

1984 WL 250023 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 17, 1984

\*1 The Honorable A. Victor Rawl  
Vice-Chairman  
House Delegation  
Charleston County Legislative Delegation  
Post Office Box 487  
Charleston, South Carolina 29402

Dear Representative Rawl:

In a letter to this Office you referenced that pursuant to [Section 2-17-40, Code of Laws of South Carolina](#), 1976, lobbyists are required to file annually on a form prescribed by the Secretary of State ‘. . . a complete and itemized sworn statement of all contributions and expenditures made, paid, incurred or promised in connection with promoting or opposing in any matter any legislation within the terms of this chapter.’ Such provision further states that a lobbyist ‘. . . with other duties is required to report only that income or expense directly related to lobbying.’ You have questioned whether the salary paid to a lobbyist should be specifically set out in the report filed with the Secretary of State.

As stated, a lobbyist must report ‘contributions’ and ‘expenditures’. Such terms are not specifically defined and the General Assembly in enacting the provisions pertaining to financial disclosures by lobbyists did not specifically state that salaries paid to lobbyists are to be reported. Furthermore, a ‘legislative agent’ or lobbyist is defined by [Section 2-17-10\(b\), Code of Laws of South Carolina](#), 1976, as ‘. . . any person who is employed, appointed or retained, with or without compensation, by another . . .’ to influence legislation.

By comparison, statutes of other states and the federal government do specifically require ‘salaries’ to be reported. For instance, [2 U.S.C.S. § 267](#) which requires registration of any person employed to influence federal legislation, provides that such person shall report ‘. . . how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are included.’ As set forth in [Seeber v. Washington State Public Disclosure Commission, 634 P.2d 303 \(1981\)](#), the State of Washington pursuant to [RCW 42.17.170\(2\)](#) provided that registered lobbyists were required to report: ‘. . . the totals of all expenditures made or incurred by such lobbyist or on behalf of such lobbyist by the lobbyist’s employer during the period covered by the report, which totals shall be segregated according to financial category, including food and refreshments; living accommodations; advertising; travel; telephone; contributions; office expenses, including rent and the salaries and wages paid for staff and secretarial assistance, or the proportionate amount thereof, paid or incurred for lobbying activities; and other expenses or services . . .’ [634 P.2d at 305](#).

See also: [Indiana Code Section 2-4-3-4 \(1971\)](#) (Burns Code Ed.) as set forth in [Day v. State, 341 N.E.2d 209 at 210 \(1976\)](#): ‘(w)ithin thirty days after the adjournment of the General Assembly . . . every person, firm, corporation or association employing legislative counsel or legislative agents, shall file with the Secretary of State a complete and detailed statement . . . of all expenses paid or incurred by such person, firm, corporation or association in connection with the employment of legislative counsel or agents, including the salaries of each of such counsel or agents . . .’

\*2 I am enclosing a copy of the form provided by the Secretary of State’s office for lobbyists to file their report pursuant to [Section 2-17-40](#). Such form is captioned ‘Expense Statement of Registered Lobbyist.’ As you can see, such form specifically

sets forth 'salary' as one item which is to be included in the statement. Therefore, it is clear that the Secretary of State has interpreted [Section 2-17-40](#) as requiring salary to be reported. Generally, where the construction of a statute by the agency charged with implementing it has been uniform and acquiesced in by the General Assembly, such construction is entitled to considerable weight. [Etiwan Fertilizer Company v. South Carolina Tax Commission](#), 217 S.C. 354, 60 S.E.2d 628 (1950).

As to any disputes which may exist that certain individuals should be considered as receiving a salary for lobbying, as opposed to their contentions that they receive other compensation such as legal fees, etc. for generally representing a client which need not be reported, it appears that such disputes should be solved by legislative clarification or amendment to the present reporting statutes. This is especially true inasmuch as the courts have consistently held that penal statutes must be strictly construed against the State and any uncertainty or ambiguity must be resolved in favor of the defendant. See: [State v. Guy Mobile Home Corporation](#), 248 S.C. 386, 149 S.E.2d 913 (1966); [State v. Cutter](#), 274 S.C. 376, 264 S.E.2d 420 (1980). [Section 2-17-60, Code of Laws of South Carolina](#), 1976, provides a criminal penalty for the violation of the above-referenced provisions dealing with reporting by lobbyists.

If there are any further questions, please advise.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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