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Senate of Pennsylvania  
March 22, 1999

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The Honorable F. Joseph Loeper  
Majority Leader  
Chairman, Senate Rules Committee  
362 Main Capitol  
Harrisburg, PA 17120

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REVIEW COMMISSION

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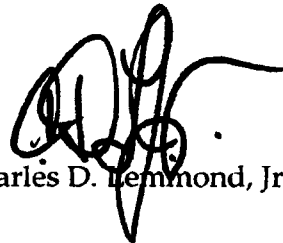
Dear Senator Loeper:

Attached hereto is the report to the Senate Rules Committee from the Sub-Committee on Lobbying Disclosure with comments regarding the proposed Lobbying Disclosure Act regulations.

We will be glad to answer any questions members of the Committee may have.

Very truly yours,

  
David J. Brightbill

  
Charles D. Lemmond, Jr.

  
Robert J. Mellow

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**REPORT TO THE SENATE RULES COMMITTEE  
FROM THE SUB-COMMITTEE ON LOBBYING DISCLOSURE**

March 22, 1999

INDEFINITE REGULATORY  
REVIEW CATEGORY

After examining the proposed Lobbying Disclosure Regulations, we submit the following comments and recommendations to the for your consideration.

- In the definition of "principal," eliminate the phrase "in and of itself." We recommend that language be added to clarify that a member of an association may be a principal but is not automatically a principal solely because he or she is a member of an association.
- Revisit the definition of "indirect communication" to add further qualifying language. The primary focus of this definition seems to be a desire to cover substantive communication which is paid for and/or distributed by a lobbyist or principal and which is a direct effort to influence legislative action or administrative action. The definition should be refined so that it clearly doesn't encompass every "whisper-down-the-lane" type of communication.
- In the definition of "Service (of official papers)," change "date of mailing" to "postmarked date." In 43.3(c)(3), change "mailing date" to "postmarked date."
- In the definition of "Effort to influence legislative action or administrative action," eliminate the second sentence, which excludes purely technical data, because it is not clear what constitutes "purely technical data."
- Review of 31.2(c) raised the concern that some of Pennsylvania's many elected officials may be unaware of the new definitions of "gift" and "transportation and lodging or hospitality received in connection with public office or employment." We ask the Commission to consider amending the Ethics Act regulations to include these new definitions or, at a minimum, publish the new definitions in the Pennsylvania Bulletin. We also urge the Commission to highlight this change on the appropriate forms and in the appropriate instructions.
- In 31.11 (*Electronic filing*), add language stating that an Ethics Commission employee may be subject to punishment up to and including termination for the improper use of information filed electronically, including digital signatures.
- Regarding 31.4 (*Registration periods and reporting periods*), Section 1304 of Act 93 clearly requires that the registration periods coincide to the terms of members of the House of Representatives. Since the language is not similarly clear in terms of the reporting requirements, we ask that this issue be marked for further discussion.
- In chapters 33 and 35, consider adding language that would allow a parent corporation to register and report for all of its direct affiliates and subsidiaries as long as all such lobbying contacts and expenses are reported by the parent corporation.

- In 33.3 (*Lobbyist registration*), clarify that an entity does not need to pay the \$100 registration fee for the firm in addition to paying the fee for each of its lobbyists.
- In 33.5 (*Termination*), add language stating that if a lobbyist or principal is unwilling to or refuses to “sign off” on a termination report, a termination report may be filed solely with the signature of the lobbyist or principal filing such report. In such cases, perhaps the lobbyist or principal filing the report should be required to provide a certified mail receipt as proof that the other party has been notified of the termination.
- In 35.1(g)(1), consider adding language to clarify that publicly-held corporations do not need to report the identity of their major shareholders. This information already is reported under a separate Act and does not fall under the intent of Act 93.
- In 35.1(g)(3)(iii) and 35.2(a)(3), dealing with the contents of quarterly expense reports and records maintenance, respectively, eliminate “except as provided by the Act or these regulations.”
- In 35.1(i)(5), determine whether it is appropriate for the amounts of rental value, electric utilities and similar expenses to also be calculated as a good-faith estimates.
- In 35.1(k)(1), we recommend that the time allowed for the return of an unused gift or hospitality item be reduced to 10 days. We ask the Commission to consider how this provision may relate to gifts and hospitality items which are received less than 10 days before the end of a reporting period and returned after the end of that reporting period.
- In 39.3 (*Prospective conduct to be reviewed*), clarify that questions may be brought to the Commission at any time and that such questions may deal with topics related to past conduct, although the advice or opinion from the Commission may only be relevant to future conduct.
  - Also in 39.3, add language explicitly giving lobbyists and principals the right to request a special hearing before the Commission to appeal advice which has been received from Commission counsel, mirroring the current practice of the Commission under the Ethics Act regulations.
- In 41.1(c), eliminate the phrase “unless for cause” and insert “random” before the word “audit.” The intent of this clause appears to be to protect lobbyists and principals from the possibility of more than one random audit in a given registration period. Clarifying that 41.1(c) deals only with random audits should remove any confusion related to what constitutes “cause.” Other sections of the statute and regulations spell out the Commission’s right to conduct an audit as part of an investigation.
- In 41.4 (*Audit report*), require that the Commission send the audit report via certified mail.

- Regarding Chapter 43 (*Investigations, Hearings and Referrals*), in addition to comments relating to specific provisions in Chapter 43, we strongly urge the Committee to reexamine how the regulations under the Ethics Act, 51 Pa. Code Ch. 21, can be mirrored in Chapter 43 of these regulations to the fullest extent possible under Act 93. The Chapter 21 regulations were the subject of a lengthy review process with input and participation from many interested sources. The success of this process is evidenced by the effective implementation of Chapter 21 over the past 6 years.
- Eliminate 43.3(a)(4). This provision is unnecessary because of the provision included in 43.3(a)(5), which allows the Executive Director of the Ethics Commission to initiate proceedings based on his own motion.
  - In 43.3(b)(4), eliminate the words “informally or.” If 43.3(a)(4) is eliminated as requested in the above item, these words should also be eliminated.
- In both 43.3(c) and 43.3(d), clarify in the regulations that a second “non-compliance” letter will be sent prior to the Commission filing a petition for civil penalties, mirroring the current practice of the Commission when dealing with Financial Interest Statement discrepancies.
- In 43.3(e), require the Commission to file service of petition for civil penalties in accordance with the Pennsylvania Rules of Civil Procedure.
- In 43.3(e) and 45.2(b)(13), modify the language so that the regulations read, “upon the majority vote of all of its members, ...” Add language stating that a “clear and convincing evidence” standard shall be used by the Commission in determining whether to levy civil penalties or prohibit a lobbyist or principal from lobbying.
- Add language exempting records, but not expenses, related to privileged conversations, such as those between an attorney and a client, from being turned over to the Commission. We ask the Committee to consider how lobbyist-related expenses should be handled in this context.

In addition to the comments and suggestions listed above, we would make note of our support for the following sections:

- 35.1 (k)(6), dealing with reporting the value of gifts, transportation, lodging or hospitality. It is our belief that the flexibility allowed in the proposed regulations is in the best interest of those affected by these regulations. Eliminating this flexibility may create an overly cumbersome accounting requirement.
- 43.3(c), dealing with noninvestigative procedures. Although much clarification is needed, we support the concept of a procedure to be used as a tool by which the Commission may resolve simple and unintentional issues of noncompliance.