
2020 ETH 02

LOBBYING – DUTIES ON BEHALF OF A PRINCIPAL AS EXCLUSIVE OR NOT EXCLUSIVE TO LOBBYING

You are the Government Relations Director for a lobbying principal. You have presented certain duties and inquire whether, under the applicable statutes, a lobbyist who is assigned those duties has duties that are considered exclusively limited to “lobbying.”

Summary:

It is the opinion of the Commission that because one or more of the lobbyist’s duties include things other than attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee (including time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs), the lobbyist’s duties overall are not exclusive to lobbying. Therefore, the lobbyist must be authorized by the fifth day of lobbying communication on behalf of the principal within a six-month reporting period.

Analysis

The following are the duties contained in your original inquiry:

1. Meet with legislators, agency professionals and administration leaders as needed to successfully promote the principal’s policy priorities;
2. Regularly meet with principal staff on policy priorities;
3. As needed, brief volunteers and Board leaders of the principal on the principal’s policy priorities, legislative process, and political climate;
4. Review proposed bills and regulations that the principal may have an interest in and discuss position and potential engagement with the principal;
5. Notify principal staff of upcoming public hearings, particularly when principal participation is optimal;
6. Provide counsel regarding testimony before the Legislature or state agency;
7. Provide insight and guidance on media opportunities related to the principal’s policy priorities;
8. Participate in coalition meeting/calls as necessary and appropriate;
9. Review and provide guidance on communications with volunteers and Board leaders of the principal; and
10. Other duties as necessary and agreed upon by both parties.

In subsequent conversations you clarified duties 7-10 as follows:

7. Provide insight and guidance on media opportunities related to the principal’s policy priorities. The target audience depends on the type of media opportunity. Sometimes the media opportunity targets Wisconsin residents to engage them on a grassroots level to get more involved in advocacy activities with the principal, and sometimes the opportunity aims to get specific legislator’s attention as well as the constituents in their district. The opportunities are all earned media and not paid for by the principal.
8. Participate in coalition meeting/calls as necessary and appropriate.

This usually includes other groups like the principal that work together on a common issue. This coalition does not include state officials or state employees. The meetings and/or calls could be either in preparation for lobbying communications or for internal or grassroots efforts.

9. Review and provide guidance on communications with volunteers and Board leaders of the principal.

Communications to volunteers and Board leaders of the principal are usually to inform them on issues but depends on the circumstance.

10. Other duties as necessary and agreed upon by both parties.

You speculated a duty in this category to be giving insight to the principal about upcoming elections. You also noted that this clause is infrequently relied on to expand upon a lobbyist's duties.

The crux of your question is when the individual with the aforementioned duties is required to be authorized by the principal. The licensure and authorization requirements are found in [WIS. STAT. § 13.66](#), which provides:

Except as authorized under s. [13.621](#), no person may engage in lobbying as a lobbyist unless the person has been licensed under s. [13.63](#) and has been authorized to act as a lobbyist for the principal whom the lobbyist represents under s. [13.65](#). Except as authorized under s. [13.621](#), no principal may authorize its lobbyist to engage in lobbying until the lobbyist is licensed and the principal is registered under s. [13.64](#).

Under this statute, the following steps are required. First, the lobbyist must be licensed, and the principal must be registered. Second, the lobbyist must be authorized to lobby for the principal. After those things occur, the lobbyist may engage in lobbying.¹

The following definitions are pertinent to the analysis of this opinion:

- “Lobbyist” means an individual who is employed by a principal, or contracts for or receives economic consideration, other than reimbursement for actual expenses, from a principal and whose duties include lobbying on behalf of the principal. If an individual's duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if he or she makes lobbying communications on each of at least 5 days within a reporting period. [WIS. STAT. § 13.62\(11\)](#).
- “Lobbying” means the practice of attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee, and includes time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs. [WIS. STAT. § 13.62\(10\)](#).

¹ [WIS. STAT. § 13.65](#) establishes the lobbyist authorization process:

Before engaging in lobbying on behalf of a principal, a lobbyist or the principal who employs the lobbyist shall file with the commission a written authorization for the lobbyist to represent the principal, signed by or on behalf of the principal. A lobbyist or principal shall file a separate authorization for each principal represented by a lobbyist.

- “Lobbying communication” means an oral or written communication with any agency official, elective state official or legislative employee that attempts to influence legislative or administrative action, unless exempted under s. [13.621](#). [WIS. STAT. § 13.62\(10g\)](#).

Because the definition of “lobbyist” includes the terms “lobbying” and “lobbying communications,” it might be clearer if we restate the definition of “lobbyist” as follows:

“Lobbyist” means an individual who is employed by a principal, or contracts for or receives economic consideration, other than reimbursement for actual expenses, from a principal and whose duties include

attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee (including time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs)

on behalf of the principal. If an individual's duties on behalf of a principal are not limited exclusively to

attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee (including time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs),

the individual is a lobbyist only if he or she makes

oral or written communication with any agency official, elective state official or legislative employee that attempts to influence legislative or administrative action (unless exempted under s. 13.621)

on each of at least 5 days within a reporting period.

At issue is the second sentence of the definition of “lobbyist.” This sentence creates an exception to the definition of “lobbyist” for individuals that have additional duties other than those that constitute “lobbying” and “lobbying communication.” Under the exception, an individual that has duties outside of “lobbying” is not a “lobbyist” and, therefore, is not required to obtain a lobbyist license and authorization until s/he has had 5 or more days of “lobbying communication” in a reporting period.² This exception requires that the Commission consider the individual’s duties to determine whether each duty is “lobbying.” The answer will necessarily depend on the facts of each situation.

² There are two reporting periods each year. The first reporting period is from January 1 through June 30. The second reporting period is from July 1 through December 31. [WIS. STAT. § 13.62\(12r\)](#).

The person that will engage in these duties will be paid to “lobby” as that term is defined in statute. The question is whether the individual’s duties are not limited exclusively to “lobbying.” If even one of the duties listed is not considered “lobbying,” then the individual’s duties are not limited exclusively to “lobbying” and the principal is not required to authorize that individual until the fifth day on which the individual had “lobbying communication.”

Items 1-6 of the duties provided in your request include things like meeting with legislators, promoting policy priorities, reviewing bills and regulations, and providing counsel regarding testimony before the legislature or an agency. This includes preparation for the “lobbying” or “lobbying communications” that will occur. These duties are clearly lobbying as they show a direct attempt to influence legislative or administrative action by oral or written communication with an elective state official, agency official or legislative employee.

7. Provide insight and guidance on media opportunities related to the principal’s policy priorities. The target audience depends on the type of media opportunity. Sometimes the media opportunity targets Wisconsin residents to engage them on a grassroots level to get more involved in advocacy activities with the principal, and sometimes the opportunity aims to get specific legislator’s attention as well as the constituents in their district. The opportunities are all earned media and not paid for by the principal.

The additional details provided for item 7 clarify that at least a portion of this duty includes communications geared towards grassroots efforts. Grassroots efforts do not attempt to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee (including time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs). In other words, grassroots efforts are not “lobbying.” Furthermore, “lobbying through communications media or by public addresses to audiences made up principally of persons other than legislators or agency officials,” is exempt from the lobbying subchapter.³ To the extent that item 7 does not include lobbying communications intended for an audience made up principally of legislators or agency officials, it would not constitute “lobbying.”

8. Participate in coalition meeting/calls as necessary and appropriate. This usually includes other groups like the principal that work together on a common issue. This coalition does not include state officials or state employees. The meetings and/or calls could be either in preparation for lobbying communications or for internal or grassroots efforts.
9. Review and provide guidance on communications with volunteers and Board leaders of the principal. Communications to volunteers and Board leaders of the principal are usually to inform them on issues but depends on the circumstance.

The analysis of 8 and 9 are substantially similar and can be considered together. Additional details provided for item 8 states that it concerns grassroots efforts. Details provided for item 9 include

³ [WIS. STAT. § 13.621](#) establishes complete exemption from the lobbying subchapter for certain conduct. Sub. (1)(a) states:

Lobbying through communications media or by public addresses to audiences made up principally of persons other than legislators or agency officials.

communications with volunteers, which can be commonly understood as grassroots efforts. As discussed in the analysis for item 7, grassroots efforts are not lobbying. Therefore, to the extent that “participating in coalition meeting/calls as necessary and appropriate,” and “reviewing and providing guidance on communications with volunteers and Board Leaders of the principal,” include grassroots efforts and communication, items 8 and 9 are duties not exclusively limited to lobbying.

10. Other duties as necessary and agreed upon by both parties.

You speculated a duty in this category to be giving insight to the principal about upcoming elections. You also noted that this clause is infrequently relied on to expand upon a lobbyist’s duties.

Item 10 is much more open-ended. If item 10 includes providing insight about upcoming elections as speculated, it would not be a duty exclusive to lobbying because discussions and providing information regarding elections are not included in the definition of lobbying.

Similarly, sometimes lobbyists provide additional services to principals by way of serving as the treasurer of a registered political action committee, or administrator of a registered conduit. If item 10 includes advising on campaign finance laws or fulfilling reporting obligations for a registered committee or conduit, it would not be a duty exclusive to lobbying.

It is also not uncommon for lobbyists to serve as a principal’s organizer of grassroots advocacy efforts. Grassroots advocacy does not have its own definition in the [Merriam-Webster Dictionary](#). However, grassroots is defined as “the basic level of society or of an organization especially viewed in relation to higher or more centralized positions of power,”⁴ and advocacy is defined as “the act or process of supporting a cause or proposal.”⁵ Together, grassroots advocacy could be considered to be organizing the membership of an organization to show support for a particular cause or proposal. Organizing a principal’s grassroots advocacy efforts might include:

- Facilitating a lobby day at the Capitol for volunteers and members of the public to voice concerns directly to their legislators,
- Organizing volunteers to do outreach for causes that the principal has subscribed to,
- Providing guidance on social media usage to engage volunteers and members of the public,
- Encouraging members of the public to contact their legislators regarding causes that the principal has subscribed to.

If item 10 includes organizing a principal’s grassroots advocacy efforts, it would not be a duty exclusive to lobbying.

It is reasonable to expect that “other duties agreed upon by both partners” would include things not necessarily related to attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee (including time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs). Therefore, to the extent that item 10 does not include solely other duties related to lobbying or lobbying communication, it can be considered a duty not exclusively limited to lobbying.

⁴ <https://www.merriam-webster.com/dictionary/grassroots> (Last visited on January 30, 2020.)

⁵ <https://www.merriam-webster.com/dictionary/advocacy> (Last visited on January 30, 2020.)

Conclusion

It is the opinion of the Commission that items 1-6 of your request are duties exclusively limited to lobbying. Item 7 is likely exempt under [Wis. STAT. § 13.621\(1\)\(a\)](#). To the extent that items 8 and 9 include grassroots efforts, they are duties not exclusively limited to lobbying. In so far as item 10 includes tasks related to things other than lobbying or lobbying communications, it is a duty not exclusively limited to lobbying. Because one or more of the lobbyist's duties include things other than attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee (including time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs), the lobbyist's duties overall are not exclusive to lobbying. Therefore, the lobbyist must be authorized by the fifth day of lobbying communication on behalf of the principal within a six-month reporting period.

From: [REDACTED]
To: [Russell Caroline M - ETHICS](#)
Subject: [REDACTED]
Date: Thursday, September 26, 2019 3:25:51 PM
Attachments: [image005.png](#)
[image006.png](#)
[image002.png](#)

Great. I would like to ask for an informal opinion on whether to following duties quality a person as “exclusive to lobbying” or “not exclusive to lobbying”.

Duties include:

1. Meet with legislators, agency professionals and administration leaders as needed to successfully promote the [REDACTED]’s policy priorities.
2. Regularly meet with [REDACTED] staff on policy priorities.
3. As needed, brief [REDACTED] volunteers and Board leaders on [REDACTED]’s policy priorities, legislative process, and political climate.
4. Review proposed bills and regulations that [REDACTED] may have an interest in and discuss position and potential engagement with [REDACTED].
5. Notify [REDACTED] staff of upcoming public hearings, particularly when [REDACTED] participation is optimal.
6. Provide counsel regarding testimony before the Legislature or state agency.
7. Provide insight and guidance on media opportunities related to [REDACTED] policy priorities.
8. Participate in coalition meeting/calls as necessary and appropriate.
9. Review and provide guidance on [REDACTED] communications with [REDACTED] volunteers and Board leaders.
10. Other duties as necessary and agreed upon by both parties.

Thanks!

[REDACTED]

From: [REDACTED]
To: [ETH Lobbying](#)
Subject: RE: Request for Advice Follow Up: Exclusive Lobbying
Date: Tuesday, November 12, 2019 9:06:52 AM
Attachments: [image004.png](#)
[image001.png](#)

Hi Caroline,

Sorry for the delay. You caught me at a very busy time.

Here are responses to your questions below. I hope this is helpful.

[REDACTED]

8. Participate in coalition meeting/calls as necessary and appropriate.

What is the coalition?

A: Not a particular coalition. Usually other groups like [REDACTED] working together on a common issue.

Are any of the people involved state officials or state employees?

A: No.

Are the meetings/calls in preparation for lobbying communication or attendance at hearings or meetings to have lobbying communication? Alternatively, are the meetings/calls internal or for grassroots efforts?

A: Could be for either or both.

9. Review and provide guidance on [REDACTED] communications with [REDACTED] volunteers and Board leaders.

Are the [REDACTED] communications aimed solely at [REDACTED] volunteers and [REDACTED] Board leaders?

Can you describe what these communications might look like?

A: It depends on the circumstance but usually to inform them on issues.

10. Other duties as necessary and agreed upon by both parties.

Would these "other duties" be frequent? Can you give a few examples of other duties that would be performed by the lobbyist, or hypothetical ones that may have been discussed?

A: I can't think of anything that falls into this category - maybe something like insight on upcoming elections. I don't think we've ever relied on this clause to actually expand their responsibilities.

[REDACTED]

From: ETH Lobbying <ETHLobbying@wisconsin.gov>
Sent: Monday, November 11, 2019 3:56 PM
To: [REDACTED] <[REDACTED]>
Subject: RE: Request for Advice Follow Up: Exclusive Lobbying

***** CAUTION:** This email originated from outside of the [REDACTED]. Do not click links or open attachments unless you recognize the sender and know the content is safe. ***

Hi [REDACTED],

Touching base on this one last time.

Thanks,

Caroline M. Russell

Ethics Specialist

Wisconsin Ethics Commission

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<https://ethics.wi.gov> | (608) 266-8123 | Twitter: [@EthicsWI](https://twitter.com/EthicsWI)

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From: [REDACTED] <[REDACTED]>
Sent: Monday, November 4, 2019 8:22 PM
To: ETH Lobbying <ETHLobbying@wisconsin.gov>
Subject: RE: Request for Advice Follow Up: Exclusive Lobbying

Hi Caroline,

I did see your email. Sorry for the delay. I'm swamped with an advocacy day and a big public hearing this week. I'll respond later in the week when I have time to breath again.

[REDACTED]

[REDACTED]

From: ETH Lobbying <ETHLobbying@wisconsin.gov>
Sent: Monday, November 4, 2019 2:33 PM
To: [REDACTED] <[REDACTED]>
Subject: RE: Request for Advice Follow Up: Exclusive Lobbying
Importance: High

***** CAUTION:** This email originated from outside of the [REDACTED]. Do not click links or open attachments unless you recognize the sender and know the content is safe. ***

Hi [REDACTED],

I wanted to touch base with you about the below email to see if you've received it. I would like a little but more information to better formulate advice. Please let me know if you have any questions.

Caroline M. Russell

Ethics Specialist

Wisconsin Ethics Commission

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From: Russell, Caroline M - ETHICS
Sent: Tuesday, October 29, 2019 1:55 PM
To: [REDACTED] <[REDACTED]>
Subject: Request for Advice Follow Up: Exclusive Lobbying

Hello [REDACTED],

I am currently working on the request for advice that you sent in the end of September. To better assess whether certain duties of a lobbyist qualify as "exclusive to lobbying," I would like to ask you some follow up questions, specifically about duties 8, 9 and 10 of your request. I have laid out the duties and the follow-up questions beneath:

8. Participate in coalition meeting/calls as necessary and appropriate.
What is the coalition? Are any of the people involved state officials or state employees? Are the meetings/calls in preparation for lobbying communication or

attendance at hearings or meetings to have lobbying communication?
Alternatively, are the meetings/calls internal or for grassroots efforts?

9. Review and provide guidance on [REDACTED] communications with [REDACTED] volunteers and Board leaders.

Are the [REDACTED] communications aimed solely at [REDACTED] volunteers and [REDACTED] Board leaders? Can you describe what these communications might look like?

10. Other duties as necessary and agreed upon by both parties.
Would these "other duties" be frequent? Can you give a few examples of other duties that would be performed by the lobbyist, or hypothetical ones that may have been discussed?

Thank you in advance for any additional insight you can provide regarding my questions. As a reminder, we are preparing your request for the Commission to review at its meeting on December 3, 2019, and will promptly follow up with you afterwards.

In the meantime, if you have any questions, please let me know.

Caroline M. Russell

Ethics Specialist

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