

MAINE STATE LEGISLATURE

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Markham L. Gartley, Secretary of State

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September 29, 1975

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?

Answer: 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.

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.

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.


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