



## 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-002 Registration as a lobbyist required if compensated by client to meet with legislative or executive officials for purposes of providing information**

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### ISSUE PRESENTED

You ask about two related scenarios. In the first, an individual who is not a registered lobbyist will be paid more than \$500 by a client to meet with several senators and delegates. These meetings will not be at the initial requests of the legislators. Instead, the client is asking the individual to cold call the legislators and then meet with them. The purpose of these meetings will be to provide information to the legislators on behalf of the client, regarding certain policy considerations that are relevant to the industry in which the client operates. Information will also be provided about recent technological advances and new equipment developed for that particular industry. The meetings will be only to provide information. The individual will not suggest or propose that any legislation be considered or introduced by any of the legislators. If the topic of possible legislation arises during any of the meetings, the individual will decline to answer any questions.

In the second scenario, an individual who is not a registered lobbyist will be paid more than \$500 by a client to meet with the heads of several Virginia agencies. These meetings will not be at the initial requests of the agency heads. The purpose of the meetings will be to provide information to the agency heads on behalf of the client about products and services that the client's company could provide if the agencies were interested. The purpose of the meetings will be informational only; at no point will the person suggest or imply that a sale should occur or that a contract be considered. If an agency were to purchase the typical services and products offered by the client, the value of the expected contract would be in excess of \$5 million. However, any such negotiations would be carried out by registered lobbyists on behalf of the client at a later time. The initial meetings in this scenario will be only to provide information about the products and services, and the individual would refuse to answer any questions related to possible contracts.

You ask if the individual in either of these scenarios would be required to register as a lobbyist before the informational meetings.

## DISCUSSION

Virginia defines "lobbying" as "[i]nfluencing or attempting to influence executive or legislative action through oral or written communications with an executive or legislative official; or solicitation of others to influence an executive or legislative official."<sup>1</sup> "Executive official[s]" include "the chief executive officer of each executive agency," and delegates and senators are included in the definition of "legislative official."<sup>2</sup>

"Executive action" is defined as including "procurement transactions," which in turn are defined as "all functions that pertain to obtaining all goods, services, or construction on behalf of an executive agency, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration where the stated or expected value of the contract is \$5 million or more."<sup>3</sup> Legislative action is defined as including "[p]reparation, research, drafting, introduction, [and] consideration...of a bill, resolution...or other matter by the General Assembly or a legislative official."<sup>4</sup> When an individual is paid by a client to cold call and then meet legislative officials to discuss policy issues or new technologies, or is paid by a client to cold call and then meet with the chief executive officer of an executive agency to provide information on the products and services offered by the client, it can be assumed that lobbying will occur during the meetings, even if the purported purpose of the meetings is only to provide information.<sup>5</sup>

It should be noted that in both of these scenarios, the individual is both initiating the meetings and then will be present at the meetings on behalf of his client. Merely arranging or initiating a meeting, without any further activity such as actually attending the meeting or otherwise attempting to influence executive or legislative actions, would not constitute lobbying.<sup>6</sup>

Virginia requires lobbyists to register with the Secretary of the Commonwealth.<sup>7</sup> While there are a limited number of exemptions from the requirement for a lobbyist to register, none of them are applicable in either of the scenarios presented.<sup>8</sup> In particular, for both scenarios, the individual is not limiting his lobbying solely to formal testimony before a public meeting of an executive agency

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<sup>1</sup> VA. CODE § 2.2-419 (2023).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Cf.* 2015-F-004, Va. Confl. of Interest & Ethics Advis. Council (when a lobbyist's principal invites legislative or executive officials to an event, it can be assumed that lobbying will occur during the event even if the purported purpose of the event is not lobbying).

<sup>6</sup> "'Lobbying' does not mean...[r]equests for appointments, information on the status of pending executive and legislative actions, or other ministerial contacts if there is no attempt to influence executive or legislative actions." VA. CODE § 2.2-419 (2023).

<sup>7</sup> VA. CODE § 2.2-422 (A) (2023). The registrations are filed "electronically in accordance with the standards approved by the Council." VA. CODE § 2.2-422 (C) (2023).

<sup>8</sup> *See* VA. CODE § 2.2-420 (2023).

or legislative body, and he is being compensated more than \$500 for the meetings.<sup>9</sup> Because the purpose of the meetings is to engage in lobbying, the individual in both of the scenarios will be required to register as a lobbyist. As the introductory statute for Virginia's lobbying laws states, "[t]he identity and expenditures of certain persons who attempt to influence legislative and executive actions...should be publicly identified to preserve and maintain the integrity of government."<sup>10</sup>

## CONCLUSION

When an individual is paid more than \$500 by a client to cold call and then meet with legislative officials to discuss public policies or recent advances in technology, or to cold call and then meet with executive officials to discuss the potential products and services the client could offer to an executive agency, this constitutes lobbying, notwithstanding the fact that the meetings are being requested and conducted only for purposes of "providing information." Accordingly, the individual is required to register as a lobbyist. This analysis applies only to the stated facts. If the facts differ, the analysis will change.

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<sup>9</sup> Lobbying that is limited to formal testimony before public meetings of executive agencies or legislative bodies is exempt from registration and reporting requirements, as is a person who receives \$500 or less in compensation for his lobbying activities. *Id.*

<sup>10</sup> VA. CODE § 2.2-418 (2023).