

STATE ETHICS ADVISORY COMMISSION

ADVISORY OPINION 1984-5

Re: Is an officer of the judicial, legislative, or executive branch whose compensation exceeds \$200 in a calendar quarter and whose primary employment consists of other responsibilities but who occasionally entertains agency officials and spends more than \$200 in a calendar quarter, required to register and report under art. 6252-9c, V.T.C.S.?

This opinion responds to a request (AOR 1984-26) from the Public Servant Standards of Conduct Advisory Committee for a State Ethics Advisory Commission opinion. The request was received by the Commission at its meeting on January 13, 1984, and relates to the following issue:

S.B. 923, 68th Legislature, adds "or administrative action" following the words "to influence legislation" in most of the appropriate places in the Act; however, under sec. 3(b) of the act (page 3, line 7 of the bill), the first full sentence of subsection (b) has no such reference to influencing administrative action. Is an officer whose compensation exceeds \$200 in a calendar quarter and whose primary employment consists of other responsibilities, but who, on occasion, entertains agency officials and spends more than \$200 in a calendar quarter, required to register and report under art. 6252-9c, V.T.C.S.?

Tex. Rev. Civ. Stat. Ann. art. 6252-9c, § 3 (Vernon Supp. 1983-1984) states that a person must register as a lobbyist with the secretary of state if the person makes a total expenditure in excess of \$200 in a calendar quarter on certain activities for communicating directly with one or more members of the legislative or executive branch to influence legislation or administrative action, and receives compensation or reimbursement in excess of \$200 during that period from another to communicate directly with a member of the legislative or executive branch, for the purpose of influencing legislation or administrative action. Section 3 states that a person must register only if he meets both the expenditure threshold stipulated in subsection (a) of that section and the compensation threshold stipulated in subsection (b) of that section.

Section 3(b) reads as follows:

(b) receives compensation or reimbursement in excess of \$200 in a calendar quarter from another to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. This subsection requires the registration of a person, other than a member of the judicial, legislative or executive branch, who, as a part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation on behalf of the person by whom he is compensated or reimbursed, whether or not any compensation in addition to the salary for that regular employment is received for the communication. (Emphasis added).

The exception of members of the judicial, legislative and executive branches from registration under one subsection of section 3 exempts them from any registration requirements regardless of the amount of compensation or expenditures for lobby activity. No lobbyist activity reports are required of those people who are not required to register with the secretary of state. According to the statute, an officer of the judicial, legislative or executive branch whose compensation exceeds \$200 in a calendar quarter and whose primary employment consists of other responsibilities but who occasionally entertains agency officials and spends more than \$200 in a calendar quarter, is not required to register as a lobbyist and report under the statute.

As noted in the question, the first full sentence in section 3(b) of S.B. 923, 68th Legislature, contains no reference to "administrative action" in conjunction with "legislation", and this question apparently arises because of the lack of that reference. Many of the amendments to art. 6252-9c contained in that bill indicate an intent to enact a general amendment that draws agency lobbying into the regulated field. Section 1 of S.B. 923 amends the general policy statement found in section 1 of the statute to include the benefit derived from

the disclosure of agency lobby activity. The legislative bill analysis of S.B. 923 also reflects this intent. Specifically, the section analysis of section 3 of the bill states that the amendment to section 3 of the statute "[i]ncorporates 'administrative action' into [the] definition of persons required to register" Finally, the general statement of purpose in the bill analysis states that the bill amends the lobby control act to "broaden its scope to include administrative action lobbying"

There is nothing in the bill or the bill analysis to suggest that the absence of the term "administrative action" in section 3 of the statute was other than an inadvertent omission.

SUMMARY

An officer in the judicial, legislative, or executive branch, who otherwise fits all the requirements of a person who must register, is not required to register with the secretary of state or to report expenses for lobby activity.

W. Page Keeton, Chairman
State Ethics Advisory Commission
Adopted this 24th day of February, 1984.