



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 80-13

Requirements for Registration as a Lobbyist

The State Ethics Commission has been asked whether persons who lobby under the circumstances set forth below must register with the Commission as lobbyists in order to comply with the Code of Ethics for Lobbyists, Chapter 10, Part II, General Statutes. Each of the persons is employed by or has a substantial financial interest in one of several businesses engaged in a particular trade. The businesses have formed a trade association, the officers of which are persons with a substantial financial interest in, or are employees of, the member businesses. The trade association has retained a lobbyist who is registered with the Commission, as is the association. Additional lobbying on behalf of the trade association is carried on by the persons each of whom is employed by, or has a substantial financial interest in, one of the businesses of which the trade association is comprised. These persons are paid nothing by the association for their lobbying. Some of the lobbying is done during the normal working hours of those who are employees of the member businesses. To illustrate the situation with a hypothetical example: a small bank belongs to a small bank association, with several members, which is registered as a lobbyist and retains a paid lobbyist; the president and part owner of the small bank, who is an unpaid officer of the association, also lobbies on behalf of the association; he receives from the association no compensation for his lobbying.

If they meet the financial threshold, and no exception applies, the persons described above, and the bank president in the hypothetical example, would be communicator lobbyists. Subsection 1-91(1), General Statutes; section 1-92-41, Regulations of Connecticut State Agencies. The financial threshold is met by the receipt, or the expectation of the receipt, of \$300 or more in a calendar year in compensation, reimbursement, or both for lobbying or in furtherance of lobbying. Subsection 1-91(1), above. In the case of an individual whose lobbying is incidental to his regular employment, compensation to be counted toward the \$300 threshold is determined by the pro rata value of the compensation earned while lobbying or conducting activities in furtherance of lobbying. Subsection 1-96(b), General Statutes; section 1-92-43, Regulations of Connecticut State Agencies. A communicator lobbyist who meets the financial threshold and to whom no exception applies must register as a lobbyist with the Ethics Commission, subsection 1-94(a), General Statutes, and file with the Commission periodic financial reports concerning lobbying activities, section 1-96, General Statutes.

Although it is never stated expressly, the statutory scheme described above contemplates that the compensation and reimbursement which accumulate toward the threshold for registration are compensation and reimbursement paid by the client, the person on whose behalf the lobbying is

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said to be performed. Connecticut's lobbying act is not designed to look behind a lobbying organization to identify the persons who are members the organization. State Ethics Commission Advisory Opinion No. 78-17, 40 Conn. L.J. No. 8, p. 14.

That Advisory Opinion considered a trade association that had, in fact, an identity clearly separate from its members. The association had interests that would not always coincide with those of all its membership. It employed a paid staff which worked full time for the association. The association was sufficiently large that positions which it adopted, while intended to be generally beneficial to the trade in which its members were engaged, often would not support the business interests of a portion of its members. The ordinary contribution of a trade association member to the development of an association position on proposed legislation addressed in the Opinion fitted within the assumptions of the lobbying statute. When an association, or its members' activities, does not the Ethics Commission need not ignore reality.

The instant trade association scarcely has an existence independent of its member businesses. A person from one of the member businesses who lobbies on behalf of the association as a practical matter is lobbying essentially directly for the benefit of his or her own business. The pro rata amount of compensation the person receives from his or her business based on the value of the time devoted to lobbying amounts to compensation received for lobbying not only within the letter of the lobbying statute but within the spirit of the law as well. If the pro rata amount received or to be received during the calendar year equals or exceeds in value \$300, the person is a lobbyist and must register unless an exception to the definition of "lobbyist", such as the five-hour threshold for those who receive no compensation or reimbursement specifically for lobbying (subsection 1-91(1)(7), General Statutes) is applicable. The registrant should file periodic financial reports concerning lobbying activities. Section 1-96, General Statutes.

The receipt reported by a communicator lobbyist in his financial report is an expenditure by the person on whose behalf the lobbying is done. It has been decided that, on the facts given, the persons above are lobbying essentially directly for the businesses with which they are associated. Their businesses are the client lobbyists, the ones on whose behalf the lobbying is performed. Therefore, if a business pays a communicator lobbyist associated with it compensation, reimbursement, or both amounting to \$300 or more in a calendar year, the business must register, unless some exception is applicable, and file periodic financial reports. (By analogy, if in the situation described in 78-17 a member firm had lobbied for an issue on which the firm and the trade association were in agreement it would appear that, as in the instant case, the individual business should register, if the requisite threshold is passed and no exception applies. The trade association, having held itself out as a person and having paid its retained lobbyist more than \$300 during the year for his lobbying activities, must also register. It might be possible, within the statute and Commission regulations and through special arrangements with the Ethics Commission on a case-by-case basis, to report in the association's financial report the expenditures of compensation and

reimbursement made by the individual business belonging to the association. In that event, registration and financial reporting by the individual businesses might be avoided. One of the purposes of the Code of Ethics for Lobbyists is to make available to the General Assembly and to the public the value of the effort expended in attempting to influence official action. Relating to this trade association the lobbying efforts of a person from a member business would satisfy that purpose in the simplest way, whether the trade association is a sham formed for the purpose of evading the lobbying statute or, as in the present case, one established for sound reasons such as efficiency in representing the interests of its members but, in its officers and its lobbying activities, not having an identity for purposes of the lobbying statute that is really independent from those of its members.

Insofar as Ethics Commission Advisory Opinion 78-8, 39 Conn. L.J. No. 48, p. 22, is inconsistent with the foregoing, it is overruled.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated June 6, 1980



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

June 25, 1980

Ms. Maureen Prior
Commission on Official Legal
Publications
Office of Production & Distribution
78 Meadow Street
East Hartford, CT 06108

Dear Ms. Prior:

Enclosed please find the Ethics Commission's Advisory Opinion Number 80-13. Sections 1-81(3) and 1-92(5), General Statutes require the Commission to publish in the Connecticut Law Journal advisory opinions which it issues with regard to Chapter 10, General Statutes.

Very truly yours,

A handwritten signature in cursive script that reads "Cindy".

Cindy Cerreta
Clerk of the Commission

Enclosure



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

June 6, 1980

The Honorable Dorothy D. Barnes
50 High Street
Farmington, CT 06032

Dear Representative Barnes:

Advisory Opinion Number 80-13, issued in response to the request in your letter of April 14, 1980, is enclosed.

Very truly yours,

Cindy Cerreta

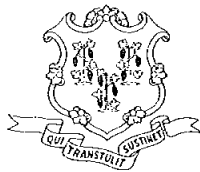
Cindy Cerreta
Clerk of the Commission

Enclosure

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APR 18 1980

STATE ETHICS COMMISSION

REPRESENTATIVE DOROTHY D. BARNES
TWENTY-FIRST DISTRICT
50 HIGH STREET
FARMINGTON, CONNECTICUT 06032

April 18, 1980

Mr. J. D. Eaton
State Ethics Commission
30 Trinity Street
Hartford, Connecticut 06115

Dear Mr. Eaton:

First, I am requesting an advisory opinion from the State Ethics Commission as to whether someone who is lobbying for more than five hours, and is spending more than \$300 worth of his time communicating with public officials on behalf of legislation that affects the business or industry in which he is employed or has substantial financial interest, should register as a lobbyist. Such individuals represent their lobbying activities as part of the campaign of a trade association.

In the case that has caused me to raise the question, the trade association itself compensates only one lobbyist who is registered; however, a number of individuals employed in the industry or who have substantial financial interest in the industry have not registered as lobbyists despite the fact that they have spent more than five hours and, presumably, spent more than \$300 worth of their time in the activity. Hypothetically, for example, various banking associations have paid lobbyists working at the Capitol. If a bank president whose bank is a member of an association lobbies for over five hours at a cost to himself of more than \$300, should this man register?

Second, I am interested to know if you have encountered the problem of a registered lobbyist working for one cause while also lobbying for another cause for which he is not registered. If so, what action have you taken in such a case?

I would appreciate being kept informed on your opinions. I should be agreeable to provide you with more information dealing with the specifics of the problems leading to my request, if you wish.

Yours very truly,

Dorothy D. Barnes
Dorothy D. Barnes



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

April 23, 1980

The Honorable Dorothy D. Barnes
50 High Street
Farmington, CT 06032

Dear Representative Barnes:

Your request for an advisory opinion, dated April 18, 1980, has been received. I will try to get it on the Agenda for the Commission's May 7 meeting. If so, you may have a response by about May 9.

The second question in your letter bears a conceptual relationship to the first, but is easier to answer. I suspect I have encountered the exact situation to which you refer.

A registered lobbyist for one client (a jai alai organization as I recall) was asked to testify before a legislative body on an entirely different subject -- nonconforming signs in a zoned area, I believe -- because of his expertise on that subject. The persons who asked him to do this bore no relationship to the client on whose behalf he acted as a paid lobbyist. He was not paid for his testimony concerning nonconforming signs. His only lobbying consisted of testimony at a public hearing. All other conditions of subsection 1-91(1)(4), General Statutes, were met.

Thereafter, he came by the office to ask whether he should have registered as a lobbyist because of his unpaid testimony.

Subsection 1-91(1)(4) requires that a person must confine his lobbying solely to the provision of the public testimony. It seems to me that the subsection must be construed to mean no other lobbying for that client. Otherwise, a person who is a registered lobbyist paid over \$300 by his client could not, as an individual citizen, lobby without pay for some other cause he believes in unless he registers. The answer seems supported by Ethics Commission Advisory Opinion Number 80-1, which concerns an analogous situation. A public official had acted as a paid legal counsel for an organization. He offered to represent the organization, without compensation, before an agency listed in subsection 1-84(d), General Statutes. On the assumption that the agreement to represent the organization for no compensation was bona fide, the Commission held the public official could represent the organization despite subsection 1-84(d). A copy of that opinion is enclosed for your convenience. See also subsection 1-95(a), General Statutes, third sentence.

Very truly yours,

A handwritten signature in cursive script, appearing to read "G. D. Eaton".

G. D. Eaton, Executive
Director and General Counsel

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STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 80-1

Uncompensated Representation by a Public
Official before a Subsection 1-84(d) Agency

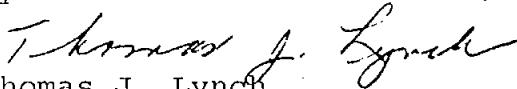
An attorney who is a member of the General Assembly wishes to represent a nonprofit social club, located in his senatorial district, before the Division of Liquor Control. The legislator will receive no compensation or other thing of value in consideration of this representation. He has asked whether the Code of Ethics for Public Officials proscribes such an appearance before the Division of Liquor Control. The General Assembly member also represents the social club, for compensation, on another matter, for which he was engaged prior to the time the issue before the Liquor Control Division arose.

Subsection 1-84(d) of the General Statutes provides that "No public official ... shall agree to accept ... any employment, fee or other thing of value ... in consideration of ... appearing, agreeing to appear, or taking any other action on behalf of another person before ... the division of liquor control within the department of business regulation" A member of the General Assembly is a public official for the purpose of this provision of the Code of Ethics for Public Officials. Subsection 1-79(j), General Statutes. The prohibition, however, applies only to paid employment, representing another for compensation before the State agency. It would not forbid the free representation involved here.

The question is complicated somewhat by the fact that the legislator is being paid for representing the social club concerning another matter. It would be simple to adjust upward the compensation for services on the other matter so that the appearance before the Liquor Control Division would be "free". In this case, however, the legislator has advised the Ethics Commission that the compensation for his services previously agreed upon is unchanged, unaffected by the services he is rendering his constituent before the subsection 1-84(d) agency.

Subsection 1-84(d), General Statutes, therefore does not prevent the legislator from representing his client before the Division of Liquor Control, since the representation is without compensation. Compliance with other provisions in sections 1-84 through 1-86, Code of Ethics for Public Officials, which have possible applicability should pose no problem so long as they are kept in mind.

By order of the Commission,

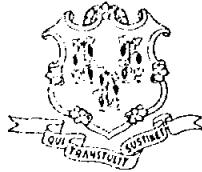

Thomas J. Lynch
Chairman

Dated Jan. 4, 1980

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HOUSE OF REPRESENTATIVES
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REPRESENTATIVE DOROTHY D. BARNES
TWENTY-FIRST DISTRICT
50 HIGH STREET
FARMINGTON, CONNECTICUT 06032

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APR 18 1980

STATE ETHICS COMMISSION

April 18, 1980

Mr. J. D. Eaton
State Ethics Commission
30 Trinity Street
Hartford, Connecticut 06115

Dear Mr. Eaton:

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I would appreciate being kept informed on your opinions. I should be agreeable to provide you with more information dealing with the specifics of the problems leading to my request, if you wish.

Yours very truly,

Dorothy D. Barnes
Dorothy D. Barnes



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

May 8, 1980

The Honorable Dorothy D. Barnes
50 High Street
Farmington, CT 06032

Dear Representative Barnes:

By letter of April 18, 1980 you asked the Commission for an advisory opinion. The Commission took your request under consideration at its meeting yesterday. This occurred, however, late in the day after a lengthy hearing. The Commission felt it did not have enough time to provide guidance in its opinion sufficient for all trade associations to understand their responsibilities under the Code of Ethics for Lobbyists.

Therefore, the Commission deferred action on your request to its next regular meeting, June 4, 1980.

Very truly yours,

A handwritten signature in cursive script that reads "J. D. Eaton".

J. D. Eaton
Executive Director and
General Counsel

JDE:cc

Phone: (203) 566-4472

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STATE OF CONNECTICUT
STATE ETHICS COMMISSION

May 14, 1980

John R. Rathgeber, Esq.
CT Business and Industry
Association, Inc.
60 Washington Street
Suite 1202
Hartford, CT 06106

Dear John:

I am working on an advisory opinion in response to the question in the first two paragraphs of the enclosed letter.

Would you care to give me CBIA's thoughts on the question?

Are you sufficiently informed of the circumstances of other business or trade associations to have a feel for other, small trade associations that might wish to present their views? If so, would you give me a call?

Thanks for your assistance.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "J. D. Eaton".

J. D. Eaton
Executive Director and
General Counsel

JDE:cc

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CONNECTICUT STATE ETHICS COMMISSION

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J. D. EATON, Executive Director
and General Counsel

KEITH D. LAKEY
Auditor-Investigator

30 May 1980
Mr. David Rhodes
P.O. Box 5373
Hamden, Conn. 06518

Dear Mr. Rhodes:

Enclosed is a letter in
partial response to Rep. Barnes'
letter of 18 April 1980.

At its May meeting, the
Ethics Commission deferred action
on the advisory opinion requested
by Rep. Barnes. The request
will be considered at the
Commission's next meeting, June 4.
A copy of the Commission's advisory
opinion will be sent to you.

Very truly yours,
J. D. Eaton