

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

In Re: Request for)
Advisory Opinion by)
Sara Rasmussen) AO No. 23-01-LOB
_____)

FINAL ORDER REJECTING ADVISORY OPINION

Former Representative Sara Rasmussen sought an advisory opinion from the Alaska Public Offices Commission asking whether a former legislator's incidental or social contact with current legislators, legislative employees, or other executive branch employees amounts to lobbying activity that would trigger a registration requirement or violate provisions that prohibit her from acting as a lobbyist.¹ The question presented by Ms. Rasmussen's request is hypothetical, depends on an underlying assumption that she will conduct no lobbying activity during the hypothetical interactions, and lacks the specificity required by AS 15.13.374(b). The Commission therefore rejects the draft advisory opinion.

The advisory opinion statute requires that a request "describe a specific transaction or activity that the requesting person is presently engaged in or intends to undertake in the future."² A request "must include a description of all relevant facts" and "may not concern a hypothetical future situation or the activity of a third party."³

¹ With limited exception, former members of the legislature may not engage in activity as a lobbyist before the legislature for a period of one year after the former member has left the legislature. AS 24.45.121(c).

² AS 15.13.374(b)(2).

³ AS 15.13.374(b)(3) & (4).

Ms. Rasmussen’s request does not meet these requirements. The request does not contain specific, non-hypothetical relevant facts upon which to ground analysis. It begins with the premise that Ms. Rasmussen “will not engage in lobbying as defined by statute” and states that she is “likely” to have “incidental non-lobbying contact with legislators and members of Alaska’s executive branch.” The question is tautological; Ms. Rasmussen simply asks the Commission to confirm that if a former legislator does not conduct lobbying activity, her conduct will not be considered lobbying activity.⁴ Staff’s proposed advisory opinion is therefore rejected. That draft opinion is attached to this order.⁵

This is a final Commission decision and may be appealed to the superior court within 30 days.⁶ A request for the Commission to reconsider this order must be made within 15 days after issuance of this order.⁷

Dated: June 26, 2023

BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION⁸

⁴ Given Ms. Rasmussen’s title as GCI’s State Government Affairs Director, the Commission calls attention to the fact that lobbying includes “communicat[ing] directly” and also “through the person’s agents” for the purpose of influencing legislation or administrative action. AS 24.45.171(11).

⁵ See AS 15.13.374; 2 AAC 50.826.

⁶ AS 44.62.560; 2 AAC 50.826(c)(3); Alaska R. App. P. 602.

⁷ AS 44.62.540; 2 AAC 50.840(c).

⁸ Commissioners Richard Stillie, Lanette Blodgett, Suzanne Hancock, Eric Feige, and Dan LaSota participated in this matter. The decision was made on a 5-0 vote.

Certificate of Service:

I hereby certify that on this date, I served, by U.S. Mail, Certified Mail and Email a true and correct copy of the foregoing in this proceeding on the following:

Scott Kendall
Cashion Gilmore & Lindemuth
501 L Street, Suite 601
Anchorage, AK 99501
scott@cashiongilmore.com

and by Email to:
Heather Hebdon
Executive Director
Public Offices Commission
heather.hebdon@alaska.gov



Paralegal II

6/26/23

Date

ADVISORY OPINION REQUEST

Number: AO 23-01-LOB
Requested By: Scott Kendall on behalf of
Sara Rasmussen, GCI State Government Affairs Director
Prepared By: Heather Hebdon, Executive Director
Date Issued: March 30, 2023
Subject: How lobbyist prohibitions relate to a former legislator's incidental or social contact with legislators and legislative employees.¹

Commission Decision: On June 15, 2023, the Commission heard and rejected this advisory opinion by a vote of 5-0.

I. FACTS

Sara Rasmussen served as a State Representative in the Alaska State Legislature until her term ended on January 17, 2023.

Ms. Rasmussen is currently employed as a State Government Affairs Director for GCI. Her job duties include working directly with the company's Law and Corporate Advocacy team in developing the company's policy and communications objectives; communicating with the public regarding the mission and goals of GCI and its subsidiaries; providing research and policy briefs to the company; developing and executing strategic communications strategy for public engagement and engagement of key stakeholder group, such as Tribes, trade associations, and non-profit organizations.²

In her new role with GCI, Ms. Rasmussen anticipates she will have limited contact with legislators and/or members of Alaska's Executive Branch. Such contact might include incidental social contact at local events, dinners, receptions, and other social activities. Ms. Rasmussen may also present on GCI's behalf at various forums or events that legislators and/or other executive officials are likely to attend.

Ms. Rasmussen will not attempt to influence any legislative action and intends to deliberately avoid any discussions related to pending legislative action or leave the general vicinity should discussions related to any pending legislative action arise.

II. QUESTION PRESENTED

Does a former legislator's incidental or social contact with current legislators, legislative employees, or other executive branch employees amount to lobbying activities

¹ Exhibit 1, Request.

² Exhibit 2, March 24, 2023, Kendall Email.

that would trigger a registration requirement or violate provisions that prohibit her from acting as a lobbyist?

III. SHORT ANSWER

Generally, no. Communication with legislators or other public officials that does not attempt to influence legislative action does not trigger a registration requirement.

IV. LAW AND ANALYSIS

With limited exception, former members of the legislature may not engage in activity as a lobbyist before the legislature for a period of one year after the former member has left the legislature.³ In this context, there are several key definitions to examine when determining whether someone is engaging as a lobbyist before the legislature.

The law defines a “lobbyist” as a person who “is employed and receives payments...to communicate directly or through the person’s agents with any public official for the purpose of influencing legislative or administrative action for more than 10 hours in any 30-day period in a calendar year”.⁴ “Payments” include a disbursement or other rendering or tendering of money, property, goods, or services or anything else of value.⁵ “Communicating directly” means speaking with a legislator, legislative employee, or public official by telephone; by two-way electronic communication; or in person.⁶ “Public official” is defined to include various positions with the state including: the governor or the lieutenant governor; persons serving as the head or deputy head of a department; directors or deputy directors of a division; special assistants to the head of a department; legislative liaisons for a department; and assistants to the governor or the lieutenant governor.⁷

Here, Ms. Rasmussen is employed by GCI and ostensibly receives compensation for her services. Additionally, she anticipates instances of direct communication with legislators and other public officials during social events such as dinners, receptions, and possibly legislative bowling. She may also have direct communication with legislators and other public officials through presentations made on behalf of her employer at other forums or business events.⁸

Next, to consider is whether the person communicates directly or through their agent “for the purpose of influencing legislation or administrative action for more than 10 hours in any 30-day period in a calendar year.” “Influencing legislative action” is defined as

³ AS 24.45.121(c).

⁴ AS 24.45.171(11).

⁵ AS 24.45.171(12).

⁶ AS 24.45.171(4).

⁷ AS 24.45.171(15). *See also*, AS 24.60.990(a)(10); AS 39.50.200(a)(9).

⁸ *See generally*, AO 16-02-LOB, GCI [<https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=11648>] [direct communication includes educational presentations or discussions where public officials may be present].

communicating “directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative action.”⁹ And, “legislative action” is defined as:

...the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat, or rejection of any bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature, or by a standing, interim, or special committee of the legislature, or by a member or employee of the legislature acting in an official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding, or sustaining that veto and the action of the legislature in considering, confirming, or rejecting an executive appointment of the governor.¹⁰

In her request, Ms. Rasmussen describes the direct communications with legislators and other public officials as incidental social interactions such as dinners and receptions. She further details her intent to actively avoid situations that might involve discussions of legislation. In other words, the communications would be for social purposes and not for influencing legislative action and therefore do not meet the definition’s intent factor.

However, presenting on GCI’s behalf at various forums or events that legislators and/or executive officials are likely to attend, presents a closer question. The Commission has previously held that direct communication includes educational presentations or discussions where legislators and other public officials may be present.¹¹ Additionally, influencing legislative action includes introducing, promoting, advocating, preparation and drafting of a bill or any other matter before the legislature. That is to say, influencing legislative action goes beyond discussions or presentations that relate to pending legislation and could include prospective legislation, as well. In these instances, depending on the nature and content of the presentation, it is possible that Ms. Rasmussen would need to track her time to ensure she does not exceed 10 hours within any 30-day period in one calendar year.¹² Exceeding that threshold would require she register as a lobbyist and would run afoul of the prohibition found in AS 24.45.121(c).

A final and stand-alone factor to consider is when someone represents themselves as “engaging in the influencing of legislative or administrative action as a business, occupation, or profession.”¹³ Here, although the title of State Governmental Affairs Director is a common title used interchangeably with lobbyist, based solely on the description of her job duties as provided, coupled with her pledge to deliberately avoid

⁹ AS 24.45.171(9).

¹⁰ AS 24.45.171(10).

¹¹ See, AO 16-02-LOB, GCI.

¹² AS 24.45.171(11).

¹³ *Id.*

direct communications that relate to legislation, it does not appear that this factor is met. However, Ms. Rasmussen should be aware that should she instead direct GCI's state and local lobbyists to communicate directly with the legislature to influence GCI's legislative or administrative goals,¹⁴ she may trigger the prohibition against engaging as a lobbyist before the legislature for a period of one year after leaving office.

V. CONCLUSION

Based on the information provided by Ms. Rasmussen about her anticipated limited interactions and activities that might involve incidental contact with legislators, legislative employees, or public officials for purposes other than influencing legislative action; and that such contact would not be directly relate to any prospective, proposed, or currently pending legislation action, it would not rise to the level of lobbying activity. However, if, at Ms. Rasmussen's direction, interactions with the legislature are had through GCI's lobbyists and consultants, and those interactions meet the definition of communicating directly for the purpose of influencing the legislature and occur more than 10 hours in any 30-day period in one calendar year, the prohibition found in AS 24.45.121(c) would be triggered.

VI. COMMISSION DECISION

On June 15, 2023, the Commission heard and rejected this advisory opinion by a vote of 5-0.

CERTIFICATE OF SERVICE: I hereby certify that on this date, I caused a true and correct copy of the foregoing to be delivered to:	
Scott Kendall Cashion Gilmore & Lindemuth 501 L Street, Suite 601 Anchorage, AK 99501 scott@cashiongilmore.com	<input checked="" type="checkbox"/> Certified Mail & U.S. Mail <input checked="" type="checkbox"/> Email

 6/26/23
Paralegal II Date

¹⁴ 2 AAC 50.590

STATUTES AND REGULATIONS

AS 24.45.121 Prohibitions

(c) A former member of the legislature may not engage in activity as a lobbyist before the legislature for a period of one year after the former member has left the legislature. This subsection does not prohibit a former member from acting as a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the commission.

AS 24.45.171 Definitions

(4) "communicate directly" means to speak with a legislator, legislative employee, or public official

(A) by telephone;

(B) by two-way electronic communication; or

(C) in person;

(9) "influencing legislative or administrative action" means to communicate directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative or administrative action;

(10) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat, or rejection of any bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature, or by a standing, interim, or special committee of the legislature, or by a member or employee of the legislature acting in an official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding, or sustaining that veto and the action of the legislature in considering, confirming, or rejecting an executive appointment of the governor;

(11) "lobbyist" means a person who

(A) is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislation or administrative action for more than 10 hours in any 30-day period in one calendar year; or

(B) represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession;

(12) "payment" means the disbursement, distribution, transfer, loan, advance, deposit, gift, or other rendering or tendering of money, property, goods, or services or anything else of value;

(15) "public official" or "public officer" means a public official as defined in AS 39.50.200(a), a member of the legislature, or a legislative director as defined in AS 24.60.990(a); however, it does not include a judicial officer or an elected or appointed municipal officer.

2 AAC 50.590 Definitions

(5) "lobbying" or "lobbying activity"

(A) includes communicating directly, as defined in AS 24.45.171, or using an agent to communicate directly, for the purpose of influencing legislative or administrative action; (B) includes written communications that are part of a two-way electronic communication with a legislator, legislative employee, or public official within the meaning of AS 24.45.171 for the purpose of influencing legislative or administrative action; those communications include electronic mail, telecommunications relay service (TRS), and text messages;