STATE OF CONNECTICUT
OFFICE OF STATE ETHICS

Draft Advisory Opinion No. 2014-3

March 21, 2014

Question Presented: **The petitioner asks whether, under General Statutes § 9-601a (b) (10) (B), a lobbying firm (i.e., a "business organization") may "purchase an ad in an ad book produced in connection with a fundraiser sponsored by a political action committee," given that that provision bars a "communicator lobbyist," as defined in General Statutes § 1-91 (22), from doing so.** [1]

Brief Answer: **Although we conclude that a "business organization" does not fit within the definition of "communicator lobbyist" in § 1-91 (22), the question of whether a "business organization" may thus make the proposed ad book purchase pursuant to § 9-601a (b) (10) (B) must be answered by the State Elections Enforcement Commission.**

At its February 2014 regular meeting, the Citizen's Ethics

[1]Although we lack statutory authority to interpret § 9-601a (b) (10) (B), the answer to the petitioner's question turns on whether a "business organization" is a "communicator lobbyist" under § 1-91 (22). Because we are authorized to interpret § 1-91 (22); see General Statutes § 1-92 (e); we will address this sub-issue. But we will not address the petitioner's other question, concerning ad book solicitations, as the answer depends entirely on a reading of a provision that we lack authority to interpret.

Advisory Board ("Board") granted the petition for an advisory opinion submitted by Jay F. Malcynsky, Esq., of Gaffney, Bennett and Associates, Inc., and the Board now issues this opinion in accordance with General Statutes § 1-92 (e).

Facts

On February 10, 2014, the petitioner asked for declaratory rulings from both this Board and the State Elections Enforcement Commission ("SEEC") concerning General Statutes § 9-601a (b) (10) (B), the so-called "ad book exception." This exception in the campaign-finance statutes excludes the following from the definition of "contribution":

> The purchase of advertising space which clearly identifies the purchaser, in a program for a fund-raising affair or on signs at a fund-raising affair sponsored by a party committee or a political committee, other than an exploratory committee, provided the cumulative purchase of such space does not exceed two hundred fifty dollars from any single party committee or a political committee, other than an exploratory committee, in any calendar year if the purchaser is a business entity or fifty dollars for purchases by any other person. . . .[2]

The provision goes on, however, to prohibit certain persons from using the exception, including a "communicator lobbyist."[3]

Subsequently, SEEC issued Proposed Declaratory Ruling 2014-03, titled, "Application of the Program Book Exception to Communicator Lobbyists." In it, SEEC addressed, among other things, whether the term "communicator lobbyist," as used in § 9-601a (b) (10) (B), includes a lobbying firm—known in the Codes of Ethics (and hereinafter referred to) as a "business organization"[4]—and thus bars it from making an ad book purchase. After noting

[2]General Statutes § 9-601a (b) (10) (B).

[3]Id.

[4]A "business organization" is "a sole proprietorship, corporation, limited liability company, association, firm or partnership, other than a client lobbyist, that is owned by, or employs, one or more individual lobbyists." General Statutes § 1-91 (20).

that the campaign-finance statutes look to General Statutes § 1-91 to define "communicator lobbyist," and that § 1-91 is under the jurisdiction of the Office of State Ethics, SEEC concluded:

> [W]e will defer to the Office of State Ethics as to whether or not the ["business organization"] in question would be deemed a communicator lobbyist. To the extent that a ["business organization"] is not considered a communicator lobbyist . . . it would be permitted to purchase advertising space in a program book for a fundraiser held by a political committee so long as all such purchases by the ["business organization"] do not exceed two hundred and fifty dollars in a calendar year. If, however, the ["business organization"] is deemed to be a communicator lobbyist . . . then such an advertising purchase would be prohibited pursuant to . . . § 9-601a (b) (10).

The question before us, then, is whether a "business organization" fits within § 1-91 (22)'s definition of "communicator lobbyist."

Analysis

Whether a "business organization" fits within § 1-91 (22)'s definition of "communicator lobbyist" is a question of statutory construction. When construing a statute, "[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature."[5] General Statutes § 1-2z directs us to consider, first, the text of the statute itself and how it relates to other statutes. If the meaning of the text is "plain and unambiguous and does not yield absurd or unworkable results," we may not consider "extratextual evidence of the meaning of the statute . . . ."[6] "The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation."[7]

With that said, we turn to the text of the statute at issue, § 1-91 (22), which provides as follows:

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[5](Internal quotation marks omitted.) *State* v. *Brown*, 310 Conn. 693, 702 (2013).

[6]General Statutes § 1-2z.

[7](Internal quotation marks omitted.) *State* v. *Brown*, supra, 702.

> "Communicator lobbyist" means a lobbyist who communicates directly or solicits others to communicate with an official or the official's staff in the legislative or executive branch of government or in a quasi-public agency for the purpose of influencing legislative or administrative action.

For the following three reasons, we conclude that § 1-91 (22)'s definition of "communicator lobbyist" does not include a "business organization":

1. A "communicator lobbyist" is an "individual"; a "business organization" is not.

2. A "communicator lobbyist" is a "lobbyist"; a "business organization" is not.

3. A "communicator lobbyist" may be a "registrant"; a "business organization" may not.

1. A "communicator lobbyist" is an "individual"; a "business organization" is not.

Taking those reasons in turn, the first is that a "communicator lobbyist" is an "individual," but a "business organization" is not.

The Code of Ethics for Lobbyists[8] defines "individual" as a "natural person."[9] As for a "business organization," it is certainly not a "natural person," as is evident from its definition: "a sole proprietorship, corporation, limited liability company, association, firm or partnership, other than a client lobbyist, that is owned by, or employs one or more individual lobbyists."[10] As for a "communicator lobbyist," although not readily apparent from its definition (see above), both the Lobbyist Code and the Regulations of Connecticut State Agencies[11]—in discussing lobbyist registration and

[8]Chapter 10, part II, of the General Statutes.

[9]General Statutes § 1-91 (9).

[10]General Statutes § 1-91 (20).

[11]See *Rainforest Cafe, Inc.* v. *Dept. of Revenue Services*, 293 Conn. 363, 375 (2009) ("[t]he Regulations of Connecticut State Agencies, which have

reporting—make clear that they are speaking of a natural person, that is, an "individual."

Starting with lobbyist registration, § 1-92-46 of the regulations could not be more explicit and unambiguous on this point. Indeed, we glean much from its title: "*Communicator lobbyist* must register as *individual*, and disclose his firm as well as client."[12] From that we learn that a "communicator lobbyist" is an "individual" and is to be distinguished from his "firm" (i.e., his "business organization") and his client, both of which he must disclose on his registration.

As for its language, § 1-92-46 first states: "When the registrant is the *communicator lobbyist*, the *individual* who will lobby on behalf of the client lobbyist shall register in *his or her individual* capacity."[13] Thus, when discussing a "communicator lobbyist," the regulation uses not just the term "individual," but also the gendered pronouns "he" and "she"—which, to paraphrase one court,

> compels the construction that the word ["communicator lobbyist"] used in its context means natural persons only. If the General Assembly had intended to include ["business organizations"] in the meaning of the word ["communicator lobbyist"] as used, it could easily have included the pronoun 'it' with the pronouns "he" and "she" . . . .[14]

Next, § 1-92-46 states: "As part of *his or her* address, the *individual* registrant shall indicate the name of any partnership, professional corporation, limited liability company, or corporation in which the individual registrant is a member, or by which the individual registrant is employed."[15] That is, the regulation—which again refers to a "communicator lobbyist" as an "individual" and

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the full force and effect of the law . . . inform our [statutory] analysis" [citations omitted]).

[12](Emphasis added.) Regs., Conn. State Agencies § 1-92-46.

[13](Emphasis added.)

[14]*Folsom* v. *Summer, Locatell & Co.*, 83 S.E.2d 855, 856 (Ga. App. 1954); see also *Thomas* v. *Taco Bell Corp.*, 879 F. Supp.2d 1079, 1082 n.1 (C.D. Cal. 2012) ("although not explicitly set forth, Illinois corporate law requires that directors be natural persons, because the sections of the code discussing directors uses only gendered pronouns such as 'his', 'he,' 'she,' and 'her' when referring to directors, and never the pronoun 'it'").

[15](Emphasis added.)

uses more gendered pronouns—requires the "individual" (i.e., the "communicator lobbyist") to indicate the name of his or her "business organization," thereby differentiating the two.

Finally, § 1-92-46 states that a communicator lobbyist's registration must include certain information about the client lobbyist,

> regardless of whether the client lobbyist . . . makes payment directly to *the individual registrant who is the communicator* or to any partnership, professional corporation, or corporation in which the individual registrant is a member, or by which the individual registrant is employed.[16]

Once more, the regulation makes explicit that the "communicator" is the "individual" and is not to be confused with the entity in which the "individual" is a member or by which the "individual" is employed—namely, the "business organization."

Turning to lobbyist reporting, both the Lobbyist Code and the regulations continue to use gendered pronouns when referring to a "communicator lobbyist." That is, General Statutes § 1-96 (b) states, in part, that each "communicator lobbyist registrant" must report "the amounts of compensation and reimbursement received from each of *his* clients during the previous year. . . ."[17] Section 1-96 (c) states, in part, that each "communicator lobbyist registrant" must "file a separate report for each person from whom *he* received compensation or reimbursement. . . ."[18] And § 1-92-50 (c) of the regulations states, in part, that "[a] communicator lobbyist registrant must file a separate report for each client for which *he or she* was registered in the preceding calendar year."[19] As noted above, the consistent use of gendered pronouns when referring to "communicator lobbyists" suggests that the legislature intended the term to apply only to natural persons, or "individuals."[20]

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[16](Emphasis added.)
[17](Emphasis added.)
[18](Emphasis added.)
[19](Emphasis added.)
[20]See *Folsom* v. *Summer, Locatell & Co.*, supra, 83 S.E.2d 856; *Thomas* v. *Taco Bell Corp.*, supra, 879 F. Supp.2d 1082 n.1.

Not only that, the Lobbyist Code continues to refer to "communicator lobbyists" as "individuals" and to distinguish them from "business organizations." Specifically, § 1-96 (c) provides that

> Notwithstanding any provision of this subsection to the contrary, a business organization to which one or more *individual communicator lobbyist* registrants belong may file a single report for each client lobbyist in lieu of any separate reports that *individual registrants are required to file* pursuant to this subsection.[21]

Note, first, that the term "communicator lobbyist registrants" is modified by the term "individual." Note, too, that it is the "individuals"—not the "business organization"—who must file reports. In fact, § 1-92-50 (c) of the regulations explains that the

> business organization report shall include the names of all the communicator lobbyist registrants filed for. The filing of reports as a business organization shall not affect the statutory rights and duties, under the code of ethics for lobbyists . . . of the communicator lobbyist registrants belonging to the organization.

Stated differently, even though a "business organization" may file a single report for each client on behalf of its "communicator lobbyist registrants," those "individual registrants" (as § 1-96 (c) puts it) are still on the proverbial hook.

2. A "communicator lobbyist" is a "lobbyist"; a "business organization" is not.

Our next reason for concluding that the definition of "communicator lobbyist" does not include a "business organization" is that the former is a "lobbyist," but the latter is not.

Although a "communicator *lobbyist*" is, by definition (see above), a "lobbyist,"[22] the Lobbyist Code expressly distinguishes between

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[21](Emphasis added.)

[22]General Statutes § 1-91 (12) defines "lobbyist," in part, as follows: "[A] person who in lobbying and in furtherance of lobbying makes or agrees to make expenditures [i.e., a client lobbyist], or receives or agrees to

the terms "lobbyist" and "business organization." Indeed, it does so in the very definition of "business organization," which (again) is this: "a sole proprietorship, corporation, limited liability company, association, firm or partnership, *other than a client lobbyist, that is owned by, or employs one or more individual lobbyists*."[23] In other words, a "business organization" is simply an entity, other than a client lobbyist, that is composed of "individual lobbyists"—but is not a "lobbyist" itself.

This is made even more apparent in two of the Lobbyist Code's "gift" exceptions. Under the exceptions, the term "gift" does not include food and/or beverage valued under $50 per person at certain legislative receptions that are "hosted not more than once in any calendar year by a *lobbyist or business organization*."[24] If the legislature had intended a "business organization" to be considered a "lobbyist," then there was no reason to add the words "or business organization," given that the exceptions already include the word "lobbyist." That it did add those words suggests that a "business organization" is not a "lobbyist," and to conclude otherwise would render those words meaningless in the context of these "gift" exceptions.[25]

Bolstering our conclusion is Advisory Opinion No. 99-32,[26] involving lobbyist registration fees, and the issue there was this: If, in an odd-numbered year, a "business organization" pays the "two-year lobbyist registration fees for one of its staff lobbyists, must [it] in the even-numbered year pay an additional year of such fees for a new staff lobbyist that replaces the former lobbyist?"[27] It was argued that, because the "business organization" had "paid fees for the two year registration period and is not increasing its number of lobbyists, no additional fee should be required."[28] Disagreeing, the

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receive compensation, reimbursement, or both [i.e., a communicator lobbyist], and such compensation, reimbursement or expenditures are two thousand dollars or more in any calendar year or the combined amount thereof is two thousand dollars or more in any such calendar year. . . ."

[23](Emphasis added.) General Statutes § 1-91 (20).

[24](Emphasis added.) General Statutes § 1-91 (7) (J) and (K).

[25]See *Savage* v. *Aronson*, 214 Conn. 256, 289 (1990) ("[a] statute should be construed so that no word, phrase or clause will be rendered meaningless" [internal quotation marks omitted]).

[26]Connecticut Law Journal, Vol. 61, No. 29, p. 11C (January 18, 2000).

[27]Id., p. 12C.

[28]Id.

former Commission stated that "*[t]he business organization . . . is not the registered lobbyist*."[29] Rather, it is

> solely a statutory creation, established to simplify reporting by a group of individual communicator lobbyists working for the same firm. The fact that this business organization has not increased its aggregate total of lobbyists is, therefore, not determinative of whether an additional registration fee is required. Rather, the fee is triggered . . . when a new individual registers, regardless of whether the individual is a replacement for . . . the business organization's current lobbyists.[30]

This, according to the former Commission, "has been the statutory registration scheme since the inception of the Lobbyist Code in 1978 . . . ."[31]

3. A "communicator lobbyist" may be a "registrant"; a "business organization" may not.

Our final reason for concluding that the definition of "communicator lobbyist" does not include a "business organization" is that the former may be a "registrant," but the latter may not.

A "registrant" is defined as "a person who is required to register pursuant to section 1-94 . . . ."[32] Section 1-94 provides that "[a] *lobbyist* shall register with the Office of State Ethics . . . if it or he" meets the annual registration threshold, currently $2000. A "registrant," therefore, must be a "lobbyist," which a "communicator *lobbyist*" most certainly is. And if, under § 1-94 (1), a "communicator lobbyist" "[r]eceives or agrees to receive compensation or reimbursement for actual expenses, or both in a combined amount of [$2000] or more in a calendar year for

[29](Emphasis added.) Id.

[30]Id.; see also State Ethics Commission, Declaratory Ruling 2000-A (July 26, 2000) (regarding the contingent-fee prohibition in General Statutes § 1-97 (b), the former Commission stated that it applies only to a "lobbyist," and that "a '*business organization*' . . . *is not a lobbyist*; but rather is an entity recognized by the Code solely to facilitate lobbyist registration and reporting" [emphasis added]).

[31]Connecticut Law Journal, Vol. 61, No. 29, supra, p. 12C.

[32]General Statutes § 1-91 (17).

lobbying," then the "communicator lobbyist" must register with the Office of State Ethics and is, by definition, a "registrant."

Not so with respect to a "business organization." Only a "lobbyist" can be a "registrant," and, as already discussed, a "business organization" is not a "lobbyist." Further, just as the Lobbyist Code expressly distinguishes between the terms "business organization" and "lobbyist," so too does it distinguish between the terms "business organization" and "registrant." That is, General Statutes § 1-96d provides, in part, that

> [e]ach *registrant or business organization* that hosts a legislative reception to which all members are invited, or all members of a region in the state . . . are invited, shall include in its invitation or any published notice of such reception whether the *registrant or business organization* reasonably expects such expenditures to be reportable . . . .

Paraphrasing our analysis above, if the legislature had intended a "business organization" to be deemed a "registrant," then there was no reason to add the words "or business organization," because the provision already includes the word "registrant." That it did add those words suggests that a "business organization" is not a "registrant," and to conclude otherwise would render those words meaningless in the context of § 1-96d.[33]

Our conclusion finds support in Advisory Opinion No. 78-6,[34] which was issued just after the Lobbyist Code took effect in 1978. There, two individuals were engaged in lobbying on behalf of a client lobbyist, and they asked how to report

> moneys paid by the client to the individuals' corporation [i.e., their business organization] and to the individuals. Under the client's agreement for payment, the client pays a fee to the corporation for lobbying services . . . . The individuals who lobby on behalf of the client receive from their corporation a salary which is determined independently of the fees

[33]See *Savage* v. *Aronson*, supra, 214 Conn. 289.
[34]Connecticut Law Journal, Vol. 39, No. 43, p. 21 (April 25, 1978).

> paid by the client to the corporation for lobbying services. . . .[35]

In addressing how to report the money, the former Commission stated:

> The client and the two individuals who lobby on the client's behalf are required to register; *the corporation [i.e., the "business organization"] is not. Only registrants need file reports*. . . . Therefore, the fees paid by the client . . . must be reflected in the lobbyists' financial reports even though the fees are paid to the individuals' corporation.[36]

In other words, the corporation (i.e., the "business organization") is not required to file any reports, as only "registrants" are required to do so—and the "business organization" is not a "registrant."[37]

And so, to sum up what has been said thus far, a "communicator lobbyist" is an "individual" and a "lobbyist," and may be a "registrant"; however, a "business organization" is never any of the above. Thus, we conclude that, when read in relation to other provisions, § 1-91 (22) is plain and unambiguous, as it is susceptible to just one reasonable interpretation: that its definition of "communicator lobbyist" does not include a "business organization." To conclude otherwise would ignore not only the comprehensive statutory and regulatory scheme governing lobbyist registration and reporting, but also decades of precedent.

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[35]Id.

[36](Emphasis added.) Id.

[37]See also Advisory Opinion No. 2004-4, Connecticut Law Journal, Vol. 66, No. 4, p. 7E (July 27, 2004) (noting that the term "registrant" applies, not to a "business organization," but rather to "the entity represented (i.e., the 'client lobbyist') and the individual doing the lobbying (i.e., the 'communicator lobbyist')"); Advisory Opinion No. 2001-10, Connecticut Law Journal, Vol. 62, No. 49, p. 4C (July 5, 2001) ("if the business organization is retained to seek state contracts and goes beyond the preparation of submissions in response to an agency's request for proposals . . . it will be engaged in lobbying and *both the individual members of the lobbyist business organization and the client corporation must register* . . ." [emphasis added]).

Conclusion

Although we conclude that a "business organization" does not fit within the definition of "communicator lobbyist" in § 1-91 (22), the question of whether a "business organization" may thus make the proposed ad book purchase pursuant to § 9-601a (b) (1) (B) must be answered by SEEC.

By order of the Board,

Dated_____ _____
Chairperson