



*State of New Jersey*

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June 20, 2002

James P. Ryan, Esq.  
O'Connor & Hannan, LLP  
Suite 500  
1666 K Street, N.W.  
Washington, D.C. 20006-2803

**Advisory Opinion No. 03-2002**

Dear Mr. Ryan:

Your request for an advisory opinion on behalf of the Pharmaceutical Research and Manufacturers of America (hereafter, PhRMA,) was considered by the Commission, and the Commission has directed me to issue this response. You write that PhRMA is a national trade association, and conducts lobbying activity in New Jersey. As counsel to PhRMA, you have asked whether or not so-called “grassroots” lobbying activity that it anticipates conducting in New Jersey is subject to the requirements of the Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq. (hereafter, the Lobbying Act). You are hereby advised for the reasons expressed herein that the Lobbying Act does not require reporting of expenditures for the “grassroots” lobbying activity described in this request. The Commission notes that while the inclusion of “grassroots” lobbying expenditures within the reporting requirements of the Lobbying Act has been recommended by the Commission, “grassroots” lobbying expenditures are not currently included in the reporting requirements.

For the purposes of this opinion, please note that the term “lobbyist organization” is used to mean “lobbyist” as that word appears in the Lobbying Act, and the term “legislative agent firm” is used to mean the “legislative agents” collectively working for a firm that is employed to conduct lobbying by a lobbyist organization.

**Submitted Facts**

You write that the PhRMA anticipates “...engaging professionals and in-house employees to orchestrate a grassroots letter-writing campaign to New Jersey legislators.” The trade association, you state, will pay professionals to contact New Jersey citizens, “educate them” about a particular issue before the legislature, and provide them with the text of letters,

faxes, or other communications to be sent to New Jersey legislators. The professionals and in-house employees will not communicate directly with any legislators.

You further write that the individuals being solicited to sign and send these letters, faxes or other communications may indicate that they are “members of a consumer coalition.” The citizens so solicited by PhRMA will not be paid for submitting the letters or communications to legislators. Further, PhRMA will not reveal its identity to either the citizens who are solicited, or to the legislators who may receive communications from citizens.

PhRMA, at the address of 1100 Fifteenth Street, N.W., Washington, D.C., is listed as a client lobbyist of Riker, Danzig, Scherer, Hyland & Perretti, LLP, (hereafter, Riker, Danzig), on Riker, Danzig’s 2001 annual report (Form L1-A) filed on April 15, 2002. Riker, Danzig filed its annual report as a New Jersey legislative agent firm, and also filed the annual report on behalf of its lobbyist clients, including PhRMA. You have confirmed that the organization making this request is the same entity as that reported as a client lobbyist on the Riker, Danzig 2001 annual report, which report described PhRMA as a “nonprofit scientific trade association.” Also, PhRMA was again listed as a client lobbyist on the most recent quarterly reports (Form Q-4) filed with the Commission on April 10, 2002 by individual legislative agents of Riker, Danzig. Your authority to make this request as an attorney representing PhRMA has been confirmed by letter from Julie A. Corcoran, Director of Operations for Government Affairs of PhRMA, see N.J.A.C. 19:25-18.1(b).

### **Question Presented**

Are the expenses that PhRMA anticipates incurring for its contemplated “grassroots letter-writing campaign” that it describes in this request subject to the reporting requirements of the Lobbying Act?

### **Response**

The Lobbying Act requires reporting of expenditures made by a lobbyist organization for communications through its legislative agents to legislators, but does not provide for reporting of communications made by a lobbyist organization to citizens (or the public at large) urging the public to communicate with legislators. Accordingly, the Commission is compelled to conclude that expenses incurred by PhRMA for its contemplated “grassroots letter-writing campaign” are not subject to reporting under the Lobbying Act.

### **Discussion**

A lobbyist organization is required to include in its annual report “...those expenditures made, incurred or authorized by it for the purpose of communication with or providing benefits to any member of the Legislature, legislative staff, the Governor, the Governor’s staff, or an officer or staff member of the Executive Branch during the previous year.” See N.J.S.A. 52:13C-22.1 (hereafter, Section 22.1). However, there is no provision in the Lobbying Act explicitly requiring the reporting of expenditures made by a lobbyist organization for the purpose of communicating with members of the public in the expectation or hope that those communications will persuade the public in turn to make communications with legislators. Expenditures made by a lobbyist organization in an attempt to persuade the public to communicate to their legislators are commonly referred to as “grassroots lobbying” because if

the effort is successful it may serve to give notice to legislators that the legislative objectives being promoted by the lobbyist organization are widely held.

In states where “grassroots lobbying” is required to be reported, there are typically specific statutory directives mandating “grassroots” reporting. For example, the **Connecticut** statutory definition of “lobbying” provides, in pertinent part, that the term “...means communicating directly or soliciting others to communicate with any official ...for the purpose of influencing any legislative or administrative action...” (emphasis added). See Conn. Gen. Stat. § 1-91(k). Other nearby states requiring “grassroots lobbying” reporting also have enacted explicit statutory statements. For example: see **Maryland**, MD. CODE ANN., STATE GOV’T § 15-701(a)5, providing that an entity “soliciting others to communicate with an official to influence legislative action” comes under the term “regulated lobbyist;” **Pennsylvania**, 65 Pa.C.S. § 1303, defining “lobbying” to include indirect communication, and in turn defining “indirect communication” as an effort to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action; **Rhode Island**, R.I.G.L. 22-10-2(a), defining “lobbying” to include soliciting others to act for the purpose of promoting, opposing, amending, or influencing in any manner the passage by the general assembly of any legislation; and **Vermont**, 2 V.S.A. § 261(9)(B), defining “lobby” or “lobbying” to include soliciting others to influence legislation.

In contrast, the New Jersey Lobbying Act contains no explicit statutory text bringing expenditures for solicitations of the general public or other persons to conduct lobbying on any given issue within the ambit of its reporting requirements. However, you have noted in this request that the Lobbying Act does contain the phrase “indirect communication” within the definition of the term “legislative agent.” That definition of “legislative agent,” in pertinent part, reads as follows: “...any person who receives compensation to influence legislation by direct or indirect communication with a member of the legislature...” (emphasis added by PhRMA), see N.J.S.A. 52:13C-20. Therefore, you have asked the Commission to consider whether or not the use of “direct or indirect communication” in that definition possibly could be construed as the basis for concluding the Lobbying Act did require “grassroots lobbying” reporting.

The Commission notes that the phrase “direct or indirect communication” is not defined in the Lobbying Act, and other than the phrase’s appearance in the definition of “legislative agent” quoted above, those words appear nowhere else. Since the text of the Lobbying Act does not provide a definition or other guidance regarding the meaning of the phrase “direct or indirect communication,” and since there is no explicit statutory provision for “grassroots lobbying” reporting, the Commission undertook the following examination of legislative history to assist it in discovering legislative intent.

### **Legislative History of the Lobbying Act**

The obligation of a lobbyist organization to report annually its lobbying communication expenditures arose with the enactment of the Campaign Contributions and Expenditures Reporting Act in 1973; see P.L. 1973, c.83, section 3, defining “political information organization” in part as an organization seeking to influence legislation, and see section 8 requiring the filing of annual reports disclosing expenditures undertaken “...to seek to influence the content, introduction, passage or defeat of any legislation.” The Constitutional applications of the lobbying reporting provisions were almost immediately challenged in the State courts, principally on the ground that the reporting requirements restricted Free Speech of citizens expending minimal amounts of money to communicate to their legislators; see New Jersey State

Chamber of Commerce v. ELEC, 135 N.J. 537, (Ch. Div. 1975), *rev'd* 155 N.J. Super. 218 (App. Div. 1977), *aff'd as modified* 82 N.J. 57 (1980). Ultimately, the constitutionality of the statute was upheld only after the State Supreme Court exercised “judicial surgery” to narrow the construction so that the reporting obligations applied only to activity “...which consists of direct, express and intentional communications with legislators...” See N. J. Chamber of Commerce, 82 N.J., at 79.

What is significant about this narrowing interpretation is its impact on subsequent legislation that led to the enactment of the current Lobbying Act. After the N. J. Chamber of Commerce opinion was handed down, the lobbying reporting provisions in the Reporting Act were repealed (see L. 1981, c. 151), and a new section was added to the Lobbying Act to require annual reporting of expenditures made “...for the purpose of direct, express and intentional communication with legislators ...undertaken for the specific purpose of affecting legislation during the previous year.” See P.L. 1981, c. 150, section 2. That entire phrase, “direct, express and intentional communication with legislators (etc.),” was defined to mean specifically communications made by legislative agents employed by lobbyists, not communications made by ordinary citizens communicating their views to legislators. See P.L. 1981, c. 150, section 1, amending and supplementing the definitions in the Lobbying Act. A few months later, the scope of expenditure reporting was further narrowed by an amendment to the Lobbying Act which limited reporting to only those expenditures for communications that “expressly” related to “direct, express and intentional communication with legislators,” see L. 1981, c. 513, section 1. The net effect was that in order for a communication to be subject to lobbying reporting, the communication had to be made by a legislative agent employed by a lobbyist organization, and the communication had to be “expressly” about legislation. Other expenditures by lobbyist organizations that related to social events or entertainment of legislators were excluded from lobbying reporting as long as there were no contemporaneous communication “expressly” related to legislation (such expenditures were commonly referred to as “goodwill lobbying.”

In May, 1990, this Commission issued a report in which it recommended that the “expressly” restriction preventing the reporting of “goodwill lobbying” expenditures be removed, and that in addition expenditures for “grassroots lobbying” be added to the reporting requirements; see ELEC Whitepaper No. 5, Lobbying Reform, pages 1–5. Subsequently the Legislature formed the Ad Hoc Commission on Legislative Ethics and Campaign Finance. That body recommended the elimination of the “expressly” restriction, but did not make any recommendation to include reporting of “grassroots lobbying” expenditures; see Findings and Recommendations of the Ad Hoc Commission on Legislative Ethics and Campaign Finance, pages 23-26, October 22, 1990. That report led to the enactment in 1991 of further amendments of the Lobbying Act, which amendments resulted in the addition of the “direct or indirect communication” text that is the subject of this advisory opinion.

The adjectives “direct or indirect” as used to modify the noun “communication” and appearing in the current definition of “legislative agent” at N.J.S.A. 52:13C-20 were added to Assembly Bill No. 4617 of the 204<sup>th</sup> Legislature by the Assembly State Government Committee (hereafter, ASGC) on May 30, 1991. The Statement issued by that Committee at that time contains the following expression of legislative intent: “1. Expenditures upon communications to public officials are to be subject to financial disclosure irrespective of whether the communication is ‘express or intentional’ and without regard to the purpose of the legislative agent undertaking the communication.” (emphasis added). That above-quoted statement appears to underscore the thought that all communications by a legislative agent made to a legislator were under the Bill to become subject to reporting, not just those expenditures that “expressly”

related to specific legislation. However, the statement does not give any indication that communications from non-legislative agents, such as the general public in the case of "grassroots lobbying," were also to become subject to lobbying disclosure. To the contrary, the statement provides that the communications the Legislature was describing in the bill were those undertaken by legislative agents, not those undertaken by the general public.

Assembly Bill No. 4617, as amended by the ASGC, was signed into law on August 5, 1991 by then Governor Jim Florio; see P.L. 1991, c. 244. In a News Release issued on the signing date, the Bill was described as requiring lobbyists to disclose "...expenditures on communications to public officials regardless of the purpose." Again, that description is an apparent reference to the fact that under the Bill all lobbyist organization expenditures for communications by their legislative agents to public officials became subject to disclosure, not only those "expressly" related to specific legislation. However, the Governor's Release makes no assertion that communications by citizens to legislators, that is "grassroots lobbying," was also intended to be subject to reporting.

### **Conclusion**

In the absence of any text in the Lobbying Act to the effect that expenditures by lobbyists to solicit citizens to make communications to legislators ("grassroots" lobbying) are reportable, the Commission lacks any statutory foundation for extending reporting requirements to the "grassroots" lobbying expenditures described in this request. The Commission has recommended in its annual reports inclusion of "grassroots" lobbying expenditures in the reporting requirements of the Lobbying Act; see Commission Annual Reports, 1994 through 2001. Up to this time that recommendation has not been acted upon. Accordingly the Commission is constrained to construe the Lobbying Act in accordance with the expressed intention of the Legislature limiting reporting to those communications undertaken by legislative agents, not communications from the public.

For the above reasons, you are advised that the expenditures described in this request are not subject to disclosure under the Lobbying Act.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: \_\_\_\_\_  
GREGORY E. NAGY  
Legal Director

APR 26 2002



ADVISORY OPINION REQUEST

A person, committee or entity subject to, or reasonably believing he, she or it may be subject to, any provision or requirement of the Campaign Reporting Act may request that the Commission provide an advisory opinion pursuant to N.J.S.A. 19:44A-6. Such request must be in writing (please type or print) and must include the following:

1. This request for an Advisory Opinion is being submitted on behalf of:

Full Name of Person, Committee or Entity
Pharmaceutical Research and Manufacturers of America

Mailing Address
1100 15th Street, N.W., Suite 900

Day Telephone No.
(202) 835-3400

Washington, D.C. 20005

Evening Telephone No.

2. Indicate if the above named person, committee or entity currently files reports with the Commission:

Yes [X] No [ ]

a. If yes, indicate in what capacity it is filing:

- Candidate committee [ ] Recall committee [ ]
Joint candidates committee [ ] Recall defense committee [ ]
Political committee [ ] Lobbyist [X]
Continuing political committee [ ] Legislative agent [ ]
Political party committee [ ] Personal financial disclosure statement [ ]
Legislative leadership committee [ ] Other (please describe): [ ]

b. If no, indicate if the above named person, committee or entity has in the past filed reports with the Commission, giving elections (i.e., 1992 general election) or calendar years, and identify filing capacity:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

c. If reports are or were filed under a different name than that appearing in 1 above, provide that name:

\_\_\_\_\_
\_\_\_\_\_

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations (if known).

Whether grassroots type lobbying is captured by the definition of "legislative agent", New Jersey statute section 52:13C-2.3G.

\_\_\_\_\_
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\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry. Your statement must affirmatively state that the contemplated activities have not already been undertaken by the person, committee or entity requesting the opinion, and that the person, committee or entity has standing to seek the opinion, that is the opinion will affect the person's or committee's reporting or other requirements under the Act. (Attach additional sheets if necessary).

Statement of Facts:

See attached letter.

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result.

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\_\_\_\_\_

\_\_\_\_\_

6. Person who is submitting request on behalf of committee or entity listed in Item 1 above:

Full Name:  
James P. Ryan, Esquire

Mailing Address:  
1666 K Street, N.W., Suite 500  
Washington, D.C. 20006

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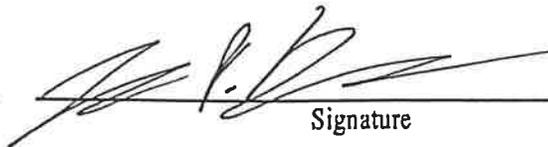
a. Official Capacity of Person Requesting Opinion:

- Candidate
- Treasurer
- Organizational Treasurer
- New Jersey Attorney representing requesting person, committee or entity
- Other (please describe): Attorney representing requesting   
entity

7. I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-6f to a 30-day period for Commission response, which period shall start on the date of Commission receipt of the completed advisory opinion request. (CROSS OUT THIS PARAGRAPH IF CONSENT IS WITHHELD).

8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

4-23-02  
Dated:

  
Signature

ELEC RECEIVED  
APR 26 2002

O'CONNOR & HANNAN, L.L.P.  
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April 23, 2002

New Jersey Election Law Enforcement Commission  
P.O. Box 185  
Trenton, NJ 08625-0185

Dear Sir or Madam:

I am writing to request an advisory opinion regarding the interpretation of a particular provision of the New Jersey statute governing lobbying activity. In particular our request involves the definition of "legislative agent" found at N.J. Statute §52:13C-20.3.g, and whether this provision of the statute requires registration of grassroots type lobbying activity.

The facts are as follows. A trade association will engage professionals and in-house employees to orchestrate a grassroots letter-writing campaign to New Jersey's State legislators. The trade association will pay the professionals to contact citizens of New Jersey, educate them about a particular issue before the legislature, and provide them with the text of letters, faxes or to otherwise provide the content and subject of communications to be directed to New Jersey legislators. The citizens being contacted by the professionals and employees of the trade association will not be paid. The professionals and employees of the trade association also will not communicate directly with any legislators. The letters will be signed by individuals and may indicate that the individuals are members of a consumer coalition. No reference will not be made to the trade association that is funding the grassroots campaign nor will the identity of the trade association be revealed to the citizens or the legislatures.

Our question is whether this activity requires registration of the professionals and employees of the trade association as legislative agents under the above referenced New Jersey lobbying statute. Specifically, does the fact that the professional and trade association employees control the content of the suggested correspondence and communication cause their activity to fall within the statutory definition of a "legislative agent" by virtue of the statutory language defining a legislative agent as "any person who receives compensation to influence legislation by direct or *indirect communication* with a member of the legislature." (Emphasis added.) The question is limited in scope to the issue outlined here, as it is our understanding that

if the employees or professionals meet the definition of a "legislative agent" registration of these individuals and the trade association is required under the New Jersey statutes.

I previously submitted this question to the assistant compliance officer, Titus Kamal. Mr. Kamal responded via telephone that grassroots lobbying activity is not captured by the lobbying laws of New Jersey. Although we do not doubt in any manner the accuracy of Mr. Kamal's response, for the benefit of our client we request a written response and it is my understanding that this can only be obtained via an advisory opinion.

If you have any questions or require clarification of this factual scenario, please feel free to call me at the number above.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James P. Ryan", with a long horizontal line extending to the right.

James P. Ryan