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March 21, 2006

Thaddaeus Diggs
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Newark, New Jersey 07101-1709

Advisory Opinion No. 01-2006

Dear Mr. Diggs:

The Commission considered your request for an advisory opinion at its meeting today and directed me to issue this response. Your request is made on behalf of the University of Medicine and Dentistry of New Jersey (UMDNJ), which you have described as a “State Authority,” created by N.J.S.A. 18A:64G-1. You have further advised that the UMDNJ has, in the past, “employed several outside state lobbyist/governmental affairs agents to represent the University.”

Question Presented

You have asked whether or not the UMDNJ is subject to the requirements of the Legislative and Governmental Process Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq. (hereafter, the Lobbying Act), which requires a lobbyist organization to file the Annual Report of Lobbyist Organization (Form L1-L) and a governmental affairs agent to file the Annual Report of Legislative Agent (Form L1-A).

Commission Response

The Commission concludes that the UMDNJ is an instrumentality of New Jersey State government, and, as such, is exempt from the reporting requirements of the Lobbying Act. Because it is an instrumentality of State government, individuals who lobby on behalf of the UMDNJ, including “in-house agents” and “outside agents,” as described below, are not required to file quarterly lobbying activity reports, and the UMDNJ is not required to file the annual lobbying financial report.

Please be advised that application of this response is limited to the UMDNJ, and that the Commission makes no determination regarding other organizations, hospitals, foundations, or ventures that may be associated or affiliated with the UMDNJ since the status of these entities is not the subject matter of this Advisory Opinion.

Discussion

The Commission notes that the amendments to the Lobbying Act in 2004 changed the terminology used to refer to those who engage in lobbying activity. The term “governmental affairs agent” (hereafter, agent) replaced the term “legislative agent” to refer to individuals who conduct lobbying activity. The Commission notes further that the term used in your inquiry, “outside ... agent,” refers to those who are retained or engaged by a client, such as the UMDNJ, to lobby on its behalf, while the term “in-house” agent refers to a person who is an employee of an organization, such as the UMDNJ, and who conducts lobbying activity as all or part of his or her job responsibilities.

The Commission believes that the specific text of the legislation creating the UMDNJ supports the conclusion that the UMDNJ is an instrumentality or unit of New Jersey government. The Medical and Dental Education Act of 1970, N.J.S.A. 18A:64G-1, *et seq.* (L. 1970, c.102), created the College of Medicine and Dentistry of New Jersey, the predecessor to the current UMDNJ. The 1970 legislation was amended in 1981, creating the UMDNJ and giving it university status. The legislation stated that “it is the responsibility of the State to provide funds necessary to establish and operate such programs of [medical] education” (Emphasis added.) N.J.S.A. 18A:64G-2. The law further stated that “[t]he exercise by the university of the powers conferred by this act in the ... operation of programs of medical, dental, nursing and health related professions and health sciences education shall be deemed to be public and essential governmental functions necessary for the welfare of the State and the people of New Jersey.” (Emphasis added) N.J.S.A. 18A:64G-3.

Among the powers and duties conferred on the Board of Trustees of the UMDNJ are the following, which the Commission believes are indicia that the UMDNJ is a government entity: to appoint staff “in accordance with the salary schedules of the Civil Service Commission wherever possible”; to exercise the right of eminent domain; to promulgate rules “as are necessary and proper for the administration and operation of the university ...”; and to [f]unction as a public employer” The law also permits the UMDNJ to be represented by the Attorney General. See N.J.S.A. 18A:64G-6. Financial information available on the UMDNJ website indicates that the State supports the operation of the UMDNJ and provided an appropriation of more than \$350 million in 2003.

While the UMDNJ is authorized by N.J.S.A. 18A: 64G-6(v)(1) to create and participate with other entities in partnerships and joint ventures, the law specifically states that “[a] joint venture, subsidiary corporation, partnership or other jural entity entered into or owned wholly or in part by the university shall not be deemed an instrumentality of the State of New Jersey.” N.J.S.A. 18A:64G-6(v)(7). The Commission reads the plain language of this section to distinguish between the UMDNJ itself, which is an instrumentality of the State, and its affiliates, which are not.

The Commission wishes to bring to your attention N.J.S.A. 52:13C-35 and N.J.A.C. 19:25-20.8, which permit the voluntary filing of lobbying reports by persons who are not required by law to file such reports.

Thank you for submitting your request and for your interest in the work of the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT
COMMISSION

By: _____
NEDDA G. MASSAR, ESQ.