NOTICE OF INTENT TO ADOPT AN ADVISORY OPINION OF THE GEORGIA GOVERNMENT TRANSPARENCY AND CAMPAIGN FINANCE COMMISSION

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia Government Transparency and Campaign Finance Commission (hereinafter "Commission") proposes to adopt:

Advisory Opinion No. 2015-03

This notice, together with an exact copy of the proposed advisory opinion is being mailed to all persons who have requested, in writing, that they be placed on a mailing list. A copy of this notice, an exact copy of the advisory opinion may be reviewed during normal business hours of 8:30 a.m. to 4:30 p.m. Monday through Friday, except official State holidays, at the Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1402 - West Tower, Atlanta, Georgia 30334. These documents will be available for review on the Georgia Government Transparency and Campaign Finance Commission website (www.ethics.ga.gov). Copies may be requested by contacting the Commission at 404-463-1980.

A public hearing is scheduled to begin at 10:00 AM on March 24, 2016 in Room 606 at the Coverdell Legislative Office Building, 18 Capitol Square SW, Atlanta, GA 30334 to provide the public an opportunity to comment upon and provide input into the proposed advisory opinion. At the public hearing anyone may present data, make a statement, comment, or offer a viewpoint or argument whether orally or in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record. Oral statements should be concise and will be limited to five (5) minutes per person. Written comments are welcome. Such written comments must be legible and signed, and should contain contact information from the maker (address, telephone and/or facsimile number, etc.). To ensure their consideration, written comments must be received on or before March 20, 2016. Written Comments should be addressed to Nancy Sandberg, Legal Administrative Assistant, Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1402 – West Tower, Atlanta, Georgia 30334. Fax: 404-463-1988.

The proposed amendments will be considered for adoption by the Commission at its meeting scheduled to begin at 10:00 a.m. on March 24, 2016, at the Coverdell Legislative Office Building, Room 606, 18 Capitol Square SW, Atlanta, GA 30334.

The Georgia Government Transparency and Campaign Finance Commission has the authority to adopt this advisory opinion pursuant to authority contained in O.C.G.A. § 21-5-6(b)(13).

This 22nd day of February, 2016.

Stefan Ritter, Executive Secretary

GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

Advisory Opinion No. 2015-03

In response to numerous informal requests regarding the obligations, if any, of persons employed by the executive or judicial branches of state government to register as lobbyists, the Georgia Government Transparency and Campaign Finance Commission advises that if such an employee that meets the definition of lobbyist in O.C.G.A. § 21-5-70(a)(5) and does not fall within an exception to registration, *see, e.g.,* O.C.G.A. § 21-5-71(i)(2), (3), (6), he or she must register as a lobbyist. Due to the hardship presented by various agency interpretations of the effect of the 2013 deletion of O.C.G.A. § 21-5-70(a)(5)(C), *see* 2013 Ga. Laws 540 § 2, this Commission opinion shall only apply prospectively, and late fees shall not be imposed on those State employees who did not register prior to this opinion due to a mistake in understanding the law.

Question Presented

> Did the deletion of O.C.G.A. § 21-5-70(a)(5)(D) from the Georgia Government Transparency and Campaign Finance Act (hereinafter "Campaign Finance Act") have the effect of exempting all employees of the executive or judicial branches of state government from any obligation to register and file as lobbyists?

Background

In 2013, along with numerous other changes to the Campaign Finance Act, the General Assembly deleted the following language from the definition of lobbyist:

> (C) Any natural person who as an employee of the executive branch or judicial branch of state government engages in any activity covered under subparagraph (A) of this paragraph;

2013 Ga. Laws 540, § 2. "Subparagraph (A) of this paragraph" is one of several definitions of "lobbyist" in the Act. *See* O.C.G.A. § 21-5-70(a)(5).

Some but not all State agencies and employees interpreted the deletion of subparagraph (C) as an elimination of any obligation of employees of the State government to register as lobbyists under any circumstances. Other State agencies, including the Attorney General's Office, disagreed,

although no formal interpretations issued. Numerous informal inquiries have been made to Commission staff seeks guidance as to the obligation of State level public employees to register.

Discussion

The Campaign Finance Act, O.C.G.A. § 21-5-1 *et. seq.*, states that "no person shall engage in lobbying as defined by this article unless such person is registered with the commission as a lobbyist." O.C.G.A. § 21-5-71(a)(1). The activity of "lobbying" is likewise defined as "the activity of a lobbyist while acting in that capacity." O.C.G.A. § 21-5-70(4). Once one has registered with the Commission as a lobbyist, one is required to file periodic reports with the Commission disclosing, among other things, lobbying expenditures.[1] O.C.G.A. § 21-5-73.

The Campaign Finance Act currently defines a "lobbyist" as:

> (A) **Any natural person** who, either individually or as an employee of another person, receives or anticipates **receiving more than $250.00 per calendar year in compensation or reimbursement** or payment of expenses specifically for undertaking to promote or oppose the passage of any **legislation by the General Assembly**, or any committee of either chamber or a joint committee thereof, or the approval or veto of legislation by the Governor;
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> (B) **Any natural person** who makes **a lobbying expenditure of more than $1,000.00 in a calendar year**, not including the person's own travel, food, lodging expenses, or informational material, to promote or oppose the passage of any **legislation by the General Assembly**, or any committee of either chamber or a joint committee thereof, or the approval or veto of legislation by the Governor;
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> (C) Reserved;
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> (D) Any natural person who, either individually or as an employee of another person, is compensated specifically for undertaking to promote or oppose the **passage of any ordinance or resolution** by a public officer specified under subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3, or any committee of such public officers, or the approval or veto of any such ordinance or resolution;
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> (E) Any natural person who makes a lobbying expenditure of more than $1,000.00 in a calendar year, not including the person's own travel, food, lodging expenses, or informational material, to promote or oppose the **passage of any ordinance or resolution** by a public officer specified under subparagraph (F) or (G) of paragraph

[1] The frequency of the reports is determined by who, when and for what purpose the lobbying was conducted. *See* O.C.G.A. § 21-5-73(b), (c), (d).

(22) of Code Section 21-5-3, or any committee of such public officers, or the approval or veto of any such ordinance or resolution;

(F) Any natural person who as an employee of the executive branch or judicial branch of local government engages in any activity covered under subparagraph (D) of this paragraph;

(G) Any natural person who, for compensation, either individually or as an employee of another person, is **hired specifically to undertake influencing a public officer or state agency in the selection of a vendor** to supply any goods or services to any state agency but does not include any employee or independent contractor of the vendor solely on the basis that such employee or independent contractor participates in soliciting a bid or in preparing a written bid, written proposal, or other document relating to a potential sale to a state agency and shall not include a bona fide salesperson who sells to or contracts with a state agency for goods or services and who does not otherwise engage in activities described in subparagraphs (A) through (F) or (H) through (I) of this paragraph;

(H) Any natural person who, either individually or as an employee of another person, is **compensated specifically for undertaking to promote or oppose the passage of any rule or regulation of any state agency**;

(I) Any natural person who, either individually or as an employee of another person, is **compensated specifically for undertaking to promote or oppose any matter before the State Transportation Board**; or

(J) Any natural person who makes a lobbying **expenditure of more than $1,000.00** in a calendar year, not including the person's own travel, food, lodging expenses, or informational material, to promote or oppose any matter **before the State Transportation Board**.

O.C.G.A. § 21-5-70(5) (emphasis added for clarity between the subparts).

Subparagraph (C), which now states "reserved," see above, formerly included in the definition of lobbyist "[a]ny natural person who as an employee of the executive branch or judicial branch of state government engages in any activity covered under subparagraph (A) of this paragraph; … ." As noted above, subparagraph (C) was removed in 2013 along many other changes to the Act. Its removal likely was intended to insulate State employees from the burden of registering as lobbyists if the Act is read in an overly manner.

Nonetheless, the 2013 amendment of the Campaign Finance Act did not modify other subparagraphs of the definition of "lobbyist" to exclude State employees from their ambit. These all apply, on their face, to "any natural person." *See* O.C.G.A. § 21-5-70(5) (set out above).

The Commission is required to apply the law as written. *Lue v. Eady*, 297 Ga. 321. 332 (2015) ("Where the plain language of a statute is clear and susceptible of only one reasonable construction, we must construe the statute according to its terms," quoting *Atlanta Independent School System v. Atlanta Neighborhood Charter School, Inc.*, 293 Ga. 629, 631 (2013)). The Commission does not have the authority to grant a lobbying exception for State employees unless that authority is expressly granted to it by the General Assembly. The Commission has not been granted such authority. Thus, since the definition of "lobbyist" applies to all "natural persons," it necessarily applies, on its face, to State employees. The deletion of subparagraph (C) from the definitions does not alter the language or requirements of the other subparagraphs.

The fact State employees in the executive and judicial branches may have to register as lobbyists in some circumstances does not impose draconian obligations on them nor obligations beyond those imposed on any other natural person. State employees are only required to register as lobbyists when, to paraphrase the definition of "lobbyist," they (a) receive more than $250 in compensation or reimbursement "specifically" to promote or oppose State legislation; (b) they make a "lobbying expenditure" of more than $1,000; or (c) they are "compensated specifically for undertaking to promote or oppose" the passage or an ordinance, resolution, rule, regulation, or matter before the State Transportation Board or to influence the selection of a vendor. *See* O.C.G.A. § 21-5-70(5). The circumstances in which these would occur are rare. Even then they may be excepted from the lobbyist registration and filing requirements if their conduct involves, among other things, (a) giving testimony or information regarding statutes, rules, and regulations when invited to do so; (b) if they are "public officers or appointed public officials performing the official duties of their public office or position"; or (c) if they are "perform[ing] various services at the direction of a member of the General Assembly related to the legislative process." *See* O.C.G.A. § 21-5-71(i).

Nonetheless, it has come to the attention of the Commission that the employees of many State agencies may not have been registering and filing reports as lobbyists under the mistaken view that the deletion of subparagraph (C) from § 21-5-70(5) had the effect of eliminating their obligation to register and file reports under other subparagraphs of the law. This Commission has the authority to grant hardship waivers on a showing of good cause. O.C.G.A. § 21-5-6(b)(14)(C)(i). The circumstances presented before the Commission constitute such a hardship, and, therefore, this advisory opinion and the registration and filing requirements it describes shall only be applied in a prospective manner.

Conclusion

For the forgoing reasons, the Georgia Government Transparency and Campaign Finance Commission advises that if such an employee that meets the definition of lobbyist in O.C.G.A. § 21-5-70(a)(5) and does not fall within an exception to registration, *see, e.g.,* O.C.G.A. § 21-5-71(i)(2), (2), (6), he or she must register as a lobbyist, but, due to the hardship presented by various agency interpretations of the effect of the 2013 deletion of O.C.G.A. § 21-5-70(a)(5)(C), this

opinion shall only apply prospectively, and late fees shall not be imposed on those State employees who did not register prior to this opinion due to a mistake in understanding the law.

Advisory Opinion 2015-03 is hereby adopted by the Commission in conformity with O.C.G.A. § 21-5-6(13) on_____, 2016.

_____
Hillary S. Stringfellow
Chair of the Commission

AO 2015-03 prepared by Stefan Ritter and Robert S. Lane.
September 15, 2015.