



# TEXAS ETHICS COMMISSION



**\*\*Overruled, Modified, Clarified, or Superseded\*\***  **Opinion History**

## ETHICS ADVISORY OPINION NO. 158

*July 19, 1993*

*Application of the lobby statute to a salesperson's efforts to sell products to a state agency. (AOR-105)*

The Texas Ethics Commission has been asked whether a salesperson's efforts to sell materials to a state agency require the salesperson to register as a lobbyist. The request letter describes a situation in which a salesperson is attempting to sell to a state agency both products on the agency's "qualified product list" and also products covered by existing specifications. The request letter also describes a situation in which a salesperson encourages a state agency to add a new product to a qualified product list or to adopt new product specifications. The question raised is whether such efforts require a salesperson to register as a lobbyist.

There are two thresholds for registration as a lobbyist under chapter 305 of the Government Code. Unless otherwise excluded by the lobby statute or commission rule, a person must register as a lobbyist if that person either (1) receives more than \$200 in compensation or reimbursement in a calendar quarter to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action or (2) expends more than 200 in a calendar quarter on certain types of activities<sup>1</sup> to communicate directly to influence legislation or administrative action.<sup>2</sup> Gov't Code § 305.003(a); 1 T.A.C. §§ 40.1, 40.3.

Communications to officers or employees of a state agency are communications to members of the executive branch. *See* Gov't Code § 305.002(4) (defining "member of the executive branch"). The request letter asks whether the communications in question are communications to influence administrative action. "Administrative action" is defined as "rulemaking, licensing, or any other matter that may be the subject of action by a state agency, including the proposal, consideration, or approval of the matter." *Id.* § 305.002(1). Therefore communications to encourage a state agency to buy a certain product are communications to influence administrative action.

However, by rule the commission has excluded from the definition of "administrative action" certain purchasing decisions of a state agency:

For purposes of the compensation threshold of the Government Code, § 305.003(a)(2), "administrative action" does not include the purchasing decisions of a state agency or the negotiations regarding those decisions. This exception, however, does not affect registration requirements under the expenditure threshold.<sup>3</sup>

18 Tex. Reg. 4299 (1993) (to be codified at title 1, new section 40.5(c), of the Texas Administrative Code). Under this rule, in either of the situations described by the requestor, a salesperson who is compensated or reimbursed more than \$200 in a calendar quarter to encourage a state agency to purchase a product is not required to register as a lobbyist. However, a salesperson who meets the expenditure threshold in connection with efforts to influence agency purchasing would be required to register as a lobbyist.

## SUMMARY

A salesperson who attempts to influence state agency purchasing decisions is making a communication to influence administrative action. However, Lobby Rule 40.5(c) exempts from registration a salesperson whose compensation or reimbursement triggers the registration threshold. This rule does not provide an exemption for a salesperson who is required to register as a lobbyist under the expenditure threshold of the lobby statute.

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<sup>1</sup> When the following expenditures are made to communicate with members of the executive or legislative branches, with an intent to influence, they are included in the \$200 expenditure threshold: (1) transportation and lodging; (2) food and beverages; (3) entertainment; (4) gifts, other than awards and mementos; (5) awards and mementos; and (6) expenditures made for the attendance of members of the legislative or executive branch at political fund-raisers or charity events. Gov't Code § § 305.003(a)(1), 305.006(b).

<sup>2</sup> Reimbursement or expenditures for the person's own food, travel, lodging and membership dues are not included in either threshold.

<sup>3</sup> Lobby Rule 40.5(c), before its recent amendment, exempted certain purchasing decisions from both the expenditure and compensation thresholds, as follows: For purposes of the Government Code, Chapter 305, "administrative action" does not include an action which affects only the internal operations of the agency, such as the purchasing decisions of the state agency; and the negotiations over the terms of a contract to provide those services, including, but not limited to, negotiations over payment, delivery and performance of services, compliance with contract terms, and amendments. 17 Tex. Reg. 6893 (1992).