

1971 O. A. G.

OFFICIAL OPINION NO. 3

February 18, 1971

Hon. Larry A. Conrad
Secretary of State
201 State House
Indianapolis, Indiana 46204

Dear Mr. Conrad:

This Official Opinion is in response to your request for an interpretation of the Acts of 1915, Ch. 2, Sec. 1, p. 5, and amendments thereto (Burns' Section 34-301, *et seq.*; IC 1971, 2-4-3-1), with respect to the duties of your office in the matter of registration of lobbyists. In view of the statewide application of your hypothetical questions, the matter warrants detailed analysis.

ANALYSIS

First of all, what persons come within the scope of the Indiana Lobbyists Act?

Burns' Section 34-301, *supra*, states that:

"Any person, firm, corporation or association, or any officer or employee of a corporation or association, acting for or on behalf of such corporation or association, who, directly or indirectly, *employs* any person or persons, firm, corporation or association to promote, advocate, or oppose in any manner, any matter pending, or that might legally come before the general assembly * * *" (My emphasis)

The word "employment" includes "any compensation, given directly or indirectly." Anything of value given to a lobbyist in return for his services is considered "compensation." *Commissioner of Internal Revenue v. LoBue*, (1955) 351 U.S. 243.

The words "promote, advocate, or oppose," should be given their ordinary and common meanings, in accordance with the rules on statutory construction cited in Burns' Section 1-201 (IC 1971, 1-1-4-1).

OPINION 3

Burns' Section 34-301, *supra*, requires the person, association or corporation which employs the lobbyist to do the following:

- A. Provide the Secretary of State within one week of the employment of the lobbyist a statement showing the following facts:
 1. The name of any person, corporation or association employing lobbyist(s) along with the business and, where applicable, the residence address and the name(s) and addresses of any and all principals, partners and officers.
 2. Nature of the business conducted.
 3. Name and address of lobbyist(s) employed.
 4. The exact subject matter to be promoted or opposed by lobbyist before the General Assembly.
 5. Designation as to whether the lobbyist is to be "legislative counsel" or "legislative agent," or both.
 - a. The definition of "legislative counsel" is a lobbyist who appears before committees of either house or who promotes or opposes legislation by written brief or statement.
 - b. The definition of "legislative agent" is a lobbyist who promotes or opposes legislation by any other means including personal contact with a legislator or others. A lobbyist can be one or the other or both.
 6. Any change, modification or addition must be furnished in writing to the Secretary of State within one week.
- B. The person, corporation or association which employs the lobbyist must pay the filing fee (See Burns; Section 34-307, *supra*.).
- C. The person, corporation or association which employs the lobbyist must file a complete and detailed statement showing expenses and salaries of lobbyists they have employed within thirty (30) days after the adjournment of the General Assembly (See Burns' section 34-303, *supra*).

- D. No person shall be employed as a lobbyist contingent upon a passage or defeat of any proposed legislation or upon any other contingency connected with legislative action.

The next item to consider is what the lobbyist himself must do to satisfy this law. Within one week of employment, the individual employed to be a lobbyist must sign an affidavit with your Office, affirming that he has never been a member of the Communist Party or other subversive organization. (See Burns' Section 34-301a, *supra*).

The Secretary of State issues a certificate to each person designated as lobbyist, which certificate shall serve as an identification. This certificate shall show the name of the employer or employers of the lobbyist and the subject matter to be lobbied for or against. The certificate, according to present law, is good for three (3) months. This means that it is necessary for lobbyists to re-register after the expiration of three (3) months and to re-register for each session of the General Assembly.

The following categories of persons *cannot* be lobbyists for money or other compensation:

Public officials of the state, county, township, city or town, either elective or appointive; members or employees of any state political central committee; members or employees of either house of the General Assembly; representatives of the press. (See Burns; Section 34-306, *supra*).

Whoever violates any of the provisions of this Act shall be adjudged guilty of a felony, and upon conviction shall be fined not less than \$200 nor more than \$1,000, or imprisoned not less than three (3) months nor more than one (1) year. See Burns' Section 34-308, *supra*.

CONCLUSION

It is my official opinion that the essence of the Lobbyists' Act with respect to the Secretary of State is contained in the foregoing analysis of Burns' Section 34-301, *et seq.* and

OPINION 3

that persons who are employed and receive compensation to lobby before the Legislature must register with your Office. The persons who are forbidden to lobby for hire are enumerated in the foregoing analysis.

Nothing in this Act prevents any citizen from consulting with a member of the General Assembly on any legislative matter. The Act only comes into play when the citizen is a paid lobbyist who must register. With the foregoing guidelines, the registration of lobbyists in your Office then becomes an administrative matter.