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ADVISORY OPINION NO. 2020-04

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Lobbyists/Principals/Registration and Reporting

Consistent with past administrative practice and until further clarification is provided, when an organization employs or hires a lobbyist, the administrative requirements of Ala. Code §§ 36-25-18,19 are satisfied when: (1) The organization is listed as the principal and authorizes a lobbyist's registration, (2) A representative of the principal signs on behalf of the principal and (3) The organization files quarterly reports as the principal.

Dear Messrs. McDonald and Robichaux:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of this Commission and this opinion is issued pursuant to that request.

QUESTIONS PRESENTED

What is the obligation of Principals with respect to compliance with Ala. Code § 36-25-18 and 19 in light of *Ex Parte Hubbard* ___ So. 3d ___ (Ala. 2020)?

FACTS AND ANALYSIS

This request comes on behalf of Alabama Council of Association Executives (hereinafter “ACAЕ”) and Community Foundation of Greater Birmingham (hereinafter “Foundation”). ACAЕ is a nonprofit trade association whose members include numerous trade, professional association, and nonprofit executives. Many of these members work with organizations that employ or retain lobbyists and must, therefore, manage issues associated with being a principal. The Foundation is a 501(c)(3) philanthropic organization doing work in Blount, Jefferson, St. Clair, Shelby and Walker counties which likewise employs or retains lobbyists from time to time and must, as well, manage issues associated with being a principal.

The requestors acknowledge that retaining or employing a lobbyist triggers certain registration and reporting obligations under the Act, but they have questions regarding the application of the governing legal standards triggering those obligations in light of the Alabama Supreme Court’s decision in *Ex Parte Hubbard*, ___ So. 3d ___, (Ala. 2020).¹ Specifically,

¹ Ala. Code § 36-25-18:

- (a) Every lobbyist shall register by filing a form prescribed by the commission no later than January 31 of each year or within 10 days after the first undertaking requiring such registration. Each lobbyist, except public employees who are lobbyists, shall pay an annual fee of one hundred dollars (\$100) on or before January 31 of each year or within 10 days of the first undertaking requiring such registration.
- (b) The registration shall be in writing and shall contain the following information:
 - (1) The registrant's full name and business address.
 - (2) The registrant's normal business and address.
 - (3) The full name and address of the registrant's principal or principals.
 - (4) The listing of the categories of subject matters on which the registrant is to communicate directly with a member of the legislative body to influence legislation or legislative action.
 - (5) If a registrant's activity is done on behalf of the members of a group other than a corporation, a categorical disclosure of the number of persons of the group as follows: 1-5; 6-10; 11-25; over 25.
 - (6) A statement signed by each principal that he or she has read the registration, knows its contents and has authorized the registrant to be a lobbyist in his or her behalf as specified therein, and that no compensation will be paid to the registrant contingent upon passage or defeat of any legislative measure.
- (c) A registrant shall file a supplemental registration indicating any substantial change or changes in the information contained in the prior registration within 10 days after the date of the change.

both requestors recognize that in the past and in those situations where an organization will be a principal, the Act's administrative provisions have required the organization: (1) to be listed as the principal in the lobbyist's registration, (2) to sign a principal's authorization statement regarding the lobbyist's registration, and (3) to file quarterly reports. This understanding reflects the Commission's historical approach to the issue as contained in its advisory opinions. See, e.g., Advisory Opinion 2011-11.

In *Ex Parte Hubbard*, ___ So. 3d ___, (Ala. 2020) the Alabama Supreme Court did not determine which, if any, individual board members or employees of an organization are also considered a principal subject to the above-referenced administrative requirements, although it did determine that that mere service on an entity's board of directors is not enough to make an individual a principal. The *Hubbard* decision further reaffirmed that the facts underlying the definition of "principal" can vary greatly from business entity to business entity and must be determined on a case-by-case basis.² Individuals and businesses the ethics laws affect need confirmation regarding compliance with the administrative requirements for registration and reporting.

The requestors acknowledge that this requested administrative guidance does not address larger issues that may arise regarding other requirements in the Act, such as the conduct requirements and prohibitions regarding principals, lobbyists, and subordinates of a lobbyist under Ala. Code § 36-25-5.1.

As a practical matter, therefore, and only for purposes of compliance with Ala. Code §§36-25-18 and 19, principals and lobbyists can continue to file and report as they have historically. This decision speaks only to administrative filing requirements pending further clarification on the definition of "principal," and should in no way imply that the Commission has determined that the business entity and named filer are the only possible "principals" for purposes of Ala. Code § 36-25-5.1, as the requestors concede. This opinion merely continues the Commission's historic approach to filing and reporting for the time being that only the organization be listed as the principal for the administrative reporting requirements of Ala. Code §§ 36-25-18 and 19.

Ala. Code 36-25-19 (in pertinent part):

(a) Every person registered as a lobbyist pursuant to Section 36-25-18 and every principal employing any lobbyist shall file with the commission a report provided by the commission pertaining to the activities set out in that section.

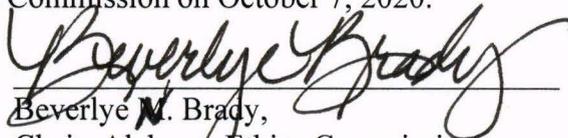
² "We note that our conclusion that a board member of an entity that has employed, hired, or otherwise retained a lobbyist is not a 'principal' solely based on the individual's position as a board member does not foreclose the possibility that a board member of such an entity could, in fact, satisfy the definition of 'principal.' In other words, there is no 'bright-line' rule that a member of the board of an entity that has employed, hired, or otherwise retained a lobbyist cannot be considered a 'principal.' Again, the key to whether an individual fits within the definition of 'principal' is the activity of the person, not the person's title, position, or job description. The hallmark of a 'principal' is one that employs, hires, or retains a lobbyist; this will necessarily be determined on a case-by-case basis." *Ex Parte Hubbard*, ___ So. 3d ___ (Ala. 2020).

CONCLUSION

Consistent with past administrative practice and until further clarification is provided, when an organization employs or hires a lobbyist, the administrative requirements of Ala. Code §§ 36-25-18,19 are satisfied when: (1) The organization is listed as the principal and authorizes a lobbyist's registration, (2) A representative of the principal signs on behalf of the principal and (3) The organization files quarterly reports as the principal.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on October 7, 2020.


Beverlye M. Brady,
Chair, Alabama Ethics Commission