



MONTGOMERY COUNTY ETHICS COMMISSION

Nina Weisbroth
Chair

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Advisory Opinion 12-11-012

Annual Lobbying Registration Fees

The Public Ethics Law requires, annually, a registration fee with respect to each lobbyist for each registration filed.¹ For calendar year 2013 lobbying registrations and thereafter, a registration fee will be collected from each person who lobbies and with respect to each registration. Lobbyists at a firm who wish to file what amounts to a joint registration may continue to do so, but a fee will be required for each person listed as lobbying for the client (except those not required to register because they do not meet registration thresholds, see fn. 1.)

This constitutes a change in practice. It is the conclusion of the Ethics Commission that the existing practice is inconsistent with the law's requirement that all lobbyists meeting the requirements for registration register for each client represented and pay an annual registration fee.

Legal Analysis

1. Montgomery County Public Ethics Law

"Lobbying" and "Lobbyist" are defined in section 19A-4 of the Public Ethics Law as follows:

(k) *Lobbying* means any attempt to influence any legislative, executive, or administrative action by a County agency.

(l) *Lobbyist* means any individual or organization who spends money or is compensated to influence legislative, executive, or administrative action by a County agency.

Article V of the Public Ethics Law, 19A-21 to 19A-26, addresses Lobbying Disclosure. 19A-21 details the triggers and thresholds for registration. It provides:

¹ See 19A-23(e), fn. 3 below.

(a) Any individual or organization must register as a lobbyist under this Article if, during a year, that individual or organization:

(1) communicates with a public employee to influence legislative action by a County agency, and for that purpose either:

(A) spends more than \$500, or

(B) receives compensation, including a pro-rated part of a salary or fee for services, totaling more than \$500; or

(2) communicates with a public employee to influence executive or administrative action by a County agency, and for that purpose spends a total of more than \$500 for:

(A) meals and beverages;

(B) transportation;

(C) lodging;

(D) provision of any service;

(E) one or more special events; and

(F) one or more gifts.

The registration requirement is broad and covers both organizations and individuals. Notably, while the spending or receipt of funds can apply to either organizations or individuals, the statute reflects an intent to be expansive as regards individuals' registration by specifying in (a)(1)(B) that receiving compensation includes "a pro-rated part of a salary or fee for services." While an organization (as well as individuals) might receive fees for services, the reference to salary is peculiar to individuals. The significance of this is that the requirement under 19A-21 to register clearly applies to an individual receiving the salary or fee for lobbying that meets the thresholds specified in 19A-21 regardless of what happens at the organizational level.

There are a number of specific exceptions in 19A-21 to the requirement to register. One of these states:

(d) Except for the authorization required by Section 19A-22, an individual or organization is exempt from the reporting requirements of this Article if the individual or organization:

(1) compensates one or more lobbyists;

(2) reasonably believes that each lobbyist will timely register and report all expenditures required to be reported; and

(3) engages in no other lobbying.

This exception extends to the individual or organization that hires a number of lobbyists to conduct lobbying activities on its behalf; it is not an exception that allows one lobbyist to register and have a number of other affiliated lobbyists avoid registration.

19A-21 requires certain persons to register, as discussed above. Viewed together, 19A-21 and 19A-23 together require all lobbyists working on behalf of a client to register and then, in the registration document that each lobbyist files, to list each person who will "lobby on behalf of the lobbyist." Read literally, this means that if a client were lobbied for by a law firm with several lawyers doing the lobbying, each such lawyer at the firm must register separately and list each other in the registration as persons who will lobby on behalf of the law firm.

Prior to the implementation of an annual fee, the Ethics Commission, for purposes of practicality in administrative processing, treated a law firm registration with several lawyers listed as, in effect, a joint registration. This no doubt facilitated the registration process from both the perspective of the registrants (because it reduced the number filings that would have to be made – only one paper filing needed to be made per law firm per client) and from the standpoint of Commission staff (as many fewer filings would need to be processed.)

Another practical result of this approach concerns the reporting requirement of the law. 19A-25 requires each registered lobbyist to file semi-annual reports. "Each lobbyist must file a separate report for each individual or organization that compensates the lobbyist." If a law firm or its lobbying members was able to file a consolidated registration for each client it represented, then presumably only one semi-annual report would be required to be filed with respect to the lobbyists and client identified on the registration. This single reporting mechanism greatly simplified the reporting process and the data received through that process. If each lawyer at a firm filed separate reports relating to fees and expenses for the same client, several substantive problems would result. There would be inherent questions of whether the information supplied by lawyers overlapped with other reported information from other lawyers in the firm. A considerable amount of time and effort would be required to manipulate incoming data in a way that would reflect what lobbying expenditures were being made by persons underwriting lobbying efforts.

The approach of the Ethics Commission was, therefore, to require single registration for multiple attorneys from the same firm working for a single client and require single filings of reports in connection with the activities of those lawyers and that client. Strict compliance with the statute's registration requirements could be viewed as maintained to the extent the registration and listing of other persons who were lobbying was considered as registration for those affiliated persons as well. Furthermore, the practical intent of registration would have been fulfilled as there was, in fact, disclosure of the identity of

each person who would be engaged in lobbying activity for the client. From a reporting standpoint, the expenditures of those underwriting lobbying efforts were fully disclosed. Therefore, the Ethics Commission's practice prior to the institution of fees was eminently reasonable in light of what the statute requires.

When fees were instituted for FY 2009, the question was raised as to whom to charge. For ease of administration, the Ethics Commission began charging the actual registrants, but not the individuals listed as persons who were lobbying for the lobbyist. However, this approach was inconsistent with the notion that the persons listed as other persons engaged in lobbying activities were being "registered" by being listed. If listing were tantamount to registration, then the Ethics Commission should have charged for each person listed; but, instead, neither a fee was charged nor was a separate registration required. In the end, some lobbyists were being treated as having registered but without any fee.

2. *Conforming to State Ethics Law and Practice*

The State of Maryland's Public Ethics Law provides:

The lobbying provisions enacted by a county or municipal corporation under § 15–803 of this subtitle shall be *substantially similar* [italics added] to the provisions of Subtitle 7 of this title, but:

(1) shall be modified to the extent necessary to make the provisions relevant to that jurisdiction; and

(2) may be further modified to the extent considered necessary and appropriate by and for that jurisdiction.

While there are many modifications in language and in the details of Montgomery County's lobbying registration provisions, the County's approach to lobbying registration is "substantially similar" to the State Ethics Law.² The County's law, like the State law,

² The State's registration requirement provides at §15-701:

(a) *Registration required.* — Unless exempted under subsection (b) of this section, an entity shall register with the Ethics Commission as provided in this subtitle, and shall be a "regulated lobbyist" for the purposes of this title, if, during a reporting period, the entity:

(1) for the purpose of influencing any legislative action or, as to the development or adoption of regulations or the development or issuance of an executive order, executive action:

(i) 1. communicates with an official or employee of the Legislative Branch or Executive Branch in the presence of that official or employee; and

2. exclusive of the personal travel or subsistence expenses of the entity or a representative of the entity, incurs expenses of at least \$500 or earns at least

focuses on the expenses and compensation related to communication to government officials as triggering registration. Moreover, the provision in County law that exempts an employer of lobbyists from registration and reporting if the hired lobbyists register and report on the employer's behalf tracks the State law provision.³ And, the provision in the County law that a lobbyist must register separately for each entity that engages the lobbyist to lobby for it is modeled on the State law's "substantially similar" requirement. Finally, the lobbying laws both provide for the collection of a registration fee.⁴ The

\$2,500 as compensation for all such communication and activities relating to the communication during the reporting period; or

(ii) 1. communicates with an official or employee of the Legislative Branch or Executive Branch; and

2. earns at least \$5,000 as compensation for all such communication and activities relating to the communication during the reporting period;

(2) in connection with or for the purpose of influencing any executive action, spends a cumulative value of at least \$100 for gifts, including meals, beverages, and special events, to one or more officials or employees of the Executive Branch;

(3) subject to subsection (b)(4) of this section, is compensated to influence executive action on a procurement contract that exceeds \$100,000;

(4) subject to subsection (b)(5) of this section, is compensated by a business entity to influence executive action to secure from the State a business grant or loan with a value of more than \$100,000 for the business entity;

(5) spends at least \$2,000, including expenditures for salaries, contractual employees, postage, telecommunications services, electronic services, advertising, printing, and delivery services for the express purpose of soliciting others to communicate with an official to influence legislative action or executive action;

or

(6) spends at least \$2,500 to provide compensation to one or more entities required to register under this subsection.

³ 15-701 provides a limited exemption for employers of lobbyists:

(c) *Limited exemptions — Employer of regulated lobbyist.* — (1) Except for providing the authorization required by § 15–702 of this subtitle and the report required by § 15–704(d) of this subtitle, an entity that compensates one or more regulated lobbyists, and that reasonably believes that all expenditures requiring registration will be reported by the regulated lobbyist or lobbyists, is exempt from the registration and reporting requirements of this subtitle if the entity engages in no other act that requires registration.

(2) If a regulated lobbyist compensated by an entity that is exempt under paragraph (1) of this subsection fails to report the information required by this subtitle, the entity immediately shall become subject to the registration and reporting requirements of this subtitle.

⁴ The State Ethics Law provision relating to fees states in 15-703(e):

Fee. — (1) Each registration form shall be accompanied by a fee of \$100.

County's fee provision allows charging "each lobbyist an annual registration fee" while the State's provision requires a fee for "each registration." While the State's provision is directly tied to registrations, the County's charging of fees to lobbyists is also tied to annual registration. And, since the institution of lobbying fees in Montgomery County, a registration fee has been charged per registration.

Despite the County's similar provisions to the State's lobbying disclosure law as regards registration and fees, the County has veered from the State's application of its law as regards the collection of registration fees. The State Ethics Commission requires, tracking the language of the law, a separate registration and fee from each lobbyist for each client the lobbyist represents, including where multiple lobbyists from the same firm are lobbying for the client.

In the view of the Montgomery County Ethics Commission, following the State Ethics Commission's registration of each lobbyist for each client and collection of the registration fee for each lobbyist would promote the County's fulfillment of the State Ethics Law's requirement of having substantially similar lobbying laws. At the same time, the Montgomery County Ethics Commission intends to continue allowing, in effect, the registration of multiple lobbyists from the same firm on one registration form when representing a particular client. Ethics Commission staff consulted with State Ethics Commission staff and was assured that this approach was consistent with the "substantially similar" requirement of the State Ethics Law.

Conclusion

As a result of the institution of the new fee collection methodology, those employers who have multiple representatives will pay additional fees. The Commission believes this is dictated by the County's Public Ethics Law and, furthermore, is an equitable adjustment of the fee collection structure as Ethics Commission staff spends greater time processing lobbying registrations reporting multiple lobbyists. Moreover, lobbying efforts involving multiple lobbyists can fairly be presumed to be, in general, larger in scope so that the fees being charged are more likely to parallel the scope of lobbying efforts.

For the Commission:



Nina A. Weisbroth, Chair

(2) The fee shall be credited to the Lobbyist Registration Fund established under § 15-210 of this title.

The County's provision states at 19A-23(e):

The Commission may charge each lobbyist a reasonable annual registration fee in an amount set by an Executive regulation adopted under method (2). The revenue to be raised by the fee must not exceed the cost of administering this Article. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1.)