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answered

The Honorable Lawrence A. Gonzalez
Executive Director
Commission on Ethics
Post Office Box 6
Tallahassee, Florida 32302

Re: SUNSHINE AMENDMENT--Art. II, §8(e), Fla. Const.

Dear Mr. Gonzalez:

This is in response to your request for an opinion of this office on four hypothetical situations submitted by Representative Sidney Martin, Chairman of the House Standards and Conduct Committee. Our office does not normally render opinions as to purely hypothetical situations. However, since Representative Martin's committee is engaged in efforts to sponsor legislation implementing the Sunshine Amendment, I will undertake to respond to your request in my capacity as counsel to the Commission.

Each of the four hypotheticals involves the following provision of Art. II, §8(e), Fla. Const.:

No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office.

I have previously ruled that insofar as this provision operates to prohibit the specified conduct by legislators or statewide

elected officers, it is self-executing and serves as a prohibition of such conduct without the need for implementing legislation. AGO 077-136.

Accordingly, you request a response to the following two questions: (1) whether an elected official, within two years following the end of his legislative term, may, as part of his official duties, lobby the legislature on behalf of the agency of which he is an officer and (2) whether a legislator within two years following his term may lobby the legislature on behalf of a private organization, such as the ACLU, NOW, Florida Association of Retarded Citizens, or a similar group.

The purpose of Art. II, §8(e), is set forth in the preface to the Amendment which attests: "A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse." It is essential to keep the intent of the people in adopting the provision in mind when determining its applicability to specific instances. The people of Florida, by adopting this amendment, have declared that their elected officials may not abuse the trust placed in them by peddling the influence they acquire through public office to the highest bidder who wishes to have his cause advanced by an influential advocate. Since the Sunshine Amendment was enacted by citizen initiative rather than joint legislative resolution, we have no legislative history in the usual sense to aid in construction. Nor as yet has there been judicial construction of the scope of §8(e). However, in seeking public support for the amendment, its drafters and supporters widely distributed a circular explaining in laymen's terms its essential elements. Entitled "An Explanation of the Sunshine Amendment," it states in part, concerning §8(e):

The amendment prohibits a member of the legislature or the holder of a state-wide elective office from representing any client for a fee before the body or agency of which he or she was a member for a period of two years after leaving office. This provision provides a strong framework for conflict-of-interest legislation to prevent influence peddling and

the use of public office to create opportunities for personal profit once officials and employees leave office.

* * *

. . . The people of Florida need additional assurances that their public officials are serving the public interest, and not a private interest. They need assurances that public office is regarded by officials as a public trust and not as a public license.
(e.s.)

In sum, therefore, it appears that the citizens of this state, in enacting §8(e), understood that they were acting to prevent an elected official from using the trust placed in him to serve and advance the interests of private organizations for a fee. In my opinion, this prohibition does not operate to prevent a public official from lobbying the legislature on behalf of the public agency of which he is an officer, even within two years of the termination of his legislative term. In this capacity, he would not be using his influence to serve private interests and advance his own opportunities for personal gain. His lobbying activities would be conducted in the interest of the public which elected him. While he would, of course, receive the prescribed compensation for his government services, the amount of compensation would not vary according to the amount of time spent lobbying, or whether he actually spent time lobbying at all. There is simply not the potential in this situation for abuse of legislative office and influence that exists when a former legislator concludes his term and then uses his influence on behalf of private interest for his personal financial gain, and I find no indications that the public, when it voted to include the Amendment in the Constitution, intended to prohibit or believed the effect would be to prohibit such activity. Hence, in my opinion, it is a violation of neither the letter nor the spirit of §8(e) for an elected public official to lobby the legislature on behalf of the agency of which he is an officer, within two years of the end of his legislative term.

Finally, I conclude that your second question should be answered in the negative. Section 8(e) constitutes a clear prohibition against a former legislator's lobbying within two years of the

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end of his term, for a fee on behalf of the private organizations as posited in the hypothetical situation. I do not intend to say, nor do I believe the people by enacting §8(e) intended to say, that all former legislators will abuse the trust of the people at every opportunity. Certainly, the vast majority will not. However, the amendment operates to reduce even the mere appearance of impropriety and the potential for actual abuse. Accordingly, pending a judicial determination to the contrary, I conclude that such activity falls within the prohibition of the Sunshine Amendment.

Hoping I have been of assistance to you in this matter and with all good wishes, I am

Sincerely,

ROBERT L. SHEVIN
ATTORNEY GENERAL

RLS/FAV/sf