lobbyist Quarterly Report would separately report a \$10,000 fee (income), \$2,000 expenses and \$2,000 reimbursement. Client's Annual Report would include payment of the \$10,000 fee, \$2,000 expenses and \$2,000 reimbursement.

Reimbursement to the lobbyist for expenses must be reported in accordance with the above \$50 reporting levels. Overhead expenses incurred by the in-house lobbyist for lobbying must be reported by him/her even if the lobbyist did not actually pay directly for such expenses. Use of an office, equipment, etc. by the in-house lobbyist is an incurred expense.

When the item is only a percentage of the whole, a reasonable estimate is acceptable. The lobbyist may use as the percentage of total overhead expenses compensation (income) for lobbying is of the lobbyist's total compensation. For example, if the lobbyist earns \$20,000 per year, \$10,000 of which is paid to him/her for lobbying, then the percentage of all overhead that is to be reported for lobbying would be 50%.

Other expenses for lobbying paid on behalf of a client that meet reporting thresholds must be reported by the lobbyist responsible for the activity. For example, an employee of the client was designated to make all arrangements for a reception for legislators. Even if the costs are paid directly by the employer (client), the individual who incurred the costs on behalf of the client must report same in the periodic report next following the event. Another example of this reporting requirement would be the situation wherein an employee was designated by and incurred expenses on behalf of this employer (client) to produce and/or distribute communications that come under the Act.

OPINION

The Regulation of Lobbying Act requires *all* expenses related to lobbying, except those specifically excluded under the Act, to be reported once the expenditures threshold is met. Overhead that is associated with lobbying activity must be reported in detail when it exceeds \$50. It may be reported in the aggregate otherwise. All qualifying expenses incurred by the lobbyist on behalf of his/her client must be reported by the lobbyist regardless of whether the client paid directly for the expenses.

APPROVED BY COMMISSION: JULY 18, 1979

CONCURRING: CHAIRMAN MARGARET C. ANDRONACO, VICE CHAIRMAN D. CLINTON DOMINICK, FRANCES FOX, GAIL HELLENBRAND and S. STANLEY KREUTZER.

/S/

MARGARET C. ANDRONACO
Chairman