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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

October 10, 1975

Honorable John L. Martin
Box 276
Eagle Lake, Maine 04739

Dear John:

This is a reply to your letter of October 6 posing several questions regarding P.L. 1975, c. 576: "An Act Revising Lobbyist Disclosure Procedures." The questions are answered in the order presented in your letter.

1. "If I meet with the chief executive officer of a large Maine corporation for the purpose of discussing the ways in which the Maine Legislature might assist that business, or the industry to which it belongs, in expanding its productivity and the size of its labor force, is that discussion one 'which is within the jurisdiction of the Legislature' if the meeting is conducted during a period when the Legislature is not meeting in Regular or Special Session?"

The answer to the question is yes for the reason that nothing in Chapter 576 indicates that the Legislature intended the Act only apply to action occurring when the Legislature is either in regular or special session.

"'Legislative action' means introduction, sponsorship, debate, amendments, passage, approval, defeat or any other official action relating to any bill, resolution, amendment or any other matter pending or proposed in a legislative committee or in either House of the Legislature or any matter which is within the jurisdiction of the Legislature.

October 10, 1975

"'Lobbying' means communicating directly or soliciting others to communicate with any official in the Legislative Branch for the purpose of influencing any legislative action, when such activities are engaged in pursuant to employment." 3 M.R.S.A. § 312, sub-§§ 7 and 8.

It should be noted that registration of lobbyists and employers is not predicated upon the fact the Legislature is in session. Also, renewal of a registration by a lobbyist or employer is based upon considerations of the calendar year and is not made dependent upon whether the Legislature is in session.

2. "Is your answer to that question the same if the Legislature is in session?"

We answer in the affirmative.

3. "Assuming that your answer to question #1 or #2 is in the affirmative, and assuming that the 'chief executive' would not be talking to me unless he believed the information he supplied might influence my activities with regard to legislative action, if the 'chief executive' was being reimbursed by his company for his travel expenses to and from Augusta incurred in conjunction with our meeting, would he be considered a 'lobbyist' under the definition contained in the Act?"

The answer is yes, assuming the chief executive is paid a regular salary and his duties specifically include lobbying. 3 M.R.S.A. § 312, sub-§ 9.

4. "Would the 'chief executive' referred to in question #3 be a 'lobbyist' if his company did not reimburse him for expenses but did pay him his regular salary for time spent in meeting with me?"

The answer is yes, for the same reasons given in support of the answer to the third question. The Act does not make the definition of "lobbyist" dependent upon the person's receipt of expenses while performing lobbying activities. The Act defines a lobbyist as a person who engages in lobbying, "who is paid a regular salary or retainer and whose duties specifically include lobbying." (Ibid.)

October 10, 1975

5. "Would the 'chief executive' referred (sic) in question #3 be a 'lobbyist' if the company did not reimburse his expenses and also deducted an amount from his weekly salary representing the time spent in meeting with me?"

The answer is no, on the basis that the chief executive would not then be receiving a regular salary for the time spent communicating with an official in the Legislative Branch. Too, the chief executive's duties would not apparently include lobbying because of his loss of salary when performing lobbying activities.

6. "Would your answers to questions 1, 2 and 3 be different if I had requested the meeting with the 'chief executive'?"

The answer is no, for the reason the Legislature has defined "lobbying" to mean "communicating directly or soliciting others to communicate with any official in the Legislative Branch for the purpose of influencing any legislative action, when such activities are engaged in pursuant to employment." 3 M.R.S.A. § 312, sub-§ 8. The Act does not exempt those activities that would amount to lobbying but for the fact the initial contact with a person was made by the official in the Legislative Branch.

7. "Would your answers to the preceding questions be different if the 'chief executive' was employed by a non-profit, tax-exempt organization?"

The answer is no because the definition of "person" in the Act includes a corporation, association, firm, partnership, club or other organization. 3 M.R.S.A. § 312, sub-§ 12. The Legislature's broad definition of "person" gives indication the Legislature intended that the Act have a broad reach.

8. "Assume that I am a member of the Board of Directors of a non-profit organization such as the United Fund. While at a meeting of the board of that organization, the executive director of that organization, a paid employee, presents to the board a proposal for legislation and urges that the board secure a sponsor for that legislation. After hearing the persuasive explanation by the executive director, I agree to introduce the legislation. Is the executive director a 'lobbyist' under the Act and, if not, under what factual situation would he become one?"

The executive director would not be a lobbyist unless his duties specifically included lobbying activities. His contact with the board of directors is an employer-employee relationship and even though one of the members of the board of directors is also an official in the Legislative Branch of government, the situation does not amount to lobbying. As for the second part of the question, viz: under what factual situation would the executive director become a lobbyist, we respectfully decline to comment because of the expanse of the question.

9. "Assume that I introduce the legislation and, while at another meeting of the board, I express the desire for experts to come to the Legislature to testify on the bill. The board directs the executive director to locate some expert witnesses and ask them to appear before a committee to testify on the bill. Is the executive director 'soliciting others to communicate' and, if so, is he a lobbyist?"

The answer is yes, because under the assumed facts, the board directed the executive director to solicit others to communicate with officials in the Legislative Branch; creating a duty of employment, among other duties, for which the executive director received a regular salary. Our answer is rested in large part upon the aspect of duties of employment. Without creation of a duty of employment, including lobbying, our answer to this question would be in the negative. 3 M.R.S.A. § 312, sub-§ 9. Additional comment is necessary concerning appearances before legislative committees, viz: whether such appearances constitute lobbying within the definition of that term in the Lobbyist Disclosure Act. If it is, consider whether a constitutional question is raised by a statute defining lobbying as including activity wherein a person appears before a legislative committee at a public hearing on proposed legislation, written notice of said hearing being given for the purpose of encouraging participation by the general public to testify. There is an opportunity, on the horizon, to rewrite the Lobbyist Disclosure Act making the definitions more specific. The opportunity is created by the fact the Legislature, in enacting P.L. 1975, c. 621: An Act to Create the Commission on Governmental Ethics and Election Practices, will have repealed the Lobbyist Disclosure Act as of January 1, 1976. See § 2 of c. 621.

10. "Assume that I am chairman of a legislative committee looking into the matter of 'temperature inversion in the ionosphere.' I am informed by the staff counsel to the committee that the world's

October 10, 1975

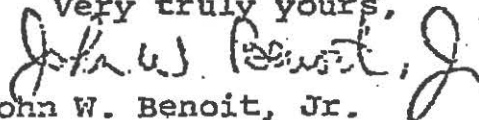
foremost expert in the field of ionospheric temperature inversion lives in Maine and works for a telemetric communications company. On behalf of the committee I communicate with the 'expert' and invite him to testify before the committee. Upon receipt of my letter, he inquires of his employer as to whether he has permission to attend. The employer advises the expert that 'temperature inversion in the ionosphere' is a subject that is of great interest to the employer. He directs the expert to attend, agrees to reimburse him for his expenses, and agrees that he will receive his hourly wage for the time spent in traveling to and from Augusta and appearing before the committee. Is the expert a 'lobbyist' under the Act and does his 'employer' become one for purposes of the Act?"

The answer is yes as to both parts of the question, on the basis the employer has given the "expert" - employee a duty to perform in connection with his employment. The stated facts reveal the employer will benefit from the "expert's" contact with officials in the Legislative Branch. The definition of "lobbying" in Chapter 576 does not allow one to interpret "lobbying" as activity occurring on a one-time basis. We incorporate by reference the portion of our answer to the previous question which refers to creation a duty of employment as well as comments concerning appearances before legislative committees.

11. "Assuming the facts as set forth in question #10, would the 'expert' be a 'lobbyist' if he testified before the committee in response to a subpoena?"
12. "Under what circumstances may the Legislature, its joint standing committees, or the Legislative Council issue subpoenae?"

Because questions 11 and 12 concern issuances of subpoenas by legislative agencies, something that the procedures in the Lobbyist Disclosure Act do not directly address, we will issue an opinion answering these two questions when our research is completed. We do this in order not to delay our opinion on your questions concerning the Lobbyist Disclosure Act.

Very truly yours,



John W. Benoit, Jr.
Deputy Attorney General