S T A T E O F T E N N E S S E E
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Opinion No. 02-024

Organization as Lobbyist

QUESTIONS

1. Under Tenn. Code Ann. §§ 3-6-101, *et seq.* (the "Lobbying Laws"), may an organization be required to register as a lobbyist?

2. a. Would it be considered "lobbying" under state law if a group runs an advertisement telling people to call specific legislators on a specific topic in order to influence legislation?

b. Would it matter if the group was receiving contributions (money or other consideration) to pay for the advertisements and other activities?

OPINIONS

1. Yes.

2. Such activity would be a direct or indirect communication for the purpose of influencing legislative action as used in the definition of the Lobbying Laws to define lobbying that triggers the registration and disclosure requirements. But a group that expends its own money for such communications is not doing so "for pay or for any consideration" within the meaning of the same definition. If the group is receiving contributions such as money or any other consideration to pay for the advertisements and other activities, then it is engaged in lobbying as defined under the Lobbying Laws.

ANALYSIS

1. Organization as Lobbyist

The first question is whether an organization may be required to register and file disclosure reports as a lobbyist under state law. The Tennessee Registry of Election Finance is charged with administering and enforcing the Lobbyist Registration and Disclosure Law, Tenn. Code Ann. §§ 3-6-101, *et seq.* (the "Lobbying Laws"). Tenn. Code Ann. § 2-10-205(2).

Under Tenn. Code Ann. § 3-6-104, every "person" qualifying as a "lobbyist" within the meaning of the statute must register with the Registry of Election Finance. Tenn. Code Ann. § 3-6-102 defines various terms as used in the statutory scheme, "unless the context otherwise requires." Under subsection (13), "lobbyist" means "any person who engages in lobbying[.]" The term "person" means "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons[.]" Tenn. Code Ann. § 3-6-102(17). The term "lobby" means:

> to communicate, *directly or indirectly*, with any official in the legislative branch or executive branch, *for pay or for any consideration*, for the purpose of influencing any legislative action or administrative action[.]

Tenn. Code Ann. § 3-6-102(12) (emphasis added).

While the definitions clearly reflect that the term "person" includes a group, some of the statutes outlining the registration process suggest that it is focused on individuals, not groups or legal entities. Under Tenn. Code Ann. § 3-6-104(a), every "person" qualifying as a lobbyist must register with the Registry, and a "person" who registers as a lobbyist must furnish written proof of such "person's" authority to lobby on behalf of each employer to the Registry before doing any lobbying. When any "person" registers, the provisions of Tenn. Code Ann. § 3-6-114 apply to the lobbyist for the rest of the registration year. But subsection (b) of Tenn. Code Ann. § 3-6-104 states that, at the time of registration, "each *individual* shall pay an annual filing fee of twenty-five dollars ($25.00) for each *person* for whom such *individual* registers as a lobbyist." Tenn. Code Ann. § 3-6-104(b) (emphasis added). Under Tenn. Code Ann. § 3-6-105, the registration form must contain the *individual's* name and business address and the name and address of each *person* for whom such *individual* registers for the purpose of lobbying. Tenn. Code Ann. § 3-6-105(a)(1) & (2) (emphasis added). Each *individual* registered as a lobbyist must file a supplementary report with the Registry. Tenn. Code Ann. § 3-6-105(b). Tenn. Code Ann. § 3-6-110(a)(2) provides that if a registrant has failed to file a report required under the statute, the *person* for whom the registrant has been a lobbyist must file a report for the period. Finally, the Registry is authorized to suspend the registration of a lobbyist and "suspend any *person* from the privilege of lobbying if that *lobbyist or person* is found by the registry" to have violated reporting or disclosure requirements or the restrictions on giving gifts. Tenn. Code Ann. § 3-6-110(c) (emphasis added). We think that, under the Lobbying Laws, an organization may be required to register as a lobbyist. This Office reached the same conclusion with regard to the lobbyist statutes in effect in 1986. Op. Tenn. Atty. Gen. 86-34 (February 18, 1986). At that time, the lobbyist registration statutes contained virtually the same language as that now in effect.

2. Running an Advertisement as Lobbying

Your second question concerns a more specific factual situation. You ask whether it would be considered lobbying if an organization runs an advertisement telling people to call specific legislators on a specific topic in order to influence legislation. Under the Lobbying Laws, the term "lobby" means:

> to communicate, *directly or indirectly*, with any official in the legislative branch or executive branch, *for pay or for any consideration*, for the purpose of influencing any legislative action or administrative action[.]

Tenn. Code Ann. § 3-6-102(12) (emphasis added). "Influencing legislative or administrative action" means:

> promoting, supporting, influencing, modifying, opposing or delaying any *legislative* or administrative *action* by any means, including, but not limited to, the provision or use of information, statistics, studies, or analyses, but not including the furnishing of information, statistics, studies, or analyses requested by an official of the legislative or executive branch to such official or the giving of testimony by an individual testifying at an official hearing conducted by officials of the legislative or executive branch[.]

Tenn. Code Ann. § 3-6-102(10)(emphasis added). "Legislative action" means:

> introduction, sponsorship, debate, voting or any other nonministerial official action or nonaction on any *bill*, resolution, amendment, nomination, appointment, report or any other matter pending or proposed in a legislative committee or in either house of the general assembly[.]

Tenn. Code Ann. § 3-6-102(11) (emphasis added). By its terms, the statute includes communicating "directly or *indirectly*" with officials in the legislative or executive branch "for pay or any other consideration" to influence legislative or administrative action. The United States Justice Department found that a federal law requiring any disclosure by any person receiving contributions or expending money to influence, *directly or indirectly,* the passage or defeat of congressional legislation, included expenditures for a campaign to induce groups and individuals to communicate by letter with members of Congress on such legislation. *United States v. Harris,* 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed. 989 (1954). The United States Supreme Court found that the statute, by including indirect influence, was not unconstitutionally vague and did not violate the First Amendment rights of groups subject to the disclosure requirements. The United States District Court for the Northern District of New York reached a similar conclusion with regard to a New York law requiring disclosure by any person that "attempts to influence the passage or defeat of any legislation" or other decisions. *Commission on Independent Colleges and Universities v. The New York Temporary State Commission on Regulation of Lobbying,* 534 F.Supp. 489 (N.D.N.Y. 1982). The Court found that the statute was not unconstitutionally overbroad and did not violate the First Amendment even though it was not confined to direct communications with officials. The Court cited *Harris* in concluding that campaigns to exhort the public to send letters and telegrams to government officials could constitutionally be regulated by disclosure laws.

We conclude that, by including direct and indirect communications within the definition of lobbying, the General Assembly intended to include activities such as an advertisement intended to cause others to communicate directly with legislators regarding proposed legislation. But, unlike the federal and New York statutes, the Lobbying Laws define "lobbying" to include specified activities conducted "for pay or for any consideration." A group that expends its own money for such communications is not doing so "for pay or for any consideration" within the meaning of the Lobbying Laws. If the group is receiving contributions such as money or any other consideration to pay for the advertisements and other activities, then it is engaged in lobbying as defined under the Lobbying Laws.

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