

Are You an Executive Branch Lobbyist?

In Louisiana, lobbying used to be something done solely with respect to legislators. That changed in 2005 when the Executive Branch Lobbying Law, La. R.S. 49:71, *et seq.*, first became effective. Now, not only can you lobby your state senator or representative, you also can lobby just about any state employee. Why should you care? Because if you lobby, you can be considered a lobbyist, and if you are a lobbyist, you have to register with the Louisiana Board of Ethics (Ethics Board) and provide the Ethics Board periodic reports of your lobbying activities. Failing which, you can be subjected to severe penalties.

But this is not a full blown explanation of the Executive Branch Lobbying Law. Rather, this is simply a word of caution about a couple of common situations that could render you an “executive branch” lobbyist. Although factually different, the “lobbying” issues are the same.

Situation 1: Are you a lobbyist if you talk to your Louisiana Department of Environmental Quality (LDEQ) permit writer to try to influence the way he writes your environmental permit?

Situation 2: Are you a lobbyist if you talk to your LDEQ inspector to try to influence her to not cite you for the violation of an environmental regulation?

Prior to this most recent legislative session, the answer in both situations generally was “yes.” You were an “executive branch” lobbyist. Why? Because you met the relevant definitions in La. R.S. 49:72.

LDEQ is an “executive branch agency” because it’s a department of the state. Your permit writer and inspector are “executive branch officials” because they are employees of an executive branch agency, LDEQ. You are “lobbying” when you directly communicate with these executive branch officials in order to influence an “executive branch action,” which can include a number of acts “by an executive branch agency or official to effectuate the public powers, functions, and duties of the executive branch official or an executive

branch agency,” including, e.g., acts in the nature of licensing (permitting), regulation, and enforcement.

The fact that you had not spent anything on your permit writer or inspector--you didn’t buy them lunch or dinner--was of no moment. You fell within one of the three prongs of the “old” definition of “lobbyist” because you were employed to act in a representative capacity for the purpose of lobbying and lobbying constituted one of the duties of your employment. In other words, you were a “lobbyist” because you were paid by your company employer to deal with LDEQ permit writers and inspectors on its behalf.¹

Although this all may seem a bit much, the Ethics Board essentially issued an opinion to this effect. *See*, responses to Questions 7, 8, and 9 in the May 12, 2008 emergency advisory opinion issued by the Ethics Board to the Louisiana Association of Business and Industry, Docket No. 2008-497.

Fortunately, in Act No. 769 of the recent regular session, the legislature revised the definition of an executive branch lobbyist. Under the act’s revised definition of “lobbyist,”² in the above two situations, you will not be considered an executive branch lobbyist *unless you also make an expenditure*. Thus, if you do not give anything to your LDEQ permit writer/enforcement officer or provide him or her anything to eat or drink, you will not be an executive branch lobbyist even if you lobby him or her (i.e., try to influence his permitting or her enforcement decisions on behalf of your company employer).

1 This assumes that you were not employed by your company to provide “professional services.” Persons providing “professional services” had to make an expenditure to be considered an executive branch lobbyist.

2 Other defined terms within La. R.S. 49:72 were not changed in this act.

See, also Act No. 164 of the 2008 Louisiana Legislature. Until January 1, 2009, the old \$10 “expenditure” safe harbor has been reinstated. That is, for the rest of 2008, food, drink, and refreshments--**valued at \$10 or less**--provided to executive branch officials for the purpose of lobbying are not “expenditures.” Thus, at least till the end of this year, you can provide an oyster po-boy to your LDEQ inspector without risking becoming an executive branch lobbyist. In 2009, this changes; the \$10 “expenditure” safe harbor is eliminated and any expenditure, however slight, that you

make while lobbying an executive branch official will render you an executive branch lobbyist.



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