

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date August 15, 1975

To Anne Pomeroy, Executive Director Dept. Governor's Advisory Council on
the Status of Women
From Donald G. Alexander, Assistant Dept. Attorney General
Subject Lobbying Activities on Behalf of the Governor's Advisory Council on
the Status of Women

This memo is in response to your letter of August 6 to the Attorney General asking several questions regarding lobbying activities for the Governor's Advisory Council on the Status of Women. Prior to discussion of your questions, there are two assumptions upon which this opinion is written:

(a) that your questions apply prospectively for lobbying activities at a time when laws enacted in the regular session of the 107th Legislature will be in effect;

(b) that your contemplated activities do not include any "political activity; involving efforts to secure the election or defeat of members of the Legislature. Such involvement in or attempts to influence elections is prohibited by 5 U.S.C. Chap. 15 which is specifically made applicable to the Comprehensive Employment and Training Act by 29 U.S.C. § 990. Some political activities relating to elections may also be prohibited by 18 U.S.C. § 595 where undertaken by federally funded personnel. Such activity by classified State employees is prohibited by the provisions of P.L. 1975, Chap. 309.

With those assumptions, your questions and the responses follow:

1. What specifically constitutes "lobbying" State Legislators:
(a) personal contact? (b) testifying before Committee hearings?
(c) providing printed information, solicited and unsolicited, in regard to specific bills? (d) writing to individual Legislators?

Answer:

All of the above activities constitute lobbying. Lobbying is defined by P.L. 1975, Chap. 576 as: "communicating directly or soliciting others to communicate with any official in the legislative branch for the purpose of influencing any legislative activity, when such activities are engaged in pursuant to employment." Thus, any communication with the Legislature, direct or indirect, in the course of one's employment constitutes lobbying. Employment is defined in Chap. 576 as: "An agreement

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to provide services in exchange for compensation or reimbursement of expenditures."

2. What restrictions are placed on my lobbying State Legislators, as I am a CETA employee, paid by federal monies?

Answer:

Unless there are specific prohibitions on lobbying State Legislators included in the relevant Federal grant agreements, the fact that you are paid by Federal funds does not limit your ability to lobby before the State Legislature. The limitation on use of Federal funds for lobbying pursuant to 18 U.S.C. § 1913 only effects lobbying members of Congress; it does not apply to activities dealing with State Legislatures. The memorandum of the Solicitor of the Labor Department cites the Anti-Deficiency Act, 31 U.S.C. § 65(a) as another matter to be considered. However, the broad uses to which CETA funds can be put make it likely that any activities incident to the normal scope of your employment would not be affected by this provision.

As with any other State employee, you are limited by the general prohibition of 5 M.R.S.A. § 41 that "no head of any department shall employ counsel or witnesses at the expense of the State to appear before any committee of the Legislature without the consent of the Legislature." This provision in applying to department heads also applies to their subordinates. You are subordinate to the Commissioner of Health and Welfare pursuant to 22 M.R.S.A. § 1. Further, though this section (41) is apparently limited to activities "at the expense of the State," those words do not exempt Federally funded employees. Rather, the words should be construed broadly to mean "under the authority of the State." Section 41 has been in the Maine Statutes for many years. See R.S. 1903, Chap. 2, § 21. When it was enacted, few, if any, State employees were supported by Federal assistance, and the clear intent of the statute was to prohibit employees acting under the authority of the State from appearing before the legislative committees without consent of the Legislature.

3. What restrictions are placed on the State lobbying activities of any member of the Council on the Status of Women, presuming her/him not to be employed by either the Federal or State Government? Expenses incurred by Council members may be reimbursed, but no per diem is provided.

Answer:

There are no restrictions on the lobbying activities of Council members who are not Federal or State employees and who are not paid, except reimbursement for expenses, for their lobbying activities. While Council members receive expenses and thus their activities would constitute "employment" under the new lobbying statutes (P.L. 1975, Chap. 576), they are not paid a "regular salary or retainer" and thus do not constitute "lobbyists" under Chap. 576. Therefore, they are not required to register as lobbyists.

4. May the Council, using my personal services, contact any member of the Maine Congressional delegation to express the view of the Council on the Status of Women?

Answer:

The provisions of 18 U.S.C. § 1913 would generally appear to prohibit such contacts. The Labor Department has, by regulation, apparently made an exception for contacts with State Congressional delegations to present the view of the state. Our office would accept the Labor Department's interpretation of § 1913 on this point as they are charged with administering the law. However, we would advise care in such contacts, particularly if an instance should arise where the position of the Governor's Advisory Council on the Status of Women should differ from that of the Governor.

5. May the Council, using my personal services, publish a newsletter for women and women's groups in Maine which would include information on matters before (a) the Maine Legislature? (b) the U. S. Congress?

Answer:

There is no provision of law, Federal or State, which would prohibit your publishing a newspaper including information on matters before the Maine Legislature. Further, 18 U.S.C. § 1913 in no way prohibits dissemination of information about matters before the United States Congress. However, in editing such a publication, you should be careful to avoid advocacy language such as might run afoul of the Labor Department's regulation interpreting § 1913, cited on page 3 of the memorandum of the Solicitor of the Labor Department. That regulation prohibits use of funds "attempting to prompt any state agency or any other person or organization to solicit or attempt to influence members of Congress regarding pending or perspective legislation." (emphasis added).

Donald G. Alexander
DONALD G. ALEXANDER
Assistant Attorney General