



ADVISORY OPINION 07-09

Interpretation of T.C.A. § 3-6-301(15) with respect to the Greater Nashville Regional Council and the Regional Transportation Authority as “employers of lobbyists”, and to the registration of their legal counsel as a “lobbyist”.

INTRODUCTION

The following Advisory Opinion is in response to a written inquiry from Mr. Sam H. Edwards as to whether the Greater Nashville Regional Council (“Council”) and the Regional Transportation Authority (“Authority”) are employers of lobbyists under the Comprehensive Governmental Ethics Reform Act of 2006 (the “Act”), and whether Mr. Edwards must register as a lobbyist for either entity.

Mr. Edwards asks the following questions: (1) Are the Council and the Authority “agencies or entities of state, county or municipal government” and therefore exempt from registering as employers of lobbyists pursuant to T.C.A. § 3-6-301(15)(D)? (2) Is the Executive Director/Legal Counsel of the Council required to register as a lobbyist pursuant to T.C.A. § 3-6-301(15)(D)? (3) Is the Legal Counsel of the Council, when assigned to perform lobbying services for the Authority pursuant to a contract for staff services between Council and Authority, required to register as a lobbyist for the Authority under T.C.A. § 3-6-301(15)(D)?

In response to the above questions, the Tennessee Ethics Commission (“Commission”) concludes:

- (1) The statutory definition of the term “lobby” specifically exempts from its provisions communications by an employee of any department, agency or entity of state, county or municipal government and, because the Council and the Authority are both statutorily-created public entities whose governing bodies are comprised primarily of local and state public officials, who are funded by a combination of federal, state and local government funds, and who are recognized as tax exempt governmental entities by the Tennessee Department of Revenue and local city and county governments, neither the Council nor the Authority are required to register as an employer of a lobbyist;
- (2) The statutory definition of the term “lobby” specifically exempts from its provisions communications by an employee of any department, agency or entity of state, county or municipal government and, thus, the Council’s Executive Director/Legal Counsel is not required to register as a lobbyist for the Council; and
- (3) The statutory definition of the term “lobby” specifically includes communications by a contractor to any department, agency or entity of state, county or municipal government and, thus, because the Council contracts with the Authority to provide staff support services, including representation of the Authority by the Council’s Executive Director/Legal Counsel before the Tennessee General Assembly, the Council’s Executive Director/Legal Counsel is required to register as a lobbyist for the Authority.

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BACKGROUND

The Council was created by the Tennessee General Assembly. See T.C.A. § 64-7-101, *et seq.* Its purpose is to undertake regional planning and economic development activities on behalf of 13 counties and 52 cities in Middle Tennessee. Its governing body is comprised primarily of local and state public officials. Council employees are eligible to participate in the state retirement and insurance systems. The Council is funded by governmental entities and is recognized as a tax exempt governmental entity by the state Department of Revenue and the Metropolitan Government of Nashville and Davidson County.

The Authority was also created by the Tennessee General Assembly. See T.C.A. § 64-8-101, *et seq.* Its purpose is to undertake planning for and implementing mass transit services and systems on behalf of 9 counties and the cities in those counties and its governing body is comprised entirely of county and state public officials. It does not have any employees, and instead contracts with the Council for staff support, office, financial, and administrative services. The Authority is funded by governmental entities and is recognized as a tax exempt governmental entity by the state Department of Revenue, the Metropolitan Government of Nashville and Davidson County, and Wilson County.

Mr. Edwards states that, in his position as the Executive Director/Legal Counsel for the Council, one of his duties is to represent the interests of the Council before the General Assembly. In addition, pursuant to the Council's contract to provide staff support to the Authority, Mr. Edwards represents the interests of the Authority before the General Assembly.

DISCUSSION

A. COUNCIL OR AUTHORITY AS EXEMPT ENTITIES OF GOVERNMENT

Are the Council and the Authority "agencies or entities of state, county or municipal government" and therefore exempt from registering as employers of a lobbyists pursuant to T.C.A. § 3-6-301(15)(D)?

T.C.A. § 3-6-301(15) states, in part:

(D) "Lobby" does not mean communications by an employee of a school board, municipal utility, utility district, or any department, agency or entity of state, county or municipal government; provided, however, that, if the board, utility, district, department, agency or entity employs, retains or otherwise arranges for lobbyist services in this state by a contractor, subcontractor or other representative who is not an employee of such board, utility, district, department, agency or entity, then "lobby" includes communications by the contractor, subcontractor or other representative, and the contractor, subcontractor or other representative shall comply with the lobbying registration and other provisions of this part pertaining to lobbyists; provided further, however, that the board, utility, district, department, agency or entity that employs the contractor, subcontractor or other representative is not deemed to be an employer of a lobbyist for purposes of this part;

Thus, even if there is a circumstance under which a lobbyist for a department, agency or entity of state, county or municipal government" must register as a lobbyist, the department, agency or entity itself is exempt from registering as an employer of a lobbyist.

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Numerous factors support the conclusion that the Council and the Authority are each a “department, agency or entity of state, county or municipal government”. Both entities are statutorily-created public entities whose governing bodies are comprised primarily of local and state public officials, are funded by a combination of federal, state and local government funds, and are recognized as tax exempt governmental entities by the Tennessee Department of Revenue and local city and county governments. In addition, Council employees are eligible to participate in certain state benefits. Thus, the Council and the Authority are each exempt from registering as an employer of a lobbyist.

B. REQUIREMENT TO REGISTER AS LOBBYIST FOR COUNCIL

Is the Executive Director/Legal Counsel of the Council required to register as a lobbyist pursuant to T.C.A. § 3-6-301(15)(D)?

T.C.A. § 3-6-301(15)(D) exempts from the definition of “lobby” communications by an employee of a government entity. Mr. Edwards is employed as Executive Director/Legal Counsel by the Council. As discussed in question (1), above, the Council is a government entity. Although one of Mr. Edwards’ duties is representation of the Council before the General Assembly, these communications are exempt from the definition of “lobby” and he is not required to register as a lobbyist for the Council.

C. REQUIREMENT TO REGISTER AS LOBBYIST FOR AUTHORITY

Is the Executive Director/Legal Counsel of the Council, when assigned to perform lobbying services for the Authority pursuant to a contract for staff services between the Council and the Authority, required to register as a lobbyist for the Authority under T.C.A. § 3-6-301(15)(D)?

T.C.A. § 3-6-301(15)(D) contains a specific provision for contracted lobbyists:

. . . if the board, utility, district, department, agency or entity employs, retains or otherwise arranges for lobbyist services in this state by a contractor, subcontractor or other representative who is *not an employee* of such board, utility, district, department, agency or entity, then "lobby" *includes* communications by the contractor, subcontractor or other representative, and the contractor, subcontractor or other representative shall comply with the lobbying registration and other provisions of this part pertaining to lobbyists . . . [emphasis added]

Mr. Edwards states that the Authority does not have any employees. Instead, the Council contracts with the Authority to provide staff services, including the use of the Council’s Legal Counsel to represent the Authority before the General Assembly. Accordingly, as a contract lobbyist for the Authority, Mr. Edwards is required to register as a lobbyist for the Authority under T.C.A. § 3-6-302.

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