

N. WARNER LEE, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

January 2, 1975

DEPARTMENT OF LAW OPINION NO. 75-3 (R-4)

REQUESTED BY: THE HONORABLE THOMAS GOODWIN
Arizona State Representative

QUESTIONS: (All of the following questions relate to the application of A.R.S. §§ 41-1231 through 41-1238, which sections pertain to the registration and regulation of lobbyists.)

1. When is a "person" required to register?
2. Are the employees of a "person" who is required to register also required to register?
3. Are attorneys exempt from any of the provisions?
4. Does "type and nature of compensation", as that expression is employed in A.R.S. § 41-1232.A.6, refer to the "amount of compensation"?
5.
 - A. What is the meaning of the expression "each expenditure in excess of twenty-five dollars", as employed in A.R.S. § 41-1232.C.1?
 - B. Does the expression "total of all expenditures", which is employed in A.R.S. § 41-1232.C.2, include expenditures of \$25.00 and less?
6. Is an expenditure, which is made in connection with a meeting during which there is no discussion of either legislation or action by the state, required to be reported?

- ANSWERS:
1. See body of opinion.
 2. See body of opinion.
 3. Yes. See body of opinion.
 4. No.
 5. A. See body of opinion.
B. Yes.
 6. See body of opinion.

PREFATORY REMARKS

During its Second Regular Session, Arizona's Thirty-first Legislature enacted legislation providing for the registration and regulation of lobbyists (Chapter 198). The substantive provisions of that legislation are contained in Article 8.1 of Chapter 7 of Title 41, Arizona Revised Statutes (A.R.S. §§ 41-1231 through 41-1238).^{*/} The effective date of Chapter 198 was August 9, 1974.

In rendering the opinions that follow, we have endeavored to apply the usual and commonly understood meaning to the language of the subject legislation, unless it is plain that a different meaning was intended by Arizona's Legislature (e.g., the words "expenditure", "legislation" and "person" are given the meanings expressed in A.R.S. § 41-1231).

During our review of the subject legislation for the purpose of responding to your specific inquiries, we have identified several provisions, the reasonable effect of which may not be consistent with the objective intended to be achieved by the Legislature (e.g., Did the Legislature intend that a gift of an automobile, valued at \$8,000,

^{*/} Pursuant to the authority of A.R.S. § 41-1304.02, the Director of the Arizona Legislative Council renumbered many of the sections of Chapter 198. Accordingly, citations herein to provisions of the subject legislation are in agreement with the Act, as renumbered by the Director.

for the purpose of influencing the defeat of legislation, would require the donor to register? If yes, why is the registration requirement of A.R.S. § 41-1232.A limited to "any person who receives any contributions or compensation or expends any money. . . ."? If no, why is the word "expenditure" defined to include gifts of "anything of value"?)

We think a need for immediate clarification by Arizona's Legislature is signaled by the apparent "confusion" that prompts your request for our opinion on numerous questions regarding the subject legislation. Although we are hopeful that our thoughts will be helpful to persons interested in the subject legislation, it is essential to be mindful that meaningful enforcement of the various provisions can be reasonably anticipated only if the language of the statutes themselves is clear and unambiguous.

1. When is a "person" required to register?

A.R.S. § 41-1232.A reads in pertinent part as follows:

A. Any person who receives any contributions or compensation or expends any money for the purpose of attempting to influence the passage or defeat of any legislation by the legislature of this state or for the purpose of attempting to influence the actions of any state officer, agency, board, commission or council shall register with the secretary of state before doing anything in furtherance of such object.
. . . (Emphasis added.)

Based on a plain reading of the above quoted provision, it is our opinion that a person is required to register BEFORE DOING ANYTHING IN FURTHERANCE OF EITHER (1) attempting to influence the passage or defeat of any legislation by the Legislature of this state or (2) attempting to influence the actions of any state officer, agency, board, commission or council, if such person receives any contributions or compensation or expends any money for any of such purposes.

Whether or not a particular act constitutes DOING ANYTHING IN FURTHERANCE OF any of the stated purposes is a "fact" issue which must be resolved based on the circumstances of each case as disputes arise.

We think the Legislature, by the language of A.R.S. § 41-1232.A, intended that employment of a lobbyist may precede his registration. However, in no uncertain terms Arizona's Legislature states that, BEFORE DOING ANYTHING IN FURTHERANCE OF any of the stated purposes, registration shall be effected.

2. Are the employees of a "person" who is required to register also required to register?

The word "person, as employed in the subject legislation, means "an individual, partnership, committee, association, corporation and any other organization or group of persons, except legislators". Accordingly, that same meaning is intended by the use of the word "person" herein.

The registration requirement in A.R.S. § 41-1232.A applies to "any person who receives any contributions or compensation or expends any money" for any of the stated purposes.*

Based on a plain reading of A.R.S. § 41-1232.A, it is our opinion that any employee of a "person" who is required to register is also required to register if such employee "receives any contributions or compensation or expends any money" for any of the stated purposes.

For illustrative purposes, assume that "X Corporation" receives compensation for one or more of the stated purposes. "X Corporation", through its employees, will carry on its work of attempting to influence. To the extent that a paid employee, acting as such, attempts to influence either the passage or defeat of legislation or official

*/ The registration and reporting requirements of A.R.S. § 41-1232 do not apply in certain instances. See A.R.S. § 41-1232.E.

state action, such employee is receiving compensation for such purpose and, accordingly, such employee is required to register.

3. Are attorneys exempt from any of the provisions?

The registration and reporting provisions of A.R.S. § 41-1232 do not apply to attorneys representing clients before any court or before any quasi-judicial body. A.R.S. § 41-1232.E.4. Since the "professional services" detailed in A.R.S. § 41-1232.E.3 involve to a great extent--if not entirely--the practice of law, it is appropriate to also characterize that subsection as an exemption for attorneys.

However, except for Subsections 3 and 4 of A.R.S. § 41-1232.E, we do not think Arizona's Legislature has indicated an intention to exempt attorneys from the provisions of the legislation.

4. Does "type and nature of compensation", as that expression is employed in A.R.S. § 41-1232.A.6, refer to the "amount of compensation"?

". . . Words ought to be given their usual and commonly understood meaning unless it is plain or clear that a different meaning was intended. . . ." Kilpatrick v. Superior Court, 105 Ariz. 413, 466 P.2d 18 (1970).

Our research discloses various "usual and commonly understood meanings for the words "type" and "nature". However, our research does not disclose any authority whatsoever for interpreting either the word "type" or the word "nature", or the two words used in combination, as indicating a reference to "amount".

Accordingly, it is our opinion that "type and nature of compensation", as that expression is employed in A.R.S. § 41-1232.A.6, does not refer to the "amount of compensation".

5. A. What is the meaning of the expression "each expenditure", as employed in A.R.S. § 41-1232.C.1?

The word "expenditure" is defined in A.R.S. § 41-1231.1 as follows:

1. "Expenditure" means a payment, distribution, loan, advance, deposit or gift of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable, to make an expenditure.

It is our opinion that the "each expenditure" language of A.R.S. § 41-1232.C.1 means each payment, each distribution, each loan, each advance, each deposit or gift of money or anything of value, and includes each contract, promise or agreement, whether or not legally enforceable, to make an expenditure. Accordingly, if a payment of \$20.00 is made on one day and a payment of \$20.00 is made on another day, there are two expenditures.

However, the employment of a scheme for the purpose of avoiding the reporting of expenditures in excess of \$25.00 would be treated as such by the court (i.e., the substance of a transaction or series of transactions will prevail over "form" in the event of the employment of a scheme to avoid the reporting requirements).

5. B. Does the expression "total of all expenditures", which is employed in A.R.S. § 41-1232.C.2, include expenditures of \$25.00 and less?

Yes. Based on a plain reading of A.R.S. § 41-1232.C.2, it is our opinion that the expression "total of all expenditures", as employed in A.R.S. § 41-1232.C.2, includes all expenditures (i.e., expenditures greater than \$25.00, ex-penditures equal to \$25.00 and expenditures less than \$25.00).

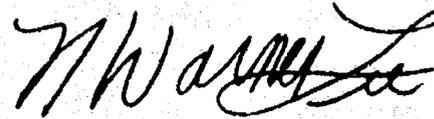
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6. Is an expenditure, which is made in connection with a meeting during which there is no discussion of either legislation or action by the state required to be reported?

The expenditures required to be reported by subsections A and B of A.R.S. § 41-1232 are those expenditures made by a person "in carrying on his work of attempting to influence the passage or defeat of" any legislation or the official actions of any state officer, agency, board, commission or council.

Whether or not a discussion of either legislation or action by the state is conducted is not determinative of whether or not the expenditure is made in carrying on the work of attempting to influence. By necessity, that "fact" issue will be resolved on an individual case, substance over form basis as disputes arise.

Respectfully submitted,



N. WARNER LEE
The Attorney General

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