

VOLUME NO. 34

Opinion No. 8

REAL ESTATE COMMISSION - Lobbyist, authority to hire - Lobbying; State agency, authority to hire lobbyist - Lobbying; requirements of registration. Article V, section 35, Montana Constitution, Article XIII, section 1, Montana Constitution, sections 43-802, 43-806 and 43-807, R.C.M. 1947.

- HELD:**
1. A state commission or agency is not prohibited by law from hiring a lobbyist.
 2. A state commission or agency that hires a lobbyist must comply with the provisions of the lobbying act.

Mr. Morris L. Brusett
Legislative Auditor
State Capitol
Helena, Montana 59601

May 25, 1971

Dear Mr. Brusett:

You have requested my opinion on the following questions:

1. "Did the Montana Real Estate Commission and its lobbyists violate the requirements of law by failing to register as lobbyist and principal during the 1969 and 1971 legislative sessions?" and
2. "Were the payments by the Montana Real Estate Commission for lobbying during the 1969 and 1971 legislative sessions proper expenditures of public moneys?"

You advise that the minutes of the January 9, 1969 meeting of the Montana real estate commission, hereinafter referred to as the commission, contain the following statement: "Mr. (name) was officially engaged as a lobbyist for the Montana Real Estate Commission." On March 28, 1969, the person hired by the commission was paid \$2,500 on an invoice reading, "For professional services for lobbying Senate Bills No. 38 and No. 115 during the 1969 Montana Legislative Assembly."

Your letter also states that the minutes of the February 2, 1971 meeting of the commission state that it employed ". . . an attorney, to watch the legislative session for the Montana Real Estate Commission." On March 31, 1971, the attorney was paid \$2,500 on an invoice reading, "1971 Legislative Session \$2,500.00".

You advise that you reviewed the docket of lobbyists maintained by the secretary of state and in both the above instances the person hired by the commission was not registered as a lobbyist for the commission.

In 1959 the legislature enacted a law to control lobbying. Section 43-806, Revised Codes of Montana, 1947, provides in part:

"No person shall practice as a lobbyist unless he has been duly licensed under the provisions of section 43-803 and unless his name appears upon the docket as employed in respect to such matters as he shall be promoting or opposing. No principal shall directly or indirectly authorize or permit any lobbyist employed by him to practice lobbying in respect to any legislation affecting the pecuniary interest of such principal until such lobbyist is duly licensed and the name of such lobbyist is duly entered on the docket . . ."

The first issue presented by your initial question is whether the person or persons employed by the commission to look after its interests in the legislative session was a lobbyist. Section 43-802, R.C.M. 1947, defines "lobbying" and "lobbyist" as follows:

"(1) Lobbying. The practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members thereof by any person other than a member of the legislature or a public official acting in his official capacity.

"(2) Lobbyist. Any person who engages in the practice of lobbying for hire except in the manner authorized by section 43-807. Lobbying for hire shall include activities of any officers, agents, attorneys or employees of any principal who are paid a regular salary or retained by such principal and whose duties include lobbying. ***"

Statements contained in your letter indicate that the person hired for the 1969 legislative session reported on the progress of certain bills important to the commission and the minutes of the commission itself state that he was hired as a lobbyist. Likewise, the person hired for the 1971 legislative session indicated to the commission that a certain house bill was killed through his efforts. All of the foregoing facts support the conclusion that the person or persons hired by the commission to look after its interests in the 1969 and 1971 legislative sessions was a lobbyist.

However, section 43-807, R.C.M. 1947, provides:

"Any person who limits his lobbying solely to appearances before legislative committees of either house and registers his appearance on the records of such committee in writing, shall not be required to be licensed as a lobbyist, pay a license fee, or register with the secretary of state."

It is not clear from your letter nor from the statements contained in the minutes of the commission whether the individual or individuals hired by the commission appeared only before legislative committees of either house and registered his appearance on the records of said committees. It is conceivable, without more facts, that the person or persons employed by the commission came within the exception provided by section 43-807, R.C.M. 1947.

Therefore, it is my opinion that there are not sufficient facts upon which to make a determination as to whether or not the person or persons hired by the Montana real estate commission for the 1969 and 1971 legislative sessions was a "lobbyist" as defined by statute.

In your second question you ask whether the payments by the commission for lobbying during the 1969 and 1971 legislative sessions were proper expenditures of public moneys.

Section 43-802, (49, R.C.M., 1947, in subsection (b) defines "principal" as:

"(b) Any board, department, commission or other agency of the state, or any county or municipal corporation, which engages a lobbyist or other person in connection with any legislation pending or to be proposed affecting the statutory powers, duties or appropriation of such agency, county or municipal corporation."

Insofar as the lobbying act itself is concerned, the legislature has acknowledged the existence of lobbying by state agencies and commissions and the applicability of the lobbying act to such practices.

Possible objections to lobbying by a state agency or commission are contained in the Montana Constitution. Article V, section 35, provides in part:

"No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state ***."

Further, Article XIII, section 1, provides in part:

"Neither the state, *** shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation ***."

Article V, section 35, Montana Constitution, specifically prohibits appropriating moneys to an instrumentality not under the absolute control of the state. In the instant case the legislature appropriated moneys to the commission, an agency under its absolute control. The commission, in turn, hired an agent to represent its interests. Therefore, since no moneys were appropriated to an instrumentality not under the absolute control of the state, the provisions of Article V, section 35, Montana Constitution, are not applicable.

Article XIII, section 1, Montana Constitution, is a restriction on the nature or capacity of the recipient. It specifies that the state cannot make a donation or grant to an "individual, association or corporation." Since the appropriation was made to the commission, Article XIII, section 1, Montana Constitution is not applicable.

In conclusion, neither Article V, section 35, nor Article XIII, section 1, Montana Constitution, prohibit a state commission or agency from hiring a lobbyist to look after its interests in the legislature. For a

further discussion of the cited constitutional provisions see **Veterans Welfare Comm. v. V.F.W. and D.A.V.**, 141 Mont. 500, 379 P.2d 107 (1963).

In the absence of a constitutional or statutory prohibition it appears that a state agency or commission may hire a lobbyist. There is little case authority in this area and the few existing decisions involve municipal corporations. There is a conflict among the authorities as to the right of a municipal corporation to appropriate funds to influence legislation affecting its interests. Some authorities hold that a municipality may expend public moneys for the promotion of favorable legislation. **Meehan v. Parsons**, 111 N.E. 529 (Ill.); **Powell v. City and County of San Francisco**, 62 Cal.App.2d 291, 144 P.2d 617. Some authorities have taken a contrary position. **City of Cleveland v. Artl**, 23 N.E.2d 527 (Ohio). **City of Phoenix v. Michael**, 148 P.2d 353 (Ariz.).

Therefore, it is my opinion that based on the provisions of the lobbying act, specifically section 43-802, R.C.M. 1947, a state commission or agency is not prohibited by law from hiring a lobbyist. The policy decision of whether or not public funds should be used for lobbying is one to be made by the legislature. Nevertheless, any state agency or commission that hires a lobbyist must comply with the provisions of the lobbying act. First of all, the commission or agency, as principal, has a specific duty to determine if its lobbyist is licensed. Secondly, the commission or agency can engage a lobbyist only in connection with legislation pending or to be proposed affecting the statutory powers, duties or appropriation of such commission or agency, but not otherwise.

Very truly yours,

ROBERT L. WOODAHL
Attorney General