MAINE STATE LEGISLATURE

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Assistant

State

Phillip M. Kilmister, Attorney General

Attorney General

Clarification of Chapter 576 of P.L. 1975.

In the hope that it will make for easier reading, I have taken the liberty of repeating each question as set forth in your memo under date of September 25, 1975, followed by my answers thereto.

Question 1. Is the self-employed person who communicates directly with any official in the Legislative Branch, on his own behalf, in order to influence legislation that concerns his livelihood required to register as a lobbyist?

<u>Question 1-A</u>. If this self-employed person <u>is</u> required to register as a lobbyist, then is he also required to register as an employer of a lobbyist?

Answer: The Answer to both questions is in the Negative.

To hold that a self-employed person has to register as a lobbyst in order to freely express his opinion to members of the Legislature would be a clear cut violation of the First Amendment Right of Freedom of Speech. The case of Moffett v. Killian, 360 F.Supp. 228 (1973) is an excellent discussion of the constitutionality of the Connecticut lobbying law and holds, inter alia, "one does not forfeit First Amendment rights because he pays someone to exercise them for him." The Killian case stands for the obvious principle that a person, in addition to employing a lobbyist, may also exercise his independent constitutional right to voice his opinion on affairs of state of interest to him. Should a self-employed person employ an agent or employee to lobby on his behalf, then the classic lobbying situation exists, requiring registration, but said self-employed person obviously need not register himself as a lobbyist as a condition precedent to expressing his opinion on legislative matters.

Since the answer to question one is in the negative, it necessarily follows that the self-employed person, as delineated in question 1, need not register as an employer of a lobbyist.

Question 2-A. Does a corporation which hires a lobbying firm have to register as an employer of a lobbyist?

Answer: Yes.

Question 2-B. Does the law firm engaged to lobby by a corporation have to register as a lobbyist?

Answer: Yes.

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Question 2-C. Does the individual lawyer of a law firm engaged to lobby for a corporation have to register as a lobbyist when he communicates directly with officials in the Legislative Branch?

Answet: Yes (see commentary).

Question 2-D. Does the assistant of the lawyer of the law firm engaged to lobby for a corporation have to register as a lobbyist if he is asked by the lawyer to lobby in his stead?

Answer: Yes.

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Question 2-E. Does the law firm employing the individual lawyer and assistant who lobbys in the name of the law firm have to register as employer of lobbyists?

Answer: No.

In answering question 2-C in the affirmative, I believe that any rule or regulation promulgated by the Secretary of State's Office which requires individual registration of each member of a law firm, who actually engages in the activity of lobbying, would be a valid implementation of our recently enacted Lobbyist Disclosure Law (P.L. 1975, c. 576).

In answering question 2-E in the negative, I see the problem of requiring a duplication of registration not reasonably connected to carrying out the purposes of our lobbying statute.

Failure to abide by the terms of our recently enacted lobbying statute constitutes criminal conduct and the terms of our statute must therefore be narrowly construed. The Federal courts have long since enunciated this basic tenet of criminal law in regard to interpretations of the (Federal Regulation of Lobbying Act).

"This section requiring registration of persons who engage for pay in attempting to influence passage or defeat of legislation by Congress, is a criminal statute and must be construed most favorably to defendant in case of any doubt or ambiguity." U.S. v. Slaughter, 89 F.Supp. 876.

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By way of specific example, I conceive the answer to question 2-E to be as follows:

If "X, Y, Z" law firm is to lobby for the "O" corporation,
"X, Y, Z" must register as a lobbyist and all individual lawyers
associated with "X, Y, Z" must register with the Secretary of State's
Office, "O" corporation must obviously register as an employer, under
the terms of our Act.

If "X, Y, Z" law firm, in addition, subcontracts or employs "P" and "Q" (lawyers or non-lawyers, for that matter) to engage in lobbying activity for "O" corporation, there is great doubt as to whether or not "X, Y, Z" must register as an employer. "P" and "Q" must register as lobbyists, but their compensation is really derived from "O" corporation and "X, Y, Z" law firm is only the conduit for their compensation. "X, Y, Z" would have to disclose the amounts of compensation paid to "P" and "Q" and comply with all other disclosure provisions relating to expenditures, but it is certainly doubtful that "X, Y, Z" would have to register as both a "lobbyist" and an "employer."

Question 3. Do individuals in a firm or other association of lobbyists each have to register as a lobbyist, or may they register collectively as a lobbying unit?

Answer: When individuals engage in lobbying, they must register in their individual capacity, regardless of their agency or employment status with any corporation, association, or other business entity.

Question 4. Is it necessary for the State of Maine to register as an employer of lobbyists and make reports of the compensation and expenses paid to those employees who lobby within the scope of their employment?

Answer: No.

By the terms of section 314 of (P.L. 1975, c. 576) the Legislature has expressly exempted any state employee from registration requirements as long as said employee is "acting within the scope of his employment." If a state employee is not acting within the scope of his employment, he is obviously not acting as a state employee and the State of Maine is not his employer for the lobbying activity in which he would be engaged. I can think of no circumstances in which the State of Maine would be an employer and required to register as a lobbyist.

PHILLIPM. KILMISTER

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