



**GAFFNEY, BENNETT AND ASSOCIATES INCORPORATED**  
GOVERNMENT RELATIONS AND POLITICAL CONSULTING

Jay F. Malcynsky, Esq.  
Stephen R. Kinney  
Richard F. Conway

T.J. Casey  
Lisa M. Fecke

Paula A. Clarke, Esq.  
Brendan M. Fox, Esq.  
Jeffrey A. Zyjeski, Esq.

State Elections Enforcement Commission  
20 Trinity Street  
Hartford, CT 06106

February 10, 2014

To Whom It May Concern:

Pursuant to Connecticut State Regulations Section 9-7b-64 I am requesting a declaratory ruling on the following matter.

Nature of the Petition: Individual Lobbyists, the Association of Connecticut Lobbyists, the State Elections Enforcement Commission and the Office of State Ethics have been examining the issue of whether a lobbying firm may purchase advertising space in an ad book produced in connection with a fundraiser sponsored by a political action committee and whether or not lobbyists may solicit their clients for such ads. Attached are SEEC Opinion of Counsel 2013-12, a legal opinion from the attorney of the Association of Connecticut Lobbyists and an informal staff opinion from OSE General Counsel Barbara Housen to myself.

Identify the Statute: Connecticut General Statutes Section 9-601a(b)(10)(B) – “(B) 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 town committee, provided the cumulative purchase of such space does not exceed two hundred fifty dollars from any single town committee in any calendar year if the purchaser is a business entity or fifty dollars for purchases by any other person. Notwithstanding the provisions of this subparagraph, the following may not purchase advertising space in a program for a fund-raising affair or on signs at a fund-raising affair sponsored by a town committee: (i) A communicator lobbyist, (ii) a member of the immediate family of a communicator lobbyist, (iii) a state contractor, (iv) a prospective state contractor, or (v) a principal of a state contractor or prospective state contractor. As used in this subparagraph, “state contractor”, “prospective state contractor” and “principal of a state contractor or prospective state contractor” have the same meanings as provided in subsection (g) of section 9-612;”

RECEIVED  
STATE ELECTIONS  
FEB 18 2014  
ENFORCEMENT COMMISSION

The Question: Can a lobbying firm purchase an ad in an ad book produced in connection with a fundraiser sponsored by a political action committee and can a communicator lobbyist solicit their clients to purchase such ads?

In the attached opinions and letters are the data, facts and arguments surrounding the issue. I have also attached a Petition for Declaratory Ruling I am submitting to the Citizen's Ethics Advisory Board covering the same subject matter.

Thank you for your attention to this matter,

Sincerely,

A handwritten signature in black ink, appearing to read "Jay F. Malcysnky". The signature is fluid and cursive, with the first name "Jay" and last name "Malcysnky" clearly distinguishable.

Jay F. Malcysnky, Esq.



STATE OF CONNECTICUT  
OFFICE OF STATE ETHICS

BEFORE THE CITIZEN'S ETHICS ADVISORY BOARD

In the matter of the petition for a declaratory ruling of: §  
§  
§  
§ No. \_\_\_\_\_  
§ (Assigned by OSE)  
§  
Jay F. Malcynsky, Esq. \_\_\_\_\_ Petitioner §

**PETITION FOR DECLARATORY RULING**

Jay F. Malcynsky, Esq. \_\_\_\_\_ Petitions the Citizen's Ethics Advisory Board to issue a  
(Name of Petitioner)

declaratory ruling in this matter.

The factual background of the issue is as follows:

*Note: If you require additional space you may attach separate pages and any supporting documentation to the petition form.*

Individual lobbyists, the Association of Connecticut Lobbyists, the State Elections Enforcement Commission and the Office of State Ethics have been examining C.G.S. Sec. 9-601a(b)(10)(B) as amended by Public Act 13-180 and the issue of whether a lobbying firm may purchase advertising space in an ad book produced in connection with a fundraiser sponsored by a political action committee and whether or not lobbyists may solicit their clients for such ads. Attached are SEEC Opinion of Counsel 2013-12, a legal opinion by the attorney for the Association of Connecticut Lobbyists Bartley Halloran and an informal staff opinion from OSE General Counsel Barbara Housen to me.

The question upon which Petitioner seeks a ruling is as follows:

*Note: If you require additional space you may attach separate pages and any supporting documentation to the petition form.*

Can a lobbying firm purchase an ad in an ad book produced in connection with a fundraiser sponsored by a political action committee and can a communicator lobbyist solicit their clients to purchase such ads?

Petitioner's position with respect to the question is as follows:

*Note: If you require additional space you may attach separate pages and any supporting documentation to the petition form.*

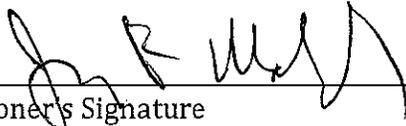
It is the petitioner's position that a lobbying firm can purchase advertising space in an ad book produced in connection with a fundraiser for a political action committee and a communicator lobbyist can solicit their clients to do the same.

Petitioner's argument (if any) in support of his or her position (with such legal citations as are considered appropriate) is as follows:

*Note: If you require additional space you may attach separate pages and any supporting documentation to the petition form.*

See attached SEEC Opinion 2013-12 and informal staff opinion from Barbara Housen. Also attached is a Petition for Declaratory Ruling I have submitted to the State Elections Enforcement Commission on the same subject matter.

Wherefore, petitioner requests that the Citizen's Ethics Advisory Board grant this petition and issue a declaratory ruling in this matter.



\_\_\_\_\_  
Petitioner's Signature

2/10/14

\_\_\_\_\_  
Date

\_\_\_\_\_  
One Liberty Square, Suite 201

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
New Britain, CT 06051

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
860-229-0301

\_\_\_\_\_  
Daytime Phone No.

**Deliver or Mail to:**

**Citizen's Ethics Advisory Board  
Office of State Ethics  
18-20 Trinity Street  
Hartford, CT 06106-1660**



STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

November 21, 2013

Deb Hutton  
Chief Legal Counsel  
House Republican Office  
Legislative Office Building, Room 4200  
Hartford, Connecticut 06106

**Opinion of Counsel 2013-12: Advertising Purchases in a Political Committee Ad Program**

Dear Ms. Hutton:

You have inquired into the advertising purchase exception to contribution in light of its extension to political committees under Public Act 13-180: *An Act Concerning Disclosure of Independent Expenditures and Changes to Other Campaign Finance Laws and Election Laws*. Specifically, you have asked about: (1) the limits applicable to a trade or professional association's purchase of advertising in a political committee's ad program; and (2) the ability of communicator lobbyists and client lobbyists to purchase such ads.

General Statutes § 9-601a (b) (10) (B), as amended by Public Act 13-180, provides that the following is not considered a 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. Notwithstanding the provisions of this subparagraph, the following may not purchase advertising space 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: (i) A communicator lobbyist, (ii) a member of the immediate family of a communicator lobbyist, (iii) a state contractor, (iv) a prospective state contractor, or (v) a principal of a state contractor or prospective state contractor. As used in this subparagraph, "state contractor", "prospective state contractor" and "principal of a state contractor or prospective state contractor" have the same meanings as provided in subsection (f) of section 9-612, as amended by this act;*

(Emphasis added). This exception to contribution is commonly known commonly "the ad book exception."

### **Ad Purchases by Trade or Professional Associations**

Pursuant to the ad book exception to contribution, a business entity may purchase advertising space in a program or on signs at a fundraising affair held by a political committee if the cumulative amount for all such purchases from that political committee does not exceed \$250 per calendar year, while all "other person[s]" are limited to cumulative purchases of \$50 per calendar year. *See* General Statutes § 9-601a (b) (10) (B).

The definition of "business entity" includes "trade or professional associations which receive funds from membership dues *and* other sources." General Statutes § 9-601 (8) (emphasis added). The definition of "person" includes "organization[s]," and the definition of "organization" in turn includes, "trade or professional associations which receive their funds *exclusively* from membership dues." General Statutes § 9-601 (7) & (10) (emphasis added).

Thus, it follows that a trade or professional association that receives its funds from membership dues and other sources is considered a business entity under the law and may purchase up to \$250 in advertising in a political committee's ad program(s) per calendar year while a trade or professional association that receives its funds from membership dues only is considered an organization and may cumulatively purchase up to \$50 in such advertising per calendar year.

### **Ad Purchases by Communicator Lobbyists and Client Lobbyists**

You also inquired into the ability of communicator lobbyists and client lobbyists to purchase ads under the ad book exception. Specifically, you asked for confirmation of your understanding of the following hypothetical:

1. A client lobbyist, let's say for example, the company AT&T, could purchase an Ad.
2. Their in-house communicator lobbyist, "Joe Smith" cannot purchase an Ad.
3. The outside communicator lobbyist hired by AT&T, "Mary Smith", also cannot purchase an Ad, HOWEVER, the lobbying firm in which Mary Smith is a member could purchase an Ad.

The ad book exception specifically provides that communicator lobbyists, as well as members of their immediate family, may not purchase advertising under the exception. *See* General Statutes § 9-601a (b) (10) (B). It does not provide any such restrictions as to client lobbyists and thus, client lobbyists may purchase advertising under this exception up to the normal limits (\$250 per year cumulatively if the client lobbyist is a business entity).

As far as the meaning of "communicator lobbyist" and "client lobbyist," the campaign finance statutes look to General Statutes § 1-91 for the definitions of both terms, which is under the purview of the Office of State Ethics. *See* General Statutes 9-601 (16).<sup>1</sup> General Statutes § 1-

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<sup>1</sup> General Statutes 9-601 (16) provides: "'Lobbyist' means a lobbyist, as defined in section 1-91, and 'communicator lobbyist' means a communicator lobbyist, as defined in section 1-91, and 'client lobbyist' means a client lobbyist, as defined in section 1-91."

91 defines a "communicator lobbyist" as "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" while it defines a "client lobbyist" as "a lobbyist on behalf of whom lobbying takes place and who makes expenditures for lobbying and in furtherance of lobbying." General Statutes § 91 (u) & (v). "Lobbyist," in turn, is generally defined as "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." General Statutes § 1-91 (l). We defer to the Office of State Ethics with respect to the interpretation of section 1-91 in the identification and registration of such lobbyists.

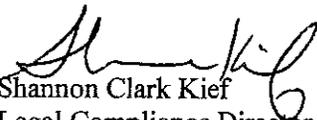
In your hypothetical, you identify four potential purchasers: one client lobbyist, two communicator lobbyists and a lobbying firm. If AT&T is registered only as a client lobbyist with the Office of State Ethics, then it would be permitted to purchase an ad under the ad book exception. The two people identified as communicator lobbyists employed or hired by AT&T would be prohibited from utilizing the ad book exception. With respect to the lobbying firm, we defer to the Office of State Ethics as to whether or not such firm would be deemed a communicator lobbyist. If the firm does not fall within that definition, it may make an ad book purchase.

\* \* \*

The foregoing advice is an Opinion of Counsel and not a formal Declaratory Ruling or Advisory Opinion of the Commission. An Opinion of Counsel differs in effect from the latter in that it is not binding on the Commission; however, the person to whom an Opinion of Counsel is rendered may rely upon the opinion with respect to any matter brought before the Commission based upon the same facts and circumstances. The Commission emphasizes that if there is an omission or change in any of the facts or assumptions presented, and such omission, fact or assumption is material to the conclusion or conclusions presented in this Opinion of Counsel, then the requestor may not rely on that conclusion as support for its proposed activity.

Please contact me if you have any additional questions or if we can be of further assistance. I may be reached via telephone at 860.256.2975.

Very truly yours,

  
Shannon Clark Kief  
Legal Compliance Director



HALLORAN & HALLORAN  
ATTORNEYS AT LAW

R. Bartley Halloran, Esq.  
rhalloran@halloranlawct.com  
Kaitlin A. Halloran, Esq.  
khalloran@halloranlawct.com

Concetta B. Aresco, Paralegal  
caresco@halloranlawct.com  
Chelinda M. Paterno, Paralegal  
cpaterno@halloranlawct.com

January 27, 2014

Randy Collins, President  
% Matt Gianquinto  
Judith Blei Government Relations  
104 Hungerford Street  
Hartford, CT 06106

Dear Board and Members of the ACL:

It is important to remember, the opinions advanced by the State Elections Enforcement Commission and the Office of State Ethics, will not offer you or any of the members of the Association of Connecticut Lobbyists protection in the future. The opinion is *not binding* on the State Elections Enforcement Commission and the only person that may rely on the opinion is Attorney Deb Hutton from House Republican Office.

I believe the opinion by the Office of State Ethics is fatally flawed. The opinion, as quoted in House Minority Leader Larry Cafero's e-mail, only looks at the definition of the term "business organization" and then concludes that a business organization is not a communicator lobbyist. To support this proposition, the Office of State Ethics cites a 1999 opinion by the Office of State Ethics entitled *Proper Calculation of Registration Fee Payments When A Business Organization Replaces One of Its Lobbyists*. First of all, this opinion was rendered prior to the changes in the Campaign Finance Law and the creation of the terms "client lobbyist" and "communicator lobbyist." In this opinion, the Commission concludes that a business organization is solely a statutory creation and a business organization is not the registered lobbyist.

Connecticut General Statute Section 1-91(v) defines "*communicator lobbyist*" as 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.

Connecticut General Statute Section 1-91(l) defines "*lobbyist*" as 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. The section goes on to state that a lobbyist shall not include a (1) public official; (2) a publisher, owner or an employee of the press, radio or television while disseminating news or editorial comment to the general

public in the ordinary course of business; (3) an individual representing himself or another person before the legislature or state agency other than for the purpose of influencing legislative or administrative action; (4) any individual or employee who receives no compensation for lobbying; (5) a member of an advisory board acting within the scope of his appointment; (6) a senator or representative in Congress acting within the scope of his office; (7) any person who receives no compensation or reimbursement specifically for lobbying and spends no more than five hours in furtherance of lobbying... ; and (8) a lobbyist who agrees to receive compensation or reimbursement or both which is less than two thousand dollars from each client in any calendar year.

Connecticut General Statute Section 1-91(n) defines "person" as an individual, a business, corporation, limited liability company, union, association, firm, partnership, committee, club or other organization or group of persons.

It is my opinion, that a lobbying firm, that employs one or more individual lobbyists is a communicator lobbyist under Connecticut General Statute Section 1-91 and is therefore *prohibited* under Connecticut General Statute 9-601a(b)(10)(B) from purchasing any advertising space in a program for a fundraising affair or on signs at a fundraising affair sponsored by a party committee or a political committee, other than an exploratory committee.

It is also my opinion, that a lobbyist should not solicit their clients to purchase ads. Even though ads are not considered a contribution under Connecticut General Statute Section 9-601a(b)(10)(B), the current definition of solicitation is extremely broad and does not apply only to contributions. More specifically, under Connecticut General Statute Section 9-601(26)(b), "solicit" is defined in part as (b) participating in any fundraiser activities for a candidate committee, exploratory committee, political committee, or party committee, including but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee, *servicing on the committee that is hosting a fundraising event, introducing the candidate or making other public remarks at a fundraising event, being honored or otherwise recognized at the event; and (c) serving as chairperson, treasurer or deputy treasurer of any such committee.* Due to the broad and vague definition of solicitation, I would strongly advise against soliciting your clients to purchase ads.

Very truly yours



R. Bartley Halloran

**From:** "Housen, Barbara" <Barbara.Housen@ct.gov>  
**To:** "Jay Malcynsky" <jmalcynsky@gbact.com>  
**Cc:** "Kief, Shannon" <Shannon.Kief@ct.gov>, "O'Dowd, Brian" <Brian.ODowd@ct.gov>, "Carson, Carol" <Carol.Carson@ct.gov>  
**Subject:** RE: Request to SEEC

Dear Mr. Malcynsky,

I apologize for any confusion you may have experienced in trying to seek clarity from the Office of State Ethics (OSE). First I want to emphasize that the State Elections Enforcement Commission (SEEC) is the sole agency with jurisdiction and authority to answer *both* of your questions. I'll address your questions below in reverse order. Regarding your question # 2, because no Code of Ethics provision is implicated the OSE does not have the authority to address this question.

Regarding your question #1: whether a lobbying firm (such as Gaffney, Bennett & Associates), can purchase an ad in an ad book produced in connection with a fundraiser sponsored by a political action committee, my understanding is that the SEEC has already answered that question in the affirmative. (See SEEC's Opinion of Counsel attached dated 11/21/13 issued to Deb Hutton from Shannon Kief, page 3, first full paragraph, last two sentences, stating "With respect to the lobbying firm, we defer to the Office of State Ethics as to whether or not such firm would be deemed a communicator lobbyist. If the firm does not fall within that definition IT MAY MAKE AN AD BOOK PURCHASE" [emphasis added.] ; and OSE's Informal Staff Opinion attached dated 11/21/13 from Peter Lewandowski to Deb Hutton clarifying that "the term 'communicator lobbyist' DOES NOT APPLY OR EXTEND TO 'business organization'". (emphasis added)

In answering your question#2 in the affirmative SEEC relied on the determination by the OSE that a "business organization" is not a "communicator lobbyist", within the meaning of the Code of Ethics. (By way of background, SEEC's statute does not itself define the term "communicator lobbyist" and *requires* SEEC to look to the Code of Ethics' definition of "communicator lobbyist". This SEEC has done).

The OSE staff stands by the determination that a "business organization" is not a "communicator lobbyist", within the meaning of the Code of Ethics. This is an informal staff opinion and not necessarily the opinion of the CEAB. Should you desire a formal CEAB Advisory Opinion on this limited question, please let me know and I will forward your request to the CEAB. The CEAB could likely address this question at its February 27<sup>th</sup> meeting. Formal Advisory Opinions are binding upon the CEAB, and are an absolute defense in any criminal action brought under the provisions of the Code of Ethics if the accused individual acted in reliance upon such Advisory Opinion.

Sincerely,

Barbara

*Barbara E. Housen*  
*General Counsel*  
*Office of State Ethics*  
*A Division of the Office of Governmental Accountability*  
*18-20 Trinity Street*  
*Hartford, CT*  
*USA*  
*860-263-2388 Direct*  
*860-263-2400 Main*  
*860-263-2402 Fax*  
email: [barbara.housen@ct.gov](mailto:barbara.housen@ct.gov)  
Home Page: [www.ct.gov/ethics](http://www.ct.gov/ethics)

**From:** Jay Malcynsky [<mailto:jmalcynsky@gbact.com>]  
**Sent:** Tuesday, January 28, 2014 4:56 PM  
**To:** Kief, Shannon; O'Dowd, Brian; Housen, Barbara  
**Subject:** FW: Request to SEEC  
**Importance:** High

Dear Ms. Kief, Ms. Housen and Mr. O'Dowd –

I write to you regarding a matter of some urgency for my firm, Gaffney, Bennett & Associates. As you are aware, for some time now, the State Enforcement Elections Commission and the Office of State Ethics have been examining the following issues: i) is a lobbying firm permitted to purchase an advertisement in an ad book that is produced in connection with a fundraiser sponsored by a political action committee; and ii) are communicator lobbyists permitted to solicit their registered clients to purchase an advertisement in an ad book produced in connection with a fundraiser sponsored by a political action committee?

At this time, there appear to be two conflicting opinions regarding the legal authority for a lobbying firm to purchase such an ad as well as whether a communicator lobbyist is allowed to solicit his/her own clients to purchase such ads. For your information, I attach two opinions: the first is dated November 21, 2013 from Ms. Kief and the second is dated January 27, 2014 from Bart Halloran, who produced this opinion at the request of the Association of Connecticut Lobbyists.

Ultimately, the opinion of the regulatory authorities (i.e., the SEEC and OSE) is the paramount opinion. Therefore, I ask two very simple questions:

1) Can Gaffney, Bennett & Associates, a lobbying firm, purchase an ad in an ad book produced in connection with a fundraiser sponsored by a political action committee; and

2) Can a communicator lobbyist such as myself solicit his clients to purchase such an ad?

Given the differences of interpretation in the law, I would appreciate simple "Yes" or "No" answers to these apparently simple questions. As you may appreciate, a **written response** to these questions is extremely important to me and my firm. My firm is being solicited at this time to participate in events that will occur over the course of the next week, beginning today. Therefore, although I am sure that there are others matters that are vying for your attention, time is of the essence with respect to my request.

Thank you very much for your consideration and attention.

Jay Malcynsky

860-229-0301