EXECUTIVE BRANCH LOBBYING

LOBBYIST REGISTRATION

To: Cynthia Henderson (Tallahassee)

SUMMARY:

A person or entity who contracts with a principal to facilitate the administrative functions of Executive Branch lobbyist retention is not itself a "principal" required to be identified and disclosed pursuant to the requirements of Section 112.3215(3), Florida Statutes. CEO 99-4 and CEO 18-07 are referenced.¹

QUESTION:

Is an entity that acts as an administrator of a contract between a principal and a lobbyist required to be identified as a "principal" for the purposes of lobbyist registration under Section 112.3215(3), Florida Statutes?

Under the circumstances presented, your question is answered as set forth below.

In your letter of inquiry, authorized under Section 112.3215(12), Florida Statutes,² you ask whether certain intermediary entities should be identified as principals or in conjunction with the identification thereof for the purposes of the lobbyist registration requirements of Section 112.3215(3), Florida Statutes. You state that you are a lobbyist registered to lobby the Executive Branch on behalf of certain principals. You inquire with respect to two factual scenarios. The first scenario involves a traditional contractual relationship wherein a principal (Company A) hires a

¹ Prior opinions of the Commission on Ethics can be viewed at www.ethics.state.fl.us.
² Section 112.3215(12), Florida Statutes, provides:

Any person, when in doubt about the applicability and interpretation of this section to himself or herself in a particular context, may submit in writing the facts of the situation to the commission with a request for an advisory opinion to
lobbyist via a contract between Company A and the lobbyist's firm (Company B). You state that Company A has also contracted with an administrator (Company C) to manage the administrative aspects of lobbyist retention across the United States, including Florida. You state that Company C does not manage or influence the policy aspects of lobbyist representation nor does it engage in any lobbying activities, but rather, acts as a resource for legislation, issue tracking, and factual information pertaining to the industry of the respective principal. You further relate that Company C then contracts with Company B to facilitate its compliance with the regulatory aspects of lobbying including proper lobbyist registration, payment of invoices, etc. However, you reiterate that Company C does not engage in any activities that constitute lobbying.

In the second scenario presented, you state that the facts are the same as those set forth in the first scenario, however, the principal—Company A—does not directly contract with the lobbyist and/or his firm—Company B—but, rather, contracts with Company C to facilitate the retention of a lobbyist to lobby on behalf of Company A and represent its policy interests.

In both scenarios you acknowledge that Company A directs the totality of the lobbying policy considerations and is the entity whose interests are being represented and, thus, is the principal for the purposes of lobbyist registration. However, you inquire whether Section 112.3215(3), Florida Statutes, requires the identification of Company C in conjunction with the principal for lobbyist registration purposes so as to most accurately reflect the principal with whom its interests are before the Executive Branch. For example, "Company A care of (c/o) Company C."

Section 112.3125, Florida Statutes, is the portion of the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes) pertaining to lobbyists of the Executive Branch. The portions of the statute relevant to your inquiry provide:

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establish the standard of duty. . . .
"Lobbies" means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee. "Lobbies" also means influencing or attempting to influence, on behalf of another, the Constitution Revision Commission’s action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Constitution Revision Commission. [112.3215(1)(f), Florida Statutes]

"Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist. [112.3215(1)(i), Florida Statutes]

A person may not lobby an agency until such person has registered as a lobbyist with the commission. Such registration shall be due upon initially being retained to lobby and is renewable on a calendar year basis thereafter. Upon registration the person shall provide a statement signed by the principal or principal’s representative that the registrant is authorized to represent the principal. The principal shall also identify and designate its main business on the statement authorizing that lobbyist pursuant to a classification system approved by the commission. The registration shall require each lobbyist to disclose, under oath, the following information:
(a) Name and business address;
(b) The name and business address of each principal represented;
(c) His or her area of interest;
(d) The agencies before which he or she will appear; and
(e) The existence of any direct or indirect business association, partnership, or financial relationship with any employee of an agency with which he or she lobbies, or intends to lobby, as disclosed in the registration. [112.3215(3), Florida Statutes]

Section 112.3215(3), Florida Statutes, pertaining to the registration of lobbyists who lobby the Executive Branch, provides that a person may not lobby an Executive Branch agency or personnel thereof until such person has registered as a lobbyist with the Commission. Pursuant to the lobbyist registration process the lobbyist must provide certain information and identify and register the principal for which he or she is lobbying. The principal must provide a statement signed by the principal or the principal’s authorized representative attesting that the lobbyist registrant is authorized to represent the principal and identifying the principal's main business classification.

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3 Since 2015 the lobbyist registration and compensation reporting process has been effectuated in large part by the electronic Lobbyist Registration and Compensation Reporting (LRCR)
The lobbyist registration system is designed to provide transparency and clarity regarding the identity of individuals or entities that employ or retain lobbyist(s) for the purpose of lobbying and the identity and interests of those individuals that engage, for compensation, in activities that constitute lobbying. Section 112.3215, Florida Statutes, does not contemplate or require the identification of third-party facilitators that may aid in the administrative or regulatory aspects of lobbying. In both scenarios raised by the Requestor, the principal—Company A—is the entity which seeks to retain the lobbyist and which directs the policy goals of the lobbying activities. The identity of the principal does not change merely because it has retained a third-party administrator—Company C—to facilitate the administrative aspects of lobbyist retention. This remains true even in the second scenario wherein Company C is the intermediary liaison which identifies and contracts with the lobbyist, as it is doing so only at the direction of the principal—Company A. At no point in either scenario is the facilitator entity—Company C—seeking to retain or employ a lobbyist for the purpose of influencing the policy decisions of an agency or to engender the goodwill of an agency employee or official, and, thus, Company C does not meet the necessary requirements of the definition of "lobbies" or "principal." See CEO 18-07 and 99-4. Although not present in the instant case, were the Commission to adopt the interpretation wherein a third-party administrator becomes a "principal" for the purposes of lobbyist registration, we can imagine a scenario wherein a principal seeking to conceal its identity could merely retain an administrator and thereafter direct that entity to identify itself as the singular principal for the purposes of lobbyist registration. As such, we find that the principal in both scenarios should be identified as Company A.

system available at www.floridalobbyist.gov.
That being said, with respect to the facts in the second scenario, the Requestor has sought to accurately identify the originating principal seeking to employ or retain a lobbyist as to the representation of its interests—Company A—and, for transparency purposes, further disclose the third-party facilitator contracting with the lobbyist—Company C. Although the disclosure of additional information as to the identity of the administrator is not required by the provisions of Section 112.3215(3), Florida Statutes, this information is illustrative of the totality of the entities involved in the lobbyist representation and does not contravene the purpose of the statute.

Moreover, we encourage the lobbyist and/or his or her lobbying firm to create and retain documentation which describes and explains the principal's contractual relationship(s) with any and all third-party entities which it has retained to facilitate the administrative processes of lobbyist retention.⁴

Your question is answered accordingly.

GWN/cmk/lb

cc: Ms. Cynthia Henderson

⁴ See Section 112.3215(5)(e), pertaining to the retention of lobbyist compensation records and requiring that "[e]ach lobbying firm and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation..."
Commission on Ethics

Caroline:

Per our conversation, we are asking for clarification of the proper parties for registration for a contractual arrangement that does not fall squarely within the statutory definitions set forth in section 11.045, Florida Statutes, regarding Lobbying before the Florida Legislature and section 112.3215, Florida Statutes, regarding Lobbying before the Executive Branch.

Background:

The traditional contractual relationship involves a principal (Company A) hires a lobbyist (Firm or individual B). The contract sets forth the scope and payment between the two entities. In this request, the question involves a principal (Company A), an administrator (Company C) and a lobbyist (Firm B). Company A contracts with Company C to manage the administrative side of all lobbyists across the United States, including Florida. Company C does not technically manage the policy issues but, from time to time, is a resource for tracking and factual information relating to the industry, etc. Company C then contracts with Firm B, and Company C ensures proper registration, payment of invoices, etc. but does not engage in “Lobbying Activities” as defined in section 11.045(1)(e), Florida Statutes. Firm B engages in lobbying the Florida Executive and/or Legislative Branches and registers as a Lobbyist Firm.

Statutory Guidance:

11.045 also provides:

(i) “Principal” means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) Each house of the Legislature shall provide by rule, or may provide by a joint rule adopted by both houses, for the registration of lobbyists who lobby the Legislature. The rule may provide for the payment of a registration fee. The rule may provide for exemptions from registration or registration fees. The rule shall provide that:

(a) Registration is required for each principal represented.

(b) Registration shall include a statement signed by the principal or principal’s representative that the registrant is authorized to represent the principal. The principal shall also
identify and designate its main business on the statement authorizing that lobbyist pursuant to a classification system approved by the Office of Legislative Services.

As stated in the background, the Principal is intended to be Company A in both scenarios described. However, in the second scenario, the Principal does not directly contract with the Lobbyist but, instead, with Company C. However, the true intent of registration and disclosure is for the public to know the Principal, its business, and its intended interests before the legislature.

Therefore, in order to meet the full intent of the statute, we request confirmation that the proper and most transparent manner for registration of the Principal would state, "Company A care of (c/o) Company C" in order to accurately show the Principal, with whom its interests are before the Florida Executive and Legislative Branches, and the party contracting with the lobbyist. We are requesting guidance, if possible, for the 2019 registration cycle.

Thank you for consideration of this issue.

Cynthia Henderson

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