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March 7, 2001

ADVISORY OPINION NO. 2001-22

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Lobbying Activities/Lobbyist Receiving
Compensation Contingent Upon Passage Or
Defeat Of Legislative Action.

A lobbyist may not enter into a contract with
a principal whereby the lobbyist's
compensation is contingent upon the passage
or defeat of legislation or other legislative
action.

A lobbyist may not receive compensation
contingent upon his or her success in having
his or her client selected as service provider
for a program enacted by the State
Legislature when the second contract to
market the client as service provider is
contingent upon the success of the
legislation being adopted under the first
contract.

Dear Mr. Larsen:

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

QUESTION PRESENTED

May a client retain a lobbyist to:

- a) Advocate the passage of specific Alabama legislation creating a certain program; and
- b) advocate the appointment of the client as the service provider for the program, if the legislation is enacted?

FACTS AND ANALYSIS

The facts as have been provided to this Commission are as follows:

David A. Larsen is an attorney with the firm of Berkowitz, Lefkovits, Isom & Kushner. He has asked the above hypothetical questions based on a potentially real set of facts that may affect a client of his.

The hypothetical scenario is as follows:

A client would like to retain a lobbyist to (a) advocate the passage of specific Alabama legislation creating a program; and (b) advocate the appointment of the client as the service provider for the program, if the legislation is enacted. The client proposes to retain the lobbyist under two separate contracts.

Under one contract, the lobbyist would be retained solely to lobby for the enactment of the legislation described in section (a) above, and would be compensated on a fixed monthly or lump sum fee-for-service basis for the services provided (i.e., no "success" or "contingency" fee would be paid).

Under the second contract, the lobbyist would be retained solely to represent the client in marketing that client as the service provider for the program created by the legislation. If successful, the lobbyist would be compensated on a contingency fee basis, payable only in the event that the client is in fact appointed as the service provider for the program.

Mr. Larsen states that the services required under the second contract would not include contact with or the lobbying of any Alabama legislators, whether involved in the legislation described in section (a) above, or otherwise. (sic.)

Mr. Larsen further states that the contract involving the legislation will more than likely be broken down into two parts. In the first year, the enabling legislation would be passed, and the second year, the program would be funded.

As relates to the second contract, the service provider will be selected by either the board members or the executive director of a voluntary employee association. The association's board members are elected by its membership, and there is no relation to any legislative body.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-23(c) states:

“(c) No principal or lobbyist shall accept compensation for, or enter into a contract to provide lobbying services which is contingent upon the passage or defeat of any legislative action.”

It is clear that a lobbyist may not be paid on a contingency fee basis for his or her lobbying on behalf of or against any legislative action.

The Alabama Ethics Law does not define “legislative action.” However, a legislative body is defined by Section 36-25-1(16) as follows:

“(16) LEGISLATIVE BODY. The Senate of Alabama, the House of Representatives of Alabama, a county commission, city council, city commission, town council, or municipal council or commission, and any committee or subcommittee thereof.”

It is clear by reading the Alabama Ethics Law that under the first contract, the lobbyist may only be paid by lump sum or fixed payment. His or her compensation may in no way be based upon the outcome of his or her efforts in having the legislation enacted.

As relates to the second contract, based on the information provided, the contract to market the client as service provider would not involve legislative action or interaction with any legislative body, however, the second contract is contingent upon the success of the first contract.

This clearly provides the lobbyist with an added incentive to be successful in his efforts to fulfill the terms of the first contract and, therefore, both contracts must be viewed as two parts of one transaction.

Based on the facts as provided and the above law, a lobbyist may not enter into a contract with a principal whereby the lobbyist's compensation is contingent upon the passage or defeat of legislation or other legislative action.

Further, a lobbyist may not receive compensation contingent upon his or her success in having his or her client selected as service provider for a program enacted by the State Legislature when the second contract to market the client as service provider is contingent upon the success of the legislation being adopted under the first contract.

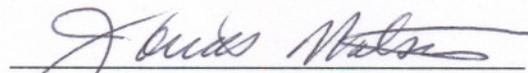
CONCLUSION

A lobbyist may not enter into a contract with a principal whereby the lobbyist's compensation is contingent upon the passage or defeat of legislation or other legislative action.

A lobbyist may not receive compensation contingent upon his or her success in having his or her client selected as service provider for a program enacted by the State Legislature when the second contract to market the client as service provider is contingent upon the success of the legislation being adopted under the first contract.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on March 7, 2001.



John H. Watson
Chair
Alabama Ethics Commission