

NOTE: The following is a draft response to a request for an advisory opinion prepared for consideration by the Citizen's Ethics Advisory Board. It does not necessarily constitute the views of the Board.

TO: Board Members
FROM: Cynthia Isales, Assistant General Counsel
RE: Reconsideration of Advisory Opinion No. 97-20
DATE: December 13, 2006

INTRODUCTION

The Citizen's Ethics Advisory Board issues this advisory opinion in reconsideration of Advisory Opinion No. 97-20. The issues being addressed are: (1) whether General Statutes § 1-84 (o) of the Code of Ethics for Public Officials and General Statutes § 1-97 (d) of the Code of Ethics for Lobbyists apply only to registered client lobbyists; and (2) for purposes of § 1-84 (o), who constitutes the executive head of an agency.

BACKGROUND

In Advisory Opinion No. 97-20, the former State Ethics Commission (former Commission) interpreted Public Acts 1997, 97-6, § 5, now § 1-84 (o), a notification provision that provides as follows:

If (1) any person (A) is doing business with or seeking to do business with the department or agency in which a public official or state employee is employed, or (B) is engaged in activities which are directly regulated by such department or agency, and (2) such person or a representative of said person gives to such public official or state employee anything of value which is subject to the reporting requirements pursuant to subsection (e) of section 1-96, such person or representative shall, not later than ten days thereafter, give such recipient and the executive head of the recipient's department or agency a written report stating the name of the donor, a description of the item or items given, the value of such items and the cumulative value of all items given to such recipient during that calendar year. The provisions of this subsection shall not apply to a political contribution otherwise reported as required by law.

Section 1-84 (o) creates a notification requirement for "any person" regulated by, doing business with, or seeking to do business with a particular state agency or department, if such person gives a benefit that is subject to the reporting requirements of General Statutes § 1-96 (e). Section 1-96 (e) requires the filing of client lobbyist financial reports and also requires an

itemized statement for certain expenditures made for the benefit of a public official. That provision provides, in pertinent part, as follows:

Each client lobbyist registrant financial report shall be on a form prescribed by the [Citizen's Ethics Advisory Board] Such financial report shall include an itemized statement of each expenditure of ten dollars or more per person . . . for the benefit of a public official . . . itemized by date, beneficiary, amount and circumstances of the transaction. The requirement of an itemized statement *shall not apply to an expenditure* made by a reporting registrant . . . for (1) the benefit of the members of the General Assembly at an event that is a reception to which all such members are invited or all members of a region of the state, as such term is used in subdivision (11) of subsection (g) of section 1-91, are invited, unless the expenditure is thirty dollars or more per person, or (2) benefits personally and directly received by a public official or state employee at a charitable or civic event at which the public official or state employee participates in his official capacity, unless the expenditure is thirty dollars or more per person, per event.

(Emphasis added.) The former Commission was asked whether § 1-84 (o) requires both unregistered and registered entities to provide notification to the recipient of a benefit, or whether this notice requirement applies only to registered client lobbyists. Because § 1-84 (o) references § 1-96 (e), which pertains in part to the financial reports of registered client lobbyists, the former Commission concluded that “the new notice requirement [in § 1-84 (o)] applies only to registered client lobbyists required to report pursuant to § 1-96.” Advisory Opinion No. 97-20.

In Advisory Opinion No. 97-20, the former Commission also interpreted what is now § 1-97 (d), a notification provision in the Code of Ethics for Lobbyists that parallels § 1-84 (o). Section 1-97 (d) provides as follows:

Any person who gives to a public official, state employee or candidate for public office, or a member of any such person's staff or immediate family anything of value which is subject to the reporting requirements pursuant to subsection (e) of section 1-96 shall, not later than ten days thereafter, give such recipient a written report stating the name of the donor, a description of the item or items given, the value of such items and the cumulative value of all items given to such recipient during that calendar year. The provisions of this subsection shall not apply to a political contribution otherwise reported as required by law.

Again, because § 1-97 (d) references § 1-96 (e), the former Commission concluded that § 1-97 (d) applies to registered client lobbyists, but not to registered communicator lobbyists.¹

¹Client lobbyists are any lobbyists on behalf of whom lobbying takes place and who make expenditures for lobbying and in furtherance of lobbying. General Statutes § 1-91 (u). Communicator lobbyists are lobbyists who communicate directly or solicit others to communicate with an official or his staff in the legislative or executive branch of government or

By virtue of Advisory Opinion No. 97-20, both §§ 1-84 (o) and 1-97 (d) apply only to registered client lobbyists. Consequently, state employees and public officials who are given an item of value by persons doing business with, seeking to do business with, or regulated by the public official or state employee's agency do not have the benefit of a written report. In addition, under the former Commission's interpretation, communicator lobbyists are not required to provide notification when they give anything of value to public officials, state employees, or candidates for public office.

QUESTIONS

(1) Whether §§ 1-84 (o) and 1-97 (d) apply only to registered client lobbyists; and (2) for purposes of § 1-84 (o), who constitutes the executive head of an agency.

ANALYSIS

As noted above, in Advisory Opinion No. 97-20, the former Commission concluded that the notification requirement found in § 1-84 (o) applies only to registered client lobbyists. It determined that:

the General Assembly has enacted legislation to enable its members to be notified directly when an item is reportable pursuant to . . . 1-96 (e). It is undisputed that [§] 1-96 (e) applies to registered client lobbyists only. Accordingly, by the plain language of the statute, the new notice requirement applies only to registered client lobbyists required to report pursuant to § 1-96.

Advisory Opinion No. 97-20.

We disagree with the former Commission's determination and conclude instead, for the reasons that follow, that: (1) § 1-84 (o) applies to "any person" regulated by, doing business with, or seeking to do business with a department or agency, regardless of whether that person is a registered client lobbyist; and (2) § 1-97 (d) applies to "any person" who is a registered lobbyist under the Code of Ethics for Lobbyists, and who gives to a public official, state employee or candidate for public office, or a member of any such person's staff or immediate family anything of value subject to the reporting requirements of § 1-96 (e).

I. The Thing of Value is Qualified And Not the Giver

The reference to § 1-96 (e) in § 1-84 (o) qualifies the thing of value, not the giver. In § 1-84 (o), the language "anything of value" is followed by "which is subject to the reporting requirements pursuant to subsection (e) of section 1-96 . . ." If the language was intended to qualify the giver rather than the thing of value, then a more logical placement for the qualifier, "which is subject to the reporting requirements pursuant to subsection (e) of section 1-96," would be following the giver. For example: If any person is doing business with or seeking to

in a quasi-public agency for the purpose of influencing legislative or administrative action. General Statutes § 1-91 (v).

do business with the department or agency in which a public official or state employee is employed, or is engaged in activities which are directly regulated by such department or agency, and is subject to the reporting requirements pursuant to subsection (e) of section 1-96

II. “Any Person” vs. “Registered Client Lobbyists”

The plain language of both statutes demonstrates that the class that is subject to the reporting requirements is “any person,” not only “registered client lobbyists.” Section 1-84 (o) reads: “If *any person* (A) is doing business with or seeking to do business with the department or agency in which a public official or state employee is employed, or (B) is engaged in activities which are directly regulated by such department or agency, and (2) such person or a representative of said person gives to such public official or state employee anything of value” (Emphasis added.) Section 1-97 (d) likewise reads “*Any person* who gives to a public official, state employee or candidate for public office, or a member of any such person's staff or immediate family anything of value” (Emphasis added.) The term “person” is defined in the Code of Ethics for Public Officials as “an individual, sole proprietorship, trust, corporation, limited liability company, union, association, firm, partnership, committee, club or other organization or group of persons.” General Statutes § 1-79 (i). It is similarly defined in the Code of Ethics for Lobbyists as “an individual, a business, corporation, limited liability company, union, association, firm, partnership, committee, club or other organization or group of persons.” General Statutes § 1-91 (n).

With respect to § 1-84 (o), to limit the notification requirement to registered client lobbyists ignores the two specific and separate categories of entities expressly mentioned in such provision, i.e., *any person* doing business with or seeking to do business with the department or agency, and *any person* engaged in activities which are directly regulated by such department or agency. General Statutes § 1-84 (o). Moreover, nothing in § 1-84 (o) references registered lobbyists. Section 1-84 (o) could conceivably apply to registered lobbyists if they happen to be doing business with, seeking to do business with, or regulated by a state department or agency.

With respect to § 1-97 (d), to limit the notification requirement to registered client lobbyists ignores the plain language of that provision, namely: “*Any person* who gives to a public official, state employee or candidate for public office, or a member of any such person's staff or immediate family anything of value” (Emphasis added.)

III. Section 1-84 (o) is Rendered Superfluous

If the legislature intended to require that only client lobbyists file a written report, it had already done so by way of § 1-97 (d), which, as noted above, is the parallel notice requirement in the Code of Ethics for Lobbyists. Consequently, it would be unnecessary for the legislature to create exactly the same notification requirement for expenditures made by client lobbyists that it already created in § 1-97 (d). In applying the written notice requirement only to client lobbyists, the former Commission rendered one of the provisions in the Code of Ethics for Public Officials superfluous. “[I]t is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is

superfluous.” (Internal quotation marks omitted.) *Board of Education v. State Board of Education*, 278 Conn. 326, 335, 898 A.2d 170 (2006).

Both §§ 1-84 (o) and 1-97 (d), we believe, reference General Statutes § 1-96 (e) merely to set forth the minimum threshold for a written report. Section 1-96 (e) requires itemization of expenditures of \$10 or more, per person, per occasion, or \$30 or more per person for a legislative reception or a charitable or civic event. Whenever an expenditure surpasses the threshold set by § 1-96 (e), a written report is required.

A correct interpretation of §§ 1-84 (o) and 1-97 (d) is that when the “thing of value” being given meets the threshold dollar amounts specified in § 1-96 (e), i.e., \$10 or \$30, as the case may be, then a written report must be provided to the recipient (if being provided by a registered lobbyist) or to the recipient and the executive head of the recipient’s department or agency (if being provided by someone who does business with, seeks to do business with, or is regulated by the individual’s agency). This conclusion, we believe, is keeping with the clear public policy of tracking the money and influence trail, from whatever the source may be, i.e., be it from the registered or unregistered community.

IV. Executive Head of an Agency

With respect to the second question, for purposes of § 1-84 (o), “the executive head” of an agency will vary and will be determined depending on the state agency or department. In some cases, it is an executive director (e.g., Office of State Ethics). In other cases, it is the Commissioner (e.g., Department of Transportation). Still, in other cases, the individual is the president (e.g., University of Connecticut). Agencies and departments that do not fit neatly into the above-stated categories should contact the Office of State Ethics for further guidance.

CONCLUSION

It is the opinion of the Citizen’s Ethics Advisory Board that: (1) § 1-84 (o) applies to any person regulated by, doing business with, or seeking to do business with a department or agency, regardless of whether that person is a registered client lobbyist; § 1-97 (d) applies to both registered client and communicator lobbyists; and (2) for purposes of § 1-84 (o), “the executive head” of an agency varies by state agency and department, and anyone with questions regarding who this individual is should contact the Office of State Ethics directly.

Advisory Opinion No. 97-20 and any others in conflict with this opinion are hereby revoked.