

## **ADVISORY OPINION REQUEST**

**Number:** AO 18-05-LOB  
**Requested By:** Ashley Reed  
**Prepared By:** Heather Dalberg, Paralegal I  
**Date Issued:** October 15, 2018  
**Subject:** Prohibitions related to lobbyists forwarding fundraising invitations

### **QUESTIONS PRESENTED**

1. Is it permissible for a lobbyist to forward a fundraising invitation as an advisory?
2. Can a lobbyist advise, via a newsletter, about upcoming fundraising events?
3. Given the many court cases related to campaign finance laws, lobbyists and freedom of speech protections since the passage of Alaska's laws, Mr. Reed has asked for a constitutional review and the applicability of Alaska's lobbying laws.

### **SHORT ANSWER**

1. No, lobbyists are prohibited from engaging in fundraising activity, including the forwarding of a fundraising invitation as an advisory.
2. No, lobbyists are prohibited from engaging in fundraising activity, including adding upcoming fundraising events to newsletters as an advisory.
3. This question does not describe a specific transaction or activity or include a description of relevant facts as required under AS 15.13.374. Therefore, this question is not addressed in this advisory opinion.

### **FACTS**

Ashley Reed is a registered lobbyist in the state of Alaska.<sup>1</sup> Acting under previous informal staff guidance Mr. Reed has informed others of upcoming fundraisers for a candidate through forwarding email invitations and including fundraiser information in periodic newsletters that he circulates to his mailing list. Recently the question has been raised resulting in conflicting interpretations of the prohibitions as they apply to lobbyists. Mr. Reed now seeks a formal Commission opinion on his activity.<sup>2</sup>

### **LAW AND ANALYSIS**

Lobbyists are prohibited from fundraising activity in the form of serving as a campaign manager or director, campaign treasurer, or deputy campaign treasurer on a finance or fundraising committee, hosting fundraising events, directly or indirectly collecting contributions for a candidate or delivering contributions to a candidate, or otherwise engaging in the fundraising activity of a legislative campaign

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<sup>1</sup> Exhibit A, Lobbyist Registration.

<sup>2</sup> Exhibit B, AO Request.

or campaign for governor or lieutenant governor.<sup>3</sup> A lobbyist's participation in a legislative campaign must be "completely independent of all fundraising activities."<sup>4</sup>

When a lobbyist receives an invitation for a fundraiser via email, forwarding the email along to clients or including it in a newsletter as an "advisory" could be interpreted as soliciting contributions for the campaign.<sup>5</sup> Though the lobbyist's name is not on the invitation itself, his name will be on the email forwarding the invitation, and while the lobbyist did not create the campaign's initial email invite list, forwarding an email containing fundraising information gives the lobbyist the ability to determine the details of who is invited to a fundraiser. Forwarding information regarding fundraisers for campaigns makes the lobbyists an active participant in the fundraising activity. The law states that to "otherwise engage in fundraising activity" and to solicit campaign funds is prohibited, which would include passing along fundraising event information.<sup>6</sup>

A 1993 advisory opinion addressed a question regarding similar activity, i.e., whether a lobbyist may prepare the list of invited guests to fundraisers for a legislative candidate.<sup>7</sup> The APOC staff's recommended AO concluded that lobbyists should not prepare the invite list. On this particular issue, the Commission's vote was split 3-2. Lacking the requisite four affirmative votes required for approval, the Commission did not issue formal, binding guidance on that single question. The AO therefore cautioned that it "does not protect [the lobbyist] from a third-party complaint alleging that [the lobbyist] 'actively engaged in fundraising activities' by preparing the list of invited guests for a fundraising event" hosted by the lobbyist's client.<sup>8</sup>

A 1994 advisory opinion directly answers the question, "Which details for a fundraiser may [a lobbyist] help determine?" with "None."<sup>9</sup> Yet, a lobbyist may perform purely "clerical" or "ministerial" functions with respect to "preparing invitations," such as "copying words and phrases which others have finalized."<sup>10</sup> Developing a list of invitees goes beyond simply copying words and phrases that others have finalized and gives the appearance of actively engaging in fundraising activity. The AO goes even further to state that when a lobbyist is asked whether a campaign needs contributions or how a campaign's fundraising is going, the lobbyist should refer those questions to the campaign and explain that the lobbyist is prohibited by law from active participation in fundraising for state legislative campaigns.<sup>11</sup>

In 2006 the Commission specified that a lobbyist may not determine the "details of fund-raising activity" or have his name be used on an invitation to or announcement of a fundraising activity.<sup>12</sup> Alerting clients to upcoming fundraisers and forwarding fundraiser invitations effectively determines the

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<sup>3</sup> AS 24.45.121(a)(8) and 2 AAC 50.580.

<sup>4</sup> AO-LOB Smith, Bernie (Sept. 21, 1994).

<sup>5</sup> 2 AAC 50.580(4).

<sup>6</sup> AS 24.45.121(8); 2 AAC 50.580.

<sup>7</sup> 931214-AO-LOB (Gravo, Mitch, Apr. 1, 1994) Formal advisory opinions were not numbered in 1993. The advisory opinion can be found online at <http://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=5509>.

<sup>8</sup> *Id.*

<sup>9</sup> AO-LOB, Pearce, Drue & Williams, Michael (Sept. 21, 1994).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> AO 06-04-LOB (Bitney, John, Oct. 9, 2006).

details of the invitation list, and amounts to allowing your name to be used on an invitation to or announcement of a fundraising activity.<sup>13</sup>

Since these AOs, there have been substantial advances in technology. Given the rise of electronic and social media, forwarding fundraiser information, and sharing invitations on Facebook and other social media, have gained popularity. None of these activities have been considered by the Commission and although they are not specifically contemplated in the law, AS 24.45.121(a)(8) and 2 AAC 50.580 prohibit any engagement in fundraising activity for a candidate.<sup>14</sup>

Notably, none of these AOs prohibit a lobbyist from personally advocating—i.e., freely expressing their opinion—regarding a candidate, or from contributing directly to a state legislative candidate in the lobbyist’s home district. However, the activities contemplated in this request go beyond simply personally advocating on behalf of a candidate. When a lobbyist informs their clients of upcoming fundraising events for candidates, they are engaging in fundraising activity—activity that is prohibited.

## **CONCLUSION**

Lobbyists should refrain from forwarding invitations to fundraising events, whether in electronic form or otherwise. Lobbyists should refrain from including fundraising event details in newsletters as an “advisory.” Lobbyists may personally advocate on behalf of candidates. This personal advocacy should not include providing any fundraising information regarding the candidate.

## **COMMISSION DECISION**

Only the Commission has the authority to approve an advisory opinion. 2 AAC 50.905. The Commission will rule on staff’s proposed advice at its next regular meeting. The Commission may approve, disapprove, or modify the proposed advice. An advisory opinion must be approved by an affirmative vote of at least four members or it will be considered disapproved. Both staff’s proposed advice and the Commission’s final advisory opinion apply only to the specific facts and activity for which advice was requested.

If you rely on staff’s proposed advisory opinion in good faith and the Commission subsequently rejects the proposed advice, staff will take no enforcement action on your activities up to that point if you acted under the specific facts described. If you have any additional questions or would like to discuss this proposed advice, please contact me at (907) 465-4864.

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<sup>13</sup> *Id.*

<sup>14</sup> Note that AS 24.45.121(a)(8) does not prohibit a lobbyist from making personal contributions to a candidate as authorized by AS 15.13 or from personally advocating on behalf of a candidate.