

THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 98-003
June 24, 1998

Syllabus by the Committee:

- (1) A group of members of the General Assembly may employ an individual to perform services or act as a consultant to the members where the services provided do not fall within the purview of R.C. 101.70 *et seq*; and
- (2) A group of members of the General Assembly may not engage an individual to act as a legislative agent for the members and may not be the employer of a legislative agent.

Jurisdiction and Question Presented

Pursuant to sections 101.34 and 102.08 of the Revised Code that direct the Joint Legislative Ethics Committee to act as an advisory body to the members and employees of the General Assembly on questions relating to ethics, conflicts of interest, and financial disclosure, the Joint Legislative Ethics Committee advises the members and employees of the General Assembly on the following questions: (1) Can a group of members of the General Assembly engage a legislative agent to act as a consultant and to advise the member on various legislative and administrative issues?; (2) Can a group of members employ a person who is registered as a legislative agent for someone else to act as a consultant to the members?; and (3) Can a group of members be the employer of a legislative agent?

Background

Under the facts presented, the members would enter into a paid contract for services with an individual. The individual would act as a consultant and the duties would include research, data collection and policy development on various member issues. Additionally, the individual would be registered as the legislative agent for the members and would actively advocate on their behalf.

Consideration of the Issues

Legislative and Administrative Issues

In order to address the above questions, it first must be determined what specific activity falls within the purview of "lobbying" and would therefore require the registration of a legislative agent. A legislative agent is any individual who is engaged by an employer during at least a portion of his or her time, as one of his or her main purposes, to promote, advocate, or oppose the passage, modification, defeat, or executive approval or veto of any legislation by direct communication with any member of the General Assembly, the controlling board, the governor, the director of any department listed in section 121.02 of the Revised Code or the staff of any of those listed persons. (See R.C. 101.70) Employer means any person who, directly or indirectly, engages a legislative agent. In this situation, the "employer" would be the group of members, and the individual engaged would be the legislative agent.

The first question asks whether members can engage a legislative agent (become the registered employer of the person) to act as a consultant and to advise the members on various legislative and administrative issues. As noted above, the person would be conducting research, collecting data and developing policy. This activity is not direct contact, on behalf of someone else, for the purposes of attempting to influence the passage, modification, defeat, or executive approval or veto of any legislation. Therefore, with respect to this type of conduct, the individual hired would not be required to register as a legislative agent because they would not be conducting "lobbying" activity. The person would not be making direct contact with others on behalf of the members in these circumstances, but would in fact only be advising the members.

Hence, the question of whether the members can engage a legislative agent to perform these tasks is moot since the activity does not fall within the purview of the Lobbying Laws.

Legislative Agent as Consultant

Since the above activity does not constitute lobbying for purposes of R.C. 101.70 *et seq.*, the question becomes can members employ an individual that is a registered legislative agent (registered for another entity, not the members) to perform these services. There is nothing which prohibits members from employing an individual, regardless of whether the person is registered as a legislative agent or not, to perform any type of work that does not constitute actively advocating. Here, the members would be paying an individual for services to be rendered that do not fall within the purview of the Lobbying Laws, therefore, it is irrelevant whether or not the individual is registered as a legislative agent. A group of members may employ an individual to perform services or act as a consultant to the members where the services provided do not fall within the purview of R.C. 101.70 *et seq.*

Employer of Legislative Agent

The last question presented is whether a group of members can engage an individual to actively advocate on their behalf; in other words, become the employer of a legislative agent.

R.C. 101.70(F) defines "legislative agent," it provides:

"Legislative agent" means any individual, *except a member of the general assembly*, a member of the staff of the general assembly, the governor, lieutenant governor, attorney general, secretary of state, treasurer of state, or auditor of state, who is engaged during at least a portion of his time to actively advocate as one of his main purposes. (Emphasis added.)

The specific exclusion of General Assembly members from the definition of legislative agent assumes it is an integral part of the member's official duties to "actively advocate." Since it is a member's role to promote, advocate, or oppose the passage, modification, defeat, or executive approval or veto of any legislation, the law does not require a member to register as a legislative agent. Inasmuch as actively advocating is considered to be the essence of a member's duties, it stands to reason a member should not hire another individual to perform those duties.

Therefore, the Committee finds a member or group of members may not engage an individual to act as a legislative agent for the members and may not be the employer of a legislative agent.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules.

Conclusion

Accordingly, the Committee finds, and the members of the General Assembly are so advised, (1) A group of members may employ an individual to perform services or act as a consultant to the members where the services provided do not fall within the purview of R.C. 101.70 *et seq*; and (2) A group of members may not engage an individual to act as a legislative agent for the members and may not be the employer of a legislative agent.

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Joint Legislative Ethics Committee