

*See report*



DEPARTMENT OF LAW  
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November 3, 1977

The Honorable Sue Dye and  
The Honorable Jim Kolbe  
Arizona State Senators  
State Capitol  
Phoenix, Arizona 85007

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Re: 77-194 (R77-133)

In your letter of April 5, 1977, you requested an opinion regarding the status of lobbyists as "public figures" with respect to the area of libel and slander. For the reasons stated below, we have concluded that, in general, lobbyists are not "public figures".

New York Times v. Sullivan, 376 U.S. 254 (1964), established a rule which limits a state's authority to impose liability in a libel action when the plaintiff is a "public official". The libel must concern the plaintiff in his official capacity, and the plaintiff must prove that the statement was made with "actual malice", that is, known falsity or reckless disregard of the truth. Curtis Publishing Co. v. Butts, and its companion case, Associates Press v. Walker, 388 U.S. 130 (1967), extended the New York Times rule to libel actions where the plaintiff is a "public figure".

In attempting to define "public figure", the Supreme Court has used rather broad language. In Curtis Publishing Co., supra, the Court stated that "public figure" status may be attained by ". . . position alone and . . . by . . . purposeful activity amounting to a thrusting of . . . personality into the 'vortex' of an important public controversy . . .", 87 S.Ct. at 1991, 388 U.S. 155. The later case of Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) gave the following discussion of "public figures":

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For the most part those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classified as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. 418 U.S. 323, 345.

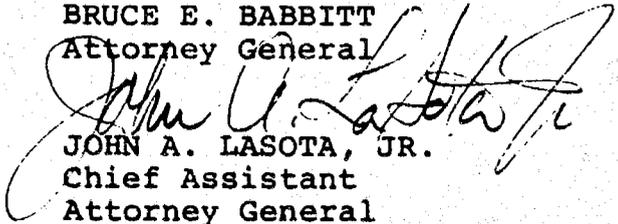
Under this view of "public figure", it is unlikely that a lobbyist's mere act of registration in accordance with Arizona law or even his appearance or testimony as a lobbyist would suffice to make a lobbyist a "public figure" within the context of libel and slander and the constitutional constructions of the First Amendment. The Supreme Court seems to condition status as a "public figure" upon a certain amount of notoriety among the general populace, and it is doubtful that the conditions of your first two questions would give a lobbyist any public recognition.

However, depending upon the facts involved, a lobbyist could thrust himself ". . . to the forefront of particular controversies . . ." in the accomplishment of his duties as a lobbyist. In such a situation, a lobbyist could well become a "public figure", not for all purposes, but for purposes of the issues involved in his actions. Thus the status of a lobbyist as a "public figure" is dependent upon facts which make him known to the public. Mere registration and testimony alone, without more, would not make a lobbyist a "public figure" in the context of libel and slander.

We hope we have been of some assistance.

Sincerely,

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