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Senate of Pennsylvania
June 9, 1999

COMMITTEES

RULES AND EXECUTIVE
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ENERGY
GAME AND FISHERIES
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Original: 1997
Bush
cc:

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Harbison

The Honorable Daneen E. Reese
Chairman, State Ethics Commission
309 Finance Building
Harrisburg, PA 17108

Dear Ms. Reese:

The following serious concerns related to the final-form Lobbying Disclosure Regulation have been brought to our attention. We ask that these concerns be addressed before the conclusion of the regulatory review process.

In §37.1(k) on page 27, our clear understanding was that the board voted to restate the statute's religious exemption language verbatim. However, the regulatory definition has in fact been altered. Whether the changes are materially significant or not is irrelevant in this case; some concern already has been raised about the religious exemption language and we do not want to cause any additional question in the regulation.

In §43.4(o) on page 33 and §43.5(c) on page 34, language is included which spells out the burden of proof required for the Commission to decide cases, issue orders, levy civil penalties, etc. Our understanding is that the board's desire was to include the burden of proof language in all sections related to Commission decisions. However, in §45.2(b)(13) on page 37, related to the Commission's ability to prohibit lobbying, the burden of proof language is absent. This may be the most important place to include such language.

The definition of "Election Code" on page 4 should read "25 P. S. §§2600-3591". The current cite in the regulation is incorrect. In §35.1(j)(2)(iii) on page 22 of the regulation, the word "amount" should be replaced with "value". In §35.1(n)(7) on page 24, the phrase "serve it upon" should be replaced with "provide it to".

In §39.2(a) and §39.2(b) on page 28, the regulatory language is narrower than the statutory language. We urge that it be broadened to allow more requests for advises and opinions, such as from a State official who desires advice as to the conduct of a member of his or her staff, or from a principal manager of a lobbying firm who desires advice as to the conduct of an employee.

The definition of "employee" on page 4 should be cleaned up to, at a minimum, not have inconsistent spellings of employe/employee within the same definition. We suggest the following: "*Employee*-An individual from whose wages an employer is required under the Internal Revenue Code to withhold Federal income tax."

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Notebook

In §31.5(a)(1) on page 8, we recommend that the regulation be changed to allow hard copy filings up to 11:59 p.m., mirroring the current practice under the Election Code. This would allow filings to be dropped off at the main desk of the Capitol Police.

In §33.2(c) on page 14 and §33.3(c) on page 15, we recommend deletion of the requirement for a street address. Some lobbyists and principals may operate out of their home, and since the "mailing address" is required, requiring the street address is an unnecessary intrusion.

In §43.4(1) on page 33, the name of a complainant is listed as evidence to which a respondent will not be allowed access. This provision is not included in the statute. Respondents are due the opportunity to face their accusers; accordingly, this provision should be removed.

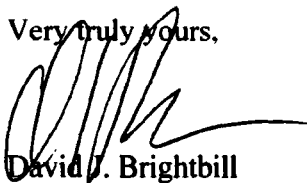
In the definition of "service (of official papers)" on page 7, the phrase "date of mailing" should be replaced with "postmark date" to mirror existing Ethics regulations. It is nonsensical to have this disparity between Lobbying and Ethics regulations.

The definition of "indirect communication" on page 5 fails to clarify who must make the effort which is described. We strongly urge the inclusion of the following clarifying language at the end of the existing definition: "In order to qualify as a reportable expense under section 1305(b)(2)(iv) of the act, the effort, as set forth in this definition, shall be made by a registrant or any entity paid by a registrant for such effort."

We reiterate our concern, also raised by several other commentators, that the Commission is granted too much power under the random audit provisions. Please keep in mind that these audits are not undertaken because of any allegation of wrongdoing. Rather, the subjects of these audits will be chosen at random and the audits are to be conducted solely to ensure compliance with the act and regulation. To that end, all of the language in §41.2(d) and §41.2(e) on page 28 should be deleted. In §41.3(c)(2)(ii) on page 29, the phrase "or another registrant" should be deleted. In §41.3(c)(3), the phrase "other individuals necessary" expands the Commission's power beyond what we believe the statute's intent to be. Further, in §41.4(b) on page 29, the word "related" should be inserted between the words "other" and "practices" to explain that an audit report may include only relevant recommendations. Again, it is important to note that these changes would not affect the Commission's investigative powers in any way.

We thank you for your attention to this matter and await your response.

Very truly yours,



David J. Brightbill



Robert J. Mellow



Charles D. Lemmond Jr.

cc: Members, Lobbying Disclosure Committee
Independent Regulatory Review Commission