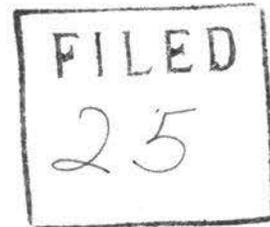


February 3, 1976

OPINION LETTER NO. 25  
Answer by letter-Klaaffenbach



Honorable Paul L. Bradshaw  
State Senator, District 30  
c/o Senate Post Office, Capitol Building  
Jefferson City, Missouri 65101

Dear Senator Bradshaw:

This letter is in response to your questions asking:

"Section 105.470(3) of C.C.S.S.C.S.H.  
C.S.H.B. 20, 79, 386, 760 and 765, 78th Gen-  
eral Assembly, defines a 'lobbyist' as:

'... any person who receives any  
direct or indirect benefits or ex-  
penses for lobbying activities,  
whether by grant or otherwise, from  
any state, the federal government  
or any private not for profit foun-  
dation or corporation...' (emphasis  
added)

"1. Does this definition include a  
state employee who, acting merely as a pri-  
vate citizen and not in any official capa-  
city or during regular hours of employment,  
asks a member of the General Assembly to  
vote for a bill which might result in a di-  
rect or indirect benefit to such state em-  
ployee? For example, would it include a  
professor of a state university, who re-  
quests added appropriations for higher edu-  
cation--or to a teacher in the public schools  
who urges increased funding for the school  
foundation program--or to any state employee

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who seeks support for an increase in benefits under the state retirement system? Obviously, these persons may expect to receive some 'direct or indirect benefits' as a result of their lobbying activities, but not 'for' the act of lobbying per se.

"2. Similarly, does this definition of a 'lobbyist' include a state employee who, acting merely as a private citizen and not in any official capacity or during regular hours of employment, asks others to contact members of the General Assembly and seek their support of a measure which might result in some direct or indirect benefit to such state employee? For example, would it apply to a caseworker who asks others to contact the members of the Legislature in support of added appropriations for the Division of Family Services?

"3. Would the answers to questions '1' and '2' above, be affected by the fact that such requests by the state employee were done at the command or suggestion of a supervisor of such employee or were made as a part of a concerted plan by the agency, or officials thereof, to influence the course of legislation? If so, how?

"4. If, in fact, such persons are included within the definition of a 'lobbyist' under subsection (3) of the act, are they nonetheless excluded under subsection (4), which applies to 'any person who engages in the activities heretofore described in subdivision (3) on an occasional basis only and not as a regular pattern of conduct and who expends for such purposes no more than one hundred dollars during the legislative session, other than for his own traveling and personal expenses.'. In other words, if one expects to receive personal benefits from his lobbying activities, is he nonetheless exempt from filing and reporting procedures if he lobbies only occasionally and does not spend more than one hundred dollars in the process?"

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The definition of "lobbyist" set forth in your question is only part of the definition provided in Section 105.470, subsection 1(3).<sup>1</sup> The entire definition reads as follows:

"'Lobbyist', any person, including persons employed by or representing federal or state agencies and all political subdivisions thereof, who acts in the course of his employment or who engages himself for pay or for any valuable consideration for the purpose of attempting to influence the taking, passage, amendment, delay or defeat of any legislative action by the legislature; or any person who receives any direct or indirect benefits or expenses for lobbying activities, whether by grant or otherwise, from any state, the federal government or any private not for profit foundation or corporation; provided that the term shall not include any member of the General Assembly or elected state officer."  
(Emphasis added)

In answering your questions, we must consider the entire definition of "lobbyist" and not just the segment quoted in the opinion request.

We further note that subsection (6) of Section 105.470 provides for criminal penalties for violations of the section. Therefore, the language of the statute must be strictly construed. State v. Taylor, 133 S.W.2d 336 (Mo. 1939).

In your first question you ask whether the definition of "lobbyist" includes a state employee who, acting merely as a private citizen and not in any official capacity or during regular hours of employment, asks a member of the General Assembly to vote for a bill which might result in a direct or indirect benefit to such state employee. Assuming that the employee in question is not acting in the course of his employment and is not being paid for his efforts to influence the bill, he would not be included within the first part of

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<sup>1</sup>Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bills Nos. 20, 79, 386, 760, and 765 has been printed in Vernon's Missouri Legislative Service, supplementing Vernon's Annotated Missouri Statutes as Act 119.

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the definition of "lobbyist" in subsection 1(3) of Section 105.470. Furthermore, even if we assume that some direct or indirect benefit will accrue to the state employee personally from the bill, the second part of the definition of "lobbyist" requires that the person receive "direct or indirect benefits or expenses for lobbying activities. . . ." (Emphasis supplied). We believe that the word "for" has a different meaning than the word "from." Therefore, if the state employee does not receive direct or indirect benefits for his activity in attempting to influence legislation, he would not come within that part of the definition.

Your second question asks whether the definition of "lobbyist" includes a state employee acting merely as a private citizen and not in any official capacity who asks others to contact members of the General Assembly and seek support of a measure which might result in some direct or indirect benefit to such state employee. Applying the same reasoning used in answering your first question, and again assuming that such person is not acting in the course of any employment or receiving pay or other valuable consideration for his attempts to influence legislation, we conclude that such employee is not, under these circumstances, a "lobbyist."

In your third question, you inquire whether the answers to the first two questions would be different if the state employee's efforts to influence legislation were done at the command or suggestion of the employee's supervisor. You ask also whether the answers to the first two questions would be different if the state employee's lobbying activities were done as a part of a concerted plan by the agency, or the officials thereof, to influence the course of legislation. If a state employee attempts to influence legislation pursuant to his supervisor's suggestion without any express or implied direction or order, we do not believe the employee would be acting in the course of his employment or for a valuable consideration. However, we recognize that the line between suggestion and command in such a situation might not be readily apparent. An employee could easily assume that a suggestion from a supervisor was, in fact, a command. Therefore, it would be necessary to analyze each situation to determine whether a supervisor made a mere suggestion or whether it was, in fact, an order or command, or could have been understood as such. If a state employee attempts to influence legislation on the command of a supervisor or as part of a concerted plan of action by an agency or the officials thereof to influence legislation, the state employee would be acting "in the course of his employment . . ." to influence legislation and would be receiving a benefit for lobbying activities. Therefore, this state

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employee would be a "lobbyist" unless his lobbying is only occasional in which case he might be a "witness."<sup>2</sup> If such person comes within the definition of "witness," he must comply with the requirements of subsection 3 of Section 105.470. We believe this also answers your fourth question.

Yours very truly,

JOHN C. DANFORTH  
Attorney General

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<sup>2</sup>"Witness" is defined in Section 105.470.1(4) as:

"'Witness', any person who engages in the activities heretofore described in subdivision (3) on an occasional basis only and not as a regular pattern of conduct and who expends for such purposes no more than one hundred dollars during the legislative session, other than for his own traveling and personal expenses."