

**TENNESSEE ETHICS COMMISSION**  
**ADVISORY OPINION NO. 06-03**  
**December 12, 2006**  
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Interpretation of T.C.A. § 3-6-301 *et seq.*  
with respect to the applicability of the  
definition of “lobbyist” to persons  
monitoring legislation and rule-making  
activities.

**INTRODUCTION**

The following Advisory Opinion is written at the request of Mr. Mark Greene, of the Tennessee Lobbyists Association, as to whether a person who merely monitors legislation on behalf of their clients must register as a lobbyist not later than seven (7) days after entering into an agreement or arrangement with an employer to provide monitoring services.

For the reasons discussed below, the Tennessee Ethics Commission (“Commission”) concludes that a person who has been employed to monitor legislation *without* engaging in traditional lobbying activities, i.e. communicating, directly or indirectly, with officials of the legislative or executive branches for the purposes of influencing legislative or administrative action, is not a lobbyist for the purposes of the Act and is not required to register.

**DISCUSSION**

The Comprehensive Governmental Ethics Reform Act of 2006 (“Act”) brought about many significant changes to the lobbyist registration process. Prior to the Act, lobbyists registered with the Registry of Election Finance (“Registry”) on an annual basis after January 1<sup>st</sup> of each reporting year. The Act, which created the Commission, provides that, commencing on October 1, 2006, lobbyists would no longer register with the Registry, but with the Commission. The Act also provided new and enhanced prohibitions on the activities of lobbyists and their employers.

The Act requires that lobbyists register not later than “seven (7) days after becoming a lobbyist.” T.C.A. § 3-6-302 (a)(2). Under the Act, “lobbyist” is defined as “any person who engages in lobbying for compensation.” T.C.A. § 3-6-301(17). The act defines “lobbying” as “communication, directly or indirectly, with any official in the legislative branch or executive branch for the purpose of influencing any legislative or administrative action.” T.C.A. § 3-6-301(15). In his inquiry to the Commission, Mr. Greene asks the Commission to consider whether the activities of legislative monitors and the limited contact they have with legislative and executive branches for the purposes of information gathering constitute “lobbying.”

The Act requires a communication, albeit an indirect one, but does not define the term “monitor.” However, *Random House Unabridged Dictionary* defines “monitor” as “to observe, record or detect (an operation or condition) with instruments that have no effect upon the operation or condition.”<sup>1</sup> Similarly, the *American Heritage Dictionary* states that “monitoring”

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<sup>1</sup> *Random House Unabridged Dictionary*, © Random House, Inc. 2006. 08 Nov. 2006. Dictionary.com  
<http://dictionary.reference.com/browse/monitor>.

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means “to keep track of systematically with a view to collecting information.”<sup>2</sup> Thus, monitoring is passive; any action taken to purposely influence or have an effect on the subject does not fit within the definition of monitoring.

According to Mr. Greene, the primary function of a legislative monitor is passively to gather information; e.g., reporting to and updating the clients about bill introductions, amendments, floor proceedings, hearings and other legislative events as well as administrative rulemaking events. These activities may often require the monitor to ask questions of officials or observe legislative proceedings. Such monitoring may also include *drafting*, *advising* clients, or *rendering opinions* on proposed legislation, rules regulations, municipal ordinances and resolutions. None of these activities, however, involve communicating “directly or indirectly, with any official in the legislative branch or executive branch for the purpose of influencing any legislative or administrative action.” See T.C.A. § 3-6-301(17). Conversely, lobbyists are employed to make those communications to attempt to influence legislative or administrative action. Following this rationale and the definitions provided in the Act, a person engaged solely in monitoring legislative and rule-making activities is not a lobbyist for the purposes of the statute and is, thus, not required to register.<sup>3</sup>

**CONCLUSION**

Persons engaged in monitoring legislation and rule-making activities are not required to register so long as their activities are limited to communications with legislative or executive officials which are solely related to information-gathering, passive observation of legislative or rulemaking proceedings, reporting to clients, rendering opinions to clients, or advising clients on proposed legislation, rules, regulations executive orders and similar legislative actions. Once they enter into an agreement with the client to lobby or their activities and responsibilities otherwise change from passive monitoring to active direct or indirect communication with legislative or executive officials for the purpose of influencing any legislative or administrative action, they must register not later than seven (7) days after the commencement of such agreement or communication unless another exception to the registration requirements applies.<sup>4</sup>

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<sup>2</sup> *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. 08 Nov. 2006. Dictionary.com <http://dictionary.reference.com/browse/monitor>.

<sup>3</sup> For analogous analyses of “monitoring services” versus “lobbying services” see, e.g., New York and Alabama state law, both of which provide exceptions from the lobbying definition for this sort of activity; both laws provide that if the service changes from passive monitoring to any attempt to persuade any member of a rule making body, the individual is required to register as a lobbyist. See N.Y. Leg. § 1-c(c)(A) and AL. ST. § 36-25-1(18)(b)(2).

<sup>4</sup> To insure that an individual who has been retained to solely monitor for the client does not exceed the scope of engagement and engage in lobbying activities, the Commission suggests that the employment or retainer agreement specifically delineate the duties of the monitor. Provided, however, that even with such an agreement, should the monitor engage in lobbying with the client’s knowledge, then both the monitor and the employer shall be subject to the registration requirements.

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