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NEWSLETTER

North Carolina Court Clarifies, Confuses State's Lobbying Law

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In the first reported decision ever to interpret North Carolina's 2007 lobbying law, the state appeals court has simultaneously clarified and clouded a question of singular importance: What *is* lobbying in North Carolina?

Under North Carolina law, lobbying is defined as "[i]nfluencing or attempting to influence legislative or executive action . . . through direct communication or activities with a designated individual or that designated individual's immediate family." (The law treats goodwill lobbying separately.) Yet despite the statute's emphasis on "direct" contact, the North Carolina Secretary of State assessed a $110,000 fine against Don Beason for failing to properly register and report as a lobbyist—even though everyone agreed that Beason had never directly communicated with a designated individual. The fine was later adjusted to $30,000, but the Secretary of State stood by her theory that Beason was liable. Even if he had not personally contacted officials, he worked with others who did. In the Secretary's view, "acting in concert" with those lobbyists was good enough.

The North Carolina Court of Appeals disagreed. Foremost, the court held that the Secretary had overstepped by trying to interpret the definition of lobbying in the first place. While state law gave the Secretary power to enforce the lobbying laws, the power to interpret those laws "ha[d] been expressly granted to the Ethics Commission." Thus, the Secretary's "concerted action" theory enjoyed no deference.

Nor could the Secretary's reading be squared with the statute itself, the court continued. As a penal statute, the lobbying law must be strictly construed against the government. And since "[t]he definition of lobbying . . . specifically states that lobbying only includes direct

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communication or activities," "indirect communications, such as those that could be based on 'acting in concert' or imputed liability, would not constitute lobbying."

But even as the court clarified the "direct communication" angle, it invited confusion elsewhere. Because North Carolina defines lobbying to mean "direct communication or activities," the court reasoned, the lower court wrongly neglected to consider whether Beason had "lobbied based on his 'activities,' the second prong of the definition." Tellingly, neither party appears to have argued this point, instead treating "direct communication or activities" as a single concept. Adding to the confusion, the appeals court seems to have quietly assumed that the word "direct" modifies only the first prong—"communication"—but not the second, "activities." So while it is unclear how "activities with a designated individual" could be anything but direct, the court seems to have gone out of its way to invite that argument on remand to the trial court. Presumably, a future appeal will ultimately settle this fresh confusion. In the meantime, North Carolina's definition of lobbying remains fluid, and the Secretary of State's office has shown itself ready to deal out punishing fines to those who misstep.