

The Inspector

The newsletter of the Office of the Legislative Inspector General

Registration and Thresholds

Among the most common inquiries directed to our office concerns who needs to register. Based on the definitions contained in the lobbying statutes, an individual is considered to be “engaged” when that individual is compensated by an “employer” for the purposes of actively advocating on that employer’s behalf. An employer is one who “directly or indirectly” engages a lobbyist, so contractual arrangements as well as direct employer/employee relationships equally qualify under the definition. Once it has been established that an individual is being compensated for the purposes of active advocacy, the next question concerns the level of advocacy at which is registration required.

This topic was last addressed in the August 2004, edition of *The Inspector*. At that time, it had become apparent that there was confusion concerning the “three contact” guidance for registration of a lobbying engagement, as well as the fact that the same number of contacts was used to clarify very different standards in the statutory language. Revised Code §101.70 defines a legislative agent as an individual who “is engaged during at least a portion of the individual’s time to actively advocate” as one of the individual’s main purposes. For executive agency and retirement system lobbying, R.C. §121.60 and §101.90, respectively, use the phrase “on a regular and substantial basis” to define the level of advocacy for executive agency and retirement system lobbyists.

In the August 2004 article, the differences between “at least a portion” and “on a regular and substantial basis” were clarified. A standard of five percent of an individual’s effort on behalf of a particular client was suggested as

the guideline for “at least a portion” of one’s time, and twenty-five percent was suggested for “on a regular and substantial basis.” At that time, the “three contacts” standard was offered as an alternative, or back-up, standard. Recognizing the value of a single standard to minimize any potential for confusion, our office will only utilize the percentage of time and effort standard in evaluating whether or not an individual has met the threshold level of activity triggering the registration requirements.

In summary, registration of engagements should be based on the following guidelines:

- **Legislative Lobbying** – when an individual’s direct communication with any member of the General Assembly, any member of the Controlling Board, the governor, the director of any department, or any member of the staff of any public officer or employee for legislative lobbying purposes constitutes at least five percent of the total performance time for which the individual is compensated by that specific employer.
- **Executive Agency Lobbying** – when an individual’s direct communication with executive officials or employees for the purposes of executive agency lobbying constitutes at least twenty-five percent of the total performance time for which the individual is compensated by that specific employer.
- **Retirement System Lobbying** – when an individual’s direct communication with retirement system officials or employees for the purposes of influencing retirement system investment decisions constitutes at least twenty-five percent of the total performance time for which the individual is compensated by that specific employer.

Members of Boards & Commissions as Private Sector Lobbyists

A common question is whether a member of a state board or commission must register as a lobbyist when advocating on behalf of the board or commission upon which the member serves. In answering this question, we ask three questions. (1) Is the member compensated other than actual and necessary expenses? (2) Does the member directly communicate with legislators or legislative staff on behalf of the board or commission? (3) Does such advocacy exceed five percent of the time for which the member is compensated? If the answer is “yes” to all three questions, the member should contact the OLIG to discuss the need for registration as a legislative agent.

A question not previously addressed by the OLIG is whether Ohio’s Ethics Law places any additional duties on those public board and commission members who act as lobbyists for clients other than the board or commission upon which the member serves. The answer to this question comes from the Ohio Ethics Commission. As a member of a state board or commission, the member is subject to Ohio’s Ethics Law and falls under the jurisdiction of the Ohio Ethics Commission. The Commission advises that Ohio Revised Code section 102.04(A) prohibits a board or commission member from receiving compensation from clients for lobbying services rendered by the member or the member’s firm on matters before the General Assembly and other governmental entities of the state; unless the requirements of Division (D) of Section 102.04 of the Revised Code are met.

In Ohio Ethics Commission Advisory Opinion 92-006, the Commission advised:

. . . if you receive compensation for personally rendering lobbying services on behalf of a client on a matter before the General Assembly, then you must file 102.04 (D) Statements with the appropriate agencies prior to rendering the services, and disqualify yourself for a period of two years from the date you file

your 102.04 (D) Statement, from any participation, as a member of the county board of elections, on any matter involving any public official or employee of the General Assembly.

A copy of the 102.04(D) Statement follows this article. Additional copies may be obtained from the Ohio Ethics Commission. Board and commission members who are registered lobbyists must file the 102.04(D) Statement with the board or commission upon which they serve and a copy with the state agency which they are attempting to influence on behalf of a client. If your lobbying activities are directed towards the Ohio General Assembly, the Statement will be filed with the OLIG. **The OLIG encourages those board and commission members, who serve as lobbyists, to contact the Ohio Ethics Commission at 614-466-7090 or www.ethics.state.oh.us for additional information.**

Reminder: Under no circumstances may a board or commission member represent clients before the board or commission upon which the member serves.

Getting It Right the First Time

“All truth is not, indeed, of equal importance; but, if little violations are allowed, every violation will in time be thought little; and a writer should keep himself vigilantly on his guard against the first temptations to negligence or supineness.”

- Samuel Johnson

Ohio Revised Code §101.72(G), and its counterparts in §121.62 and §101.92 directs the Office of the Legislative Inspector General to review initial and updated registration statements to determine if the reporting requirements found in O.R.C. §101.70 – 101.79, §121.60 – 121.69, and §101.90 – 101.99 have been complied with. Additionally, the forms on which these statements are filed contain language certifying that **“all reasonable efforts and due diligence have been undertaken in the preparation and completion of this statement and that the contents are true and accurate to the best of his or her knowledge.”**

RC. 102.04(D) STATEMENT

Required by the Ohio Ethics Law under Section 102.04(D) of the Revised Code

1. Name of Public Official or Employee: _____

Home Address: _____

2. Name of your Public Agency: _____

Agency Address: _____

3. Name of Public Agency before which the matter is pending or with which business is to be conducted (note that the exception provided by R.C. 102.04(D) does not extend to matters pending before your own agency or business to be conducted with your own agency):

Agency Address: _____

4. Brief description of the pending matter and of the personal services to be rendered before the agency listed in number 3, or brief description of the goods or services to be purchased by the agency listed in number 3:

5. Declaration—I hereby disqualify myself for a period of two years from any official participation as an official or employee of:

(Agency as listed in number 2)

in any matter involving any public official or employee of:

(Agency before which matter is pending or with which business is to be conducted as listed in number 3)

Signature: _____ Date: _____

NOTE: Copies of this statement must be filed with the public agencies designated in numbers 2 and 3 above, and with the Ohio Ethics Commission, 8 East Long Street, 10 Floor, Columbus, Ohio 43215. Please refer any questions to the Ohio Ethics Commission—(614) 466-7090.

With every filing period this office receives incomplete forms. Blank expenditure grids, boxes not being checked indicating whether or not the specified action has occurred, failure to include a date of engagement on an initial registration and unsigned forms are all examples of incomplete forms that are being submitted. Consistently filing an incomplete form may be indicative of filing a false statement, which is a first-degree misdemeanor under O.R.C.§101.99 and O.R.C. §121.99.

If you are the person signing and submitting the initial or updated registration statement, **YOU** are making the above certification and may be held accountable for any omissions or errors in the disclosure. This office is always willing and available to assist you in understanding what information is required and the appropriate manner in which it is to be reported. Please utilize that resource when completing your statements.

Remember The Filing Deadline for First Reporting Period of 2006 is May 31!

Lobbying Statistics

Each year, the Office of the Legislative Inspector General is required to report statistical information concerning lobbyist registration. The past year was a busy one for the lobbying community, as well as for the Office of the Legislative Inspector General in carrying out its duties in administration of the lobbying statutes. A few notes of interest from the data for 2005 as compared to 2004:

- The number of registered agents increased 13.67%
- The number of employers of agents increased 5.5%
- The number of legislative engagements increased 2.7%
- The number of executive agency lobbying engagements increased 4.75%
- Expenditures for legislative lobbying increased 53%
- Expenditures for executive agency lobbying increased 18%
- Overall lobbying expenditures increased 52%

Since 2005 was the first full year for Retirement System Lobbying registration, statistical comparisons do not paint an accurate picture. By the end of the year, however, there were 173 retirement system lobbyists representing 83 employers, for a total of 181 retirement system lobbying engagements. This year also saw the introduction of Post Employment Disclosure filing for public officials and other Financial Disclosure Statement filers, upon their departure from state service. To date, 93 individuals have filed Initial Post Employment Disclosure Statements, 14 of whom identified qualifying sources of income to trigger Updated Post Employment Disclosure filing similar to the expenditure reporting required of legislative agents.

Lobbyist Registration Inquiries

Additionally, the Office conducted nine formal registration inquiries, all of which are now closed. The following is a breakdown based on the resolutions of the inquiry:

- 4 – subject of the inquiry registered as a legislative and/or executive agency lobbyist
- 3 – registration by the subject was not required
- 2 – referrals were made to the Attorney General’s office.

Note Annual lobbying statistics reports can be found at the OLIG home page, www.jlec-olig.state.oh.us, beneath the “Public Information” heading.

Contact Us: Joint Legislative Ethics Committee, Office of the Legislative Inspector General
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