STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2009-01

[Date TBD], 2009

Whether a natural person constitutes a lobbyist based on the nomenclature of the service the natural person provides or the service the natural person actually performs. In addition, whether "specifically hired" means "exclusively hired" when determining if a natural person must register as a vendor level or state agency level lobbyist.

ADVISORY OPINION:

The advisory opinion request asks whether a natural person hired by a vendor to provide "high level strategic consulting advice" (or work described by analogous nomenclature) must register as a vendor level lobbyist even though he or she is not "specifically hired" to lobby for a state contract. Additionally, the request asks whether a natural person hired by a client, whose normal course of business brings it before state agencies, to provide "high level strategic consulting advice" (or work described by analogous nomenclature) must register as a state agency level lobbyist even though he or she is not "specifically hired" to lobby for or against the passage of a rule or regulation of any state agency.

The Ethics in Government Act (Act) divides lobbying into four different levels, two of which apply to natural persons who are "specifically hired" to lobby. These two categories consist of vendor level and state agency level lobbying. The Act defines a natural person acting in his or her professional capacity or as the employee of another as a "lobbyist" when that person is specifically hired to undertake influencing a public officer or state agency concerning the selection of a vendor to supply goods or services, or when a natural person is specifically hired to undertake promoting the adoption of a rule or regulation by a state agency. O.C.G.A. § 21-5-70(5)(G) & (H).

"Specifically hired" does not mean "exclusively hired." *Black's Law Dictionary* 607, 1435 (Bryan A. Gardner ed., 8th ed. West 2004). To be a lobbyist, a natural person need not be hired exclusively for the purpose of influencing vendor selection or the passage of a rule or regulation nor does it have to be an enumerated duty if, in fact, the duties of the lobbyist in his or her normal course of business include these functions. In addition, a natural person hired to provide a multitude of services, only one of which consists of undertaking to influence the award of a state contract, or the passage of a state agency rule or regulation, is still required to register as a lobbyist.

Concerning the question at hand, the providing of "high level strategic consulting advice" to a client may or may not include lobbying. The Act is not concerned with what the service provided is called but with the function that is performed. Determining the difference is dependent on fact and not on how the contracted service is denominated.

Prepared by Tom Plank