

NEVADA LEGISLATIVE COUNSEL BUREAU  
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REGULATION OF LOBBYISTS

General Principles of Lobbying.

Lobbying, an activity which can be described as conveying information to policymakers in a concerted effort to influence their decisions, is an important part of the political process. Mainly by providing expertise on a particular subject, interest groups become an unofficial policymaking force once they secure access to the formal power sources. The legislative body is especially vulnerable to lobbying since it does not usually have sufficient staff or resources to provide independent information on the multitude of issues which come before it. Nevertheless, lobbying is not confined to any one group of decisionmakers or any one stage of the process. Interest groups lobby the legislature and the executive branch, but government also lobbies government. The legislature attempts to affect administrative decisions, and the executive tries to persuade the legislature concerning financing of its programs. City and county governments lobby state government, and state government lobbies national government.

Then why is it necessary or desirable to regulate activities which on the whole are beneficial in terms of information exchange and indeed intrinsic to the function of government decisionmaking? Unlike elected legislators or appointed officials, lobbyists, in the narrow sense of the word, may play their key role in the political process unknown to the electorate to whom government is at least theoretically responsible. Thus, registration of lobbyists at least identifies one group of people who affect politics in a significant way. Secondly, since it is true that all lobbyists are not equal in terms of access to leaders, in terms of financial resources, and in terms of numbers represented, it would seem to be in the public's interest to know the nature of these unelected power groups. Finally, even further regulation would be necessary in areas such as limiting amounts and kinds of expenditures in order to equalize the opportunity to influence the decisionmaking process.

Another value to be weighed against the need to know more about unelected power groups is the necessity not to impede the free flow of information which surrounds lobbying efforts. While no one group can or will provide all the true and significant data on a problem, hopefully competing interests will accomplish this end to some imperfect degree. We have traditionally cherished the first amendment right to petition the government for redress of our grievances; limiting this right in any way must not be attempted in a cavalier fashion. Where is the fine line which distinguishes an individual who is expressing his own opinion on a matter of legislation or administration and an individual who is attempting to influence policymakers on behalf of others as well as himself? Legislators themselves are lobbyists in the most fundamental sense of the word. They need not be bribed or paid to represent an outside power group; their own interests may simply coincide with one group or many. In short, the issue is not one of separating the good guys from the bad, but of regulating the activity of lobbying so that access to power is identified and to some extent equalized, without inhibiting the means whereby outsiders have input into the governmental process.

#### Nevada Lobby Law.

In 1973, the Nevada legislature took initial steps to regulate lobby activities. NRS 218.537 requires that lobbyists register with the director of the Legislative Counsel Bureau. Anyone who represents any person other than himself in attempting to pass or defeat legislation must register, giving his name and address and the name and address of the organization(s) he represents. Exceptions are made for public officials or employees who are acting in the course of their employment and for persons who appear before committees as unpaid witnesses. Senate and Assembly rules no. 94 do not allow anyone on the floor of the chambers who is not a member of the legislature or a state official, unless a member so invites other persons. Assembly Rule 94 prohibits lobbying on the floor of the Assembly at any time.

#### Other States' Lobby Regulations.

In 1974, the Legislative Counsel Bureau conducted a survey of other states to determine the extent to which they regulated lobbyists, either by statute or by chamber rules. Responses were received from 46 states, and generally there were four

degrees of lobby regulation. There are four states which reported no lobby regulation or registration requirements at all. Twelve states, including Nevada, require that lobbyists register by name and by whom they represent. The largest group of states (27) require that lobbyists submit expenditure reports in addition to registering. Three states extend their regulations to limiting the way in which money can be utilized and in some cases how much money can be spent at all.

Within the four broad categories mentioned, many variations exist among states with regard to particular laws and rules on lobby registration. Some states regulate lobbying among administrative personnel; some states regulate lobbying when the legislature is not in session and even restrict "grass roots" lobby efforts. There are several general areas of lobby law or rule which are common to most states which regulate lobbying activities.

The first item of importance in regulating lobbying is to determine who will be considered a lobbyist for purposes of regulation. In some states the distinguishing factor is whether or not the legislative advocate is paid. Another basis for determining who shall be considered a lobbyist is whether the person acts to promote or oppose legislation affecting the pecuniary interest of any one person or group as opposed to the interest of the whole people of the state. Still another factor used by some states to identify lobbyists is whether or not they represent themselves as opposed to organized groups. Some states consider how much time an individual devotes to legislative advocacy a factor in deciding if he should be subject to restrictions placed on lobbyists. Spending money to influence legislative or administrative action is deemed sufficient evidence of lobbying in some states. Washington statutes require a lobbyist to register when he spends money in a grass roots lobby campaign. Common Cause's model law defines lobbyists as persons persuading the legislative or executive branch to take specific actions, directly or by soliciting others to do so. Most states exempt the news media, public officials in their official capacity, and individuals who receive no compensation for their legislative efforts from restrictions placed on lobbyists.

The second broad area of lobby regulation concerns the specific restrictions placed on those engaged in lobbying. The most lenient laws or rules simply require lobbyists to register their name and address and possibly that of the group they represent. Some states such as Minnesota require that the lobbyist also

list the names and addresses of officers and directors of associations represented. Texas requires that the number of members in a group and their mode of policymaking be listed by the lobbyist representing them. Mississippi and several other states require that both the lobbyist and his employer register. Common Cause model lobby law requires the same, in addition to requiring the lobby registrant to list the name, address, and business of any person compensating the registrant.

Moving into the area of restrictions on expenditures made by lobbyists, we find almost as many variations as there are states who legislate on this subject at all. Some states require that lobbyists list total expenditures; others require an itemized list broken down into categories such as gifts, travel, entertainment and advertisement. Minnesota requires that a lobbyist must list each original source of funds in excess of \$500. Iowa senate rules require both lobbyists and senators to file a list of all items, services or money received valued in excess of \$5. Ohio legislators must reveal the source of each gift greater than \$500. In Indiana, out-of-state legislative agents or representatives of foreign companies must post a bond of \$1,000 upon registration. The condition of return for the bond is that the agents file accurate reports in accordance with Indiana lobby law. Oregon lobbyists must list the names of any legislative officials to whom expenditures greater than \$25 are made. Common Cause model law requires reports of reimbursements received by lobby registrants of \$100 or more in the course of a year. Money paid out by the lobbyists to legislative or executive officials of \$10 or more or the same value of in kind services must also be listed in the model law. These expense reports must be given at various times. Some states require monthly reports; others require quarterly or yearly reports.

In the area of lobbyist expenditures, some states go even further and restrict lobbyists' expenditures as well as requiring lists thereof. By rule, Iowa lobbyists are prohibited from providing, and House members are prohibited from accepting, open-end accounts paid for by a lobbyist or his employer. No lobbyist is permitted to offer economic or investment opportunity to legislative members with the intent of affecting the performance of the recipient's official duties. In Kentucky, the burden is on the legislator who may not accept loans, gifts or services valued at more than \$100 from any person known to be attempting to influence legislative action. (Campaign contributions are excepted.)

Kansas lobbyists may not give gifts, loans, services of more than \$100 to any state officer or employee for the purpose of influencing official duties. Lobbyists in California may not make gifts to any one person which aggregate more than \$10 in a calendar month. Common Cause model law prohibits lobby registrants from giving any member of the legislative or executive branch an aggregate sum of more than \$100 in a year.

Other miscellaneous restrictions on lobbying include prohibition of appearances on the floors of the legislative chambers, requiring that lists be submitted of subject matter the lobbyist is interested in, restricting lobbying activities for persons recently employed in a government agency, and prohibiting contingency fee arrangements.

The final areas of concern for those states which regulate lobbying are what body should be responsible for administering lobby regulations and what the punishment for violation of lobby law should be. Most of the states surveyed empower the Secretary of State's office to apply lobby rules and regulations. Some states, as well as Common Cause model law, favor the establishment of an ethics commission to handle regulation of lobbyists. Those states which regulate lobbyists by rules of the chambers prefer to let legislative ethics committees deal with enforcement of rules concerning lobbyists. Whatever body assumes responsibility for administering lobby regulations, duties usually include receiving information required of lobbyists, organizing it and making it available to legislators and to the public. Other duties may include auditing lobbyist expenditure statements and investigating reports of lobbyist activity.

In so far as punishment for violating lobby laws is concerned, most of the states make violation a misdemeanor. Frequently, the punishment and fine differs according to whether the violator is judged a natural person or not. Corporations or groups found to violate lobby laws may be guilty of a felony and be fined up to 10 times as much as an individual violator would be. Some states fine persons or groups who fail to report at all 3 times the amount they have expended on lobbying efforts, in addition to other fines for violation of the law. It is not uncommon for a state to bar violators of lobby regulations from lobby activities for up to 3 years.

In conclusion, there are four areas which lobby regulation has covered in various other states: 1) defining lobbyists; 2) restricting their activities; 3) appointing a body responsible for administering lobby law and 4) determining punishment for violation of lobby law.

SUGGESTED READING

(Available in the Research Library)

Common Cause, Model Lobbying Disclosure Act, 1974.

Greenwald, Carol, "Post-Watergate Lobbying Laws: Tokenism v. Real Reform," in National Civil Review, October 1974, pp. 467-483.

Keefe, William J. and Ogul, Morris S. The American Legislative Process: Congress and the States, Englewood Cliffs, New Jersey, 1968.

Smith, John W. "Regulation of National and State Legislative Lobbying" in University of Detroit Law Journal, Vol. 43, 1966 pp. 663-693.

Ziegler, L. Harmon and Van Dalen, Hendrik, "Interest Groups in the States," in Politics in the American States, Boston, 1971, pp. 122-160.

The Office of Research has a file on lobbying which includes laws and rules of other states.