STATE OF CONNECTICUT
OFFICE OF STATE ETHICS

Advisory Opinion No. 2015-6

December 17, 2015

Question Presented: **Under General Statutes § 1-97 (c) (2), a lobbyist may not "attempt to influence any legislative or administrative action for the purpose of thereafter being employed to secure its defeat." The petitioner asks whether this provision applies *only* to so-called "make-work" conduct.**

Brief Answer: **We conclude that the prohibition in § 1-97 (c) (2) applies only if there is evidence (be it direct or circumstantial) of a lobbyist's "make-work" intent at the time he or she attempts to influence such action (i.e., intent to be employed afterward to secure its defeat).**

At its November 2015 regular meeting, the Citizen's Ethics Advisory Board ("Board") granted the petition for an advisory opinion submitted by Attorney Robert Shea. The Board now issues this advisory opinion in accordance with General Statutes § 1-92 (e) of the Code of Ethics for Lobbyists ("Lobbyist Code").

Background

In his petition, the petitioner notes that General Statutes § 1-97 (c) (2) has "never been interpreted by the [Office of State Ethics], nor by the several other states which have similar provisions." He goes on to note, however, that this type of provision was "described as a 'Make-Work' provision in a Fall 2006 *Cornell Journal of Law & Public*

Policy article entitled: 'Regulating Lobbyists: Law, Ethics, and Public Policy.'" In that article, the author states:

> 10. Make-Work Legislative Proposals:
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> Many states prohibit lobbyists from introducing legislation solely for the purpose of securing future employment either to ensure the law's passage or defeat. Such limitations share a common objective with ethics rules and other laws that prohibit attorneys and their clients from engaging in frivolous litigation. The goal in both of these contexts is to avoid wasting valuable public and private resources on initiatives that do not further legitimate purposes.[1]

The petitioner then offers two examples of the type of conduct to which, he believes, the prohibition in § 1-97 (c) (2) should attach. The first is this:

> During the off-session here in Connecticut, I [a communicator lobbyist] read a newspaper story that the Massachusetts Legislature (which meets year-round) is considering legislation to outlaw soft-top automobiles, such as jeep wranglers. After reading the story, I then meet with Connecticut Senator Jones and suggest to her that Massachusetts is considering a bill to outlaw soft-tops, and she should consider proposing this same bill in Connecticut . . . . Senator Jones then agrees with me that she likes the proposal and that she will file the proposal with the Connecticut Legislature's Transportation Committee during the next session.
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> I then contact the Jeep/General Motors Government Relations Office and inform them that the Connecticut Legislature—particularly Senator Jones—will be filing a proposal to outlaw soft-top jeeps similar to the

[1]The article's author does not actually cite to § 1-97 (c) (2) in discussing such "Make-Work Legislative Proposals." He does, however, cite to a similarly worded Alaska statute, under which a lobbyist may not "cause or influence the introduction of a legislative measure solely for the purpose of thereafter being employed to secure its passage or its defeat . . . ." Alaska Stat. § 24.45.121 (a) (4).

> existing Massachusetts proposal. I suggest to Jeep that they should hire me to help defeat the Connecticut proposal, and Jeep tells me that they will hire me . . . .

And the second example, which plays off the first, is this: As a communicator lobbyist, "I . . . push[] my existing client (the ABC Consumer Safety Association) to propose and support a legislative prohibition on soft-tops for the purpose of *thereafter* being hired by another new client (Jeep/General Motors) to defeat the proposal."

The petitioner asks us to confirm that the prohibition in § 1-97 (c) (2) "is solely designed to regulate [those] types of make-work conduct," and that it is *not* intended to cover "non-make-work" conduct, such as if he, as a communicator lobbyist, were to do as follows:

> (1) Get in a dispute with [his] client about strategy (provided that there is no evidence of make-work conduct on [his] part); or
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> (2) Have 2 or more existing clients who have different positions on a specific legislative proposal (provided that there is no evidence of make-work conduct on [his] part); or
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> (3) Provide negligent representation to [his] client (provided that there is no evidence of make-work conduct on [his] part); or
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> (4) Contact a potential client after a legislative proposal is filed in order [to] be hired to secure defeat of the proposal, but there is no evidence whatsoever regarding the first prong of the make work provision requiring [him] to have previously attempted to influence legislative action.

Analysis

The question whether the language of § 1-97 (c) (2) was intended to cover such "non-make-work" conduct is a matter of statutory construction, the "fundamental objective" of which is to "ascertain

and give effect to the apparent intent of the legislature."[2] That is,

> we seek to determine . . . the meaning of the statutory language as applied to the facts . . . [before us], including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1–2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.[3]

Starting, as we must, with the text of § 1-97 (c) (2), it provides as follows: "No lobbyist may . . . attempt to influence any legislative or administrative action *for the purpose* of thereafter being employed to secure its defeat . . . ."[4] The crucial language there—in fact, the key to answering the question whether § 1-97 (c) (2) applies to the "non-make-work" conduct noted above—is the phrase "for the purpose."

Neither § 1-97 (c) nor any other provision in the Lobbyist Code defines the phrase "for the purpose." "We may presume, therefore, that the legislature intended it to have its ordinary meaning in the English language, as gleaned from the context of its use."[5] "Under such circumstances, it is appropriate to look to the common understanding of the term as expressed in a dictionary."[6]

The pertinent word in the phrase "for the purpose" is, obviously, "purpose," which the dictionary defines as: "That which one sets before him to accomplish or attain; an end, *an intention*, or aim, object, plan, project. [The] [t]erm is synonymous with ends sought, an

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[2](Internal quotation marks omitted.) *Cruz* v. *Montanez*, 294 Conn. 357, 367 (2009).

[3](Internal quotation marks omitted.) Id.

[4](Emphasis added.)

[5]*Bortner* v. *Woodbridge*, 250 Conn. 241, 267 (1999); see General Statutes § 1-1 (a) ("[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language").

[6](Internal quotation marks omitted.) *Tine* v. *Zoning Board of Appeals*, 308 Conn. 300, 307 (2013).

object to be attained; *an intention*, etc."[7] Relying on a similar definition of "purpose," one court noted that the "plain meaning" of the phrase "for the purpose" "indicates an anticipated result that is *intended* or desired."[8] The phrase, said another court, "contemplates a subjective standard, one that requires examination of the *intent* behind a [person's] behavior."[9]

And that is precisely what the State Ethics Commission ("Commission") concluded when it construed the phrase "for the purpose" as it is used in the Lobbyist Code's definition of "lobbying." Enacted almost forty years ago in the very same legislation as was § 1-97 (c) (2), the term "lobbying" was originally defined as follows: "communicating with any official or his staff in the legislative or executive branch of government *for the purpose* of influencing any legislative or administrative action."[10]

That language—and, in particular, the phrase "for the purpose"—was construed shortly after the provision's enactment, in Advisory Opinion No. 78-13.[11] There, the Commission was asked whether an insurance firm was "lobbying" when it provided certain information to a legislative committee at the request of the committee's chairman.[12] After citing the definition of "lobbying"—and its use of the phrase "for the purpose"—the Commission responded thus:

> Whether the information is volunteered or requested by the legislature and, in the latter case, the circumstances behind the request, are not controlling. *What determines whether the insurance firm is lobbying is its intent in furnishing the information.* If it is for the purpose of influencing legislative action, it is lobbying.[13]

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[7](Emphasis added.) Black's Law Dictionary (Abridged 6th Ed. 1991); see also The American Heritage Dictionary of the English Language (New College Ed. 1981) (defining "purpose" as "[t]he object toward which one strives or for which something exists; goal; aim," and "[a] result of effect that is intended or desired; intention").

[8](Emphasis added.) *Colorado Ethics Watch* v. *Broomfield*, 203 P.3d 623, 625 (Colo. App. 2009).

[9](Emphasis added.) *O'Brien* v. *Leegin Creative Leather Products, Inc.*, 294 Kan. 318, 318 (2012).

[10](Emphasis added.) Public Acts 1977, No. 77-605.

[11]Connecticut Law Journal, Vol. 40, No. 8, p. 11 (August 22, 1978).

[12]Id.

[13](Emphasis added.) Id.

In other words, the Commission construed the phrase "for the purpose" in the definition of "lobbying" as creating an *intent*-based "lobbying" standard.

It would make little sense to give the phrase "for the purpose" one meaning in the definition of "lobbying" and another in § 1-97 (c) (2)—particularly given that the two Lobbyist Code provisions were enacted together in a single comprehensive statute. Indeed, it is a "well established principle that, absent evidence to the contrary, "where the legislature uses the same phrase it intends the same meaning."[14] In this case, there being no such "evidence to the contrary," we conclude that the phrase "for the purpose" in § 1-97 (c) (2) translates as "with the intent."

And if we insert the latter phrase into the text of § 1-97 (c) (2), we are left with this: "No lobbyist may . . . attempt to influence any legislative or administrative action [with the intent] of thereafter being employed to secure its defeat . . . ." The focus of this prohibition, therefore, is on the lobbyist's intent; specifically, the lobbyist's intent *at the time* he or she "attempt[s] to influence legislative or administrative action."[15] If the lobbyist's intent at that time is to be employed "thereafter" (i.e., "[a]fterward; later"[16]) to secure its defeat—or, to use the petitioner's terminology, if the lobbyist's intent at the time is to "make [such] work" for himself or herself—then the lobbyist has violated § 1-97 (c) (2).[17]

In applying our interpretation of § 1-97 (c) (2) to the petitioner's

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[14](Internal quotation marks omitted.) *Schiano* v. *Bliss Exterminating Co.*, 260 Conn. 21, 41 (2002).

[15]Cf. *State* v. *Garcia*, 788 N.W.2d 1, 2 (Iowa Ct. App. 2010) (noting that the following statutory language "focuses on a defendant's intent *at the time* of fraudulent use: A person commits the offense of identity theft if the person fraudulently uses or attempts to fraudulently use identification information of another person, *with the intent* to obtain credit, property, services, or other benefit").

[16]Black's Law Dictionary (8th ed. 2004).

[17]A lobbyist's subjective intent is difficult to discern, but it may be, as noted in Advisory Opinion No. 78-13, "manifested objectively . . . ." Connecticut Law Journal, Vol. 40, No. 8, supra, p. 11); see also *Wright* v. *C.I.R.*, 756 F.2d 1039, 1042 (4th Cir. 1985) ("[i]ntent must be discerned in many areas of the law, and it is done regularly, but rarely is there a case where such discernment is 'totally subjective', and this case certainly provides ample non-subjective guidance to discern that intent").

four "non-make-work" scenarios, the answer as to its applicability is, we believe, plain and unambiguous, and yields neither absurd nor unworkable results: If there is no evidence (either direct or circumstantial) of a lobbyist's "make-work" intent at the time he attempts to influence legislative or administrative action—i.e., intent to be employed afterward to secure its defeat—then the prohibition in § 1-97 (c) (2) simply does not come into play. This is true regardless of whether the lobbyist "get[s] in a dispute with [his] client about strategy," has "2 or more existing clients who have different positions on a specific legislative proposal," "[p]rovide[s] negligent representation to [his] client," or "[c]ontacts a potential client after a legislative proposal is filed [with no involvement by the lobbyist] in order to be hired to secure defeat of the proposal . . . ."

Conclusion

We conclude that the prohibition in § 1-97 (c) (2) applies only if there is evidence (be it direct or circumstantial) of a lobbyist's "make-work" intent at the time he or she attempts to influence legislative or administrative action (i.e., intent to be employed afterward to secure its defeat).

By order of the Board,

Dated 12/17/15

/s/ Charles F. Chiusano
Chairperson