

OFFICE OF THE
SECRETARY OF STATE



WILLIAM A. MOHRER
ATTORNEY AT LAW

November 8, 1944

Mr. W. Douglas Miller
1000 ...
Washington, D.C.

Mr. W. Douglas Miller
Office of General Counsel
Department of State
4800 ...
Washington, D.C.

Under the heading No. 1
Re: Lobby registration
requirements.

Dear Mr. Miller:

Dear Mr. Miller:

This is in response to your recent letter in which you asked
certain questions regarding the law, Pub. Law, 766, 80th Cong.,
Acting March 1944, specifically the word:

"In the normal business activities of Government
employees in connection with such normal
business activities as defined in Section 2 and used in
Section 3"

It was the intention of the legal representative
office in the normal course of Section 2(a)
employees those employees who directly responsible to
certain administrative activities. We do not
include any compensation in addition to their
regular salary and commission for that connection.

This official lobby law statute is covered by the in Section
Two of which is agreement with the law, Pub. Law, 766,
80th Cong., 1944 March 1944. Article 2(a) of
regards the participation of certain persons who directly
connected with a number of the legislative or executive
branch for various legislative or administrative activities.

Article 2(a) of the statute establishes the registration requirement
as follows:

Mr. Tolson
Mr. E.A. Tamm
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Hendon
Mr. Pennington
Mr. Quinn
Mr. Nease
Mr. Gandy

WILLIAM A. MOHRER

1000 ...

A person must comply with the criteria as provided in Section 2 of this act if the person:

(a) makes a total expenditure in excess of \$100 in a calendar quarter, not including any non-credit, loan, or lending agreement, or the non-attendance fees, or activities described in Subsection 3B of Section 2 of this act; the committee is eligible with one or more members of the legislature or executive branch to influence legislation or administrative action; and

(b) provides information or endorsement in excess of \$100 in a calendar quarter that results in communication directly with a member of the legislature or executive branch to influence legislation or administrative action. This committee requires the registration of a person, other than a member of the judicial, legislative, or executive branch, who, as a part of his regular employment, has communicated directly with a member of the legislature or executive branch to influence legislation or action of the person or who he is considered or considered capable to do, and compensation is obtained in the course of that regular employment in excess of the contribution.

"Administrative action" is defined in §1000 as "action, issuance or any other service that may be a subject of action by a state agency, including the proposal, issuance, review, or approval of the action."

The definition of "Administrative action" in Article 1000-B of the Texas Statutes has not been interpreted. However, the Administrative Procedure and State Records Act, 1977, Article 1000-B, which deals with the rule-making process, specifically provides in Section 1000.001 that the provisions do not apply to actions related solely to the internal personnel rules and practices of an agency. See, for example, Art. 1000-B, §1000.001, Texas Statutes, 1977. Other courts have defined agency "Administrative action" to mean actions affecting the rights or interests of the public or opposed to action which only affect the operations of the agency itself. An example of this is the California statute, Art. 1000-B, §1000.001, which states that "Administrative action" is not "the proposal, drafting, development, consideration, issuance, execution or effect by any state agency of any rule, regulation or other action in any rule-making proceeding or any quasi-legislative

proceeding In other words, "administrative action" is action taken by an administrative agency which creates public policy in the area the agency was created to regulate.

The question of "administrative action" in the lobby statute is intended to require persons to register as lobbyists who attempt to influence a state legislator's actions regarding actions that affect the status of members of the public. It is the question of those actions that the legislature did not intend "administrative action" to include actions taken by a state agency which only affect the operation of the agency itself, such as decisions to purchase equipment to be used by the agency.

The examples you gave of the actual business activities of municipal employees is related to state agencies include the following:

- make water tests on assigned agencies
- develop and maintain contact with appropriate agency personnel
- describe state government needs of assigned agencies, including basic system requirements and current data processing problems
- present proposed solutions to the needs identified of the various agencies
- present a "solution" alternative to needs based on feedback from the proposed solution
- report to supervisor any finding regarding progress and contact made in response to requests to bid received from State Data Processing and Support Services Commission, program committees, State and Administrations to supply data beyond the bid.

These activities are intended to influence state agencies in their purchase of computer equipment, software products and services, and maintenance services. Such purchasing activities by state agencies are not administrative action. They are internal decisions which only affect the policy of the one particular state (or person). One of public funds by state agencies is regulated by the appropriate law, not by the lobby law. Therefore, municipal employees who try to influence such purchasing actions of state agencies in part or their actual employment activities are not acting to influence "administrative action".

The answer to your third question takes your second question into.

Public Law Number 86-360

Report from Mr. M. Douglas Helm, Office of General Counsel, Department of Justice, Atlanta Georgia regarding lobby registration requirements.

EXHIBIT

'Administrative services' as defined by sec. 205, 210, 212, 213, 214, 215, 216, 217, 218-26, 219-21 and 220 include the provision of regular telephone, telefax postage and services, and maintenance services.