



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

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Draft Advisory Opinion No. 2012-5

March 22, 2012

Question Presented:

Petitioner asks whether he is a “communicator lobbyist,” as defined in General Statutes § 1-91, if he has registered to lobby but has neither received nor agreed to receive \$2000 or more in compensation or reimbursement for actual expenses, or both, in a calendar year?

Brief Answer:

No. Based on the specific facts presented by the petitioner, he is not a “communicator lobbyist,” as defined in § 1-91, if he has registered to lobby but has neither received nor agreed to receive \$2000 or more in compensation or reimbursement for actual expenses, or both, in a calendar year.

At its March 2012 regular meeting, the Citizen’s Ethics Advisory Board (“Board”) granted the petition for an advisory opinion submitted by Christopher Phelps (“petitioner”). The Board issues this advisory opinion on the date shown below in accordance with General Statutes § 1-81 (a) (3). The opinion interprets the Code of Ethics for Lobbyists (“Ethics Code”)¹ and its regulations, is binding on the Board concerning the person who requested it and who acted in good-faith reliance thereon, and is based solely on the facts provided by the petitioner.

¹Chapter 10, part II, of the General Statutes.

Facts

The facts provided by the petitioner are set forth (in relevant part) below and are considered part of this ruling:

I was previously employed by Environment Connecticut as a Program Director. In that capacity, I was registered with the Office of State Ethics as an in-house communicator lobbyist. I left my position at Environment Connecticut on February 17, 2012. I also terminated my registration as a communicator lobbyist as of that date.

On February 24, 2012, I filed papers with the Connecticut State Elections Enforcement Commission to establish a candidate committee to run for State Representative in the 2012 November general election.

On February 28, 2012 I received a phone call from SEEC staff attorneys informing me that because I had been registered as a communicator lobbyist during the calendar year 2012, that for purposes of compliance with election statutes, particularly those statutes regulating solicitation of campaign contributions, I may be considered a communicator lobbyist for the remainder of the calendar year. They specifically referenced OSE advisory opinion 2008-7. They explained that the OSE advisory opinion stated that a communicator lobbyist who terminates his registration nonetheless remains a communicator lobbyist for the remainder of the calendar year. SEEC staff further informed me that, due to an amendment made to subsection (e) of the General Statutes § 9-610, in July Special Session P.A. 10-1, that the ban on communicator lobbyists' solicitation of campaign contributions during the legislative session would, if I am considered a communicator lobbyist, prevent me from soliciting contributions in support of my own campaign while the General Assembly is in session. Their reasoning being that, while subsection (j) of § 9-610 provides a necessary exception to various restrictions

within § 9-610 on contribution solicitations by communicator lobbyists as applied to activities on behalf of a communicator lobbyist's own campaign, when subsection (e) was amended by July Sp. Session P.A. 10-1 to make subsection (e) applicable to communicator lobbyists, the legislature failed to include subsection (e) in the exceptions listed in subsection (j).

As a result of the interaction between OSE advisory opinion 2008-7 and the provisions of § 9-610 subsequent to the 2010 amendment, SEEC staff informed me that it appears I may be prohibited from engaging in any solicitation of contributions for my own campaign while the General Assembly is in session.

Upon reviewing OSE Advisory Opinion 2008-7, it appears that the specific scenario analyzed for the purpose of determining whether a communicator lobbyist who terminates his registration remains a communicator lobbyist for the remainder of the calendar year differs from the facts of my registration and subsequent termination in several key ways.

Most relevant, it appears that the conclusion of Advisory Opinion 2008-7 that a communicator lobbyist who terminates their registration remains a lobbyist was limited specifically to analysis of the case of a communicator lobbyist who, prior to the date of the termination of their registration with OSE, received two thousand dollars for lobbying. In my case, I did not reach the \$2000 threshold for calendar year 2012 prior to my termination date of February 17, 2012. In addition, I do not intend to receive any compensation for lobbying during the remainder of 2012.

In the process of wrapping up my work at Environment Connecticut, I did engage in some activities that were reportable as lobbying expenses during January and February. For February, approximately \$300 of my salary

was for lobbying-related activities. Including a few hours of my time in January that was lobbying related as well, my total compensation for lobbying-related activities in 2012 prior to my separation from the organization and termination of my lobbyist registration would have amounted to less than \$500.

In addition to the above facts presented by the petitioner, the Office of State Ethics received the following supporting facts from the petitioner's former supervisor, Johanna Neumann, Regional Director of Environment America.

In 2011, Mr. Phelps notified us that he intended to run for state representative in 2012, at which time he was informed that Environment Connecticut would require him to leave staff prior to filing papers to form a candidate committee. Mr. Phelps agreed that [sic] that requirement and informed us that he intended to leave staff by no later than February, 2012. His separation from the organization included termination of his lobbyist registration which was submitted to the OSE on Feb 17, 2012.

Due to our requirement that Mr. Phelps leave Environment Connecticut prior to commencing his campaign for office, and the understanding that this would occur (as it did) by mid-February, Environment Connecticut did not expect to provide Mr. Phelps, nor did he agree to receive, \$2,000 or more for lobbying activities in 2012.

Analysis

In determining whether the petitioner is a "communicator lobbyist," we must first set forth the applicable statutory terms.

Under the Ethics Code, the term "communicator lobbyist" means "a lobbyist who communicates directly or solicits others to communicate with an official or his staff in the legislative or executive branch of

government or in a quasi-public agency for the purpose of influencing legislative or administrative action.”² In turn, the term "lobbyist" means, in relevant part, “a person who in lobbying and in furtherance of lobbying makes or agrees to make expenditures, or receives or agrees to receive compensation, reimbursement, or both, 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...”³

Thus, to be a “communicator lobbyist,” a person must first be a “lobbyist,” which requires him or her to receive or agree to receive compensation, reimbursement, or both, in excess of \$2000 in any calendar year for lobbying or activities in furtherance thereof.

The question therefore is this: did the petitioner receive or agree to receive compensation or reimbursement for actual expenses, or both, in the amount of \$2000 or more in the calendar year in which he terminated his lobbyist registration. If so, then the petitioner will be considered a “communicator lobbyist” under the Ethics Code.

The petitioner stated that prior to the termination of his lobbyist registration on February 17, 2012, he did not receive or agree to receive \$2000 or more in calendar year 2012 in lobbying or in furtherance of lobbying activities on behalf of his employer, Environment Connecticut. Specifically, the petitioner noted that, as reflected in the financial filings of Environment Connecticut, his total compensation for lobbying-related activities in 2012, prior to his separation from the organization and termination of his lobbyist registration amounted to less than \$500.

Further, according to the petitioner’s supervisor at Environment Connecticut, Johanna Neumann, the petitioner informed his employer in 2011 of his intent to run for state representative in 2012. Due to the organization’s requirement that the petitioner leave Environment Connecticut prior to commencing his campaign for office, and the understanding that this would occur (as it did) by mid-February,

²General Statutes § 1-91 (v).

³General Statutes § 1-91 (l).

Environment Connecticut did not expect to provide the petitioner, nor did he agree to receive, \$2,000 or more for lobbying activities in 2012.

Accordingly, for the foregoing reasons, we conclude that the petitioner is not a “communicator lobbyist” for calendar year 2012.⁴

By order of the Board,

Dated _____

Chairperson

⁴Although in his petition for Advisory Opinion, the petitioner has argued that the conclusion reached in Advisory Opinion 2008-7 was limited specifically to analysis of the case of a communicator lobbyist who, prior to the date of the termination of lobbyist registration with the Office of State Ethics, received \$2000 for lobbying, we affirm that despite the hypothetical scenario used in that conclusion, the ruling in Advisory Opinion No. 2008-7 applies to a communicator lobbyist who either *receives or agrees to receive* compensation, reimbursement, or both, in the amount of \$2000 or more for providing lobbying services to a client lobbyist.