

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

FINAL AGENCY DECISION

**RE: LOBBYIST COMPLAINT FILED BY COLORADO ETHICS WATCH AGAINST
AMERICAN LANDS COUNCIL**

THIS MATTER came before Suzanne Staiert, Deputy Secretary of State, pursuant to § 24-4-105, C.R.S. (2015), after complainant Colorado Ethics Watch (“Ethics Watch”) filed a complaint with the Secretary of State (“the Secretary”) alleging that Respondent American Lands Council (“ALC”) or one or more of its employees had violated Colorado laws and regulations governing lobbyist registration and disclosure.

The complaint alleged in pertinent part that ALC had engaged in lobbying via a “professional lobbyist,” as defined by § 24-4-301(6), C.R.S. (2015), without first registering with the Secretary and complying with various disclosure requirements. The communication that gave rise to this allegation was an “email action alert” that ALC sent to a large distribution list with information about an upcoming hearing on Senate Bill 15-232. The email encouraged its recipients to “consider attending the hearing to show ... support for the bill” and, for those unable to attend in person, urged them to “send [the] Committee Members an email letting them know that you support SB 15-232 and the study of the transfer of Public Lands in Colorado....” It identified the members of the Senate Agriculture, Natural Resources, and Energy Committee and listed their contact information.

As authorized by § 24-6-305(2)(c), C.R.S. (2015), Department of State staff investigated the allegations in Ethics Watch’s complaint. ALC responded to the Department’s initial inquiries but not to several follow-up questions sent in August 2015. However, in an email dated October 30, 2015, ALC’s president, Ken Ivory, did respond to the Notice of Hearing that I issued on October 14, 2015. That correspondence addressed some of the follow-up questions transmitted during the investigative phase.

Applicable law

As relevant here, Colorado’s broad definition of “lobbying” includes “communicating directly, or soliciting others to communicate with a covered official for the purpose of aiding in or influencing ... [t]he drafting, introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, or veto by any covered official on ... [a]ny bill, resolution, amendment, nomination, appointment or report[.]” § 24-6-301(3.5)(a), C.R.S. (2015). An individual “who is compensated by a client or another professional lobbyist for lobbying” is a “professional lobbyist.” § 24-6-301(6), C.R.S. (2015). Colorado law requires professional lobbyists to register with the Secretary “before lobbying,” 24-6-303(1), C.R.S. (2015), and to file

periodic disclosure statements identifying their lobbying income and expenditures. §§ 24-6-302(2.5), C.R.S. (2015).

On the organizational level, § 24-6-307, C.R.S. (2015), makes it “unlawful for any person to employ for pay or any consideration ... an individual to engage in lobbying who is not registered expect upon condition that such individual register forthwith.”

The Secretary has authority to investigate complaints concerning lobbying activities, and where he “has reasonable grounds to believe that any person is in violation of section 24-6-302 or 24-6-303,” the Secretary may conduct a hearing under the Colorado Administrative Procedure Act. § 24-6-305(3), C.R.S. (2015). Following such a hearing, if a violation is found, the Secretary may “issue a cease-and desist order.” *Id.*

Summary of investigation and factual findings

Based on the Department’s investigation and my review of the complaint, the attachments, correspondence, and other materials cited below, I make the following findings of fact:

1. ALC is a Utah-based § 501(c)(4) organization whose stated mission “is to secure local control of western public lands by transferring federal public lands to willing States.” See http://www.americanlandscouncil.org/our_mission.
2. ALC is supported by donations given by individuals, members, businesses, and others.
3. ALC maintains a distribution list for email communications with its members and other interested parties. Some of the email addresses on that distribution list belong to Colorado residents.
4. During the 2015 legislative session, Senator Jerry Sonnenberg co-sponsored S.B. 15-232, which would create a commission to study the transfer of public lands in Colorado from the federal government to the state, if authorized by Congress.
5. At some point during the legislative process, Senator Sonnenberg contacted ALC to request that ALC “help [him] with contacting the other legislators on the Senate Ag Committee” concerning the bill.
6. Aside from Sen. Sonnenberg, ALC did not communicate directly with any Colorado legislators concerning S.B. 15-232.
7. On April 22, 2015, an ALC office assistant sent the email that gave rise to this complaint. It was sent to ALC’s “list of those in Colorado who had requested public lands updates.”

8. The email stated that the committee hearing on S.B. 15-232 would take place the next day, and urged its recipients to “consider attending the hearing to show your support for the bill and of the Transfer of Public Lands.”

9. ALC’s email also noted that “[i]f you can’t make it in person, you still have the ability to substantially affect the outcome of the hearing.” To that end, it listed the committee members and their email addresses, and stated: “Will you please send these Committee Members an email letting them know that you support SB 15-232 and the study of the Transfer of Public Lands in Colorado?”

10. Finally, the email included links to various studies and similar information that ALC relies on to support its policy positions.

11. The email was sent by an ALC office assistant, who has since left ALC to attend college.

12. It is unknown whether the office assistant was paid or unpaid. If paid, the rate at which the office assistant was paid is likewise unknown.

13. The office assistant was not registered as a professional lobbyist at the time that the email was sent.

Analysis and ruling

The evidence before me is insufficient to establish that the individual who sent the communication in question was a “professional lobbyist.” To qualify as a professional lobbyist, an individual must be “compensated by a client or another professional lobbyist for lobbying.” § 24-6-301(6). As noted above, it is unknown whether the office assistant was paid or unpaid. Absent such information, I am unable to conclude that the office assistant was being paid “for lobbying” when she distributed the email in question.

Moreover, even if the evidence before me had established that the office assistant who sent the email was paid “for lobbying,” I would conclude that any such expenditure was *de minimis*, and thus did not implicate either the professional lobbyist registration requirements or the prohibition in § 24-6-307 against employment of unregistered persons.

The email in question was not directed to Colorado legislators, but instead urged its *recipients* to contact their legislators to express support for S.B. 15-232. Although Colorado lobbying law generally covers both direct and indirect communications with members of the General Assembly, the type of communication at issue here is commonly understood as “grassroots lobbying.” The IRS defines a “grass roots lobbying communication” as “any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof.” 26 C.F.R. 56.4911-2(b)(1)(i). In order to qualify, the communication must refer to specific legislation, reflect a view on that legislation, and “encourage the recipient ... to take action with respect to such legislation” by, for example, urging him or her to contact legislators. 26 C.F.R. 56.4911-2(b)(1)(ii).

In 2003, former Deputy Secretary of State William A. Hobbs issued an advisory opinion that considered whether under § 24-6-301(3.5)(a), “lobbying includes activities by corporate employees to encourage other persons to contact public officials to support or oppose official action, such as when a corporation sends letter to customers urging them to contact their legislators to support or oppose pending legislation.” Exhibit A. Deputy Secretary Hobbs concluded that “[i]f a corporation directs an employee to use paid work time to carry out activities that fall under the definition of ‘lobbying,’ then it would appear that the employee is, at least technically, a professional lobbyist, and therefore subject to registration and reporting.” *Id.*

In the same opinion, however, Deputy Secretary Hobbs noted that “[i]f such corporate ‘lobbying’ is sufficiently minimal, it could be argued that it would not be reasonable to expect registration and reporting. An example might be a one-time occurrence, where a corporate newsletter includes a small item encouraging readers to contact legislators urging them to support or oppose a particular bill.” *Id.* The advisory opinion closed by noting that the Secretary “encourage[s] people to err on the side of registration and reporting” when there is any doubt, and provided suggestions on how compliance could best be achieved. *Id.*

The facts before me are remarkably similar to the scenario outlined in the 2003 advisory opinion. The complaint is based on a single, brief communication that “encourage[ed] readers to contact legislators urging them to support or oppose a particular bill.” Exhibit A. As Deputy Secretary Hobbs concluded in 2003, I also find that “it would not be reasonable to expect registration and reporting” where the communications in question are “sufficiently minimal.” The facts before me establish both that minimal resources were put into ALC’s email and that the email was not part of a larger pattern of grassroots communications that were intended to indirectly influence legislation.

Conclusion

Because the evidence before me is insufficient to establish that ALC or its office manager violated Colorado’s laws governing lobbying and professional lobbyists, I hereby DENY the relief requested in the complaint. This Decision constitutes final agency action subject to judicial review pursuant to C.R.S. §24-4-106(2).

Dated this 23rd day of December, 2015.



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Donetta Davidson

Secretary of State

William A. Hobbs

Deputy Secretary of State

Exhibit A

August 11, 2003

Mr. Steven A. Burk
Attorney at Law
Quarles & Brady, LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497

RE: Grassroots lobbying

Dear Mr. Burk:

Thank you for your inquiry concerning grassroots lobbying. Also, please accept my apologies for taking so long to respond to your inquiry.

As you noted in your letter, the statutory definition of "lobbying" in Colorado includes "soliciting others to communicate with a covered official for the purpose of aiding in or influencing" legislative or regulatory actions. (Section 24-6-301 (3.5) (a), Colorado Revised Statutes) Thus, I believe that you are correct that lobbying includes activities by corporate employees to encourage other persons to contact public officials to support or oppose official action, such as when a corporation sends letters to customers urging them to contact their legislators to support or oppose pending legislation.

However, an individual who carries out such activities would be required to register and report only if the individual qualifies as a "professional lobbyist". (Sections 24-6-303 (1) and 24-6-302 (2.5), C.R.S.) A professional lobbyist is defined as "any individual who engages himself or is engaged by any other person for pay or for any consideration for lobbying". (Section 24-6-301 (6), C.R.S.) If a corporation directs an employee to use paid work time to carry out activities that fall under the definition of "lobbying", then it would appear that the employee is, at least technically, a professional lobbyist, and therefore subject to registration and reporting.

If such corporate "lobbying" is sufficiently minimal, it could be argued that it would not be reasonable to expect registration and reporting. An example might be a one-time occurrence, where a corporate newsletter includes a small item encouraging readers to contact legislators urging them to support or oppose a particular bill.

When there is any doubt, however, we encourage people to err on the side of registration and reporting. Full disclosure furthers the purposes of the lobbyist law. Furthermore, legislators have expressed a strong desire to know who is behind any organized effort that results in phone calls, letters, and e-mails to them about particular legislation.

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If a corporation is engaging in the activity you described in your letter, compliance with the lobbyist regulation law might be achieved by having one individual register and report on behalf of the corporation (presumably, a person who is directing the communications), and then having that person report all of the corporation's activities and expenses in his or her reports. In other words, the activities undertaken by support personnel and other persons acting at the request of the principal "lobbyist" would be reported on the principal's report. See section 24-6-301 (3.5) (b), C.R.S., which provides as follows:

24-6-301. Definitions. As used in this part 3, unless the context otherwise requires:

(3.5) (b) Subject to the exclusions and provisions of this paragraph (b), for the purpose of determining when contributions and expenditures become reportable in disclosure statements, "lobbying" includes activities undertaken by the person engaging in lobbying and persons acting at his request to prepare for lobbying which in fact ultimately occurs, . . . (Emphasis added.)

I hope this is helpful. We appreciate your interest in compliance with Colorado law on lobbying activities.

If we can be of further assistance, please contact us again. Our program lead in the area of lobbyist registration is Dorothy Ferranti, who may be reached at 303-894-2200, extension 6304.

Very truly yours,



William A. Hobbs
Deputy Secretary of State