STATE ETHICS COMMISSION
ADVISORY OPINION
S.E.C. 2009-03

October 15, 2009

Whether “economic development consultants” that deal with public policy decisions, which either takes the form of an ordinance, resolution, rule, or regulation, or has the same effect, made by local officials or state agencies are required to register and report in accordance with the lobbyist provision of the Ethics in Government Act?

ADVISORY OPINION:

The Ethics in Government Act (Act) defines lobbyist broadly, but included in its definition are activities that are specifically applicable toward conduct pertaining to local officials and state agencies.

With regard to activities pertaining to local officials, the Act defines lobbyist as any natural person who, for compensation, either individually or as an employee of another person, undertakes to promote or oppose the passage of any ordinance or resolution by an elected county official, elected municipal official, or elected member of a local board of education, or the approval or veto of any such ordinance or resolution. O.C.G.A. § 21-5-70(5)(D). It also applies to any natural person who makes a total expenditure of more than $250.00 in a calendar year, not including the person's own travel, food, lodging expenses, or informational material, to engage in the aforementioned activity. O.C.G.A. § 21-5-70(5)(E).

With regard to activities pertaining to state agencies, the Act defines lobbyist as any natural person who, for compensation, either individually or as an employee of another person, is hired specifically to undertake to promote or oppose the passage of any rule or regulation of any state agency.

Accordingly, per explicit language in the Act, any natural person that is either being compensated or spends more than $250 in a calendar year – aside from the person's own travel, food, lodging expenses, or informational material -- which undertakes to promote or oppose the passage of any ordinance or resolution by any of the aforementioned local officials, must register and report as a lobbyist. Likewise, any person compensated and hired specifically to undertake to promote or oppose the passage of any rule or regulation of any state agency must register and report as a lobbyist. Note that ordinances and resolutions pertain to local candidates, while rules and regulations apply to state agencies.

What is less obvious is whether or not a natural person engages in lobbying if the individual undertakes to promote or oppose the passage of a matter that has the

"same effect" as an ordinance or resolution for an applicable local official, or the "same effect" as a rule or regulation for any state agency. In order to ascertain this answer, it is first important to examine the meaning of the words ordinance, resolution, rule, and regulation.

According to Black's Law Dictionary, an ordinance is defined as "[a]n authoritative law or decree; esp., a municipal regulation." Black's Law Dictionary (8th ed. 2004). "An ordinance… may be purely administrative in nature, establishing offices, prescribing duties, or setting salaries; it may have to do with the routine or procedure of the governing body. Or it may be a government exercise of the power to control the conduct of the public…" Judith O'Gallagher, Municipal Ordinances § 1A.01, at 3 (2d ed. 1998). A resolution is defined as "[a] main motion that formally expresses the sense, will, or action of a deliberative assembly (esp. a legislative body)." Similar to the previous two definitions, a rule is defined as "generally, an established and authoritative standard or principle; a general norm mandating or guiding conduct or action in a given type of situation" and a regulation is defined as "[t]he act or process of controlling by rule or restriction." Black's Law Dictionary (8th ed. 2004).

What is significant in the aforementioned definitions is that each term is defined broadly, and all of these definitions refer to generic actions or conduct as opposed to any proper nouns. This fact, coupled with the underlying purpose of the Act, indicates that it is not the formal name that any particular public policy decision takes, but rather, its substance and effect which controls.

Put another way, the name or any terms used to describe an ordinance, resolution, rule, or regulation will not abrogate any corresponding disclosure or reporting requirements so long as the action has the same effect in accordance with the aforementioned dictionary definitions of the term. As an example, if a motion that formally expresses the sense, will, or action of a deliberative assembly is called a "mandate" or "order" rather than a "resolution", then the mandate or order would still be treated as a resolution for the purposes of the lobbyist provisions of the Act. Once again, note that ordinances and resolutions pertain to local candidates, and rules and regulations apply to state agencies. While there is significant overlap in the definitions of the words "ordinances" and "resolutions" with the words "rules" and "regulations," such words are not necessarily synonymous.

In sum, "economic development consultants" that deal with public policy decisions, which have the effect of an ordinance or resolution in the case of a local official, or a rule or regulation in the case of a state agency, must register and report in accordance with the applicable provision of the Act irrespective of whether such ordinance, resolution, rule, or regulation is explicitly described as such.