

## The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3680  
FACSIMILE: 803-253-6283

September 24, 1991

The Honorable Jim Miles  
Secretary of State  
P. O. Box 11350  
Columbia, South Carolina 29211

Dear Mr. Secretary:

You have asked the opinion of this Office whether an individual or an organization that (1) reports on voting activity of members of the General Assembly; (2) holds news conferences relative to these surveys or reports; and (3) contacts members of the General Assembly requesting specific action on matters other than the enactment of statutory laws is a "lobbyist." I assume that your request concerns whether this hypothetical individual or organization is a "lobbyist" as that term is used in South Carolina Code Title 2, Chapter 17 (1986 Rev.). You also asked whether the activities of this organization constitute "lobbying" and I again assume your request concerns the use of that term in Title 2, Chapter 17, of the South Carolina Code.

I emphasize at the outset that statutory interpretation is the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942). Nonetheless, there are established rules of statutory construction that guide in attempting to determine how a court may ultimately resolve a question of statutory interpretation. A court will attempt to ascertain the legislative intent if it can be reasonably discovered in the statutory language. Gambrell v. Travelers Insurance Companies, 280 S.C. 69, 310 S.E.2d 814 (1983); Smalls v. Weed, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987). Of course, when the terms of a statute are clear and unambiguous, a court must apply them according to their literal meaning. Duke Power Company v. South Carolina Tax Commission, 292 S.C. 64, 354 S.E.2d 902 (1987); Garris v. Cincinnati Insurance Company, 280 S.C. 149, 311 S.E.2d 723 (1984). And where the General Assembly has prescribed legal definitions for the terms employed

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in a statute, such definitions are generally binding upon the courts and should prevail. Brown v. Martin, 203 S.C. 84, 26 S.E.2d 317 (1943); Windham v. Pace, 192 S.C. 271, 6 S.E.2d 270 (1940).

Fortunately, here, the General Assembly has prescribed statutory interpretations of the two terms subject of your inquiry and the express language of the statutory definitions appears to provide the necessary legal guidance.

Pursuant to South Carolina Code Section 2-17-10 (b) (c), "lobbyist" means

any person who is employed, appointed or retained, with or without compensation, by another person as defined in (a) above to influence in any matter the act or vote of any member of the General Assembly of this State during any regular or special session thereof upon or concerning any bill, resolution, amendment, report, claim, act or veto pending or to be introduced.

"Lobbying" is defined by the General Assembly as

direct communication with members of the General Assembly or their staff to influence the passage or defeat of legislation.

South Carolina Code Section 2-17-10 (d) (1986 Rev.).

In the factual hypothetical you have provided, you advise that the organization "writes letters to members of the General Assembly asking the General Assembly to take specific action on specific matters . . . ." Thus, it is clear that the organization or individual attempts to influence specific official action of the members of the General Assembly. I assume that this contact is made on behalf of the members of the organization. The statutory definition of "lobbyist" is drafted very broadly to include within its scope not simply those attempts to influence "legislation" as that term may be used in its technical or restrictive sense; but instead, it includes attempts "to influence in any matter the act or vote of any member of the General Assembly of this State during any regular or special session thereof upon or concerning any bill, resolution, amendment, report, claim, act or veto" [emphasis added]. See also, U. S. v. Rumely, 345 U.S. 41, 73 S.Ct. 543, 97 L.Ed. 772 (1953); Young Americans for Freedom, Inc. v. Gorton, 522 P.2d 189, 191 n. 2 (Wash. 1974) ["We [the Court] use the term 'legislation' herein [in the context of the lobbyist registration laws] to also include pending or pro-

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posed rules, rates, standards or proposals." I caution that the factual hypothetical does not identify whether these direct mailings to members of the General Assembly could be construed as attempts to influence legislative action upon "any bill, resolution, claim, act or veto pending or to be introduced." Whether the subject organization is a "lobbyist" depends upon your Office's determination that these direct mailings were intended to influence "legislation" as that term is used in its very broad sense.

Similarly, with regard to whether the activities outlined in your hypothetical constitute "lobbying," it is clear that the mailing of the letters to members of the General Assembly is a direct communication intended to influence their official actions upon legislative matters. See, U. S. v. Harris, 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed. 989 (1954); U. S. v. Rumely, *supra*, 345 U.S. at 47. [Lobbying, in its commonly accepted sense, is generally defined as representations made directly to Congress, its members or its committees.] Whether these direct communications to members of the General Assembly could be construed as attempts to influence legislative action upon "any bill, resolution, claim, act or veto pending or to be introduced" would depend upon the factual determinations of your Office.

I further advise that the preparation of surveys or reports of selected voting activities of members of the General Assembly and the subsequent publication of this information at news conferences, even if I were to assume that the intent of this activity was to indirectly influence legislative action, does not constitute a "direct communication with members of the General Assembly or their staff[s]" and, accordingly, does not come within the statutory definition of "lobbying" found in Section 2-17-10 (d).

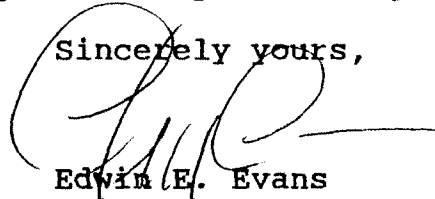
In summary, I advise that the statutory definition of "lobbyist," as used in Chapter 17, Title 2, of the South Carolina Code, is intended to be very broad. Those who attempt to influence legislative action "upon or concerning any bill, resolution, amendment, report, claim, act or veto" are "lobbyists" as that term is statutorily defined. Similarly, whether an organization is engaged in "lobbying" is determined by the statutory definition of that term. "Lobbying" involves direct communications with members of the General Assembly or their staffs to influence the passage or defeat of "legislation." Again, I believe that "legislation" as used in this Act should not be narrowly or technically defined but should be construed to include "any bill, resolution, amendment, report, claim, act or veto pending or to be introduced" in the General Assembly.

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In providing this information, I caution that the General Assembly has passed proposed legislation and, should that legislation be signed by the Governor, it may change these statutory definitions. I also advise that the registration and reporting requirements found in Chapter 17, Title 2, of the South Carolina Code are not necessarily coterminous with these statutory definitions. Of course, whether a specific individual or organization must register or report depends upon the discrete facts and is a decision that in the first instance must be made after investigation by the Secretary of State.

Please contact me if I may provide any further guidance.

Sincerely yours,



Edwin E. Evans  
Chief Deputy Attorney General

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REVIEWED AND APPROVED:



ROBERT D. COOK

Executive Assistant for Opinions