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Respond to:
P.O. Box 185
Trenton, New Jersey 08625-0185

(609) 292-8700

Website: <http://www.elec.state.nj.us/>

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Legal Director

JAMES P. WYSE
Counsel

May 21, 2002

Thomas V. O'Neil
Executive Vice President
The Marcus Group, Inc.
300 Lighting Way, Third Floor
Secaucus, New Jersey 07094

Advisory Opinion No. 01-2002

Dear Mr. O'Neil:

Your request for an advisory opinion, submitted on behalf of The Marcus Group, Inc. (hereafter, TMG), has been considered by the Commission (hereafter, the Commission or ELEC), which has directed me to issue this response. TMG is a firm that is registered with the Commission as a legislative agent under the Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq. (hereafter, the Lobbying Act), and you have asked whether or not "lobbying activity" to support or oppose a "grant resolution" before the State House Commission (hereafter, SHC), which reviews the "sale and leasing of state owned properties," or before the New Jersey Department of Environmental Protection (hereafter, NJDEP) is activity that is subject to reporting pursuant to the Lobbying Act.

Submitted Facts

You write that the SHC was created by the Legislature in 1953, pursuant to N.J.S.A. 52:20-1 et seq., and that "the majority of the Commission's membership comes from the legislative branch of government" and is comprised of two members of the Senate, two members of the Assembly, the State Treasurer, the Director of the Division of Budget and Accounting, and "the Governor or his designee as the presiding officer." You indicate that the SHC might be asked to approve "Green Acres property for private use." ELEC understands that as used in your request "Green Acres property" refers to State-owned or otherwise controlled property that has been dedicated to public use, or preserved from development. However, prior to consideration by the SHC and prior to its approval of a "grant resolution," presumably a resolution to authorize the private use of Green Acres property, the proposal would be reviewed by the NJDEP.

In your request, you indicate that TMG might conduct “lobbying activity” to support or oppose a “grant resolution” before the SHC or the NJDEP. For the purpose of this response, ELEC understands that by use of the term “lobbying activity,” you mean that legislative agents employed by TMG or their clients will communicate with members or staff of the SHC or with members or staff of NJDEP to influence the approval or disapproval of the “grant resolutions.”

ELEC notes that TMG filed its most recent “Annual Report of Legislative Agent” (Form L1-A) on February 15, 2002, and that you are registered with ELEC as a legislative agent and filed your most recent Quarterly Report of Legislative Agent (Form Q-4) on April 5, 2002.

Question Presented

Are communications undertaken by a legislative agent to support or oppose a “grant resolution” before the SHC or the NJDEP subject to reporting pursuant to the Lobbying Act and ELEC regulations promulgated pursuant to that Act?

Commission Response

You are hereby advised that communications undertaken by a legislative agent before either the SHC or NJDEP to support or oppose a “grant resolution” for State-owned property are activities to influence legislation and are subject to the requirements of the Lobbying Act and ELEC regulations.

The term “legislature” is defined by the Lobbying Act to include “the Senate and General Assembly of the State of New Jersey and all committees and commissions established by the Legislature or by either House thereof.” See N.J.S.A. 52:13C-20c and N.J.A.C. 19:25-20.2. As you indicated in your request, the SHC was created in 1953 by the Legislature (N.J.S.A. 52:20-1 et seq.), and therefore the SHC as a commission established by the Legislature is an entity that comes within the plain language of the definition.

The Lobbying Act defines the term “legislation” to include “...all bills, resolutions, amendments, nominations and appointments pending or proposed in either House of the Legislature, and all bills and resolutions which, having passed both Houses, are pending approval by the Governor.” (Emphasis added) See N.J.S.A. 52:13C-20b and N.J.A.C. 19:25-20.2. The definition of “legislation” includes “all...resolutions”, and does not distinguish or otherwise exclude specific categories of resolutions, such as the “grant resolutions” you have described. Therefore, there is no basis to exclude “grant resolutions” from the scope of the definition.

The definition of “legislation” quoted above contains the qualifier, “pending or proposed in either House of the Legislature.” The SHC is not a House of the Legislature in the sense that it is not one of the two bodies that constitute the Legislative Branch of our State government. However, the SHC is a body created by the Legislature, is constituted as having a majority of its seats assigned to sitting members of the Legislature, and is assigned to administer a function of the Legislature. For the salutary purposes of lobbying disclosure, excluding lobbying activities before the SHC would frustrate the intent of the Lobbying Act to provide information about expenditures to influence legislative decisions. Furthermore, if ELEC were to narrowly construe “legislation” to include only

those resolutions that were pending or proposed before the General Assembly or Senate, the inclusion of the word “commissions” in the definition of “Legislature” would serve no purpose in the context of legislative lobbying. There could never be a scenario under which lobbying undertaken before a commission could be subject to lobbying reporting because under the definition of “legislation” a commission is not the General Assembly or the Senate. In order to give vitality to the inclusion of legislative bodies such as “commissions” within the definition of “Legislature,” ELEC must construe the phrase “pending or proposed in either House of the Legislature” to include those “commissions” that are established by the Legislature to carry out legislative functions, such as the SHC.

The SHC is specifically authorized to “establish from its membership a subcommittee on Green Acres Properties” that constitutes “an instrumentality of the State exercising public and essential governmental functions, and the exercise by the subcommittee of the powers conferred by this or any other act shall be deemed and held to be an essential governmental function of the State.” See N.J.S.A. 52:20-18.2. Among the essential governmental functions of the SHC is the power to review and grant approval of proposals for the “alteration, expansion, exchanges, or improvement” of property purchased with Green Acres funds. See N.J.S.A. 52:20-18.5. ELEC finds that the statutory authority to undertake an essential governmental function to determine matters concerning property purchased with Green Acres funds, including the “grant resolutions” you described in your request, is the functional equivalent of the power to make legislative decisions within the circumscribed authority conferred by the Legislature on the SHC, and therefore confers quasi-legislative decision-making power upon the SHC. As such, ELEC construes SHC “grant resolutions” as the functional equivalent of legislation pending before the Legislature, and lobbying activities pertinent to such “grant resolutions” are subject to the Lobbying Act.

The term “influence legislation” is defined at N.J.S.A. 52:13C-20h and N.J.A.C. 19:25-20.2 to mean “any attempt, successful or not, to secure or prevent the initiation of any legislation. . . .” The activities described in your request are intended to affect the decision by the SHC on a quasi-legislative resolution and to achieve a particular outcome. ELEC therefore concludes that activity by TMG to support or oppose a “grant resolution” before the SHC is activity to influence legislation because it is the equivalent of an attempt to “secure or prevent the initiation” of legislation.

You have indicated that TMG might conduct lobbying activity before the NJDEP in favor of or opposition to a “grant resolution.” As ELEC understands the quasi-legislative “grant resolution” process, the approval of the Commissioner of the NJDEP is required, in addition to approval of the SHC, for any decision concerning Green Acres property. ELEC therefore finds that if a TMG legislative agent makes a communication concerning a “grant resolution” to an officer or member of the NJDEP, the communication has been made to “secure or prevent the initiation” of legislation to an “officer or staff member of the Executive Branch,” as that term is defined at N.J.S.A. 52:13C-20n and N.J.A.C. 19:25-20.2. Therefore, the communication is subject to disclosure by TMG on its annual and quarterly lobbying reports as a communication with a member of the Executive Branch; see N.J.S.A. 52:13C-20f, 52:13C-22, and 52:13C-22.1.

Conclusion

ELEC therefore advises you that all communications with the SHC or NJDEP by a legislative agent to secure or prevent a “grant resolution” are subject to the requirements of the Lobbying Act and ELEC regulations as attempts to influence legislation.

Very truly yours,

ELECTION LAW ENFORCEMENT
COMMISSION

By: _____
NEDDA G. MASSAR, ESQ.
Deputy Legal Director