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Advisory Opinion No. 11-1995

Dear Mr. DeCotiis:

The Commission has considered your request for an advisory opinion on behalf of the New Jersey Chapter of the National Association of Housing and Redevelopment Officials (hereafter, NJ-NAHRO), and has directed me to issue this response. You have asked the Commission whether or not NJ-NAHRO, its president or its individual members are subject to the registration and reporting requirements of the Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq. (hereafter, the Lobbying Act).

Jurisdictional Note

Initially, the Commission notes that the Lobbying Act contains no specific statutory mandate on the Commission to issue advisory opinions on the application of that Act, as exists in the Campaign Contributions and Expenditures Reporting Act, see N.J.S.A. 19:44A-6f. However, in order to be responsive to requests such as yours concerning the Lobbying Act, the Commission has adopted a regulation which provides the Commission may issue advisory opinions for lobbying questions at its discretion, see N.J.A.C. 19:25-20.16. Therefore, this opinion is issued under the authority of that regulation, and is not subject to the 10-day response limit provided in N.J.S.A. 19:44A-6.

Submitted Facts

In your letter dated July 7, 1995, you have written that the membership of NJ-NAHRO is composed of individual local government housing officials and of local housing authorities, which are local bodies politic of county and municipal governments. The local housing authorities are created and governed by the "Local Redevelopment and Housing Law," N.J.S.A. 40A:12A-1 et seq. You state that individuals affiliated with non-profit housing organizations (which are not bodies politic) may seek membership with NJ-NAHRO, but none are members at this time.

You further state that NJ-NAHRO and its members wish to conduct lobbying activities directed at State Government to influence the Legislature on pending legislation, and to influence Executive Branch agencies on rulemaking that may affect housing authorities. NJ-NAHRO is funded by a refund of dues paid to the National Association, paid principally by local housing authorities on behalf of the individual local housing officials. It is also funded by training seminars and by excess revenues generated from the Housing Authorities Joint Insurance Fund. Individual members do not receive any compensation from NJ-NAHRO for conducting lobbying activities, other than the President who receives expense reimbursement of approximately \$3,000 to \$4,000 annually. Individual members do not anticipate conducting lobbying activities more than 20 hours per year. Further, such lobbying activities would be conducted during their normal work week and would be viewed as part of their duties for the housing authorities that employ them.

Commission records indicate that NJ-NAHRO is not currently filing reports as a lobbyist, or registered as a legislative agent.

#### Questions Presented

1. Is NJ-NAHRO exempted from Lobbying Act requirements as a governmental entity?
2. Is the President of NJ-NAHRO, or any legislative agent it may employ, similarly exempted?
3. Are the individual members of NJ-NAHRO similarly exempted?

#### Discussion

1. For the purposes of this opinion, staff assumes that the NJ-NAHRO entity will be expending a sum greater than \$2,500 in a calendar year for the purposes of lobbying in this State, and therefore would be required to file annual reports as a lobbyist (see N.J.S.A. 52:13C-22.1), unless it is otherwise exempted. Although your letter uses the terminology of "legislative agent" and "registration" as applied to NJ-NAHRO, it appears evident that NJ-NAHRO is not itself receiving compensation as a legislative agent and therefore is not subject to registration as a legislative agent under N.J.S.A. 52:13C-21, or to filing quarterly reports pursuant to N.J.S.A. 52:13C-22.

The Lobbying Act at N.J.S.A. 52:13C-27b contains the following exemption: "...acts of an officer or employee of the Government of this State, or any of its political subdivisions, or of the Government of the United States or of any State or territory thereof or any of their political subdivisions, in carrying out the duties of their public office or employment." N.J.A.C. 19:25-20.3(a)1, which is based on the statutory text, exempts: "The acts of the government of the United States or of the State of New Jersey or of any other state or of any of the political subdivisions or authorities or commissions of any of the foregoing, or any interstate authority or commission, or any official, employee, counsel or agent of any of the above when acting in his or her official capacity."

Applying the statute and the regulation to a local housing authority, the Commission agrees that those agencies are exempt because they are bodies

politic established by political subdivisions of this State pursuant to the express statutory authority of the Local Redevelopment and Housing Law. However, while your submitted facts have demonstrated that the membership of NJ-NAHRO consists largely of local housing authorities and local government housing officials, and relies on its member authorities for its dues, the organization itself is not a body politic. It has not been established under any specific statutory authority. Membership in NJ-NAHRO is therefore discretionary with each local housing authority, and it is conceivable that some housing authorities may choose not to be members, or may choose to participate in other organizations to conduct lobbying activity.

In Advisory Opinion No. 11-1982 (copy enclosed), the Commission considered whether or not the New Jersey School Boards Association came within this statutory exemption. That organization was established by statute as a corporate and politic body composed of all the boards of education of the school districts in the State. Each district board of education by law is made a member, and each entitled to representation by a single delegate, see N.J.S.A. 18A:6-45. With the understanding that the participation of each school board was mandated by law, the Commission concluded that the School Boards Association was a public entity and its lobbying activities were therefore within the exemption in the Lobbying Act.

The Commission is not persuaded that the NJ-NAHRO is on the same footing as the School Boards Association. In the absence of a statute mandating participation, local housing authorities are free to refrain from participation in the NJ-NAHRO's lobbying efforts, or to form separate and competing associations to carry out their lobbying activities. The salutary purpose of the Lobbying Act is to promote public confidence in government by requiring disclosure of lobbying activity. Therefore, exemptions limiting that public purpose should be construed narrowly. In exempting public entities from the burdens imposed by lobbying disclosure, it is quite conceivable that the Legislature did not intend to also exempt those voluntary associations comprised wholly or principally of public entities where the participation of those entities is discretionary only.

2. According to the submitted facts, the President of NJ-NAHRO receives expense reimbursement for lobbying activity in the amount of \$3,000 to \$4,000 annually. The Lobbying Act defines a "legislative agent" as a person who receives compensation, including reimbursement for expenses, exceeding \$100.00 in any three-month period, see N.J.S.A. 52:13C-20g. Since the President (or any other person receiving similar compensation to lobby on behalf of NJ-NAHRO) receives compensation in excess of that threshold, the President (or other person) must register as a legislative agent and file quarterly reports.

3. Again, under the submitted facts, the individual housing officials who are members of NJ-NAHRO do not receive any compensation from NJ-NAHRO, and therefore none exceeds the \$100.00 threshold in N.J.S.A. 52:13C-20g. Therefore, they are not required to register or file quarterly reports as legislative agents, notwithstanding the conclusion that NJ-NAHRO is subject to the Lobbying Act requirements. Further, since the submitted facts are that their lobbying activities are conducted on behalf of the local housing authorities for which they are employed, they are exempt from legislative agent registration and reporting by virtue of the public entity status of the local authorities for whom they conduct lobbying.

### Conclusion

The Commission concludes and hereby advises as follows:

1. NJ-NAHRO is not exempt from the filing requirements of the Lobbying Act, and therefore must file annual reports pursuant to N.J.S.A. 52:13C-22.1 as a lobbyist if it exceeds the \$2,500 annual report threshold;

2. The president of NJ-NAHRO and any legislative agent employed by NJ-NAHRO are not exempt, and therefore must register, file reports and comply with all other requirements of the Lobbying Act pertinent to legislative agents; and,

3. The local housing official members are exempt from the requirements of the Lobbying Act under N.J.S.A. 52:13C-27b and N.J.A.C. 19:25-20.3(a)1 as employees of governmental entities because their lobbying activities are conducted on behalf of their employers, not NJ-NAHRO.

Thank you for submitting this inquiry. The Commission staff will be delighted to provide assistance if you should have any questions regarding recordkeeping or reporting requirements.

ELECTION LAW ENFORCEMENT COMMISSION

By: Gregory E. Nagy  
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