



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 48

September 9, 1992

Reporting requirements for an organization and for employees of the organization. (AOR-58)

A representative of a nonprofit organization has asked the Texas Ethics Commission several questions about chapter 305 of the Government Code, the lobby statute. The nonprofit organization and several of its employees are registered as lobbyists. In the situation at issue a registered employee makes certain expenditures of the type listed in Government Code section 305.006(b), and the employee is reimbursed for those expenditures by the organization. In the situation described, the expenditures reimbursed by the organization are attributable to the individual registrant, and the employee is required to list these expenditures on his individual lobby activity report. *See* Gov't Code §§ 305.004(4), 305.006(b). A lobby activity report also must list the expenditures "that other people made on the registrant's behalf if the expenditures were made with the registrant's consent or were ratified by the registrant." *Id.* § 305.006(b). Because the organization reimburses the employee, the question arises as to whether the organization must also report these expenditures as expenditures that other people made on the organization's behalf.

If the organization details on its lobby activity report the same expenses its employee is reporting there will be a duplication of reporting. We think the lobby statute should be construed to avoid "double reporting" of expenditures. Thus, we think the requirement that registrants list expenditures made by "other people" on the registrant's behalf requires reporting of expenditures made by other parties that would not otherwise be reported as lobbying expenditures. For example, a registrant would have to report a meal for a legislator paid for by the registrant's non-lobbyist friend with the registrant's consent if the purpose of the meal was to enable the registrant to communicate with the legislator to influence legislation. In contrast, a registered organization that reimburses an employee is not required to report the same expenditures that a registered employee lists on his activity report.

The requestor also asks about section 305.005(f)(5) of the Government Code, which requires registrants to list information on their lobby reports about

each person employed or retained by the registrant for the purpose of assisting in direct communication with a member of the legislative or executive branch to influence legislation or administrative action.

Specifically, the requestor asks about two registered employees of an entity who work together with neither one in charge of the other's work. The Texas Ethics Commission has promulgated a rule clarifying the phrase "employed or retained by the registrant." Rule 40.9 states:

(a) For purposes of the Government Code, § 305.005(f)(5), persons employed or retained by the registrant to assist in direct communication with a member of the legislative or executive branch include other registrants and persons who provide administrative or research assistance to the registrant, but not persons whose assistance is clerical in nature.

(b) *A person employed by the same employer as the registrant and who assists the registrant in lobby activities at the direction of the registrant is employed or retained by the registrant for purposes of the Government Code, § 305.005(f)(5).* A client of a business entity is not an employer for the purposes of this subsection.

Tex. Ethics Comm'n, 17 Tex. Reg. 4445 (1992) (to be codified at title 1, section 40.9, of the Texas Administrative Code) (emphasis added). Thus, if a registered employee assists another registered employee in lobby activities, at the other's direction, the employee receiving assistance must list the assisting employee on his lobby activity report. Circumstances of mutual assistance may lead to each registered employee listing the other as an assistant for purposes of section 305.005(f)(5).

The requestor asks whether an individual member of the nonprofit organization who communicates with members of the executive or legislative branch on behalf of the organization is required to register. The organization does not compensate the member for such communications. Such activity does not by itself require lobby registration under chapter 305. See [Ethics Advisory Opinion No. 3](#) (1992) (regarding lobby registration requirements).

The requestor also asks whether the member's communications on behalf of the organization trigger lobby registration if the organization's interests "coincide" with the interests of the member's employer. The lobby statute is applicable if the member is receiving compensation from his employer for his efforts.¹ Whether the member's activities are also part of his employment arrangement is a fact question that must be determined on a case-by-case basis.²

The requestor's final question is whether members of a nonprofit organization are "clients" for purposes of section 305.005(j) of the Government Code. That section states:

If the person described by Subsection (f)(3) [the person who reimburses, retains, or employs the registrant to communicate] is a business entity engaged in the representation of clients for the purpose of influencing legislation or administrative action, the registrant shall give the information required by that subdivision for each client on whose behalf the registrant communicated directly with a member of the legislative or executive branch.

The commission has issued the following rule to clarify this section:

The members of an organization or association (whether or not it is incorporated) are not clients of the organization or association under the Government Code, § 305.005(j). The shareholders of a for-profit corporation are not clients of the corporation under the Government Code, § 305.005(j).

Tex. Ethics Comm'n, 17 Tex. Reg. 4445 (1992) (to be codified at title 1, section 40.11(d), of the Texas Administrative Code). Members of the nonprofit organization therefore are not "clients" for purposes of section 305.005(j). See *id.* § 305.005(f)(5)

SUMMARY

An organization that is registered as a lobbyist and has several registered employees is not required to report on its lobby activity report reimbursements to those employees for lobby expenditures. The registered employees must list those reimbursed expenditures on their respective lobby activity reports.

If a registered employee assists another employee in lobby activities and acts at the other's direction, the assisted employee must list the assisting employee on his lobby activity report for purposes of Government Code section 305.005(f)(5). Circumstances of mutual assistance may lead to each registered employee listing the other as an assistant.

An individual who communicates to influence, on behalf of an organization of which he is a member, is not required to register as a lobbyist unless he crosses either the compensation threshold or the expenditure threshold

under chapter 305 of the Government Code, the lobby statute. Whether communications on behalf of the organization that "coincide" with the interests of the member's employer are communications for which the member is compensated is a fact question. Members of a nonprofit organization are not "clients" for purposes of section 305.005(j).

¹ Receipt of reimbursement and the making of expenditures can also trigger the registration requirement.

² A person is not required to register if his communication to influence, and time spent in preparing for direct communication, constitutes less or no more than five percent of his compensated time during a calendar quarter. Tex. Ethics Comm'n, 17 Tex. Reg. 4444 (1992) (to be codified at title 1, section 40.3(c), (d), of the Texas Administrative Code).