



STATE OF ALABAMA ETHICS COMMISSION



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June 1, 2016

ADVISORY OPINION NO. 2016-15

Ms. Maggie Ellinger-Locke
Legislative Analyst
State Policies Department
Marijuana Policy Project
P.O. Box 77492
Washington, DC 20013

Lobbying Requirements/Legislative Analyst
In The State Policies Department Of The
Marijuana Policy Project (MPP) Registering
As A Lobbyist

An individual whose job responsibilities include, either for compensation or as a regular and usual part of employment, the practice of promoting, opposing or in any manner influencing or attempting to influence the introduction, defeat or enactment of legislation before any legislative body is considered to be lobbying and must register within 10 (ten) days of first undertaking the lobbying activity.

Every individual registered as a lobbyist in the State of Alabama is required to personally attend a training program within 90 days of registering as a lobbyist. A lobbyist who fails to attend a training program shall not be allowed to register as a lobbyist.

Dear Ms. Ellinger-Locke:

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

QUESTIONS PRESENTED

- 1) Is a Legislative Analyst in the State Policies Department of the Marijuana Policy Project, who will monitor legislation and communicate from time-to-time with Alabama legislators, required to register as a lobbyist?
- 2) If these activities are considered lobbying, must an individual attend a training session in person?

FACTS AND ANALYSIS

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

Maggie Ellinger-Locke is a Legislative Analyst in the State Policies Department of the Marijuana Policy Project (MPP). In that capacity, she monitors legislation and supports legislative reforms of marijuana laws in twelve states, including Alabama.

As a regular part of her duties, she anticipates engaging in the following communications relating to Alabama legislative matters:

- 1) Sending e-mail alerts to MPP's Alabama subscribers, one to four times per year, which ask them to contact their state lawmakers via e-mail to express their support for (or opposition to) specific bills.
- 2) Occasionally urging MPP's Alabama supporters to meet with the state lawmakers in person.
- 3) Encouraging MPP's Alabama supporters to write letters to the editor about bills affecting issues MPP cares about.
- 4) Making phone calls or sending e-mails directly to state legislators in Alabama during legislative sessions to offer resources and suggestions regarding bills and either urging their passage or defeat.

She further states that all her work on Alabama-related issues would be conducted entirely from her office in Washington D.C. She estimates her total time spent on Alabama-related communications would be approximately 2-15 hours per year. She is paid to do this.

The Alabama Ethics Law, Ala. Code § 36-25-1(20) defines lobbying as:

“The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body. The term does not include providing public testimony before a legislative body or regulatory body or any committee thereof.”

In addition, Ala. Code § 36-25-1(21)(a)(1) through (4) defines a lobbyist as:

“a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.
2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.
3. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.
4. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.”

Excluded from the definition of a lobbyist in Ala. Code § 36-25-1(21)(b)(1) – (8) are the following:

“b. The term lobbyist does not include any of the following:

1. An elected official on a matter which involves that person’s official duties.
2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where

those professional services are not otherwise connected with legislative, executive, or regulatory action.

3. Reporters and editors while pursuing normal reportorial and editorial duties.

4. Any citizen not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.

5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.

6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.

7. A person who is a member of a business, professional, or membership organization by virtue of the person's contribution to or payment of dues to the organization even though the organization engages in lobbying activities.

8. A state governmental agency head or his or her designee who provides or communicates, or both, information relating to policy or positions affecting the governmental agencies which he or she represents.

Ms. Ellinger-Locke confirms that she anticipates making phone calls and sending e-mails that involve specific pieces of legislation. She states that these specific pieces of legislation will vary depending on what is introduced and what moves. She references "Leni's law" which Governor Bentley signed into law on May 4, 2016, which established an affirmative defense for patients with seizure disorders and their parents or guardians for possession of marijuana extracts with less than three percent THC. She states that had she been able to lobby she would have sent an alert to their membership in advance of the vote asking them to e-mail their lawmakers and urge them to vote yes on that bill.

She further stated that any phone calls to legislators she might have made would have been to discuss the specifics of the bill, if there was something she was unclear about, or to provide information to legislators that might influence their vote on the legislation.

While Ms. Ellinger-Locke anticipates that her contact with legislators in the State of Alabama will be minimal, she anticipates calling and e-mailing state legislators directly regarding pending legislation and advocating for its passage or defeat nonetheless. There are no exceptions to the definition of a lobbyist that would excuse Ms. Ellinger-Locke from having to register because she is compensated for her activity and it is a regular and usual part of her employment.

While much that Ms. Ellinger-Locke will do in Alabama is considered grass roots lobbying (contacting Alabama subscribers and supporters on issues rather than specific pieces of legislation, etc.), much of what she anticipates doing is not. Moreover, there is no exclusion in the Ethics Law for de minimis lobbying when you are paid to do it, and no requirement that a certain percentage of time be devoted to lobbying to trigger the registration requirement beyond "regular and usual." Based on the nature of her activities in making phone calls and e-mails or other direct contact to state legislators, and the fact she is paid to do so and that it is a regular and usual part of her employment, she would be considered to be lobbying and would have to register as a lobbyist.

Ala. Code § 36-25-4.2(a)(3) sets out the training requirements for lobbyists. It states:

"(a) At the beginning of each legislative quadrennium, the State Ethics Commission shall provide for and administer training programs on the State Ethics Law for members of the Legislature, state constitutional officers, cabinet officers, executive staff, municipal mayors, council members and commissioners, county commissioners, and lobbyists.

(3) The training program for lobbyists shall be held four times annually as designated by the Executive Director of the State Ethics Commission, the first of which shall be held within the first 30 days of the year. Each lobbyist must attend a training program within 90 days of registering as a lobbyist. A lobbyist who fails to attend a training program shall not be allowed to lobby the Legislature, Executive Branch, Judicial Branch, public officials, or public employees. After attending one training program, a lobbyist shall not be required to attend an additional training program unless any changes are made to this chapter. Such additional mandatory training program shall be held within three months of the effective date of the changes."

Ala. Code § 36-25-4.1(c) requires that:

"Except as provided by herein, attendance at any session of the training program shall be mandatory, except in the event the person is suffering a catastrophic illness."

While this places a burden on the individual desiring to register as a lobbyist, there are no exceptions to the mandatory training requirement.

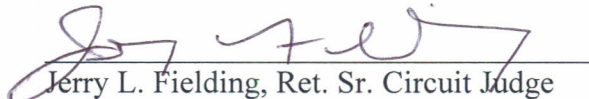
CONCLUSION

An individual whose job responsibilities include, either for compensation or as a regular and usual part of employment, the practice of promoting, opposing or in any manner influencing or attempting to influence the introduction, defeat or enactment of legislation before any legislative body is considered to be lobbying and must register within 10 (ten) days of first undertaking the lobbying activity.

Every individual registered as a lobbyist in the State of Alabama is required to personally attend a training program within 90 days of registering as a lobbyist. A lobbyist who fails to attend a training program shall not be allowed to register as a lobbyist.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on June 1, 2016.



Jerry L. Fielding, Ret. Sr. Circuit Judge
Chair
Alabama Ethics Commission