LOBBYING SYNOPSIS
1996-2017

EXEMPTIONS FROM LOBBYIST REGISTRATION

Does An Exemption Apply?

If no expenditures of funds of the type listed in 29 Del. C. § 5835(b) are made, no registration is required for:

(1) Persons who, in relation to the duties or interests of their employment or at the request or suggestion of their employer, communicate with the General Assembly or a State agency concerning any legislation, regulation or other matter before the General Assembly or such State agency, if such communication is an isolated, exceptional or infrequent activity in relation to the usual duties of their employment. 29 Del. C. § 5831(b)(3).

"Usual Duties" of Employment--Commission Opinion No. 96-15

An executive director of a non-profit association, which was a "legal entity" created by statute, but was not a State agency, asked if he was exempt from registration under the above provision. He stated that the association had "determined that it would be useful to have" an amendment to the statute creating the association. In pursuit of a change to the statute, the association presented draft legislation to the State agency which regulated the association and to members of the General Assembly. There were discussions with the regulatory agency on the proposed legislation. The agency said it would take no position. There also were discussions with General Assembly members. The director anticipated there could be further contact with General Assembly members on the legislation. He said that in his 2 ½ years with the association he had never discussed any proposed legislation with the General Assembly. This particular legislation was the only legislation he expected to present.

The Commission noted that it must look beyond his actions on a particular piece of legislation as the exemption addresses a broader scope of activities. Specifically, the exemption requires the Commission to look at activities "in relation to the usual duties" of employment. The usual duties of his employment included not only the action he proposed to take relative to a single piece of legislation, but more frequently included "rendering assistance and advice" to the regulatory agency on certain matters within the interests of the association. The Commission found that the contact with the State agency went beyond "an isolated, exceptional or infrequent activity."

It noted that if the Commission limited its interpretation of the "activity test" to the fact that a special interest group has only a single piece of legislation it wants adopted in a given year, without considering the scope of "usual duties," then the exception would swallow the rule. During any given legislative session, an interest group may have only one piece of legislation it is interested in promoting, advocating, influencing or opposing. If the Commission did not consider the full scope of the "usual duties" none of those groups would be required to register. It noted that the rules of statutory construction require that all words of a statute be given meaning. *Goldstein v. Municipal Court,* Del. Super., C.A. No. 89A-AP-13, J. Gebelein (January 7, 1991). Failure to consider the "usual duties" would result in ignoring the words of the statute. Further, the resulting effect of the exception swallowing the rule appears inconsistent with legislative intent. Accordingly, the director was required to register.

(2) Persons communicating with the General Assembly or a State agency if such communication is undertaken by them as a personal expression and not as an agent of their employers as to matters of interest to a person by whom or by which they are employed and if they receive no additional compensation or reward, in money or otherwise, for or as a result of such communication. 29 Del. C. § 5831(b)(4).

Lobbying Solicitation--Commission Opinion No. 96-37

Are non-paid rank and file members exempt from registration if they are "encouraged to contact their legislators to support or oppose legislation?"

Rank and file members were notified by the organization of legislation of interest and asked to contact legislators. However, the member could elect to do so, or not. As opposed to "direct lobbying," this is known as "lobbying solicitation." *See, Note, Federal Lobbying Disclosure Reform Legislation, Harv. J. on Leg.* (1980), reprinted in *1 Sutherland Stat. Constr. pp. 875-905, at 877 and 893-900* (5th ed. 1992). The members were not compensated and do not spend the type of funds listed in the lobbying statute.

As they are not compensated, nor do they expend any funds of the type listed, they are not lobbyists under 29 Del. C. § 5831(a)(1)(a) and (c). This Commission found that the organization's substantial purpose was not to influence legislative or administrative action. *(See, Commission Opinion No. 96-37, supra)*. Based on that finding, the rank and file members would also not be lobbyists under 29 Del. C. § 5831(a)(1)(b) (authorized representative for any person who has lobbying as substantial purpose). The Commission noted that the public purpose of insuring that government officials and the public are aware of this "special interest group" was served because the organization's executive director was registered as a lobbyist.

Even assuming the rank and file members fell within the definition of "lobbyist," there is an exception for persons if they do not expend funds and are:

Persons communicating with the General Assembly or a state agency if such communication is undertaken by them as a personal expression and not as an agent of their employers as to matters of interest to a person by whom or by which they are employed and if they receive no additional compensation or reward, in money or otherwise, for or as a result of such communication. 29 Del. C. § 5831(b)(4).

The Commission found that such communication was a "personal expression." One joins or participates in an organization because it addresses and expresses the types of issues in which the individual has a personal interest. While rank and file members might be considered "agents" in the broad sense of the term because they may call legislators and say they are calling on behalf of the organization, the exemption also requires that: "they receive no additional compensation or reward in money or otherwise, for or as a result of such communication." Here, the rank and file members receive no compensation.

Further, this Commission construes the statute in a manner consistent with the manifest intent of the General Assembly. *See,* 1 Del. C. § 301. This Commission has previously found that it would not reflect true legislative intent to interpret the statute in a way that reflects an absurd result. *See, Commission Ops. 96-08* and *96-14.*

If the statute required every rank and file member of an organization to register as a lobbyist because the organization asks them to contact General Assembly members, it would, in effect, be asking such organizations for an entire listing of its membership. The Commission does not believe the General Assembly intended such a result. *See, e.g., NAACP v. Alabama,* 357 U.S. 449, 2 L. Ed. 2d 1488, 78 S. Ct. 1163 (1958) (Association not required to disclose full list of its membership who contributed to political campaigns to, in effect, influence elections, because of Constitutional implications). Further, the purpose of lobbyist registration laws is to insure that the public and government officials know who represents what interests. *Commission Op. Nos. 96-13, 96-14,* and *96-18.* The registration of the organization's Executive Director serves this public purpose.

Accordingly, non-paid rank and file organizational members, whom their organization solicits to lobby, are not required to register as lobbyists even if the organization's solicitation to lobby results in direct communication with General Assembly members, where no expenditures of the type listed in the statute are made and the registration of the primary representative serves the statutory purpose.

Volunteer Organization--Commission Opinion No. 96-36

An organization was created as a 501(c)(4) corporation, with the express purpose of lobbying and educating. Its principal purpose is "working for responsible taxation and spending policies." The organization initially wants to focus on tax and spending policies at the State level, such as the State's current budget. The corporate president is the primary lobbyist and registered with the Commission. He expects to develop a core of persons within the organization to aid him in lobbying. Rank and file members also will be asked to contact government officials and come to Dover to speak to them on occasion. No one in the organization is compensated and no funds are spent on members of the General Assembly or State officials for such things as food, entertainment, travel, etc., as listed in 29 Del. C. § 5835.

Subparagraph (b) requires those who are authorized to act as a representative of any person who has as a substantial purpose the influencing of legislative or administrative action to register. 29 Del. C. § 5831(a)(1)(b). "Person" is "any individual, partnership, corporation, trust, joint venture and any other association of individuals or entities." 29 Del. C. § 5831(a)(4). The Commission found that because the individual was the corporate president, he would certainly be authorized to act as its representative. As he is the primary lobbyist and will have direct communication with members of the General Assembly and/or State agencies, his registration was proper.

If a core of organization members is developed specifically to aid in lobbying, they too would be authorized to act for the organization with the substantial purpose of lobbying; would have direct communication with members of the General Assembly and/or State agencies; and would be expected to register.

Other than these "direct lobbying" activities, the organization expects to ask rank and file members to contact government officials and possibly come to Dover to speak. As opposed to "direct lobbying," this is referred to as "lobbying solicitation." The Code provides an exemption for "personal expression," where there are no expenditures of funds of the type listed. 29 Del. C. § 5831(b)(4). That exemption applies to persons if they do not expend funds and are:

> Persons communicating with the General Assembly or a state agency if such communication is undertaken by them as a personal expression and not as an agent of their employers as to matters of interest to a person by whom or by which they are employed and if they receive no additional compensation or reward, in money or otherwise, for or as a result of such communication. 29 Del. C. § 5831(b)(4).

While government officials and the public have the right to know what groups are seeking to influence public policy, this Commission does not believe the General Assembly intended for every non-paid member of an organization to register merely because the organization solicits them to contact government officials, even if that solicitation results in a "direct communication." *Commission Opinion No. 96-37.* By registering those core persons who represent the organization and have lobbying as a substantial purpose, government officials and the public are on notice of the specific organization and of the area(s) of public policy it seeks to influence. *Id.* Thus, even assuming direct communication and assuming that the members are "agents" of the organization, as they receive no compensation if they respond to the "lobbying solicitation," they are not required to register when the public purpose has been served by registering core lobbyists.