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ADVISORY OPINION NO.03-1984

Dear Mr. Levy:

Your letter to the Election Law Enforcement Commission requesting an Advisory Opinion has been considered by the Commission and I have been directed to issue this response. You have asked several questions pertaining to the annual financial reporting provisions of the Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq. (hereafter, the Act).

You have written that you are the Executive Director and Counsel of the Mortgage Bankers Association of New Jersey (hereafter, "MBA"), and you are the exclusive legislative agent for the MBA. In addition to your duties for the MBA, you are also an attorney engaged in the private practice of law. Your lobbying duties on behalf of the MBA require you to travel to Trenton periodically, however you frequently conduct other business on such trips that is not related to your MBA representation. You state that it is difficult to quantify the time you devote to lobbying activity.

You have also informed the Commission that your retainer agreement with the MBA does not differentiate between the services you provide as Executive Director and Counsel and the services you provide as legislative agent. You have stated that while you are provided by the MBA with an expense account, its purpose is principally for attendance at meetings and conventions around the country. According to your letter, you traditionally have not used the expense account for purposes directly related to lobbying activity.

From these submitted facts, you initially inquire whether the MBA has an obligation to file with the Commission an annual report of lobbying activities pursuant to N.J.S.A. 52:13C-22.1. In your letter you suggest that the level of lobbying conducted by the MBA has been generally increasing over the recent years; however, you do not specify the total annual expenditures for this purpose. Since the MBA is an association

employing your services for the purpose of influencing legislation, it comes within the definition of the term "lobbyist" as set forth in N.J.S.A. 52:13C-20(d). The annual reporting requirements, contained in N.J.S.A. 52:13C-22.1, require a lobbyist that undertakes expenditures which exceed \$2,500 in any calendar year for the specific purpose of affecting legislation to file an annual report. The nature of the expenditures and method of calculation that are to be used in determining whether the \$2,500 threshold has been exceeded are set forth in Commission Regulation N.J.A.C. 19:25-8.6.

You have also asked whether you have acquired a reporting obligation by virtue of your activities as the lobbying representative of MBA. Since you do receive compensation from that entity for the purposes of lobbying in the State, and assuming that compensation exceeds \$100 in any three-month period, you would be a "legislative agent" within the meaning of that term as defined by N.J.S.A. 52:13C-20(g). As such, you would similarly acquire an annual reporting obligation pursuant to N.J.S.A. 52:13C-22.1 if either the compensation you received or the expenditures you undertook for lobbying purposes exceeded \$2,500. See generally, Commission Regulation N.J.A.C. 19:25-8.4.

In the event that both the MBA, in its capacity as a "lobbyist," and you, in your capacity as a "legislative agent," are obligated to file annual reports of lobbying activity, and assuming that the MBA undertakes no other lobbying expenditures except those made by you in its behalf, the MBA may designate you to file its lobbying report. This procedure avoids the filing of substantially identical reports by the MBA and you. (See Commission Regulation N.J.A.C. 19:25-8.11(b)). This designation may be accomplished on Commission Form L-2.

The Commission has previously addressed the reporting requirements of attorneys who act in both a legal and legislative agent capacity for a client. In Advisory Opinion No. 07-1983, a copy of which is enclosed, the Commission stated that expenditures made for the purposes of legal representation in adjudicatory proceedings do not come under the jurisdictional scope of the Act. Similarly, expenditures undertaken by the MBA for compensating you for your non-lobbying duties as Executive Director are outside the reporting requirements of the Act. That portion of the compensation that you receive from the MBA during the calendar year which is related to direct communications for the purpose of lobbying must be included in the annual reports. The MBA must disclose the lobbying compensation it paid you as an expenditure, N.J.A.C. 19:25-8.7(a)(1), and you must disclose that compensation as a receipt in your capacity as legislative agent, N.J.A.C. 19:25-8.6(a)(1). The Commission believes that the most appropriate method for determining how a single fee or payment should be attributed among services performed for a client, including lobbying, is to measure the time spent on each separate service. If you have not done so to date, the Commission encourages you to establish a record keeping system that clearly delineates the amount of time you spend for direct lobbying communications and for lobbying related activities, such as supporting research, and the compensation you receive for those lobbying related services.

You have also inquired as to how to report travel expenses incurred by you when the purpose of the travel is not exclusively lobbying activity. Travel expense incurred by legislative agents for the purpose of lobbying is subject to reporting requirements. Commission Regulation N.J.A.C. 19:25-8.7(a)(5) provides, in pertinent part, as follows:

(a) The reporting calculation shall also include, without limitation, the following expenditures which relate to direct, express and intentional communication with legislators or the Governor or his staff for the specific purpose of affecting legislation:


(5) Travel and lodging for the legislative agent.

The Commission Regulation requires that all travel and lobbying expenses that relate to lobbying communications must be disclosed. Assuming that these expenses were borne by the MBA, the fact that the travel activity may have involved other purposes besides lobbying does not relieve the MBA from the requirement to disclose the entire travel expenditure. Similarly, travel expenses incurred by you as a legislative agent for the purposes of lobbying must be entirely disclosed in your reports notwithstanding collateral purpose for the travel activity.

You have also provided the Commission with information concerning your expense account, and the Commission infers from your letter that you are inquiring whether the expense account is subject to disclosure on lobbying reports. From the information you have provided, the Commission would agree that if the account is not used for lobbying activities it would not be subject to disclosure. However, if the account is used for the travel expense you previously described, then the travel expenditures are subject to disclosure as indicated in this Advisory Opinion. Further, if lobbying communications with legislators occur at the meetings and conventions you attend, the expenses you incur in relation to your attendance are subject to disclosure, N.J.A.C. 19:25-8.7(a)(5). Even in the absence of a direct lobbying communication, your expenses could become reportable if a principal purpose of the event was to assemble information or plan strategy for a lobbying communication, or if your activities were in some other way lobbying related. See generally N.J.A.C. 19:25-8.7(a).

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION


GREGORY E. NAGY
Staff Counsel

GEN/ch
Enclosure