
1997 Wis Eth Bd 5
LOBBYING AND LOBBYISTS

A lobbying principal should not report in its Statement of Lobbying Activities and Expenditures the time and money it has spent on developing and airing television commercials that do not urge members of the general public to try to influence legislation or administrative rulemaking. (July 17, 1997)

Facts

¶ 1. This opinion is based upon these understandings:

- a. You write on behalf of a company that does business in Wisconsin.
- b. The company is a registered lobbying principal.
- c. The Legislature has been considering legislation that would affect the ability of the company to conduct its business in Wisconsin.
- d. To conduct its business in Wisconsin, the company must obtain permits and approvals from various units of government.
- e. The company has been airing television ads.
- f. The company's stated purposes in airing the commercials are: (a) to assist in counteracting opponents' efforts to persuade the public to oppose issuance of local approvals; and (b) to counteract opponents' efforts to influence public opinion in general.
- g. The company has stated that it hopes these efforts will succeed in building public support for its business operations and lead to desired results in the Legislature and with local governments.
- h. One of the commercials touts the benefits that Wisconsin residents could derive from the company's business.
- i. One of the ads talks about the historic connection of the company's business to Wisconsin.

- j. One of the ads addresses some legislators' desire to prevent the company from doing business in Wisconsin and the negative effect this would have on jobs.

Questions

¶ 2. The Ethics Board understands your question to be:

Consistent with Wisconsin's lobbying law, how, if at all, should the company report in its Statement of Lobbying Activities and Expenditures for the first half of 1997 the time and money it has spent on developing and airing the commercials?

Discussion

¶ 3. Wisconsin's lobbying law, ch. 13, subch. III, *Wisconsin Statutes*, is very specific about the reporting of a lobbying principal's time and expenses related to paid advertising activities. First, §13.621(1)(a) and(b), *Wisconsin Statutes*, provides:

13.621 Exemptions. (1) COMPLETE EXEMPTION FOR CERTAIN CONDUCT.
This subchapter does not apply to the following activities:

* * *

(b) Except as provided in s. 13.68(1)(a)5., news or feature reporting, *paid advertising activities* or editorial comment by working members of the press, and the publication or dissemination thereof by a newspaper, book publisher, regularly published periodical, radio station or television station.

(Emphasis added).

¶ 4. Section 13.68(1)(a)5., *Wisconsin Statutes*, spells out the reporting requirement for paid advertising. That section provides:

13.68 (1)(a)5. Lobbying expenditures made and obligations incurred for paid advertising and any other activities *conducted for the purpose of urging members of the general public to attempt to influence legislative or administrative action* shall be included in the aggregate total [of lobbying expenses], if the total amount of all such lobbying expenditures made and obligations incurred exceeds \$500 during the reporting period.

(Emphasis added).

¶ 5. The statutory reporting requirement for paid advertising activities is a narrow one. While reportable advertising need not necessarily contain specific language, such as “contact your legislator,” none of the ads that are the subject of this opinion can fairly be said to urge members of the general public to attempt to influence legislative or administrative action.*

¶ 6. For this reason, the lobbying law does not require the company to report its time or expenses relating to the paid advertising about which you have asked.

Advice

¶ 7. The Ethics Board advises:

The company should not report in its Statement of Lobbying Activities and Expenditures the time and money it has spent on developing and airing the commercials about which it has asked because those commercials do not urge

* The statute’s restrictive language is a response to an opinion of the Attorney General relating to previously proposed legislative language. That opinion sheds important light on the meaning of the current language of the statute. Assembly Substitute Amendment 3 to 1977 Assembly Bill 93 included in its definition of lobbying, “paid advertising through communications media” and would have required the reporting of expenditures made and obligations incurred for “advertising and public information.” In response to a request for an opinion on the constitutionality of the substitute amendment, the Attorney General stated:

It is my opinion . . . that the definition of lobbying, insofar as it includes indirectly communicative paid advertising through communications media, is probably unconstitutionally broad.

67 Op. Att’y Gen. 85, 93 (1978).

The Attorney General further opined:

[P]ersuasive efforts aimed at indirect communication with lawmakers by influencing public opinion cannot be subjected to regulation by the government. The required itemization of expenditures for public information directly violates this immunity. And since the requirement for itemization of expenditures for advertising does not distinguish between advertising which attempts to influence public opinion and advertising which seeks to solicit direct communication with lawmakers, it too infringes on the exercise of activities immune from lobbying regulations.

Id. at 104.

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members of the general public to try to influence legislation or administrative rulemaking.

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