



## MEMORANDUM

**To: Virginia Conflict of Interest and Ethics Advisory Council**

**From: G. Stewart Petoe, Executive Director**

**Date: November 28, 2023**

**Re: Formal Advisory Opinion 2023-F-001 Difference between retained lobbyists and employed lobbyists in reporting reimbursed personal travel expenses**

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### ISSUE PRESENTED

You ask whether a registered lobbyist who is retained and who is compensated for his travel expenses by his lobbyist's principal is required to disclose that travel reimbursement on his Lobbyist's Disclosure Statement. You also ask if a registered lobbyist who is not retained but is employed by his lobbyist's principal is similarly required to disclose the reimbursement he receives from his employer for travel expenses incurred when lobbying.

### DISCUSSION

Every registered lobbyist in Virginia is required to file with the Virginia Conflict of Interest and Ethics Advisory Council an annual report of expenditures for each principal for whom he lobbies.<sup>1</sup> This report "shall be on a form prescribed by the Council and shall be accompanied by instructions provided by the Council."<sup>2</sup> The Lobbyist's Disclosure Statement form prescribed by the Council distinguishes between retained and employed lobbyists and asks if the lobbyist completing the form is "Employed (on payroll of principal);" "Retained (compensated but not on payroll of principal);" or "Not Compensated (not compensated but expenses may be reimbursed)."<sup>3</sup>

The form instructs employed lobbyists to "[e]nter compensation paid to you for lobbying activities on behalf of the principal."<sup>4</sup> It further instructs that "[i]f you have job responsibilities other than

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<sup>1</sup> VA. CODE § 2.2-426 (A) (2023).

<sup>2</sup> VA. CODE § 2.2-426 (C) (2023).

<sup>3</sup> VA. CONFL. OF INTEREST & ETHICS ADVIS. COUNCIL LOBBYIST'S DISCLOSURE STATEMENT (2023). *See also* VA. CONFL. OF INTEREST & ETHICS ADVIS. COUNCIL, AN INFORMAL GUIDE TO COMPLETING THE LOBBYIST'S DISCLOSURE STATEMENT 3 *available at* <http://ethics.dls.virginia.gov/LDS%20Guide.pdf>.

<sup>4</sup> Va. Confl. of Interest & Ethics Advis. Council Lobbyist's Disclosure Statement (2023).

those involving lobbying, you may have to prorate to determine the part of your salary attributable to your lobbying activities."<sup>5</sup>

The instructions for retained or not compensated lobbyists are slightly different; those instructions are to "[i]ndicate the total amount paid or reimbursed to you, your firm, organization, association, corporation, or other entity for lobbying *services*."<sup>6</sup>

The Lobbyist's Disclosure Statement thus differentiates the reporting requirement for retained lobbyists, who are required to disclose all of the compensation they or their firms have received from a client for lobbying services, versus the reporting requirement for employed lobbyists, who only disclose their compensation for lobbying activities. The term "lobbying activities" corresponds to the definition of "lobbying" provided in Article 3 (Registration of Lobbyists) of Chapter 4 of Title 2.2, namely "[i]nfluencing or attempting to influence executive or legislative action through oral or written communication with an executive or legislative official; or solicitation of others to influence an executive or legislative official."<sup>7</sup> It, therefore, does not include such activities as driving to and from meetings with executive or legislative officials or preparing in advance for such a meeting, even if the employer is paying for those activities. Retained lobbyists, on the other hand, would disclose all of the compensation they received from their client, including compensation for travel and other services provided.

It should be noted that an employed lobbyist may have transportation expenses to report, but those expenses would involve situations where an executive or legislative official was provided transportation by either the lobbyist or his employer during the reporting period. The employed lobbyist would not list his personal transportation expenses on the Lobbyist's Disclosure Statement.

## CONCLUSION

A registered lobbyist who is retained is required to list on his Lobbyist's Disclosure Statement all of the compensation he has received for lobbying services from his client during the reporting period, including any compensation received for travel. A registered lobbyist who is employed by his lobbyist's principal only lists compensation received for lobbying activities and, therefore, does not list reimbursements or compensation he receives from his employer for his personal travel expenses. However, a registered lobbyist who is employed may still have other transportation expenses to report if transportation was provided by him or his employer to an executive or legislative official.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* (emphasis supplied).

<sup>7</sup> VA. CODE § 2.2-419 (2023).