



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 91-3

Reporting of the Fundamental Terms of Media Contracts In
Furtherance of Lobbying

Carol S. Clapp, Esq., representing Sullivan and LeShane Public Relations, Inc. (SLPR), has asked the Ethics Commission for an advisory opinion interpreting the statutory and regulatory provisions which require disclosure of the fundamental terms of contracts in furtherance of lobbying.

Specifically, Attorney Clapp has asked how these requirements apply to contracts for media campaigns entered into by SLPR and its clients, when such clients are or become registered lobbyists and the purpose of the media campaign is lobbying or is in furtherance of lobbying. According to Attorney Clapp's request for advice, such contracts are not necessarily for a fixed dollar amount. Rather, in the ordinary course of business, a client will agree to pay SLPR an hourly rate or fixed retainer for its services plus expenses for media purchases. Often, the media campaign does not have a definite termination date, and, therefore, the total dollar amount of the contract is not determined at the onset of the contractual relationship.

Pursuant to Connecticut General Statutes §1-96(b), a lobbyist's periodic financial reports shall disclose "...the fundamental terms of contracts, agreements or promises to pay or receive compensation or reimbursement or to make expenditures in furtherance of lobbying. Any such fundamental terms shall be reported once in the monthly, quarterly or post-termination report next following the entering into of such contract." The phrase "fundamental terms" is not defined in the Code of Ethics for Lobbyists, Conn. Gen. Stat., Chapter 10, Part II. The statutory requirement is, however, further delineated in the Commission's regulations which state that the disclosure shall include "the dollar amount" of the contract, agreement or promise. Regulations of Conn. State Agencies §1-92-48(d).

Attorney Clapp has suggested that the following client/lobbyist disclosure of fundamental terms of contract is sufficient under the Code and Commission regulations: the rate

(i.e., the dollar amount of the hourly fee or retainer) to be charged by SLPR for its services and a statement that the client will pay for or reimburse for media space and/or time to be purchased at prevailing rates. Attorney Clapp asserts that such reporting should satisfy statutory requirements because, under applicable contract law, it discloses the fundamental terms of the agreement, i.e., the essential components which render the contract binding on the parties and allow ultimate determination of the contract price.

The Ethics Commission agrees with Attorney Clapp that, absent statutory definition, one must look to applicable contract law to establish what constitutes the fundamental terms of a contract. The Commission further agrees that under contract law the fundamental terms are those elements which render the agreement binding and enforceable.

In applying this standard, however, the Commission questions whether the suggested disclosure is sufficiently complete. For while it reveals the intent to pay for media at prevailing rates, it discloses neither the frequency or mode of the purchase nor the overall amount to be expended. It does not seem likely that a client, in the ordinary course of business, would enter into a contract to procure advertising without establishing any of these basic parameters. Such a course of conduct would appear to ignore economic constraints and could well result in an agreement with a legally indeterminable price.

In summary, the requirement to disclose the fundamental terms of contracts in furtherance of lobbying is met when one discloses all the elements of the agreement which render it binding and enforceable. When the ultimate price is not determined at the onset of the contract, one must disclose those terms of the agreement which allow its execution including, above all else, any available information (total amount authorized for expenditure, frequency of expenditure, etc.) which provides public disclosure of the lobbyist's financial commitment to the activity in question.

By order of the Commission,

Rabbi Michael Menitoff

Rabbi Michael Menitoff
Chairperson

Dated 1-7-91