

Senate of Pennsylvania

Original: 1997
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LEGISLATIVE COUNCIL

June 10, 1999

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STATE ETHICS
COMMISSION

Vincent J. Dopko, Chief Counsel
State Ethics Commission
Room 309, Finance Building
Harrisburg, PA 17108-1470

Dear Vince:

I have had the opportunity to review, at some leisure, the regulations being advanced by the Lobbying Disclosure Regulation Promulgation Committee and I want to share several observations with you. Generally, I believe the package is well done, consistent in most ways with the Act, and valuable to the impacted community. Nonetheless, I note several issues that should receive the benefit of further attention.

Page 2, as to the definition of "anything of value" at (i,M)--given that this Act does not relate to the reporting of political contributions, may I presume that a complimentary ticket to a political reception, rally or fundraiser would be exempt from reporting?

Page 4, as to the definition of "Election Code"--the Code as published in Purdon's runs from Section 2600 to Section 3591. There are provisions further back in Title 25 that are not part of the Election Code but are simply related statutes.

Page 6, as to the definition of "political subdivision"--the definition under this statute would most appropriately be the definition contained in the Statutory Construction Act which is intended to supply definitions for statutes for which the definition is not otherwise clear. I see no authority to turn to the Ethics Act definition.

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Page 8, as to Section 31.5(a1)--the Election Bureau accepts as "timely" hardcover filings submitted by midnight to the Capitol Police Desk in the Capitol Rotunda. Might not a parallel procedure be appropriate for filings under this Act?

Page 14, as to 33.1(c)--the term "fund" is defined. The phrase "established by Section 1310(b) of the Act" is surplusage.

Pages 14 and 15, as to Sections 33.2(c) and 33.3(c)--question is raised regarding the necessity to require the street address to be filed on what are essentially going to be public documents given the fact that a number of lobbyists and principals may, in fact, work from their homes and are vulnerable to potential harassment by a requirement of public disclosure of street address rather than a permanent mailing address.

Page 22, as to Section 35.1(j2iii)--shouldn't the rule require reporting of the value of a gift rather than the "amount" of the gift? Amount only relates to a cash transaction.

Page 22, as to Section 35.1(k2)--if political contributions are not considered to be a gift under the Act, may I presume that there would be no need to disclose any "valuation of a complimentary ticket to a fundraiser" as long as the event was benefiting a political committee or candidate? This is not as clear as it might be.

Page 24, as to Section 35.1(n7)--it seems more appropriate that a lobbyist deliver a copy of a report to a principal rather than "serve" it which seems to suggest some formal method of legal delivery.

Page 28, as to Section 39.2(a)--it would seem important that state officials have the authority to obtain advice or opinions regarding not only their "own" conduct but the conduct of the employees responsible to them. Likewise, a lobbyist or a principal should have the authority to seek advice or opinions regarding individuals employed by the lobbyist or the principal. It seems clear to me that the language in the statute is written contemplating a broadened approach similar to that existing within the Ethics Act. To deny an elected official the authority to obtain an opinion as to the requirements relating to his or her employees is not what was contemplated.

Pages 28 and 29, as to Sections 41.2 and 41.3--the language appears to be troublesome to the extent that it authorizes an auditor to "fish" through records of a principal or lobbyist who is not the subject of the audit. This seems foreign to the concept of a random audit of a selected number of registrants. The review of records of other registrants is probably only appropriate as a part of a for cause investigation.

Page 29, as to Section 41.3(c3)--it seems that the Act never contemplated auditors interviewing "other individuals" other than lobbyists and principals and their representatives and employees. This provision raises the specter of auditors insisting on interviews with elected officials or public employees without cause.

Page 30, as to Section 41.4(c2)--it would seem that an individual who is the subject of an audit report should not only be entitled to file a statement setting forth the subject's position as to the audit but should be entitled to file any "exceptions" to the audit that the subject felt to be appropriate.

Pages 30, 31, and 32, as to Sections 43.2(b), 43.3(a4) and 43.3(b4)--the regulations refer to the "own motion of the Executive Director," a stilted and foreign term, if I ever heard one that I presume to mean on "the motion" of the Executive Director. The insertion of "own" appears to be without meaning.

Page 33 and 37, as to Sections 43.4(1) and 45.2(b10)--denial of access to the original complaint and the name of the complainant seems without authority in the law as contrasted to the Ethics Act which presumes a high degree of confidentiality. Complainants under this new law may not always come "with clean hands" and may be either competitors or adversaries on the issues. It seems inappropriate, as a matter of fundamental fairness, to deny the subject of an investigation knowledge as to the name of the complainant and the text of the original complaint.

I am aware that there are other comments forthcoming and believe that it would be appropriate for the Lobbying Disclosure Regulation Promulgation Committee to make one last set of revisions to correct some mistakes, refine some policy judgments, and clarify some ambiguity while the

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window for such changes remains open. By and large I believe the Committee, and you at the Ethics Commission, have done a generally good job of putting together a workable set of regulations. That notwithstanding, I urge that the Committee finish the task and I offer these observations to encourage that process of refinement.

Give me a call if any clarification would be useful. Thank you for your review and consideration of the foregoing.

Sincerely,



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General Counsel to the
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SCM/bbk

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