

May 20, 2004
Re: IO-04-16

You inquired whether you must continue to register as a lobbyist under the Anne Arundel County Public Ethics Law, §7-102 *et. seq.* for your activities as a union attorney engaged in contract negotiations. After reviewing your question and examining the commission's previous interpretations of "executive branch lobbying", as well as the apparent intent of the state and county legislatures in enacting lobbying laws, the ethics commission has concluded that you do not need to register for the activities that you described in your letter of February 11, 2004.

"Executive action" is defined in 1-101(k) as ". . .an act for which the executive branch of the county government is responsible and that is taken by an employee of that branch". On its face, "executive branch lobbying" encompasses any communication with an employee to influence executive action. If the ethics commission construed this provision liberally as is directed by §1-102(c), the result would require a lawyer, consultant, developer, engineer, or other compensated agent to register as a lobbyist upon applying for a license, permit, plat approval, waiver, or other executive branch approval. This result is impractical, and the ethics commission has previously concluded that the executive branch lobbying registration requirement only applied to those communications intended to change existing executive policies. Communications that are part of an established approval process or that follow pre-existing county procedures do not fall into categories of activities that are traditionally thought of as lobbying activities.

In 1998, the ethics commission proposed amendments to the ethics law, including an amendment to delete the registration requirements for executive branch lobbying. As the commission wrote in its comments,

"The substantive amendment to this section deletes "executive action" from subsection (q)(1). Many people are involved in attempting to influence executive action in the normal course of business, e.g. licensing and permits, inspections. Under the current definition, this type of day-to-day activity would constitute lobbying - on the part of builders, planners, and even homeowners, who incur expenses of \$100 or more in a six month period. The only activity on the part of these people that should fall within the definition of lobbyist, should be the purchase of gifts for executive employees. For example, if a developer, in pursuing a county permit, were to buy lunch for the subdivision team, the developer would be lobbying. (as long as lunch cost \$50 or more.)"

This proposed amendment, which failed, was based on the State Ethics Law, which does not require registration for executive branch lobbying unless gifts to executive branch employees are involved. See, State Government Article, Title 15, §15-701. Although the state does not generally require registration for executive branch lobbying, it does require registration for executive lobbying on procurement contracts that exceed \$100,000 in value, §15-701(a)(3), or to secure a grant or loan from the state in excess of \$100,000, §15-701(a)(4). For whatever reasons, the county did not amend the law to require these types of registration despite the ethics commission's request that it do so.

Contract negotiations, whether they be for procurement contracts or collective bargaining agreements, should be treated in similar fashion. Arguably, any contract negotiation is a communication to effect an executive policy change and would fall within the definition of executive branch lobbying. But given the county's purposeful exclusion of procurement contract lobbying from the registration requirement, the ethics commission has concluded that contract negotiation is not intended to be covered under the lobbying provisions of the ethics law. The ethics commission believes that it would be inequitable to distinguish between these comparable types of activities.

In advising you that you do not need to register as a lobbyist, the ethics commission is referring only to those "negotiations across the table" with administration representatives to which you referred in your letter. You will still be required to register as a lobbyist for any legislative lobbying in which you may become involved.

Thank you for your inquiry. If you have any additional questions, please feel free to contact me.

Sincerely,

Betsy K. Dawson
Executive Director