



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 162

*September 2, 1993*

*Questions regarding persons who assist a lobbyist and reporting requirements for living expenses in Austin. (AOR-162)*

This request for an ethics advisory opinion raises a number of questions about the lobby law, chapter 305 of the Government Code. The first questions have to do with the requirements applicable to a person who assists a registered lobbyist.

### **Persons Who Assist a Registrant**

Under the lobby law *any person* who meets either one of two thresholds must register as a lobbyist. Gov't Code § 305.003(a). One of the thresholds, the expenditure threshold, provides that a person must register if the person

makes a total expenditure of an amount determined by commission rule but not less than \$200 in a calendar quarter, not including the person's own travel, food, or lodging expenses or the person's own membership dues, on activities described in Section 305.006(b) to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action.

*Id.* § 305.003(a)(1). The other threshold, the compensation threshold, provides that a person must register if the person

receives compensation or reimbursement, not including reimbursement for the person's own travel, food, or lodging expenses or the person's own membership dues, of more than an amount determined by commission rule but not less than \$200 in a calendar quarter from another person to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

*Id.* § 305.003(a)(2).

A person required to register as a lobbyist must fill out a registration form and provide specified information, *id.* § 305.005(a), including information 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," *id.* § 305.005(f)(5). An Ethics Commission rule further explains that requirement:

(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.

1 T.A.C. § 40.9 (emphasis added). This rule makes clear that a person who is himself registered as a lobbyist may be required to be named on another lobbyist's registration as an assistant. If a person meets one of the registration thresholds and does not fit within any of the exceptions to required registration, he must register. The fact that he is named as an assistant on another lobbyist's registration does not relieve him of the requirement to register. Further, the fact that a person's communications are at the request of another registrant does not relieve a person of the requirement to register. *But see* 1 T.A.C. § 40.7(a)(3) (clerical assistance does not require registration).

### **Attribution of Expenditures**

A person registered as a lobbyist must file an activities report, which sets out certain categories of expenditures made to communicate to influence legislation or administrative action. Gov't Code § 305.006. "The report must also include expenditures for the direct communications under [six different categories] 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 of the requirement that a registrant report certain expenditures made on his behalf, it is possible that a registrant may need to report an expenditure made by an assistant. The registrant is not required to report an expenditure made by an assistant, however, if the assistant is himself registered as a lobbyist and reports the expenditure. Double reporting of expenditures is not required. [Ethics Advisory Opinion No. 48](#) (1992).

### **Living Expenses in Austin**

The request also describes the following circumstances and raises a number of questions about the applicable reporting requirements:

A registered lobbyist permanently resides in a geographical region of the state several hours from Austin. For convenience, the lobbyist resides in an apartment in Austin for one year during the legislative session in order to conduct lobbyist activities and other activities on behalf of the corporation for whom the employee works. The registered lobbyist pays for all utilities. The corporation, which is not registered as a lobbyist, pays for the lease of the apartment directly; the corporation reimburses the lobbyist for his/her utility expenses. The lobbyist also purchases groceries for his/her stay in the apartment. The lobbyist does not spend 100% of his/her time in Austin transacting lobbyist activities. Rather, the lobbyist conducts other corporation-related business while in Austin. The assistants of the lobbyist utilize the apartment while in Austin to assist the lobbyist. Other employees of the corporation also utilize the apartment when they are in Austin for non-lobbyist activities.

The request letter asks whether the registered lobbyist must report any portion of the apartment rent, any portion of the utilities, or any portion of the groceries as lobby expenditures.

As background, it is important to note that a person's own food, transportation, and lodging are not considered in determining whether a person has crossed either of the lobby registration thresholds. Gov't Code § 305.003(a).<sup>1</sup> Once a person is registered, however, he must report his expenditures for his own food, transportation, and lodging *if they are made to*

*communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.* *Id.* § 305.006(b).<sup>2</sup> Generally, whether an expenditure is made to communicate to influence is a fact question. A registrant who establishes a residence in Austin is not required, however, to report basic living expenses unless the expenses are directly connected with communications to influence, such as the rental of an apartment for the purpose of conducting meetings with legislators or other officials. *See generally* [Ethics Advisory Opinion No. 136](#) (1993).

## SUMMARY

The fact that a person is named as an assistant on another person's lobby registration does not relieve the assistant of the requirement to register as a lobbyist if he independently meets one of the registration thresholds.

A lobby registrant is not required to report lobby expenditures made by an assistant if the assistant is himself registered as a lobbyist and reports the expenditures.

A registrant who establishes a temporary residence in Austin is not required to report expenditures for the registrant's basic living expenses *unless the expenses are directly connected with communications to influence*. Whether an expenditure is made in order to communicate to influence is generally a fact question.

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<sup>1</sup> The requestor also asks whether the corporation is required to register as a lobbyist because it pays the apartment rent and reimburses its registered employee for utilities and groceries. A corporation may be required to register under the expenditure threshold. Gov't Code § § 305.002(8) ("person" includes corporation), 305.003(a) (registration thresholds apply to "person"); [Ethics Advisory Opinions Nos. 93, 92, 91, 90, 89](#) (1992) (regarding lobby registration by entities). [Ethics Advisory Opinion No. 89](#) explains the circumstances in which lobby expenditures are attributable to an entity. Expenditures for the food and lodging of an employee who is a registrant, however, would be expenditures for the corporation's own food and lodging since a corporation can act only through natural persons. Therefore, such expenditures would not, by themselves, require the corporation to register as a lobbyist.

<sup>2</sup> The request letter asks whether this response would differ if the legislature was not in session. It would not.