

1504

**BEFORE THE STATE ETHICS COMMISSION  
STATE OF GEORGIA**

**IN THE MATTER OF:**

Robert Proctor

\*  
\*  
\*  
\*

**CASE NO.**  
2003-0020

**ORDER**

On June 21, 2004, following proper notice pursuant to the Administrative Procedure Act, the above-styled matter came before the State Ethics Commission for an evidentiary hearing. The hearing was held to determine if the Respondent had violated O.C.G.A. § 21-5-71 by appearing before the Senate Finance Committee as a lobbyist. After consideration of the record in this matter, the Commission makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1.

On or about April 15, 2003, Robert Proctor, a principal in the law firm Proctor & Chambers, appeared before the Senate Finance Committee. (H.T. 8, 11, 13, 14, 15, 18.)<sup>1</sup>

2.

The purpose of Mr. Proctor's appearance was to oppose the passage of House Bill 88, the consideration of which was then before the Senate Finance Committee. (H.T. 15-18.) House Bill 88 would have added a subsection (b) to O.C.G.A. § 9-13-36 which would have made the provisions of that statute which allowed executions to be transferred to third parties inapplicable to executions issued for state, County or municipal taxes. Mr. Proctor spoke at the Committee meeting and voiced his and his client's opposition to the Bill. (H.T. 8, 11, 18.)

---

<sup>1</sup> References to the transcript of the hearing held on June 21, 2004 are referred to herein with the designation "H.T."

3.

At the time of his appearance before the Senate Finance Committee, Mr. Proctor was an attorney in private practice. He and Proctor & Chambers represented Vesta Holdings, Inc., Vesta Holdings I, LLC, and several related companies (together "Vesta Holdings") and the Fulton County Taxpayers Association, Inc. (H.T. 8, 13, 15, 16, 18.) He appeared at the Committee meeting in this capacity. (*Id.*) The business of these companies is buying tax liens and tax deeds at foreclosure sales and selling real estate. (H.T. 15.) Although Mr. Proctor stated that some of the work he did for these companies was *pro bono*, he was also compensated by at least Vesta Holdings. (H.T. 15-16.) Mr. Proctor was also concerned at the time of his appearance about the impact that the bill would have on his law practice since he and his law firm derive a substantial portion of their income from the sale of tax liens. (H.T. 15.) His client, Vesta Holdings, was also very much interested in the outcome of the Bill. (H.T. 18.)

4.

Mr. Proctor was not registered as a lobbyist with the State Ethics Commission at the time he appeared before the Senate Finance Committee. (H.T. 18.)

5.

Following a complaint by Charles Gray alleging that Mr. Proctor had violated O.C.G.A. § 21-5-71 by failing to register as a lobbyist before his appearance before the Senate Finance Committee, a preliminary hearing was held regarding the claims and probable cause was found to exist. Mr. Proctor did not attend this hearing. His case then came on for a regular hearing on May 10, 2004, at which counsel for Mr. Proctor moved to dismiss, asserting, among other grounds, that O.C.G.A. § 21-5-71 was unconstitutional as applied to him since he was a lawyer and the lobbyist registration law was regulating the practice of law when applied to him. The Commission tabled this motion until its next meeting. (Transcript of Hearing of May 10, 2004.) This motion was renewed at the June 21 hearing. (H.T. 22-23.)

## CONCLUSIONS OF LAW

1.

Georgia law provides:

**21-5-71. Registration required; application for registration; supplemental registration; expiration; docket; fees; identification cards; public rosters; exemptions**

(a) No person shall engage in lobbying as defined by this article unless such person is registered with the State Ethics Commission as a lobbyist. The administration of this article is vested in the State Ethics Commission. The State Ethics Commission shall be the successor to the Secretary of State with respect to such officer's former regulation of registered agents.

O.C.G.A. § 21-5-71(a).

2.

“Lobbyist” is defined as follows:

Any natural person who, for compensation, either individually or as an employee of another person, undertakes to promote or oppose the passage of any legislation by the General Assembly, or any committee thereof, or the approval or veto of legislation by the Governor . . . .

O.C.G.A. § 21-5-70(6)(A).

3.

As the straightforward facts presented to the Commission demonstrate, Mr. Proctor appeared before the Senate Finance Committee to oppose House Bill 88. He did so, among other reasons, as the lawyer for Vesta Holdings, his client. There is no reasonable question, based on the record, that he is and was compensated by Vesta Holdings. Nor is there any dispute that Vesta Holdings was also very much interested in the outcome of the Bill. This was true as well for Mr. Proctor's law firm since, as he testified, his law firm derived a substantial portion of its income from the sale of tax liens, the subject to which the bill related. Thus, Mr. Proctor falls within the four corners of the express definition of “lobbyist” contained in the Georgia Code: for compensation, individually and as an employee of another person, he undertook to oppose the passage of any legislation by the General Assembly, or any committee thereof. *See* O.C.G.A. § 21-5-70(6)(A).

4.

While Georgia law requiring the registration of lobbyists contains several exceptions, it is clear that Mr. Proctor fits into none of those exceptions, nor has he contended that he does. Notably, the registration requirement does not apply to “[a]ny individual who expresses personal views, **on that individual's own behalf**, to any public officer,” and “[a]ny licensed attorney appearing on behalf of a client **in any adversarial proceeding** before an agency of this state.” O.C.G.A. § 21-5-71(i)(1), (4) (emphasis added). The credible evidence shows that Mr. Proctor was appearing on behalf of companies he represented -- Vesta Holdings and his law firm, among others -- when he lobbied, and so O.C.G.A. § 21-5-71(i)(1) is inapplicable to him. Nor was the Senate Finance Committee an “adversarial proceeding,” and, therefore, O.C.G.A. § 21-5-71(i)(4) is inapplicable.

5.

While Mr. Proctor put on no evidence in his behalf other than a personal statement to the Commission, the primary thrust of his case was that, as an attorney, he could not be required to register as a lobbyist since supposedly this would be regulating his ability to practice law. To the extent he is making such an argument as a matter of statutory construction, it is unfounded in the lobbyist registration statute and must be rejected. To the contrary, the statute does provide a narrow exception for attorneys *when they are appearing in adversarial proceedings before agencies*. O.C.G.A. § 21-5-71(i)(4). As discussed above in paragraph 4, there is no question that this exception does not apply in this case. Yet, there would have been no need for the General Assembly to have provided this exception if the lobbyist registration statute did not apply to attorneys at all, because this limited exception only applies to attorneys. The principle of statutory construction *expressio unius est exclusio alterius* is well established. See *Morton v. Bell*, 264 Ga. 832, 833 (1995). By mentioning the narrow exception in one place, the General Assembly must be presumed to have excluded its application to others.

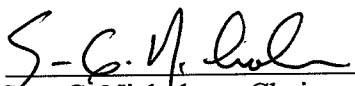
To the extent that Mr. Proctor advances his argument as a constitutional claim, that is, that the lobbying registration statute allegedly violates his constitutional rights since he is an attorney, while the Commission would be disposed to reject that argument since it is plain that the lobbying statute does not regulate the practice of law (indeed, many lobbyists are not attorneys), the Commission cannot reach the merits of this claim since it involves a constitutional question. *See Flint River Mills v. Henry*, 234 Ga. 385, 386 (1975). Therefore, that claim is denied.

FOR THE FOREGOING REASONS the Commission finds that, Robert Proctor violated O.C.G.A. § 21-5-71 by failing to register as a lobbyist before appearing before the Senate Finance Committee to oppose House Bill 88, and doing so on behalf of clients and interests by and for whom he was compensated. Accordingly, Respondent Proctor is hereby Ordered to pay a civil penalty of \$1000.00, register as a lobbyist with the State Ethics Commission, file the appropriate Lobbyist Report Forms for years 2003 and 2004 and cease and desist from any and all violations of the Ethics in Government Act and to comply with all the provisions thereof. Specifically, the Respondent is required to file Lobbyist Report Forms for January, February, March, April (for extended session), May through July 31 and August through December 31, 2003 and January, February, March, April (for extended session) and May (for special session), 2004. Respondent is required to continue filing the required Lobbyist Report Forms until said registration is terminated.

If the Respondent so chooses, he may appeal the findings of the State Ethics Commission within thirty (30) days after the service of this written Order by following the procedures outlined in O.C.G.A. § 50-13-19.

SO ORDERED this 4<sup>th</sup> day of November, 2004.

STATE ETHICS COMMISSION

By:   
Sam G. Nicholson, Chairman