

**NEW YORK
TEMPORARY STATE COMMISSION
ON LOBBYING**

OPINION NO. 48 (02-3)

FACTS

A non-profit community service organization wishes to retain a lobbyist for the purpose of attempting to secure "discretionary" funds from the New York State Budget by soliciting relevant legislators and the Office of the Governor for such funds. Further, the client wishes to pay the lobbyist on a results, contingency fee basis.

ISSUE

Is the solicitation of "discretionary" funds from the state budget considered lobbying under the Act?

Also, is the contingent fee arrangement based on results legal under the Act?

OPINION

Lobbying and lobbying activity are clearly defined in §1-c (c) of the Lobbying Act. It relates only "to any attempt to influence the passage or defeat of any legislation by either house of the State Legislature or the approval or disapproval of any legislation by the Governor." It also refers to rules and rate making, which is not relevant to the issue at hand.

In the instant case, based upon the requestor's description, the "discretionary" funds sought to be secured, are not part of the legislative process referred to in the Act and therefore not within the scope of the New York Temporary State Commission on Lobbying or the Lobbying Act.

Therefore, any attempt to influence the application of "discretionary" funds does not involve pending legislation as such term is defined in the Act and is not considered lobbying. As a result, any fee arrangement is not within the jurisdiction of the New York Temporary State Commission on Lobbying to review.

However, if the lobbyist attempts to influence legislators regarding funds to be included in pending budget legislation as "discretionary" funds with the hopes or plans to apply for those funds for their clients purpose after the budget passes and is approved, then and in that event the conduct of the lobbyist in attempting to influence the pending budget legislation would be lobbying under the Act and the lobbyist must register. Further, any payment for lobbying services, under the above scenario, would not allow for any "results" payment nor a contingency fee, as both are prohibited under the New York State Lobbying Act. (See §1-k, Lobbying Act)

APPROVED BY COMMISSION: AUGUST 20, 2002

CONCURRING: PATRICK J. BULGARO, CHAIR; STEWART C. WAGNER, VICE CHAIR; ALBERT S. CALLAN, MEMBER;
BARTLEY F. LIVOLSI, MEMBER; JOSEPH A. DUNN, MEMBER; RONALD J. AIELLO, MEMBER.

/s/

PATRICK J. BULGARO
Chairman