

## **Staff Memorandum 2017-01**

**Do the Ethics Rules prohibit state officers and employees from advocating for or against specific legislation and/or from using state property or resources to engage in such advocacy?**

The Ethics Commission has the power to promulgate Rules governing the conduct of state officers and employees. There are Ethics Rules that prohibit state officers and employees from advocating the election or defeat of state candidates and passage or defeat of state questions while on state property, using state resources, in work status, or in a uniform or wearing identification that identifies a person as a state officer or employee. These prohibitions are specific to advocacy for (1) candidates and (2) state questions. While advocacy involving legislation is not specifically prohibited, there are other Ethics Rules that may apply and are discussed below.

### **Employing Agency Policies**

The question often arises as to whether a state officer or employee, who is exercising his or her individual right to petition the government and is not in work status, may use public resources, such as email, to advocate the passage or defeat of legislation. Generally, public resources are only permitted to be used for governmental purposes. Okla. Const. art. 10, sec. 14. However, this restriction is not an Ethics Rule but rather a constitutional provision outside of the jurisdiction of the Ethics Commission.

Ethics Rule 4.3 requires a state officer or employee to abide by more restrictive policies of the agency he or she serves and any other more restrictive statutes of the State of Oklahoma. State agencies typically have policies concerning appropriate use of employee time and agency resources, such as office space, phones, and telecommunications resources, including email addresses. State employees are required to abide by the more restrictive policies of the employing agency regarding the use of time and resources when engaging in advocacy of legislation.

### **Advocating on Personal Time**

Ethics Rules recognize that state officers and employees, like other individuals, enjoy the inherent right to petition the government. However, when an individual is compensated to influence the policies of state government, the Ethics Commission may regulate his or her conduct. Ethics Rule 5.28 prohibits any state officer or employee from being hired and compensated by any organization, other than the state agency he or she is employed by, to lobby the Legislature. The Ethics Rules specifically recognize, under Ethics Rule 5.2, that a legislative

lobbyist is not a “person exercising his or her constitutional right to petition the government who receives no compensation or anything of value for lobbying[.]”

Therefore, a state officer or employee may communicate with the Governor, members of the legislature, or the respective staff of the governor or legislature on personal time as part of his or her right to petition the government, provided the officer or employee is communicating without compensation and uses personal resources. In such circumstances, the state officer or employee is not considered a legislative lobbyist or legislative liaison and bears no registration or reporting requirements with the Ethics Commission.

### **Legislative Advocacy While in Work Status**

Ethics Rule 5.2 states that a legislative liaison is “any state officer or employee whose duties in fact include legislative lobbying ... other than an individual whose lobbying activities are only incidental to, and are not a significant part of, the services provided by such individual to the agency.” Therefore, any state officer or employee that is, (1) compensated by a state agency and (2) engages in legislative lobbying, is a legislative liaison and must register and file reports with the Ethics Commission. There is an exception for activity that is incidental to his or her duties for an agency. (Note: A private legislative lobbyist hired by a state agency on a contract basis is a legislative lobbyist, rather than a legislative liaison, and is also required to register with the Ethics Commission.)

A legislative liaison is required to register within five (5) days of engaging in lobbying activities and pay the accompanying registration and administration fees. A legislative liaison is subject to the gifting provisions in the Ethics Rules and must file Expenditure Reports regardless of whether any funds were expended.

The point at which lobbying activities become more than “incidental” is a question of fact that should be addressed with the Ethics Commission on a case-by-case basis. The analysis will include, but not be limited to, assigned job responsibilities, actual activity while in work status and the use of state resources during work status to advocate the passage or defeat of legislation or other state policy.

Any question as to whether a state employee or officer is complying with agency policies regarding work duties, use of state resources or state time to advocate for or against specific legislation, is beyond the scope of the Ethics Rules but may be addressed directly by an agency.

### **Conclusion**

The Ethics Rules do not prohibit state officers and employees from advocating for or against specific legislation. The conduct of the state employee or officer exercising his or her right to petition the government is generally not regulated by the Ethics Commission provided the state officer or employee is doing so on his or her own time, while using his or her own resources. If

the advocacy occurs during state time, while using state resources, the state officer or employee may be required to register and report with the Ethics Commission as a legislative liaison. A state officer or employee who serves an agency with policies more restrictive than the Ethics Rules is required to follow those more restrictive policies.