

# Anne Arundel County Ethics Commission

## Advisory Opinion

99-72

### Issues:

1. Whether, and under what circumstances, it is necessary for an entity, or one of its principals, to register as a lobbyist.
2. Whether there is an appropriate person to sign an Employer Authorization Form for a principal, officer, partner, member, or entity that is registering as a lobbyist.

### Background:

A limited liability company (the "entity") employs three people who have registered to lobby on the entity's behalf.<sup>1</sup> These lobbyists are paid, although it is not clear by what entity they are paid. Their activities have included participation in numerous meetings with county officials and employees in pursuit of legislation that would specifically advance the interests of their client. They have also attended and testified at public hearings before the county council in favor of legislation that would specifically benefit their client.

The person who requested this opinion is a member of the limited liability company that apparently employs these lobbyists, and is also an officer/employee of the corporation for which two of the lobbyists are registered. This member attended numerous meetings with county officials and employees to pursue a favorable outcome of the legislation and testified before the county council at public hearings for the same purpose. On some of these occasions, the member attended meetings without being accompanied by any of the registered lobbyists. Although the member states that he attended these meetings and hearings at the specific request of the lobbyists, there is no evidence that he ever made this point to any county officials and employees. At no time during any public hearings, did the member state that the lobbyists had requested the member's presence.

The member also attended community and other group meetings to explain the proposed development plans and to encourage community support of those plans. To illustrate these points, the member used photographs and professionally prepared drawings. The member has received no compensation for services rendered to date on behalf of the entity, but will receive a

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<sup>1</sup> In fact, two of the three lobbyists are actually registered to lobby on behalf of a separate corporation, not the limited liability company. There is no evidence that the corporation has any interest in the legislation involved in this matter, except that some of the corporation's agents or officers are members of the limited liability company. The third lobbyist is registered on behalf of the limited liability company, although apparently all three lobbyists are working on the same matters together.

share of the entity's profits if and when they accrue.

**Discussion:**

The Public Ethics Law, §1-101(q)(1) and (3) defines a lobbyist as a person<sup>2</sup> who:

- ▶ has communicated with an employee in the legislative or executive branch;
- ▶ for the purpose of influencing any executive or legislative action; and
- ▶ either incurs personally, or through a representative, expenses of \$100 or more; or
- ▶ receives \$100 or more as compensation, exclusive of personal travel or subsistence expenses; or
- ▶ spends \$1,000 or more in a six month period for the express purpose of soliciting others to communicate with an employee to influence any legislative or executive action.<sup>3</sup>

According to this definition, the limited liability company would qualify as a lobbyist. The issues raised by this inquiry come from §5-101 and §5-102 of the ethics law. Taken together, these provisions require that a person who satisfies the definition of a lobbyist, must register with the ethics commission, unless the person fits into one of the exceptions to the requirement. The pertinent exceptions to the registration requirements are as follows:

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<sup>2</sup> The Anne Arundel County Code, §1-101(h) defines "person" to include "entity". For the purposes of this opinion, the word "person" is used, but it should be read to include "entity". A limited liability company is an entity.

<sup>3</sup> Section §1-101(q)(2) also defines a lobbyist to include a person who spends money on gifts for officials, but there is no allegation that gifts were purchased and so this provision is not relevant to this discussion.

1. §5-101(a)(5) exempts a person from registering as a lobbyist, if that person appears before the county council, "at the specific invitation or request of a lobbyist, *if no other act is undertaken for which reporting is required*, and if the person appearing *states to the County Council that the person is appearing at the request of the lobbyist*". (emphasis added). There is no evidence on the record that the member, as the agent of the entity, was specifically requested by the lobbyists to attend, and the member did not advise the council that the member's appearance was at the request of any lobbyist. In fact, the member is not listed on any of the lobbyists' registration forms as a person "who will act on the lobbyist's behalf".

And the entity, through its member, was clearly involved in other acts requiring reporting, specifically the member's attendance at and participation in numerous meetings with county officials and employees to pursue passage of legislation to benefit the member's company.

2. §5-101(b)(1), states that:

. . . [e]xcept for providing the authorization required by §5-102 of this title, a person who employs one or more lobbyists, who reasonably believes that all expenditures requiring registration will be reported by the lobbyist, *and who engages in no other act that would require registration* is exempt from this title. (*emphasis added*).

In this case, the limited liability company apparently employs three lobbyists who can reasonably be expected to report all expenditures of which they are aware. However, by adding one of its own members into the maelstrom of the legislative process, the entity is clearly engaging in additional and distinct acts that require registration. Its argument that the game is being played solely with pawns while the rook is maneuvering to capture all the pieces, is specious at best. The fact that the member is not compensated is not persuasive; his efforts will ultimately lead to a share in the profits for which these lobbying efforts are directed.

Having determined that the entity is engaged in acts requiring registration, there are two ways that the entity can register. The member can file as a lobbyist individually, on behalf of the entity, or the entity can register as a lobbyist, listing the member as a person who will act on the lobbyist's behalf.

The second issue concerns the "employer authorization" that is required to be filed along with the initial lobbyist's registration. The ethics law, §5-102(c)(4) requires "the written authorization of any person or entity *on whose behalf* the lobbyist acts. . ." (*emphasis added*). If the provision was intended to cover only those lobbyists employed by a person, the same section of the law would have read, "the written authorization of the employer of the lobbyist". The provision is not so limited. The same section, subsection (i) and (iii) does refer to the employer's name, address and phone number, and subject matter for which the lobbyist represents the employer. However, the next section, §5-102(d) provides that "[i]f the authorization to act is by a corporation, the authorization shall be executed by any authorized officer or agent who is not a

lobbyist." This section is not limited to employers, indeed by its own express language acknowledges the potential existence of a corporate officer or agent who *is* a lobbyist.

The member, while not a corporate officer, is lobbying on behalf of a like entity. As long as somebody with the authority to act on behalf of the entity authorizes the member to act, the authorization will meet the legal requirements of §5-102(c)(4).

**Conclusion:**

The ethics commission advises that an entity, as well as a partner, corporate officer, member, or other type of principal, can be required to register as a lobbyist under the ethics law, even if that entity or person also employs paid lobbyists. If the member/lobbyist is not an "employee" per se, the entity on whose behalf the lobbyist acts should provide written authorization for the lobbyist, through an authorized officer or agent of the entity.

This interpretation of the registration requirements regarding corporate or other principals is the first interpretation of these provisions since the creation of the ethics commission. Therefore, contrary to the member's assertion, this conclusion does not constitute a "new interpretation" of the law. Indeed, it is the only practical interpretation that will permit full disclosure of the extent of lobbying activity being conducted in the county. It is only when lobbying activity is fully disclosed that the citizens of the county can be assured of the impartial and independent conduct of the county's business. The ethics law is to be liberally construed to accomplish these purposes.

Date: \_\_\_\_\_

By: the Anne Arundel County Ethics Commission