

SANDLER, REIFF & YOUNG, P.C.

MEMORANDUM

To: Chairman Dick Cranwell

From: Neil Reiff, Counsel to the Democratic Party of Virginia

Re: Federal Lobbyist seeking office of Chair of the Democratic Party of Virginia

Date: November 5, 2010

You have asked whether Virginia law prohibits a federal lobbyist from holding the office of Chair of the Democratic Party of Virginia. Specifically, Virginia law bars a “lobbyist” from being the Chair of a state political party. Va. Code § 2.2-435.

The following statutory definitions must be consulted to determine whether a federal lobbyist is subject to this prohibition:

Virginia law defines a “lobbyist” as:

1. An individual who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, for the purpose of lobbying;
2. An individual who represents an organization, association, or other group for the purpose of lobbying; or
3. A local government employee who lobbies.

“Lobbying” is defined as:

1. Requests for appointments, information on the status of pending executive and legislative actions, or other ministerial contacts if there is no attempt to influence executive or legislative actions;
2. Responses to published notices soliciting public comment submitted to the public official designated in the notice to receive the responses;
3. The solicitation of an association by its members to influence legislative or executive action; or
4. Communications between an association and its members and communications between a principal and its lobbyists.

“Executive Action” is defined as:

the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection, or postponement by an executive agency or official of legislation or executive orders issued by the Governor.

“Legislative Action” is defined as:

1. Preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the General Assembly or a legislative official;
2. Action by the Governor in approving, vetoing, or recommending amendments for a bill passed by the General Assembly; or
3. Action by the General Assembly in overriding or sustaining a veto by the Governor, considering amendments recommended by the Governor, or considering, confirming, or rejecting an appointment of the Governor.

“Executive Official” is defined as:

1. The Governor;
2. The Lieutenant Governor;
3. The Attorney General;

4. Any officer or employee of the office of the Governor or Lieutenant Governor other than a clerical or secretarial employee;
5. The Governor's Secretaries, the Deputy Secretaries, and the chief executive officer of each executive agency; or
6. Members of supervisory and policy boards, commissions and councils, as defined in § 2.2-2100, however selected.

“Legislative Official” Means:

1. A member or member-elect of the General Assembly;
2. A member of a committee, subcommittee, commission, or other entity established by and responsible to the General Assembly or either house of the General Assembly; or
3. Persons employed by the General Assembly or an entity established by and responsible to the General Assembly.

Va. Code § 2.2-419.

Since section 2.2-435 is located within the lobbying provisions of Virginia law, the definitions found in section 2.2-419 must guide the interpretation of the word “lobbyist” as used in section 2.2-435. Based upon these definitions, it is clear that section 2.2-435’s prohibition on a party chair being a lobbyist is limited solely to state lobbying. Each definition clearly indicates that lobbying, as defined and regulated by Virginia’s lobbying statute, is limited to state lobbying and clearly does not contemplate that a lobbyist, for purposes of section 2.2-435 of Virginia law, includes lobbying at the federal level.

Let me know if you have any additional questions.