GEORGIA GOVERNMENT TRANSPARENCY AND
CAMPAIGN FINANCE COMMISSION

ADVISORY OPINION
S.E.C. 2011-1

QUESTION PRESENTED

Whether an individual who is an officer or employee of a "business entity" must register as a lobbyist if such individual meets with public officials and expresses opinions on potential or actual legislation that may impact the business entity.

RESPONSE

The Georgia Chamber of Commerce (the "Chamber") has requested the above opinion from the Georgia Government Transparency and Campaign Finance Commission (the "Commission"). The Chamber states that the answer to the above question is "no" under the circumstance where the individual's employment contract does not specifically state that he or she is being compensated to engage in lobbying activities. The Commission disagrees.

O.C.G.A. § 21-5-70(5) defines a state level lobbyist as

> (A) Any natural person who, for compensation, either individually or as an employee of another person, undertakes to promote or oppose the passage of any legislation by the General Assembly, or any committee thereof, or the approval or veto of legislation by the Governor;
> (B) 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 promote or oppose the passage of any legislation by the General Assembly, or any committee thereof, or the approval or veto of legislation by the Governor;

The Chamber suggests that unless an individual has an employment agreement which states that his or her specific duties include lobbying activities, that individual is not acting in the capacity of a lobbyist. This interpretation defies the clear language of the statute.

The plain language of the above definition states that all natural persons whether compensated as a contractor/consultant or "as an employee of another person" are considered to be lobbyists if such persons "undertake to promote or oppose the passage of any legislation by the General Assembly, or any committee thereof." The statute makes no mention of a prerequisite that an individual be expressly compensated to engage in lobbying activities. If the General Assembly intended that such a prerequisite exist, the General Assembly could have included verbiage such as "specifically hired to perform lobbying activities." Yet, the legislature did not. Instead, the General Assembly drafted a broad provision which can only be interpreted to mean that any

individual compensated by another, whether as a consultant or an employee, is acting as a lobbyist if such person attempts to influence legislation by the General Assembly.[1]

The Chamber also states that the "lobbying rules are not designed to require every person who is employed by a business entity to register as a lobbyist simply because he or she expresses an opinion on legislation to a public officer. While simply expressing an opinion may not necessarily rise to the level of promoting or opposing legislation, we see no language or statutory history that indicates anything other than the General Assembly's intent to require all employees engaging in lobbying activities on behalf of their employer to register. The plain language of the provision requires just that. See **Cavalier Convenience, Inc. v. Sarvis, 305 Ga. App. 141 (2010)** "Where the language of a statute is plain and susceptible of but one natural and reasonable construction, the court has no authority to place a different construction upon it, but must construe it according to its terms. See also **Kendall v. Griffin-Spalding County Hosp. Auth., 242 Ga. App. 821** (2000); a statute "should be read according to the natural and most obvious import of the language, without resorting to subtle and forced construction to limit or extend [its] operation."

As for the Chamber's remarks regarding employee or organization sponsored days at the Capitol, the Commission would advise the following. If a specific trade association were to sponsor a day at the Capitol for its association (e.g. "Nurses Day" at the Capitol), the association members who appear for such an event are generally doing so as an uncompensated association member and not as an employee of a business entity. As such, they would be considered volunteers who are promoting their profession on their own time, on their own behalf and not in the capacity as an employee. They are, therefore, not required to register as a lobbyist pursuant to O.C.G.A. §21-5-71(i)(1)[2]. The lines become less clear when perhaps the employee is required to belong to an association as part of their employment. Under these circumstances, the individual may well be acting as a lobbyist.

Additionally, O.C.G.A. §21-5-71(2) grants an exemption from the registration requirement for those who give testimony before a public agency or governmental entity and are not otherwise required to register. The Commission interprets this section to mean that an individual, who is not attempting to influence the passage of legislation, but is giving unbiased testimony for the purpose of educating the members of an agency or governmental entity in the consideration of an issue, is not required to register as a lobbyist. Of course, the testimony given will itself speak to the issue of whether the individual is giving information purely for the purposes of education or whether the testimony falls within the definition of lobbying activities.

Prepared by Stacey Kalberman
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[1] Of course, if someone who is an employee conducts lobbying activities as an uncompensated volunteer, in other words, they are not acting as an agent of their employer and are doing so outside their working time, they would not need to register as a lobbyist so long as they do not make expenditures in excess of $250 pursuant to O.C.G.A. § 21-5-70(5)(B).

[2] This conclusion relies on the fact that the individual did not also make more than $250 in expenditures which would require the individual to register under O.C.G.A. § 21-5-70(5)(B).