NEW YORK
TEMPORARY STATE COMMISSION
ON LOBBYING

OPINION NO. 49 (02-4)

FACTS

A registered lobbyist is approached by a member of the State Legislature. The legislator request's that the lobbyist contact newspaper publishers and editorial writers to solicit their support for a bill the legislator intends to introduce at the next legislative session.

The legislator has offered no compensation and the lobbyist has asked for none. The sole purpose of the lobbyist's activity is to create a climate of support for the proposed legislation (thru statewide editorials) leading to voter and legislative support for the bill.

The Lobbyist would not be contacting any other legislator to support the bill, but might prepare written material to be used by the legislator to better explain and promote his bill amongst fellow legislators.

ISSUE

(1.) Should the lobbyist register as a pro-bono lobbyist for the legislator?

(2.) Is the providing of professional services, gratis, to a legislator by a registered lobbyist a gift?

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

OPINION

The first matter that must be determined is whether or not the activity of the lobbyist described above constitutes lobbying, as that term is defined in the Lobbying Act (§ 1-c(c)) and Advisory Opinions, specifically Advisory Opinion No. 21 (79-1).

In the matter at hand, the registered lobbyist would not be required to register as a lobbyist for the legislator. The lobbyist is not having direct contact with legislators in an effort to influence the passage or defeat of pending legislation (see U.S. vs. Harris, 347 US 612 (1953) and Advisory Opinion No. 21 (79-1)), nor is he/she engaging in grassroots lobbying.

It has been the position of the Commission, historically, to view grassroots lobbying in light of its requirement that it include a "call to action" by the targeted audience. That is, a request or suggestion that the receiver of the message contact their legislative representative or Executive Branch in response to the message. In the present case, the lobbyist intends to contact other message creators (i.e. editors) to make their own statements and position to their audience without any suggestion as to what the message should say or direct, only that it speaks favorably as to a pending legislative issue. The content and delivery of the message is not being authored or controlled by the lobbyist. Therefore it is not lobbying. (See Advisory Opinion No. 39 (97-1)).

The more difficult issue is whether or not the lobbyist's services is, in fact, a gift.

If the lobbyist is not charging for the service he is asked to provide, it seems logical that his services fall within the definition of a "gift" under § 1-c (j) of the Lobbying Act.

As a professional communicator, the lobbyist's action in advocating the legislator's message to others would seem to have some value. Therefore, the only question that needs to be resolved is the value of the lobbyist's services. If they equal or exceed $75 they would be an illegal gift under the Lobby Act. If less than $75, it simply would be a legal gift and not reportable.

While those within the legislative advocacy community might reasonably differ as to the value of any given lobbyists services, the Commission is hard pressed to envision the value of any lobbyist performing any act of advocacy as having a fair market value of less than $75. However, should a lobbyist believe that their services have a fair market value less than $75, they need not report the gift with the understanding that "everything is worth what it's purchaser will pay for it", Publilus Syrus.

APPROVED BY COMMISSION: DECEMBER 20, 2002

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