Common Cause *Pennsylvania*

Citizens Working for Open, Accountable and Responsive Government

TESTIMONY BY COMMON CAUSE/PENNSYLVANIA

ON PROPOSED LOBBYING DISCLOSURE REGULATIONS

Act 93 of 1998, Chapter 13

House Judiciary Committee
Harrisburg, PA
February 25, 1999

Chairman Gannon and members of the House Judiciary Committee, thank you for the privilege of presenting Common Cause/Pennsylvania's comments on the proposed regulations to Chapter 13, of Act 93, The Lobbying Disclosure Act. My name is Jean Becker. I chair the organization's Lobbying Reform Project Team.

Our comments are few. We believe that for the most part the regulations have been well designed, and will provide the lobbying community with proper direction for complying with its legal obligations under the Act. However, we would like to make the following recommendations.

Under Section 31.1 in the definition of "Anything of value", part (i)(C), after the word "conveyance", where it appears for the second time, add the words:

present or future;

and under part (i)(K) of the same definition add the words:

and Recreation .

The second modification is necessary to make it more consistent with the intent of the law as described under the definition of "Transportation and lodging or hospitality..."

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In the definitions section, the term "de minimis" should be defined. In the alternative the term "de minimis" should be deleted in every place where it occurs and specific thresholds should be used to replace it. For example, under the definition of "Transportation and lodging..." a reasonable threshold would be ten dollars.

The content of section 35.1 (k)(2) should be deleted and replaced with the following:

The valuation of a complimentary ticket to any type of fund raising event shall be based upon the face value of the ticket.

The following suggestions, although not part of the regulations, are recommendations we believe are necessary to ensure proper compliance with the reporting requirements of the Act:

Before the regulations take effect, require the Ethics Commission to provide free training seminars for lobbyists on how to comply with the regulations, record-keeping, registration, reporting standards and restricted activities.

Prior to conducting the seminars all lobbying registration and disclosure forms and manuals should be made available to lobbyists.

In closing, I would like to congratulate you, and all members of the General Assembly, for rescuing Pennsylvania's reputation from the humiliation of being the worst in the nation for its oversight of lobbyists' activities. At the same time, I must point out that while we took a giant step forward in providing the public the kind of information they need to understand the pressures being exerted upon their institutions of government, Act 13 certainly is far from being the toughest lobbyist disclosure and regulation law in the country. Many states require significantly more disclosure of lobbyists activities and spending, and thus tougher bookkeeping requirements. Many other states have significantly stricter prohibitions on lobbyists' activities. As you proceed with your regulatory review duties, we ask that you be careful not to weaken, in any manner, the disclosure obligations now required under the regulations or the Act. Any weakening of the standards would be a terrible and unjustifiable disservice to the citizens of Pennsylvania.

Thank you, and I will try to respond to any questions you may have.

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TESTIMONY ON PROPOSED REGULATIONS UNDER THE LOBBYING DISCLOSURE ACT

FEBRUARY 25, 1999

ROOM 60, EAST WING

HARRISBURG

Good morning. My name is Travis Tu, and I am here today as a representative of the American Civil Liberties Union (ACLU) of Pennsylvania to comment on the regulations drafted to implement the recently enacted Lobbying Disclosure Act. I am thankful for the opportunity to present testimony this morning.

The ACLU shares in the desire to eliminate the real or perceived corruption in the legislative process. Certainly in a time of such public distrust of government, it is worthwhile to regulate those individuals and organizations who are furthering an agenda of special interest while "masquerading as proponents of the public weal."[1]

We are concerned, however, that the enactment of the Lobbying Disclosure Act through these regulations will impose far-reaching and substantial burdens on public policy advocacy that will make participation by grassroots organizations costly, complicated and, thus, less likely. Although we believe the regulations contain problematic implications for lobbyists as well, I will assume that there are plenty of lobbyists in this room who can take care of themselves. My statement will be limited primarily to discussing the potential impact on grassroots and small non-profit organizations treated as principals under the draft regulations. I concede that some of our objections call into question the statute itself rather than the regulations, and I can only suggest that these concerns may warrant a reexamination and amendment of the Lobbying Disclosure Act itself.

We at the ACLU are fortunate to have the funding to support a full-time lobbyist and salaried bookkeeper; but, we consider ourselves unusual amongst non-profit issue advocacy organizations. For many of the smaller non-profit organizations throughout our state, compliance with these regulations will be a significant burden. The burden imposed by these regulations is implicitly recognized by the exemption of religious organizations from the registration and reporting requirements. However, this burden does not singularly affect religious organizations; it puts constraints on a wide variety of groups, especially the under-resourced.

Before detailing our objections, let me also suggest that the statute's religious exemption (Section 1306) may unfairly favor religious groups, thereby violating the Establishment Clause of the U.S. Constitution as well as Section 3, Article I of the Pennsylvania Constitution that states that "no preference shall ever be given by law to any religious establishments or modes of worship." Concerted effort should be made to resolve the potential for a constitutional challenge to the Act. If religious organizations are exempted because the restrictions may violate the First Amendment right to "free exercise of religion," it stands to reason that the First Amendment right of grassroots and non-profit principals "to petition the government" may also be infringed. If the Act is not amended to remove the exemption for religious groups, then at the very least the regulations should be drafted to ensure that small non-profit groups and grassroots principals share the same favored status of religious organizations. In *Walz v. Tax Commission*[2] (1970), the Supreme Court upheld property tax exemptions for church property *only* because the same tax exemptions were available as part of a general taxation scheme exempting all non-profit or

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[1] United States v. Harriss, 347 U.S. 612, 625 (1954)
[2] 397 U.S. 664

socially beneficial organizations.[3] The exclusive exemption for religious organizations in this bill may, therefore, be deemed unconstitutional.

These regulations will unreasonably hinder access to the legislative process for grassroots and non-profit organizations. Our concerns stem from our belief that the participation of grassroots and non-profit organizations is a valuable asset to the legislative process. These organizations often have particular expertise regarding policy issues that is helpful in drafting effective legislation. These organizations, commonly under-funded and over-burdened, may choose to withhold their expertise for fear of reaching the threshold for reporting requirements and becoming subject to the regulations and punishments for non-compliance.

To draw attention to particularly burdensome lobbying disincentives for grassroots organizations, let me point to the ambiguous definitions of "indirect communication" and "anything of value." If these regulations are supposed to flesh out the provisions of the Lobbying Disclosure Act, it stands to reason that they should make clear and specific the intent and jurisdiction of the law. However, the regulations not only fail to narrow the definition of "indirect communication" provided in the statute, they go on to create even greater confusion by not limiting what shall be considered under the law as "anything of value." Now, non-profit organizations are vulnerable to inadvertently meeting the expenditure threshold and subsequently responsible for complying with the record keeping and reporting demands. This may cause many over-burdened non-profits to abstain from contributing to the legislative process altogether.

For organizations that do meet the threshold of reporting, an even greater burden is created by the requirement to maintain electronic records in a manner to enable the Commission or Attorney General access. While there is ambiguity in this regulation as well, it automatically necessitates greater technical support and computerized security measures that may be difficult

[3] Taken from an ACLU correspondence from Laura Murphy Lee, Director of the ACLU's Washington, D.C. office, to U.S. Senators opposing the Lobby Disclosure Act of 1994

to finance. Besides this requirement's burden, we hold firm to our assertion that the requirement potentially infringes on rights of privacy and attorney/client privilege.

Question 14 of the Regulatory Analysis Form asks: "Describe who will be adversely affected by the regulation." The response was "Unknown." The ACLU fears that there will be a clear adverse effect on non-profit, social advocacy organizations that engage in grassroots lobbying. When faced with the biennial registration fees, detailed reporting requirements, and ambiguous definitions outlined in the statute and restated in the regulations, many of these grassroots organizations may just turn their back on the legislative process, leaving only those lobbyists and principals that can afford to be heard, alongside religious groups, to influence public policy through organized lobbying.

Thank you for your consideration, and I would be happy to respond to any questions you may have.

Chart #6 Comments of the Independent Regulatory Review Commission

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
4/1/99	§31.1, Definitions of: "Administrative action"; "Affiliated political action committee"; "Agency"; "Commission"; "Compensation"; "Direct communication"; "Economic consideration"; "Fund"; "Gift"; "Immediate family"; "Indirect communication"; "Legislation"; "Legislative action"; "Lobbying"; "Lobbyist"; "Principal"; "Registrant"; "Regulation"; and "State official or employe"	The Regulation includes a number of definitions which have been excerpted verbatim from Section 1303 of the Lobbying Disclosure Act (Act). Other statutory definitions have been modified in the Regulation. Rather than repeat definitions in the Regulation, or change the legislative intent in defining certain terms, it would be more appropriate to just include a citation to Section 1303 of the Act after each of the statutorily defined terms listed at the left.	
	§31.1, Definition of "Anything of value"	1. Streamline the definition--In (i), all of the language prior to "anything of any nature . . ." should be deleted. Also delete (ii), which does not add anything to the definition. 2. Amend the definition to exclude services provided to the public and constituents.	1. Adopt the following change. Strike only the first sentence of (i), as follows: (i) [The term includes, by necessity, the terms "thing of value" and "things of value."] For the limited purpose of . . . Do not make any other deletions. 2. Adopt the changes set forth in Chart #3 at 17 as to a related comment by Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.

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	§31.1, Definition of "Audit"	Referencing "training and other areas relating to lobbying activities" in the definition creates: (1)the erroneous impression that a certain standard for "training" is mandated under the Act; and (2)confusion as to what the Commission would be auditing with respect to "training" and what other areas related to lobbying the Commission would include. This phrase should be deleted or revised to narrow its scope.	Change the definition as follows: *Audit*--A review of registration statements or disclosure reports, or both, and related information to determine compliance with the act and to review methods of recordkeeping [,] and reporting [, training and other areas relating to lobbying activities]. See, also, changes to §41.2(a) at 13 of this Chart.
	§31.1, Definition of "Child"	Agree with Office of Attorney General that stepchildren should be included.	Do not adopt. See, Chart #3 at 1 as to related comment by OAG.
	§31.1, Definition of "Day or date"	Because the Committee intends to use the terms as they are commonly used, there is no need to define them. This definition should be deleted.	Adopt. Strike the term "Day or date" and its definition from §31.1.
	§31.1, Definition of "Effort to influence legislative action or administrative action"	The first sentence is good. The second sentence raises questions concerning the scope and intent of the exclusion for "purely technical data." Suggest the second sentence be revised as follows: "The term does not apply to services provided to the public or the provision of information to a state official, employe, legislator, agency or legislative body at the request of a state official, employe, legislator, agency or legislative body."	Do not adopt, based upon the deletion of the exemption for "purely technical data" as set forth in Chart #3 at 11, as to a comment of R. David Tive, Pennsylvania Association for Government Relations.
	§31.1, Definition of "Employee"	Suggest using the existing definition from the Tax Reform Code at 72 P.S. §7301(g) which provides a simple and familiar standard: " 'Employe' means an individual from whose wages an employer is required under the Internal Revenue Code to withhold Federal income tax." If the proposed definition is retained, make two changes: (1) delete the phrase, "For the limited purpose of determining exemption under Section	Rewrite the definition by keeping only the first 1½ lines (through the comma) and adding the language proposed by IRRC, as follows: *Employe*--[(i)] For the limited purpose of determining exemption under section 1306(6) of the act, the term [means . . . independent contractors] "Employe" means an individual from whose wages an employer is required under the Internal Revenue Code to withhold Federal income tax.

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		1306(6) of the act," in (i) (the definition should apply to the entire Regulation so that confusion is not created as to when a different meaning would apply); and (2) also delete the phrase, "In determining exemption under Section 1306(6) of the act."	Do not make any other changes, in that the definition *is* intended to be for the limited purpose of determining exemption under Section 1306(6) of the Act.
	§31.1, Definition of "Engaging in lobbying"	The plain meaning of this phrase is clear. Delete the definition.	Adopt. Strike the term "Engaging in lobbying" and its definition from §31.1.
	§31.1, Definitions needed for "Guideline" and "Statement of Policy"	These terms, which are part of the statutory definition of "Administrative action," should be defined. Suggest cross-referencing the existing definitions of these terms in the Regulations of the Joint Committee on Documents, at 1 Pa. Code §1.4.	Make the following change in (i) of the definition of "administrative action": (i) An agency's proposal, consideration, promulgation or rescission of a regulation; development or modification of a guideline or a statement of policy <u>as defined in 1 Pa. Code §1.4</u>; or approval or rejection of a regulation.
	§31.1, Definition of "Immediate family"	Recommend that "stepparent" be added to this definition.	Do not adopt. A stepparent is not a "like relative-in-law."
	§31.1, Definition of "Lobbyist"	1. Since the term is statutorily defined, the definition should be replaced with a citation to Section 1303 of the Act. 2. Do the third and fourth sentences need to be included as proposed? With regard to the third sentence, if the term "de minimis" is intended to reflect the $2500 compensation exemption in §1306(3)(II) of the Act, the sentence should be revised to so reflect *or* these provisions should be placed in Chapter 37 which addresses exceptions. If the intent is to relieve the lobbyist of the responsibility for accumulating income received over the length of the biennium, the definition lacks statutory authority and is contrary to the legislative intent.	

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	§31.1, Definitions of "Negligent conduct"; "Negligent failure to register or report"; and "Negligent violation"	Instead of these long and somewhat confusing definitions, include a definition of "negligent or negligence" and a definition of "intentional."	Adopt the following changes. Strike the definitions of "Negligent failure to register or report" and "Negligent violation." Change the term "Negligent conduct" to "Negligence" and redefine it as follows: *Negligence* [t conduct]--Conduct, whether of action or omission, which violates or fails to comply with the act, and which is occasioned by a failure to exerecise such care as a reasonably prudent and careful principal or lobbyist would exercise in satisfying the requirements of [section 1304, 1305 or 1307 of]the act [(relating to prohibited activities)], and is characterized by inadvertence, thoughtlessness, inattention, or the like. [Negligent conduct is to be distinguished from willful, wanton or reckless conduct, which would fall within the ambit of intentional conduct.] Add the term "intentional" as a defined term and define it as follows: *Intentional*--The term has the meaning set forth in 18 Pa.C.S. §302(b).
	§31.1, Definition of "Principal"	This definition departs from the statutory definition. The Committee should just reference the Act. If the Committee elects not to use a reference, suggest that the phrase, "in and of itself operate" be replaced with "alone is not sufficient" or similar language to clarify Committee's intent.	Adopt the following changes to (ii) of the definition of "principal" and to the final sentence of the definition of "lobbyist": "Membership in an association [does not in and of itself operate] alone is not sufficient to make an association member . . . ."

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	§31.1, Definition of "Service (of official papers)"	The definition should be modified to cross-reference the definition of "service" in §11.1 of the existing Ethics Act Regulations or be revised to mirror that definition. All references to "mailing date" in the Regulations should be changed to "postmark date."	Do not adopt any changes. The Commission meters its mail. The mailing date is noted on the face of all pertinent documents.
	§31.1, Definition of "Transportation and lodging or hospitality received in connection with public office or employment"	1. The language in the first sentence of the definition doesn't really define anything and would be better placed in Chapter 35. 2. The rest of the definition should be kept in Definitions, but under the heading of "hospitality." 3. In (iv), there are two concerns: (1) As discussed above with regard to the definition of "lobbyist," the term "de minimis" should not be used; and (2) The second sentence contains substantive requirements that would be more appropriately placed in Chapter 35. Therefore, this sentence should be deleted and the language incorporated into Chapter 35.	1. Do not adopt. The sentence is particularly meaningful as to the phrase "received in connection with public office or employment." 2. Adopt the changes set forth in Chart #4 at 5, second block, item 2, as to a related comment by Rep. Mark Cohen. 3.
	§31.1, Definition of "Travel expenses"	Since the application of this definition is limited to § 37.1(3), this definition should be deleted and the substance should be incorporated into § 37.1(3).	Adopt. Delete the term "Travel expenses" and its definition from §31.1. Revise §37.1(3) as follows: (3) An individual who does not receive any compensation for lobbying, other than travel expenses. <u>For the limited purpose of determining exemption under section 1306(3)(i) of the act (relating to exemption from registration and reporting), the term "travel expenses" means reasonable expenses for transportation, meals, beverages and lodging.</u>

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	§31.2 (Ethics Act Regulations in Part I)	1. Subsection (a) should be deleted because opinions, advices, and investigations are addressed in Chapters 39 and 43. 2. Subsections (c) and (d) should be deleted; they are unnecessary and redundant.	1. Adopt the following changes. Delete Subsections (a) and (b) from §31.2. Re-letter (c) and (d) accordingly. Rename the Section, "Application to Ethics Act Regulations." 2. Do not adopt. They highlight the fact that certain provisions carry over to the Ethics Act.
	§31.4 (Registration periods and reporting periods)	Although the proposed quarters have some advantages, they will impose unnecessary burdens on reporters and may also create problems as to notice to public officials/employees filing Statements of Financial Interests under the Ethics Act. Calendar year quarters should be used.	
	§§31.5 and 31.6	The Act does not use the terms "delinquent" or "deficient." Additionally, the Regulations are silent as to what the Commission will do when it receives an incomplete or inaccurate filing. §19.3 of the Ethics Act Regulations addresses late and deficient filings. To avoid confusion, these two sections should be revised or combined to parallel §19.3.	Do not adopt any changes. These Sections explain the various ways in which noncompliance may result.
	§31.9 (Amended filings)	Chapters 33 and 35 contain more detailed provisions governing amended filings. Therefore, this section is redundant, and should be deleted.	Adopt the following changes. Delete Subsections (b) and (d). Keep Subsections (a) and (c) as they are. Make the substance of old (d) the new Subparagraph (b) as follows: (b) Amended registration statements shall conform to the additional requirements detailed in §33.4 (relating to amended registration statements).

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	§31.10 (Filings to be originals signed under oath or affirmation)	1. In Subsection (a), the word "forms" should be inserted between the words "these" and "filed" in the first sentence. Also, paragraph (1) essentially repeats the requirement stated in (a), and therefore, it should be deleted. 2. If the affirmation requirements for registration and report filings are the same, subsections (b) and (c)should be combined to avoid confusion and reduce redundancy. 3. Since the affirmation requirements for lobbyists signing a principal's quarterly report or attaching a statement to the report are the same, subsections (d) and (e) should be combined to avoid confusion and reduce redundancy. 4. Even if the subsections are not combined, remove "penalty under" from Subsections (b), (d), and (e), as suggested by the Office of Attorney General.	1. Adopt the following change. Insert the word "forms" between the words "these" and "filed" in the first sentence. Do not delete paragraph (1) as it is designed to remind the filer of the criteria for signed originals. 2 &3. The requirements for (c) are different and cannot be combined. Moreover, although (b), (d), and (e) deal with the same affirmation requirements, attempts to combine them were unsuccessful. The items in (b) are forms, and are easily listed, but (d) and (e) are dealing with actions--signing a form, and attaching a statement to a form--and cannot be placed in a listing of filings as was originally contemplated. Therefore, do not adopt any changes. 4. Adopt as set forth in Chart #1 at 1, as to the third comment of Cristina Papson, Deputy Attorney General, Office of Attorney General Review and Advice Section.
	§31.11 (Electronic filing)	1. Suggest that the Committee delete this section and do a separate rulemaking on electronic filing after the system has been developed and tested. 2. However, if the Section is retained: A. Unless there is a compelling need for separate paragraphs, Subparagraphs (3)(i)-(iv) should be combined. B. In Subsection (b)(4), language should be added to indicate that the Commission will notify an applicant	1. Do not adopt. It is anticipated that electronic filing will be available when the Act becomes effective. 2. A. Attempts to combine the subparagraphs as originally contemplated were unsuccessful for the same reasons set forth above as to §31.10. Therefore, do not adopt any changes. 2. B. Do not adopt. It is contemplated that defective electronic filings simply will not go through, and that the filer will be aware of that fact.

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		when it receives a defective electronic filing and that the notice will list the deficiencies. C. Add a new subsection providing that the information related to obtaining an electronic signature will be confidential.	C. No changes are needed on the issue of confidentiality.
	§31.12 (Faxed filings)	For clarity, Subsection (b) should be reformatted using the same structure as Subsection (a) and should include a provision similar to Subsection (a)(2).	Do not adopt. The filings in Subsection (b) do not require the payment of a filing fee or the submission of a photograph.
	§31.14 (Severability clause)	Delete this Section. Paragraph (a) is unnecessary and will result in confusion. Paragraph (b) merely restates the obvious and is likewise unnecessary.	Adopt. Delete the existing §31.14 and replace it with a new §31.14, as set forth in Chart #3 at 6 as to the first comment of Bruce E. Lammel, Esq. USX Corporation.
	§33.1	Subsection (a)(3) should be revised to clarify that a lobbyist must only pay one $100 fee regardless of the number of registrations filed.	Adopt the change set forth in Chart #3 at 3, third block, item 2, as to a related comment by Vince Phillips, Phillips Associates.
	§33.2 (Principal registration)	1. In Subsection (a), Paragraphs (1) and (2) essentially repeat the definition of "principal." Absent justification for their inclusion, they should be deleted. 2. Subsections (a)(2) and (a)(2)(i) appear to be redundant and should be combined. 3. Suggest the Committee consider adding a new subsection to allow corporations the option of doing consolidated registrations for themselves and their subsidiaries. If this suggestion is adopted, the Committee should establish a standard for a consolidated grouping, such as meeting the eligibility standards of the IRS for filing a consolidated corporate tax return. The Regulations should	1. Do not adopt. These paragraphs clarify "acting in any capacity as a principal." Based upon other changes made in Chart #3 at 8, as to the final comment of Bruce E. Lammel, Esq., USX Corporation, paragraph (2) clarifies that a principal that lobbies on its own behalf need not also register as a lobbyist. 2. Do not adopt. The subparagraphs address how registration is to be done. Logically, they should be broken down. Moreover, if (i) would be combined with (2), presumably (ii) would also have to be combined, resulting in a very lengthy provision. 3. Adopt the changes set forth in Chart #3 at 6-7 as to the first comment of Bruce E. Lammel, Esq., USX Corporation.

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		also clarify, either in this Chapter or Chapter 35, that corporations which elect to do a consolidated registration must apply the reporting requirements to aggregate expenditures of the corporation and the subsidiaries. This would mean that an exemption from registration or reporting could not be claimed unless the total expenditures of the corporation and its subsidiaries fell below the established limits.	
	§33.5 (Termination)	The Regulations should address what a principal should do in the event a lobbyist cannot sign, or refuses to sign, the termination report. Suggest that the principal should be required to attach a statement indicating why the lobbyist cannot sign, or that the lobbyist has refused to sign, as appropriate, and, in the event of refusal to sign, to provide proof that a copy of the termination report has been given to the lobbyist.	Adopt the following changes to §33.5. Re-letter (j) to be (k) and (k) to be (l). Add the following as the new (j): (j) If the principal is unable to secure the signature of the lobbyist as to a termination report or amended termination report, the principal shall attach an affidavit to such report, setting forth the attempts made and the reasons for the inability to obtain the lobbyist's signature. Such affidavit shall be on a form prescribed by the Commission.
	§35.1 (Quarterly expense reports)	1. A consistent method of reporting should be used. However, the use of the accrual system is unreasonable, because it is the opposite of how most individuals keep their financial records and is contrary to how corporations are required to report for their employees. Therefore, Subsection (c) should be revised to require registrants to use a cash basis for reporting. 2. The first sentence of Subsection (d) repeats requirements contained in Subsections (a) and (b), and should be deleted.	1. A. Adopt the following changes to §35.1(c): (c) For purposes . . . of the act (relating to registration; and reporting), [compensation, costs and expenses . . . when actual payments are made] books and records shall be kept on the same basis the registrant uses for federal tax purposes. For those registrants who do not file tax returns, books and records shall be kept on a cash basis. B. In §33.5(g)(3) delete "in the period . . . paid" and replace it with "as set

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		3. The second sentence of Subsection (f) is unrelated to what forms must be used and repeats the requirements contained in Subsection (g). Therefore, it should be deleted. 4. Subsection (g)(2) is unnecessarily long. To improve its readability, a period should be placed after "conducted, " and "so that," should be deleted. A new sentence should be started with "If." 5. Subsection (g)(3) is somewhat confusing and should be revised as follows: . . . designated "other." The following shall not be reported: (i) A listing indicating which lobbyists are lobbying on which matters. (ii) The specific bill numbers for which the lobbying is being done. (iii) The specific contents of any communication or the identity of those with whom the communications take place. 6. In Subsection (i)(4)(ii), the phrase "as defined by the act" is redundant and should be deleted. 7. In Subsections (i)(3) and (4)(iii), it is not clear what is meant by "in furtherance of lobbying." Unless there is a distinction the Committee is trying to draw, the "in furtherance of" language should be deleted.	forth in §35.1(c)" C. Delete (i) and (ii) in §33.5(g)(5). 2. Adopt the following changes in Subsection (d): (d) [The duty to file a quarterly expense report or statement of failure to meet the reporting threshold is preliminarily placed upon the registered principal.] The [deadline for a] principal [to] shall file a quarterly expense report or statement of failure to meet the reporting threshold [shall be] on or before the 30th day after the quarterly reporting period ends. 3. Adopt. Strike the second sentence of (f). 4. Adopt. Make the changes as follows: (2) The names of all lobbyists, registered or unregistered, by whom the lobbying is conducted[,]. [so that i]If a lobbyist is a . . . shall be included. 5. Adopt the following changes to Subsection (g)(3): (3) The general subject matter . . . designated "other." The following need not be reported: (i) A [correlation as to] listing indicating which lobbyists are lobbying on which matters [or issues is not required]. (ii) [With regard to legislative action,] The specific bill numbers [are not required to be included] for which the lobbying is being done. (iii) [Except as provided by the act or this part, t] The specific contents of

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		8. In Subsection (j)(3), the phrase "amount of the payment" should be replaced with the phrase "value of the transportation, lodging and hospitality" to be consistent with the other references to these items elsewhere in the regulation. 9. In Subsection (k)(6), some flexibility in valuation methods is needed to deal with entertainment provided to groups. However, the following should be added as a new Subparagraph (iii) to address situations where using an average would not reflect the value of the real benefit received: "Allocating a portion of the total expenditures common to more than one beneficiary to each individual based upon each individual's participation and adding that value to the value of all other gifts, transportation, lodging or hospitality provided to that individual. 10. Subsection (m) does not address what a principal should do in the event a lobbyist cannot sign, or refuses to sign, the report. The same language recommended in comments above as to Section 33.5 should be added to this subsection.	any [particular] communication[,] or the identity of those with whom the communications take place [, need not be reported]. 6. Adopt the following change to §35.1(i)(4)(ii): (ii) Time spent in direct communication or indirect communication [as defined by the act]. 7. Do not adopt. The phrase serves as a qualifier. 8. Adopt the following change to Subsection (j)(3)(iii): (iii) The [amount of the payment] value of the transportation, lodging or hospitality. 9. 10. Add the following as the new second sentence of §35.1(m): In the event the principal is unable to secure the signature of the lobbyist, the principal shall attach an affidavit to such report, setting forth the attempts made and the reasons for the inability to obtain the lobbyist's signature. Such affidavit shall be on a form prescribed by the Commission.
	§35.2 (Records maintenance, retention and availability)	The language in Subsection (c)(4) requiring "access to all of the recorded information" has created some confusion. To clarify that the only information that must be provided is that which is relevant to the audit, the	Adopt the changes set forth in Chart #3 at 2, as to related comments by Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.

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		following language should be substituted for the proposed language in Subsection (c)(4): (4) Computerized/electronic records shall be maintained to enable the Commission or Office of Attorney General to access all of the information reasonably necessary to substantiate the reports. Also, the second sentence of the proposed section is not necessary. Instead, a provision should be added to Chapter 41 which would require the subject of an audit to provide its computerized/electronic records in a format that could be read by the Commission or Office of Attorney General.	
	§37.1 (Qualifications for exemption)	The second sentence in Subsection (12) is unnecessary, restates the obvious, may cause confusion, and is missplaced in a list of exemptions. Delete it.	Adopt. Strike the second sentence in Subsection (12).
	§37.2 (Exempt status)	This Section is unnecessarily long and repetitive. There is no need to have separate subsections for principals and lobbyists. Recommend that the word "principal" in Paragraph (a) and Subparagraphs (a)(1) and (2) be replaced with the word "registrant" and that Subparagraphs b(1)-(4) be deleted.	Revise §37.2 as follows: [(a)] As long as a principal or lobbyist qualifies for exemption under section 1306 of the act (relating to exemption from registration and reporting), the principal or lobbyist is not required . . . $500. ([1]a) Upon losing exempt status, a principal or lobbyist is immediately . . . act. ([2]b) A principal is not required to retroactively file

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			reports for quarterly . . . status. [(b) As long as a lobbyist qualifies for exemption . . . the act. (1) The exemption . . . reports. (2) The exemption . . . principals. (3) Upon losing . . . of the act.] ([4]c) A lobbyist is not required to retroactively sign . . . exempt status.
	Chapter 39 (Opinions and Advices of Counsel)	1. In §39.2, the word "may" should be replaced with the word "will" to more clearly indicate that the Commission will not consider third-party requests. 2. § 39.3 is unnecessary and should be deleted, because it is covered in Chapter 13.	1. In §39.2(b), change the word "may" to "will." 2. Do not delete § 39.3. However, in § 39.3, change the word "may" to "will."
	§41.1 (Lotteries)	With regard to the reference to audits "for cause" in §41.1(c), the Act provides only for random audits. The circumstances for performing that type of audit and the scope of the audit should be clearly spelled out in Chapter 43.	
	§§41.2 (Number and scope of compliance audits)	1. With regard to paragraph (a), as set forth in the comments regarding the definition of "audit," a question is noted as to the Commission's authority to review training and other areas. Training and other areas besides recordkeeping and reporting are beyond the permissible scope of an audit.	1. Change §41.2(a) as follows: (a) The purpose of conducting the audits shall be to ensure compliance with the act [and to review methods of recordkeeping, reporting, training and other areas relating to lobbying activities].

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		2. It is recommended that paragraphs (d) and (e) be deleted. It is questioned whether the Commission has the statutory authority for these provisions, especially in light of the statutory authorization only for random audits and the strict controls under which investigations may be initiated. Additionally, it is the responsibility of the registrant being audited to produce sufficient records to support his filings.	2.
	§41.4 (Audit report)	With regard to Paragraph (b), clarification is requested as to what would be included in the reference to "other practices."	Do not adopt any changes.
	Chapter 43 (Investigations, Hearings and Referrals)	1. Chapter 43 should be reorganized and rewritten to parallel Chapter 21 to the maximum extent possible. 2. §43.2 should be rewritten to encompass the informal procedures used to handle late or deficient filing of reports, and should be closely modeled after §19.3 of the Commission's Regulations. 3. §43.3 should be rewritten to encompass Commission proceedings under Sections 1304, 1305, and 1307 of the Act. As written, it is too long and cumbersome. It is recommended that it be divided into several sections, similar to the following Chapter 21 provisions: Section 21.1. Complaints Section 21.2. Initiation of investigation by the Commission Section 21.3. Preliminary inquiries Section 21.5. Conduct of Investigations	1. See, changes below. 2. Do not adopt substantive changes to the procedures. The initial draft of the Regulations *did* track the process for informal civil penalty proceedings in the Ethics Act Regs, but was changed as the result of criticisms regarding the burden of proof issue. 3. Adopt the following changes to facilitate readability: Change the heading of §43.3 as follows: " §43.3. Late or deficient filings--Commission proceedings under section 1304 or 1305 of the act." Change §43.3(c) to be the new §43.4 designated as follows: " §43.4. Noninvestigative process for late or deficient filings." Also, re-letter and renumber the subparagraphs under old (c) appropriately. Change §43.3(d) to be the new §43.5 designated as follows: " §43.5. Investigative process for late or deficient filings." Also, re-letter and

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		Section 21.21. General Section 21.22. Discovery Section 21.23. Scope of hearing Section 21.24. Hearing officer Section 21.25. Conduct of the hearing Section 21.26. Motions Section 21.27. Briefs Section 21.28. Decision Section 21.29. Finality; reconsideration Section 21.30. Effect of order The comments below pertain to the Sections in Chapter 43 as proposed.	renumber the the subparagraphs under old (d) appropriately. Change §43.3(e) to be the new §43.6 designated as follows: "§43.6. Civil penalties for late or deficient filings." Also, re-letter and renumber the the subparagraphs under old (e) appropriately. Change §43.3(f) to be the new §43.7 designated as follows: "§43.7. Commission decisions as to late or deficient filings."
	§43.1	Paragraph (b) in §43.1 should be deleted, as it is redundant.	Do not adopt. The provision is not redundant, because it addresses actual findings by the Commission--i.e., as the result of a hearing--that a failure to register or report is intentional.
	§43.2	1. Subsection (a), which provides for a preliminary inquiry upon receipt of a complaint, should cross reference Section 21.1 (relating to complaints). 2. Likewise, Subsection (b) should reference Section 21.3 (relating to preliminary inquiries). 3. With regard to Subparagraphs (d)(1) and (2), a question is noted as to the circumstances under which the Investigative Division or the Commission would require a hearing if the Respondent would not elect to have one and would not plan to participate, and why such request would have to be delayed for 7 days beyond the Respondent's deadline?	1. Adopt the following change in Subsection (a): "Upon receipt of a complaint as defined in §31.1, the Commission . . . (relating to prohibited activities)." 2. Adopt the following change in Subsection (c): "Preliminary inquiries will be conducted [under] in accordance with the procedures for preliminary inquiries set forth within §21.3 of Part I . . . to the extent applicable." 3. No changes are needed. The answer to the question is that material factual issues may not be resolved by the pleadings. If the Respondent does not request a hearing, the Investigative Division or Commission must have that opportunity so that those matters can be resolved. The timeframe of 7 days after the Respondent's Answer is

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			received is necessary because if there is a request for hearing by the Respondent, it is usually in the Answer. Thus, until the Answer is received, it is not known whether the Respondent will request a hearing.
	§43.3	1. With regard to Paragraph (a), it is not clear what is contemplated by "Commission proceedings." Preliminary inquiries, investigations and hearings all qualify as proceedings. 2. Subparagraphs (a)(4) and (5) are inconsistent with the Act. It is recommended that Subparagraph (a)(4) be deleted and that Subparagraph (a)(5) be revised to limit the information upon which the Executive Director's motion may be based to that which leads to a reasonable belief that a violation has been committed. 3. With regard to Paragraphs (b) and (c), if the term "noninvestigative procedure" is intended to reference an informal procedure similar to that outllined in Section 19.3 of the Commission's Regulations, it would be more appropriately placed under a revised Section 43.2, which would relate to late or deficient fillings. If it is intended to reference a preliminary inquiry, it is recommended that it be placed in a separate section similar to Section 21.3. However, if it is intended to authorize the Commission to initiate formal disciplinary proceedings without a prior investigation, a question is noted as to the statutory authority for the provision. Section 1108(e) of the	1. Do not adopt any changes as to this particular comment. The subsequent Sections detail the procedures. 2. As set forth in Chart #3 at 8, under the third comment of R. David Tive, Pennsylvania Association for Government Relations, adopt the following change. In §43.3(a), delete subparagraph (4) in its entirety. Issue as to subparagraph (5) is deferred. 3. The noninvestigative procedure *is* intended to be similar to that outlined in §19.3 of the Ethics Act Regulations. The statutory authority for it is Section 1309 of the Lobbying Disclosure Act. The restructuring would be accomplished by breaking down and relabelling the pertinent Sections and Subsections as set forth in this chart at 14-15.

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		Ethics Act requires the Commission to complete an investigation before issuing a rule to show cause. 4. Subparagraph (c)(3) references both "notice recipient" and "respondent." If they are one and the same, the term, "respondent" should be used consistently, since it is a defined term. 5. With regard to Subparagraphs (c)(9) and (10) and (d)(2)(i) and (ii), a question is noted as to the circumstances under which the Investigative Division or the Commission would require a hearing if the Respondent would not elect to have one and would not plan to participate, and why such request would have to be delayed for an additional seven days. 6. Subsection (e) is without statutory authority. Section 1108(g) of the Ethics Act provides "At least four members of the commission present at a meeting must find a violation by clear and convincing proof." Based upon the recommendation that the procedural provisions in Chapter 43 be modeled after those in Chapter 21, it is recommended that Paragraph (e) be deleted.	4. Do not adopt. The terms are *not* the same. A notice recipient does not become a Respondent unless and until process such as a Petition for Civil Penalties is filed against him. 5. No changes are needed. The answer to the question is that material factual issues may not be resolved by the pleadings. If the Respondent does not request a hearing, the Investigative Division or Commission must have that opportunity so that those matters can be resolved. The timeframe of 7 days after the Respondent's Answer is received is necessary because if there is a request for hearing by the Respondent, it is usually in the Answer. Thus, until the Answer is received, it is not known whether the Respondent will request a hearing. 6. Adopt the changes set forth in Chart #3 at 9-10, as to the fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.
	§45.1	1. Section 1309(e) of the Act, which authorizes the Commission to impose a prohibition against lobbying, is limited to intentional violations. Thus, Subparagraphs (a)(4), (b), and (c) should be deleted, as they reference negligent violations.	Do not adopt. Another Section, specifically Section 1309(d) of the Act, authorizes the Commission to impose the prohibition against lobbying where there is noncompliance, an opportunity for hearing, and a subsequent failure to comply. Thus, the prohibition is not limited to intentional violations. The accuracy of this interpretation is

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		2. In subparagraph (d)(1), the applicable sections of Chapter 21 pertaining to hearings should be cross-referenced.	confirmed by Subsection (e)(4) which provides that no criminal prosecution or conviction is required for the imposition of the prohibition. Intentional violations would be found as the result of criminal prosecutions/convictions. 2. Adopt the following changes to Subparagraph (d)(1): (1) A hearing, if requested, will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission) and, to the extent applicable, Chapter 21 of Part I.
	§45.2	1. With regard to Subparagraphs (b)(7) and (8), a question is noted as to the circumstances under which the Investigative Division or the Commission would require a hearing if the Respondent would not elect to have one and would not plan to participate, and why such request would have to be delayed for an additional seven days. 2. Agreement is noted as to the recommendation of the Office of Attorney General with regard to limiting the Commission's determination, where a lobbyist or principal has been convicted, to the amount of time the lobbyist or principal would be prohibited from lobbying. There would be no need for the Commission to relitigate these matters. It is recommended that the Committee add the Office of Attorney General's suggested language as a new Subsection (c) or as a new Section 45.3.	1. No changes are needed. The answer to the question is that material factual issues may not be resolved by the pleadings. If the Respondent does not request a hearing, the Investigative Division or Commission must have that opportunity so that those matters can be resolved. The timeframe of 7 days after the Respondent's Answer is received is necessary because if there is a request for hearing by the Respondent, it is usually in the Answer. Thus, until the Answer is received, it is not known whether the Respondent will request a hearing. 2. Adopt the changes set forth on Chart #3 at 2, as to the final comment of Cristina Papson, Deputy Attorney General, Office of Attorney General, Review and Advice Section.

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	General	1. Section 1302(b) of the Act provides, in part: "This chapter is not intended to govern professional activities which do not include lobbying and which are properly the subject of regulation by the judicial branch of government or by any government agency." To give effect to this provision, the Committee should consider inserting a separate section exempting communications for which the attorney-client privilege is claimed from the disclosure requirements. 2. Where the Regulations refer to forms that are to be developed by the Commission for use by registrants, the term "approved" should be used consistently, rather than "promulgated by," "provided by," or "prescribed by." In addition, the Regulations should clarify whether the Commission will permit filings on forms which are substantially equivalent to the forms obtained from the Commission (See, 1 Pa. Code §13.42). 3. General references to Part I provide little guidance and should be replaced with specific references to the applicable sections of the Commission's Regulations. 4. The phrase "to the extent applicable" should be deleted from references to provisions in Part I. If there is another specific statutory or regulatory provision which would supercede the appropriate provision in Part I, the Regulation should include a citation to that authority.	1. Adopt the changes set forth in Chart #3 at 2 as to the first two comments by Franklin L. Kury, Reed Smith Shaw & McClay. 2. Change the wording to consistently use "prescribed by." Since only SEC forms may be used, do not use "approved by"; that wording would erroneously suggest that forms created by others could be used. 3. Replace general references to Part I with specific references to the extent possible. 4. Do not adopt. The phrase "to the extent applicable" is essential because certain wording in the Ethics Act Regs would be peculiar to the Ethics Act.

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		5. The phrase, "disclosure reports" should be defined to include all filings required under the Act or amended filings. By including amended filings in the definition of "disclosure reports," repetitive references to"separate amended quarterly expense reports" can be eliminated.	Do not adopt. Not all filings are disclosure reports.

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March 29, 1999

Hon. Bob Nyce
Executive Director
IRRC
333 Market Street
Harrisburg, PA 17101

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Nyce

Dear Bob:

I am pleased to enclose my comments on the proposed regulation on lobbyist disclosure promulgated by the Ethics Commission.

As my comments show, I think there are workability concerns with the proposal. You should know that this will affect me even more than before since, as of April 1, I will be an independent contract lobbyist. I will still lobby on behalf of the insurance agents but no longer as an employee.

Please let me know if I can be a resource to IRRC on this issue. As Government Relations Chairman for PA Society of Association Executives, I spent two years on the legislation.

Best wishes,

Vince

Vince Phillips

Pennsylvania Coal Association
212 North Third Street • Suite 102 • Harrisburg, PA 17101

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GEORGE ELLIS
President

March 2, 1999

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Mr. John Contino
Executive Director
Pennsylvania State Ethics Commission
309 Finance Building
Harrisburg, Pennsylvania 17108-1470

Re: Proposed Lobbying Disclosure Regulations

Dear Mr. Contino:

On behalf of the Pennsylvania Coal Association (PCA), I submit our comments on the proposed Lobbying Disclosure Regulations published in the Pennsylvania Bulletin on January 30, 1999. PCA objects to the proposed regulations on two grounds - they purport to allow an authorized government invasion of privacy and they impose overly burdensome and onerous reporting requirements.

Concerning the invasion of privacy, we ask that you delete the phrase "except as provided by the Act or these regulations," from Section 35.1(g)(3)(iii) and Section 35.2(a)(3). The Commission has no authority under the Act to obtain information about the contents of communications or the identity of communicants. For the Commission to reserve this right is improper and unlawful.

Equally objectionable is Section 35.2(c)(4), which purports to give the Commission and the Attorney General the right to have full access to computerized and electronic records. This paragraph should be deleted in its entirety. It is nowhere authorized by the Act. This paragraph gives the "big brother" of state government improper access to entirely private information in a manner reminiscent of George Orwell's novel "1984".

The Act establishes, through Section 1305, extremely onerous record keeping and reporting requirements. The proposed regulations, in excess of the statutory authority granted, exacerbate the complexity and difficulty of compliance. This is, in some measure but not entirely so, the result of the open-ended nature of the definition of the phrase "indirect communication" which appears to have no limits. We, therefore, request that the definition of "indirect communication" be rewritten to establish limits and that Chapter 35 be rewritten to clarify and simplify the reporting and bookkeeping obligations in compliance with Section 1305.

The Act calls only for a "good faith estimate" (added) of the amounts spent in lobbying for (a) personnel and office expenses, (b) direct communication and (c) indirect communication. The regulations go far beyond what is needed to make a "good faith estimate". For example, Section 35.1(i)(5) as written is not authorized by the Act. This Section is expansive and shows no limit. It uses the phrase "shall include, but shall not be limited to". This, and the details suggested by this subsection, far exceed what is needed to make a "good faith estimate".

In addition, Section 35.1(i)(1) says that any reasonable accounting method may be used to make the "good faith estimate" of the total amount spent for personnel and office expenses. The same accounting option should be made available to "good faith estimates" for "direct" and "indirect communication".

These requirements are particularly burdensome for trade associations such as PCA, which engage in "lobbying" and other entirely appropriate non-lobbying activities, making it difficult to divide or allocate portions of expenditures between the two types of activities.

In short, we urge revision of the regulations for the purpose of requiring only that documentation which is mandated by the Act for the purpose of producing "good faith estimates". Going beyond that is in excess of legislative authority and should be deleted.

Thank you for your consideration.
Very truly yours,

George Ellis, President
Pennsylvania Coal Association

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10 **SUBJECT(S) OF LOBBYING**

Please identify the topics general subject matter associated with your lobbying efforts. Check all the appropriate boxes and specify additional topics in the appropriate box.

[ ] Accounting	[ ] Disabled	[ ] Judiciary	[ ] Public Safety
[ ] Advertising	[ ] Domestic Violence	[ ] Labor	[ ] Railroad
[ ] Agriculture	[ ] Economic Development	[ ] Law Enforcement	[ ] Real Estate
[ ] AIDS	[ ] Education	[ ] Legal Profession	[ ] Reproductive Rights
[ ] Alcoholic Beverages	[ ] Elderly	[ ] Licensure	[ ] Retail
[ ] Arts	[ ] Energy	[ ] Lobbying Reform	[ ] Riverboat Gambling
[ ] Aviation	[ ] Engineering	[ ] Local Government	[ ] Safety
[ ] Banking	[ ] Environment	[ ] Managed Care	[ ] Salaries
[ ] Budget (State)	[ ] Ethics	[ ] Medicaid/Medicare	[ ] State Government
[ ] Business	[ ] Finance	[ ] Medical Records	[ ] Sunshine/Open Meeting
[ ] Campaign Financing	[ ] Fire Fighters	[ ] Mental Health	[ ] Taxation
[ ] Casino Gaming	[ ] Freedom of Information	[ ] Motor Vehicles	[ ] Teachers
[ ] Children's Issues	[ ] Health Care	[ ] Municipalities	[ ] Telecommunications
[ ] Civil Justice	[ ] Historic Preservation	[ ] Natural Resources	[ ] Tobacco
[ ] Commerce	[ ] Homeless	[ ] Nursing Homes	[ ] Transportation
[ ] Construction	[ ] Hospitals	[ ] Pari-Mutuel	[ ] Utilities
[ ] Consumer Affairs	[ ] Housing	[ ] Pension Funds	[ ] Wagering
[ ] County Government	[ ] Human Services	[ ] Pharmaceuticals	[ ] Waste Management
[ ] Courts	[ ] Industry	[ ] Physical Fitness	[ ] Welfare
[ ] Crime Victim Assistance	[ ] Infrastructure	[ ] Prevention of Child Abuse	[ ] Women's Issues
[ ] Criminal Justice	[ ] Insurance	[ ] Property Tax	[ ] Workers' Compensation

[ ] Other (Please specify)

[ ] Other (Please specify)

[ ] Other (Please specify)

[ ] Other (Please specify)

STATE ETHICS COMMISSION
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TO: Mary Wyatte

FROM: John Contino

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SPECIAL INSTRUCTIONS:

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March 1, 1999

Vincent J. Dopko
Chief Counsel
State Ethics Commission
309 Finance Building
Harrisburg, PA 17120

Dear Mr. Dopko:

Attached are my comments regarding the regulation on lobbyist disclosure. As a followup, I would enjoy the opportunity of having informal conversation with you and others on the Ethics Commision. As a part of the regulated community with no experience dealing with the Commission, I am looking forward to our partnership. Via background, I am a new venture with four clients. As such, although I have lobbied for employers in Harrisburg for the past ten years, this is a new world of discovery (and compliance) under the new law.

If the Commission is inclined, I hope that you see fit to establish an informal working group from the regulated community to assist you in your "new world of discovery" as well. If you do, please count on me as a resource. I spent two years as Government Relations Chairman for the PA Society of Association Executives (PaSAE) and spent a great amount of time analyzing this issue, testifying, etc. and have some credentials which may prove to be of some worth to the Commission.

Sincerely,

Vince Phillips

Vince Phillips, CAE

CC: PaSAE; PAGR; et al.

COMMENTS ON LOBBYING DISCLOSURE REGULATION

Submitted by: Vince Phillips, CAE
Phillips Associates
3610 Kent Drive
Mechanicsburg, PA 17055
717/728-1217 FAX 717/728-1164

March 1, 1999

Chapter 31. General Provisions.

31.4. Registration periods and reporting periods.

This section sets forth periods starting with December after the end of the previous session of the General Assembly. The law uses the phrase "coincident with the terms of the members of the House of Representatives" (1304 [A]). Even though the old session ends on November 30, the new session does not officially begin until January. As such the two-year term of the new session could be considered as beginning in January with reporting periods of March, June, September, and of course December. In addition, there is a desire to have the reporting cycle to go with the ebb and flow of lobbying activity. December is a month to take care of unfinished business with the old session. Why not allow lobbyists the chance to close out their books rather than mixing December's old business with that connected with the new session?

Chapter 33. Registration and Termination.

33.1. Biennial filing fee.

There are several issues connected with the filing fee. First, philosophically, although appreciating that the Commission" hands are tied, i.e. this is a legal mandate, the charging of a $100 filing fee may be considered as an infringement by charging for the freedom to express a viewpoint on an issue.

More pragmatically, the language is unclear in (3) as to what fees a lobbyist must pay. Clearly, each principal must pay a fee if it lobbies or contracts a lobbyist. Each lobbyist must also pay a fee. What is unclear is whether or not a principal only pays one fee, regardless of the number of lobbyists it employs. Similarly, a contract lobbyist representing several clients pays what? $100 or $100 for each client? I have run this paragraph past two attorneys, each of which interprets the regulation differently.

The simplest approach is to say categorically that a lobbyist pays $100 fee regardless of the number of clients. A principal pays $100 regardless of the number of lobbyists employed. The $100 should be regarded as similar to a licensing fee. For insurance agents, receiving or renewing a Certificate of Qualification (which enables them to sell insurance) costs $36.00 for two years. An agent can represent one company or fifty, but still pays $36.00 for the license.

Under insurance law, agents must be appointed by a company to legally represent it. The insurer pays the Commonwealth an $18 appointment fee every two years. The agent's $36.00 enables him or her to sell for ("lobby") for an unlimited number of insurers ("principals"). The license fee is for the function of selling insurance. Under the lobbying law, the rationale should be the same. Paying $100 and registering gives a person a license to formally lobby. He or she should not have to double-pay for what is the same authorization.

Perhaps this is what the Commission meant, but there is a lack of certainty out there now in the regulated community.

There is also duplicative cost in charging $100 for the lobbyist to register (John Doe) and another $100 to register as the principal for whom he or she lobbies (John Doe Associates). It is redundant. Please consider adding a sentence that payment of $100 by a lobbyist shall constitute payment for the principal if he or she is the owner of that concern. It is understood through 33.2 (b) that a lobbying by a principal on its own behalf means that it is acting as both principal and lobbyist. Charging the owner of the principal twice should be reviewed.

33.2. Principal registration.

(4) requires that the principal list the number of dues-paying members in compliance with Section 1304 (B)(2). Since membership categories may vary within an association and numbers of members may fluctuate within a year, literal compliance may give the Commission more information than it needs. Please insert the word 'approximate' before numbers.

33.5. Termination.

My reaction was that this process appears more complex than it needs to be. Again, there is a philosophic freedom of speech issue where a person who does not want to lobby anymore must do all this paperwork just to stop his or her advocacy.

Still, given the law's mandate for a termination process, please consider the following possible language.

(a) A lobbyist or principal may terminate registration by notifying the Commission in writing that lobbying will cease on a particular date. The communication must include all principals being lobbied for and all lobbyists being utilized.

(b) The Commission will confirm receipt of this communication and write back reminding the lobbyist or principal that all reports need to be current by the date of the next due quarterly filing report and that, whether registered or not, the lobbyist and principal must understand their legal responsibilities to retain records, be subject to potential auditing, etc.

The Commission might make the best use of staff resources by letting the system manage itself as much as possible instead of a complex, burdensome system, which makes egress from lobbying an involved process.

Chapter 35. Reporting.

The all-inclusive nature of the reporting requirements may be subsumed in the phrase 'single aggregate good-faith estimate' but the need to document specific costs may not be overlooked in the Commission's audits. That is the reporting nightmare in the infamous subsection 'eye' of the law. Lobbyists felt that technical violations would be flagged by the audit and they would be punished. In order to counteract this fear of the Ethics Commission, the regulation should insert the word 'approximate' wherever feasible. ...approximate portion of the equipment, utilities, etc.

The purpose of reporting is to report workably so that the net effect with audits is not paranoia but an understanding that the Commission is not seeking nit-picking violations but rather is seeking wholescale compliance.

Chapter 37. Exemption From Registration and Reporting

37.2 Exempt status.
(Also possible reference to 33.1 Biennial filing fee.)

If a purpose of this law is to identify who lobbies (as well as how lobbying resources are spent), there may be a loophole where lobbyists under the threshold will want to register to gain legal recognition, yet will not because of the $200 cost involved ($100 for them and $100 for the principal). Perhaps the regulation could allow this registration and provide an exempt ion from the fee. Once my association was a day late in filing papers with the Secretary of Senate. When it went into a legislator's office, the staffperson said, 'Why should I see you? You are not registered.' A smaller lobbying effort should not run the risk of exclusion because it was too small to appear. For them, the $100 might be a significant barrier.

They might also be exempted from the reporting requirements since they don't hit the threshold, but at least they are in the system.

Chapter 39. Opinions and Advices of Counsel.

In subsection 39.2 (b), third-party requests are considered unauthorized. The intent was probably to maximize the efficiency of Commission staff as well as proving to be a bar against frivolous or antagonistic attacks against a lobbyist/principal. Although not opposing the above, one wonders if there may ever be a third party request of the Commission which needs clarification. Let us suppose that the uncharted area is some facet of electronic lobbying. If the media asks if a particular practice is reported properly, what will the Commission say? Will the answer from the press officer be equated to valid advice and counsel, or will the press officer say that the Commission cannot answer the question because it has not been formally asked by a lobbyist/principal for him or herself. I am not advocating a specific recommendation but suggest that the Commission at least look at this issue.

Missing in the regulation is acknowledgement of Section 1308. Administration and Enforcement. (C) Advice and Opinions., which assures that opinions may be requested of the Commission by a lobbyist, principal, or state official/employee and that the lobbyist/principal who acts in good faith based on the written advice or opinion shall not be held liable for a violation.

This appears to contradict 39.3. which limits advice or opinion to prospective – future- conduct. The law makes no such distinction between current and future. Preferably, a lobbyist/principal should be able to query the Commission as to what he or she is doing and to say, "Is this right? If not, let me correct it so that I won't get in trouble by the next report." The limited scope of 39.3 will work against compliance, not enhance it. Another consequence may be an increase in the number of formal complaints since the regulation does not allow an outside party to get an opinion. Since they can't determine appropriateness, they may file a complaint.

Another issue within 39.3 as a follow-up to the above paragraph is the need to clarify the right of a lobbyist/principal to request a written opinion since the section does not say that a verbal opinion is binding.

Chapter 41. Compliance Audits

41.2. Number and Scope

(d) (e) General Observation Although few would quarrel with the Commission's need for access to needed documents, the proposal does not limit the scope of the inquiry. What is to prevent the Commission from examining all of a principals's records even if the audit applies to one lobbyist (out of many) hired to serve a specific purpose. Similarly, what would prevent the Commission from looking at all records of a lobbyist when only the records relating to a particular principal are needed. There needs to be a safety valve allowing a lobbyist or principal from being forced to open their entire operation and utilizing valuable staff resources unless a need is shown or at least permitting that the audit be placed on hold until the Commission can hear the lobbyist/ principal's appeal.

(f) The auditing of up to four years back seems to be at odds with the rationale that audits are needed to monitor current compliance versus being an enforcement hammer. Particularly initially, since many will be unfamiliar with how the Commission wants them to comply, an audit will be seen as the heavy hand of government instead of a way to monitor the system and hopefully correct mistakes informally instead of through enforcement. An alternative would be to limit backward audits to the past year. In the event of an enforcement action, the Commission certainly has the power to examine any records deemed necessary. In addition, there does not appear to be legislative language supporting the four years. (1308. [G] Audits.)

41.4. Audit Report

(1) Service of the audit report completed via mailing does not constitute sufficient protection for the recipient. Given the gravity of an audit, the Commission should have a higher standard than simply dropping an audit report in the mail. Sending by registered mail or via overnight mail so that tracking exists is a more thorough option. This protects the Commission too in that tracking will document attempted delivery or refusal to accept the report.

Section 41.4 is silent on the recourse a lobbyist/principal has after (c)(2) filing a statement setting forth the subject's position on the audit report. The Commission may use the audit as the basis of 'further proceedings' in (d), but the lobbyist/principal seems to have no other option but to file a reaction and know that the Commission has the final say. There may be a due process question here.

Chapter 43. Investigations, Hearings, and Referrals.

43.3 Commission proceedings.

What is missing is the authority of the Commission to informally discuss a complaint when it appears that the violation may be technical or simply an oversight. Especially in the law's early days, there will be confusion. Inadvertent violations will occur. It should be in the best interest of all parties including the Commission to resolve a situation informally where possible. If not, stating the Commission's authority to issue a cease and desist letter or for the lobbyist to sign an agreement that he or she admits no intentional wrongdoing, but agrees with the Commission to take appropriate remedial steps.

Another criticism of this section is that complaints may be filed publicly with no gag order on talking to the press. An accused party might be tried in the media at the time (in a hot legislative issue) when his or her credibility is most important. The Commission should not allow itself to be used as a political pawn by any special interest. As such, it could adopt a prohibition on the parties for commenting at least until the Commission renders a finding of fact or refers a complaint to the Attorney General. A welcome addition to this section might be a penalty to someone who is found to have filed a complaint with malicious intent.

Chapter 45. Prohibition Against Lobbying as a Sanction.

Although the regulation takes great pains to provide process to the lobbyist faced with sanction and is far better than the December 1998 draft, there are still problems.

First, a person is innocent until proven guilty. The regulation should clearly state that the burden of proof rests with the Commission to demonstrate wrongdoing. An example is the consideration of verbal falsehoods uttered by the lobbyist as grounds for a prohibition on lobbying. There should be a clear preponderance of evidence rather than 'he said, she-said' before someone is stripped of their profession. While I know the Commission will take great pains to adjudicate fairly, a greater comfort level would be achieved by the above suggestion.

Once wrongdoing has been determined by the Commission, should the lobbyist have legal recourse besides that of asking the Commission to reconsider? What recourse has he or she? Is there a standard within administrative law that governs an individual after a regulatory agency finds in guilty or does it truly have the final say?

Pennsylvania Credit Union League & Pacul Services, Inc.

4309 North Front Street
P.O. Box 60007
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(717) 234-3156

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PROPOSED REGULATIONS FOR ACT 93 OF 1998
THE LOBBYIST DISCLOSURE ACT

Comments Submitted for Consideration by the Independent Regulatory Review Commission

Patricia M. Raymond
AVP, Government Affairs

The Pennsylvania Credit Union League is a statewide trade association that represents more than 850 federal and state chartered credit unions located in the Commonwealth. These not-for-profit, tax-exempt financial cooperatives provide a range of financial services to over 3 million Pennsylvania residents. Seventy-four percent of these institutions are under $10 million in assets.

The League was organized in 1934. It provides its member credit unions with a full array of products and services, including: education and training programs, workshops and seminars; information – through publications, booklets and a toll-free technical assistance line – on all aspects of credit union operations including compliance, statistics, marketing and personnel; operational supplies, credit card processing, auditing and mortgage training, and public relations services in local, state and national media.

In addition to these primary association services, the Pennsylvania Credit Union League maintains a small government affairs department to monitor the state and federal governments, inform credit unions about legislation, policies and regulations that affect their operations, and when necessary, provide legislative and regulatory advocacy. Through its efforts, the League hopes to foster an open dialogue between policymakers and the credit union movement, ensuring a positive role for credit unions in Pennsylvania's future.

The Pennsylvania Credit Union League welcomes the opportunity to comment on the proposed regulations for the recently enacted *Lobbyist Disclosure Act* (Act 93 of 1998).

Chapter 31. General Provisions

31.4 Registration periods and reporting periods.

If the reporting period is to fall "within biennial registration periods that coincide with the terms of the members of the House of Representatives," reporting should begin in January, which is constitutionally the beginning of the new session. By amending the

current proposed rule to allow the quarterly reporting period to begin with the *official* start of the new session would allow registered lobbyist to use the month December to finalize their record keeping for the closing session.

Chapter 33. Registration and Termination

33.1 Biennial filing fee

We would appreciate additional clarification on the required $100 filing fee. Subsection (3) is too vague. According to the provision lobbyist and principals are both required to pay a $100 fee if involved in lobbying activities. In a trade association, is it necessary for every individual who has contact with a state agency to pay the fee? What is the cost if a principal uses more than one lobbyist? Is it mandated that a principal like our trade association pay $100 per lobbyist?

Constitutional questions could also be raised about charging a fee to individuals who would like to exercise their free speech and petition their government, regardless of if they ask someone do it on their behalf.

Chapter 35. Reporting

35.1. Quarterly Expense Reports

Many of the provisions in this section are vague and can be interpreted differently throughout the lobbying community. The term "monitoring staff" in subsection (i)(2) needs clarification. What is "monitoring?" Does general discussion or awareness of an issue among non-lobbying staff of an association constitute monitoring?

How does one calculate or define "research time spent in preparation for lobbying" and "any other time consumed in furtherance of lobbying," as used in subsection (i)(4)?

More defined procedures must be promulgated by the Commission for the calculation of office, equipment and supply in subsection (i)(5). Identifying and prorating office and equipment costs will place an undue burden on an association by requiring detailed examination of expenditures and hours of documentation. Many associations are ill equipped or cannot afford to compensate staff for the time spent solely on this provision. It will take non-lobbying staff away from their primary responsibilities of serving the association's members, affecting the true mission of the association.

Chapter 41. Compliance Audits

41.2. Number and Scope of Compliance Audits

The provisions of this section have the potential to be far-reaching. According to the regulation, an audit of a lobbyist also allows for the audit of the registered principal. Is such an audit limited to the organization's lobbying efforts or does the scope of the audit reach further into other non-government aspects of the principal?

At the League, lobbying is but a small part of the association services provided to members. However, those services are so highly integrated that government affairs activities often touch staff in education, compliance, legal and communications. Under the current draft regulations, the burden of calculating accurate staff, office and equipment expenses and maintaining acceptable records will be quite high. A broad audit that affects other departments of the association (i.e., communications, accounting, education, marketing and member services) has the potential to impact the quality of non-lobbying services provided to association members. Staff resources would be required to meet the demands of the audit, taking them away from their primary responsibilities.

41.4. Audit Report

In an effort to ensure delivery and receipt of such an important document, service of the audit report by the Commission should not be considered complete upon mailing. There should more thorough procedures undertaken to confirm the mailing of the audit. Such a document should be sent by registered mail or via overnight mail. Following these mailing procedures will ultimately protect both the sender and the recipient.

Lobbyist and/or principals also need to have a clearer understanding of their options once they have filed with the Commission a statement setting forth their position on the audit report under subsection (c)(2). Subsection (d) allows the audit report to be used by the Commission as a "basis for further proceedings under the Act or the Ethics Act." What procedural channels are open to the subject of the audit after the subject has made a statement?

Chapter 43. Investigations, Hearings, and Referrals

Section 43.2 raises questions and concerns about the actual initiation of an inquiry. In subsection (a), "Upon receipt of a complaint, the Commission, through its Executive Director, shall conduct a preliminary inquiry into any alleged negligent violation." Will there be a process for submission of such a complaint or guidelines for Commission consideration? Can the origin of such an allegation or complaint be anonymous? Further confusion exists because subsection (b) allows for the Commission, based upon the motion of the Executive Director, to start an inquiry based on "any alleged negligent violation."

We are concerned that these provisions could foster complaints that stem from hearsay, rumor or personal innuendo and may not be based in fact. By acting on anonymous allegations, the Commission could be opening an inquiry at the behest of a complainant whose intention might be to hinder a rival's public policy initiatives.

Section 43.3(b)(4) raises some of the same concerns as those pertaining to Section 43.2 with regard to hearsay or innuendo potentially meeting the criteria for the Commission to begin proceedings based on "information received informally." Furthermore, the Commission is then able to initiate proceedings against a subject under the "non-investigative" procedures set forth in subsection (c) regardless if this information was

informal and the Commission gathered no factual evidence. It appears that by following the "non-investigative" process and issuing a communication of complaint, the subject is presumed guilty until proven innocent.

There must be room for dialogue between the Commission and the lobbyist/principal to address discrepancies that might be technical in nature. Common oversights will happen, especially in the first few months of implementation of these regulations. If a discrepancy is simply an oversight and not an intentional act, there should be an effort to avoid harming the credibility and reputation of the lobbyist/principal, which could happen under an investigation. Some sort of informal channel should exist within the Commission to address the issue and allow for a corrective action plan.

Conclusion

In conclusion, we believe the proposed regulation has a number of deficiencies that will negatively affect those lobbyists who represent trade associations. More importantly, it would negatively affect residents of the Commonwealth whom directly or indirectly benefit from the necessary services that trade associations provide.

We believe all parties that have an interest in the implementation of these regulations are intent on providing a fair set of standards that will protect the system from abuse while ensuring continued cooperation between policymakers and the constituencies that trade associations represent. We thank you for the opportunity to comment on this very important issue.

STATE ETHICS COMMISSION
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March 19, 1999

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Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market St.
Harrisburg, PA 17101

Dear Mr. Nyce:

This is to confirm the scheduling of a meeting for March 24, 1999 at 9:30 a.m. in Room 307 of the Finance Building, for the purpose of reviewing matters involving the Lobbying Disclosure Regulations.

The Chair of the Lobbying Disclosure Committee, Austin M. Lee, Esquire, and Assistant Counsel for the Commission's Legal Division, Robin M. Hittie, will attend. However, due to pressing Commission business in Pittsburgh, neither I nor John J. Contino, Esquire, Executive Director of the State Ethics Commission, will be able to attend the meeting. Since there are some areas of the Regulations which would best be addressed with our involvement, we are keeping the previously-scheduled meeting date of March 29, 1999 at 9:30 a.m. available for a possible second meeting should that be needed.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Vincent J. Dopko

Vincent J. Dopko
Chief Counsel

VJD/mlj

STATE ETHICS COMMISSION
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March 18, 1999

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Mary S. Wyatte, Chief Counsel
Richard M. Sandusky, Deputy Director for Regulatory Analysis
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market St.
Harrisburg, PA 17101

Dear Ms. Wyatte and Mr. Sandusky:

This is to confirm my telephone conversation with Ms. Wyatte this date, scheduling a meeting for March 29, 1999 at 9:30 a.m. in Room 307 of the Finance Building, for the purpose of reviewing matters involving the Lobbying Disclosure Regulations.

If you have any questions prior to that meeting, please do not hesitate to contact me.

Very truly yours,

Robin M. Hittie
Assistant Counsel
State Ethics Commission

RMH/mlj

cc: Austin M. Lee, Esq.
Hon. Mark R. Corrigan
Hon. Clancy Myer
David J. DeVries, Esq.
Cristina S. Papson, Esq.
Deborah Griffiths
Gerard M. Mackarevich, Esq.
James M. Darby, Esq.
Gregory F. Dunlap, Esq.
J. Andrew Crompton, Esq.

STD-501, 9-86

COMMONWEALTH OF PENNSYLVANIA
ORIGINAL: 1997
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DATE: March 18, 1999

SUBJECT: Comments on Lobbying Disclosure Regulations

TO: Lobbying Disclosure Committee

FROM: Robin M. Hittie, Assistant Counsel
State Ethics Commission

As per the direction of the Chair at the March 18, 1999 meeting of the Lobbying Disclosure Committee, I have prepared the following list of issues which appear, at least so far, to be most heavily emphasized in the comments to the proposed Lobbying Disclosure Regulations:

1. §31.4 — whether quarterly reporting periods should be on a calendar-year basis;

2. §41.1(c) — concerns as to the phrase, "unless for cause," with regard to multiple audits in any biennial registration period;

3. Chapters 33, 35 — whether a parent corporation should be allowed to register and report on behalf of all of its direct and indirect subsidiaries and affiliates;

4. §§35.2(c), (h); 41.2(c), (e) — concerns as to delineating the scope of records which may be accessed by the Commission or Office of Attorney General;

5. §§43.3(b), (c) — whether non-investigative procedures should be deleted from the Regs;

6. §31.1 — concerns about the exemption for the provision of purely technical data within the definition of "Effort to influence legislative action or administrative action";

7. Chapter 35 — whether greater specificity is required as to how costs are to be reported;

8. §31.1, definitions of "Gift," "Effort to influence legislative action or administrative action," and/or "Lobbying"; §35.1 — whether it should be made clear that constituent services are not to be regarded as reportable items or gifts;

9. a. §§43.2; 43.3(c)(15); 43.3(d)(2); 43.3(e) — proposing that the Regulations require a four-member majority of the Commission to determine violations, as is required in the Ethics Act;

b. Proposing that the standard of proof for finding a violation, assessing a civil penalty, or imposing a prohibition against lobbying, should be "clear and convincing evidence" (the standard of proof in the Ethics Act);

10. §35.1(k)(6) — whether there should be only one method for valuing gifts and lodging/transportation/hospitality. This issue reflects diametrically opposed interests: the legislator's interests in not being assessed more than is actually received versus the interests of the lobbyist, who seeks ease in reporting. Concerns have been expressed as to the impact of disparities between reports under the Lobbying Disclosure Act and the amounts as reported by legislators in Statements of Financial Interests; and

11. §31.1 — clarifying various terms such as "direct communication" and "indirect communication."

There are, of course, many other issues that have been raised, as set forth in the chart which you have already received.

As directed by the Chair, additional charts will be prepared as further comments are received.

RMH/mlj

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March 18, 1999

✓Mary S. Wyatte, Chief Counsel
Richard M. Sandusky, Deputy Director for Regulatory Analysis
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market St.
Harrisburg, PA 17101

Dear Ms. Wyatte and Mr. Sandusky:

This is to confirm my telephone conversation with Ms. Wyatte this date, scheduling a meeting for March 29, 1999 at 9:30 a.m. in Room 307 of the Finance Building, for the purpose of reviewing matters involving the Lobbying Disclosure Regulations.

If you have any questions prior to that meeting, please do not hesitate to contact me.

Very truly yours,

Robin M. Hittie

Robin M. Hittie
Assistant Counsel
State Ethics Commission

RMH/mlj

cc: Austin M. Lee, Esq.
Hon. Mark R. Corrigan
Hon. Clancy Myer
David J. DeVries, Esq.
Cristina S. Papson, Esq.
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March 5, 1999

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The Honorable Albert Masland
Pennsylvania House of Representatives
House Box 202020
51A East Wing
Harrisburg, PA 17120-2020

Dear Representative Masland:

As a follow up to our colloquy during my testimony before the House Judiciary Committee on the proposed Lobbying Disclosure Regulations, I have read the case of P.J.S. v. Pennsylvania State Ethics Commission decided by the Pennsylvania Supreme Court in February. Thank you very much for bringing this to my attention. I appreciate it. However, having read it, I see nothing in this case which affects the validity of my comments to the Judiciary Committee and the Ethics Commission concerning the lawyer/client privilege.

The P.J.S. case does not deal with lobbying or with the lawyer/client privilege. It deals with whether a lawyer who is employed by a municipality is subject to the Ethics Act. This is in no way inconsistent with my position as I presented it to you last week. The Legislature can subject those who lobby to the jurisdiction of the Ethics Commission with regard to their conduct *vis-a-vis* state legislators and other government officials. But when the rules of the Ethics Commission attempt to force lawyers to violate their obligations to clients under the Rules of Conduct promulgated by the Supreme Court, they clearly exceed legislative authority. The Legislature and the Ethics Commission can regulate the conduct of those who lobby in their dealings with government officials. But the Legislature and Ethics Commission have no authority to regulate communications and dealings between lawyers and their clients. That continues to be within the exclusive jurisdiction of the Supreme Court.

I continue to have no doubt as to how the Supreme Court would rule if this issue were to be presented to it. I believe that the suggested changes to the proposed regulations that I made would avoid this confrontation.

Again, thank you for bringing this to my attention. I will be happy to discuss this with you further if you so desire.

Best regards,

Franklin L. Kury

FLK/rem

cc: Brian J. Preski, Esquire

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February 24, 1999

ORIGINAL: 1997
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Ms. Daneen E. Reese
Chairperson
State Ethics Commission
309 Finance Building
P.O. Box 11470
Harrisburg, Pennsylvania 17108-1470

Re: The Lawyer-Client Privilege and the Proposed Regulations to Implement the Lobbying Disclosure Act

Dear Ms. Reese:

This letter is submitted as a formal comment to the proposed Lobbying Disclosure Act regulations published in the Pennsylvania Bulletin January 30th. I request the Committee charged with drafting the regulations to make several amendments for the purpose of eliminating any conflict between the new law and our obligations of confidentiality to clients with regard to communications protected by the attorney-client privilege.

I request the following changes to the proposed regulations:

(1) Add to the definition of "indirect communications" on page four: "The term does not include communications between attorneys and their clients".

(2) In Sec. 35.1(g)(3)(iii) and Sec.35.2(a)(3) delete the phrase "Except as provided by the Act or these regulations".

(3) To Sec.37.1, Qualifications for exemption, add the following:

(m) An attorney while engaged in communications with a client and a client while engaged in communication with an attorney.

(n) An attorney while engaged in litigation or proceedings before a state administrative agency in which the agency is represented by counsel.

These changes are requested to protect the attorney-client privilege for confidential communication and to eliminate unintended regulation. The attorney-client privilege for confidential communication is fundamental to the practice of law and has been universally recognized in American law as essential to the ability of a lawyer to properly serve his client.

The present draft of the regulations could require violating the attorney-client privilege. For example, a lawyer's counseling of his client could very well have the result of encouraging the client to take action that is "lobbying." This counsel would fall within the definition of "indirect communication".

In Sec. 35.1(g) and Sec. 35.2(a), the phrase "Except as provided by the Act or these regulations," preceding the sentence "the specific contents of a particular communication, or the identity of those with whom such communications take place, need not be recorded.", implies that the legislature and Commission have the right to require disclosure of the contents of communications or the identity of those to whom communications are sent. There is no such authority in the legislature or in the Commission with regard to attorney-client communication. Moreover, there is nothing in the Act now authorizing such record keeping or disclosure.

(Although not involving the privilege question, the new subsection (n) to Sec. 37.1 would eliminate the unintended result of bringing within the definition of "lobbying" activity which is really litigation in nature.)

I do not believe that the legislature in enacting Act 93 intended to authorize any action that would result in violating the attorney-client privilege. If it had, I do not believe such an authorization would be upheld by any court. I, therefore, urge you to revise the regulations so as to remove any doubt as to the information to which the Commission is properly entitled under Act 93.

Very truly yours,

Franklin L. Kury

FLK/rem

Statement
of the

PA SOCIETY OF ASSOCIATION EXECUTIVES
ON THE
LOBBYING DISCLOSURE ACT REGULATIONS

House Judiciary Committee
February 25, 1999

My name is David Sheppard and I serve as president of the Pennsylvania Society of Association Executives (PASAE). The society membership includes 600 individual association professionals who are engaged in all facets of association management. I want to thank Chairman Gannon and the members of the committee for the opportunity to present our concerns on the implementation of the Lobbying Disclosure Act.

We are very concerned with the issue. As president of PASAE, the new law is one of my highest priorities. No other single piece of legislation will have more impact on association professionals and their employers.

We believe that the new law will impose a significant mandate on associations and their legislative activities. To comply with this new mandate will require detailed record keeping, changes in accounting procedures and substantial staff time devoted to compliance with the new law.

Lobbying and legislative advocacy is the mission of some associations. While at the top of the priority list, in terms of association activities, lobbying may not be the reason for the existence for many of our members. While associations typically engage in the legislative process, many of our members exist primarily for other purposes including professional development and education, standards setting, certification, philanthropy or other organizational interests.

In many cases, the association staff is less than ten and requires multi-faceted job duties. While many associations do indeed lobby in some form, there may not be staff positions dedicated solely to lobbying.

For all associations, the new law will establish a difficult process of tracking, identifying, recording and calculating not only time spent on lobbying activities but the apportioning of other staff time and other costs which will be attributable to lobbying activities.

The PASAE Government Affairs Committee has reviewed the regulations promulgated by the State Ethics Commission for implementing the new law. Without taking the committee's time to address all the concerns let me focus on a few of the major concerns we have identified.

First the scope of the regulations is extremely broad. The definition of lobbying in the regulations mirrors the language in Act 93--*(1) providing any gift, entertainment, meal, transportation or lodging to a state official or employee for the purpose of advancing the interest of the lobbyist or principal; and (2) direct or indirect communication.* While it is

somewhat clear to us what this definition entails in part one, the regulations do not provide sufficient guidance for determining direct and indirect communication. We urge that indirect and direct communication should be refined in the regulations so that associations and their employees can look for specificity in order to assure compliance.

The most burdensome provision in the regulations is the reporting requirements contained in Chapter 35. The quarterly expense report again is broad and scope and short specifics. The regulations state that "any reasonable accounting method may be used" to calculate spent for personnel and office expenses related to lobbying. We believe that a full cost accounting system replete with detailed time accounting for all association employees will be required. Personnel costs of not just lobbying staff but also "research and monitoring staff", "publications and public relations staff" and "clerical and administrative support staff" will be included in the calculations.

If associations will be responsible to report the personnel costs of these positions we need additional guidance from the regulations on the types of activities are to be included as lobbying expenditures. The regulations in section 35.1(l)(4) state that, "The time devoted to lobbying shall include: research time spend in preparation for lobbying; time spent in direct communication or indirect communication as defined by the Act; and any other time consumed in furtherance of lobbying for which the individual or entity is compensated or reimbursed." Without more guidance in direct/indirect communication combined with the vagueness of terms such as research time compliance becomes a moving target.

Further, after attempting to identify personnel related lobbying expenditures, the regulations require calculations for offices, equipment and supplies. Determining the amount of capital costs, depreciation and apportionment of use will require detailed accounting and hours of calculations. Again, we would urge the regulations to go beyond restatement of the provisions in the act and provide the association community with specific and defined procedures for determining methods for reporting these ancillary expenses.

In section 35.1(j), the regulations provide that the expense report must also identify by name state officials and employees who receive "anything of value" from a lobbyist. This sections cross references several requirements of the State Ethics Law. Again, in order to help us to comply, these provisions should be spelled out in the law rather than just cite sections of the Ethics Law.

In section 35.2 the regulations set forth record retention and maintenance requirements. This section authorizes the Ethics Commission to promulgate standardized forms for reporting under Act 93. We would propose that standardized records would assist in the efforts by associations to comply with regulations. We must question why the regulations stop short and only enable the commission. To provide more certainty in the process, a uniform record keeping process would be beneficial.

While we realize the regulations contain many provisions bound by the law, we are not satisfied that the regulations have adequately addressed many of the specifics that associations will need to comply. We hope that the current regulations can be redrafted to provide additional guidance, more clarity and sufficient detail to meet the extensive requirements in Act 93.

Thank you again for this opportunity to comment. I will be glad to respond to questions you may have.

COMMONWEALTH OF PENNSYLVANIA

DATE: February 25, 1999

SUBJECT: Lobbying Disclosure Proposed Rulemaking (63-06)

ORIGINAL: 1997
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TO: Robert E. Nyce, Executive Director
IRRC
Honorable Joseph F. Loeper, Chairman
Senate Rules and Executive Nominations Committee
Honorable Thomas P. Gannon, Chairman
House Judiciary Committee

FROM: Vincent J. Dopko, Chief Counsel
State Ethics Commission

Pursuant to Section 745.5(c) of the Regulatory Review Act, 71 P.S. §745.5(c), enclosed please find photocopies of the following comments received as to the above which was published in the Pa. Bulletin, Volume 29, Number 5 on Saturday, January 30, 1999 at page 548 et seq.

Commentator	Received at State Ethics Commission
Franklin L. Kury, Esquire Reed Smith Shaw & McClay, LLP	February 25, 1999

VJD/mlj

Enclosure
cc: Members, Lobbying Disclosure Committee

KIRKPATRICK & LOCKHART LLP

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March 1, 1999

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Gentlemen:

Please accept the following comments and recommendations for improvements to the proposed lobbying disclosure regulations published in the *Pennsylvania Bulletin* on January 30, 1999, 5 Pa.B. 548.

Scope of the Regulations

As currently drafted, the regulations appear to require registration and reporting by professionals such as attorneys, accountants and engineers who provide professional services or disseminate professional opinions which are not provided for the purpose of influencing legislative or administrative action, but which may directly or indirectly have a foreseeable effect upon legislative or administrative action. The regulations should be modified to clarify that the provision of professional services not undertaken for the purpose of influencing legislative or administrative action should not be included within the scope of the regulations. Otherwise the regulations will become a trap for the unwary and may impose unnecessary and unreasonable burdens upon individuals not intentionally engaged in lobbying activities. A failure to clearly distinguish between activities undertaken for the purpose of lobbying and activities which only have an incidental effect upon legislative and administrative action could

also invite challenges to the validity of the Lobbying Disclosure Act and the Commission's regulations.

The regulations currently provide that the term "lobbying" means "an effort to influence legislative or administrative action," and includes "direct or indirect communication." The term "direct communication" is defined to mean "an effort, whether written, oral or by another medium, ... directed to a State official or employee, the purpose *or foreseeable effect of which* is to influence legislative action or administrative action." Similarly, the term "indirect communication" is defined to mean "an effort, whether written, oral or by another medium, to encourage others, including the general public, to take action, the purpose *or foreseeable effect of which* is to influence legislative action or administrative action." (Emphasis added.)

As currently drafted, a professional, such as an attorney, accountant or engineer, assisting a client in dealing with state government to obtain permits, licenses or approvals, may be inadvertently engaged in lobbying if communications directed to state officials or to the client may have a foreseeable effect upon legislative or administrative action. In addition, a professional providing advice to a client regarding state laws and regulations, may be inadvertently engaged in lobbying if it is foreseeable that the client or another individual based upon the advice may be encouraged to directly effect legislative or administrative action. Likewise, a professional preparing or distributing advertising or other promotional material or providing education or training which describes problems involved in compliance with existing laws or regulations may be inadvertently engaged in lobbying if recipients may be foreseeably encouraged to directly effect legislative or administrative action. None of these activities should appropriately or legitimately fall within the scope of the Commission's lobbying registration and reporting regulations.

The purpose of the Lobbying Disclosure Act is to require public disclosure of "the identity and the scope of activity of those employed to influence actions of the General Assembly and the Executive Department." The law expressly is "not intended to govern professional activities which do not include lobbying and which are properly the subject of regulation by the judicial branch of government or by any government agency." 65 Pa.C.S. § 1302. Professionals not providing advice or services for the purpose of influencing legislative or administrative action should be exempt from the requirements of the law and regulations because such individuals do not receive compensation for lobbying. 65 Pa.C.S. § 1306(3)(i).

To avoid the possibility that the Commission's regulations will inappropriately apply to professional activities not intended to constitute lobbying, the Commission should modify the definition of the term "effort to influence legislative or administrative action." As used in the regulations, the term should not apply to "professional services or activities not undertaken for the purpose of influencing legislative or administrative action, even if the services may foreseeably have an incidental effect upon legislative or administrative action." Alternatively, the Commission could clarify the meaning of the exemption provided by § 1306(3)(i) by clarifying that the acceptance of compensation for other professional services shall not be deemed to constitute the acceptance of compensation for lobbying.

Guidelines and Statements of Policy

The proposed regulations codify without explanation or clarification statutory provisions which include within the definition of the term "administrative action" an agency's "development or modification of a guideline or a statement of policy." In order to avoid confusion and uncertainty regarding the scope of registration and reporting requirements, the regulations should include definitions of the terms "guideline" and "statement of policy." Individuals subject to potential civil penalties or criminal prosecution for violations of the Commission's regulations should be provided reasonable specificity and certainty regarding the requirements of the regulations and should not be required to guess as to the proper meaning of terms utilized in the law and regulations.

The Joint Documents Committee adopted regulations in 1986 defining the terms "statement of policy," "guideline" and "interpretation." 1 Pa.Code § 1.4, 16 Pa.B. 4648 (November 29, 1986). A statement of policy is any document, other than a regulation or adjudication, "interpreting or implementing a statute enforced by an agency," including "guidelines and interpretations." Guidelines are documents which describe "the policy an agency intends to implement in future rulemakings, adjudications or which will otherwise guide the agency in the exercise of administrative discretion." Interpretations are statements of policy other than guidelines issued by an agency "without reliance upon express or implied rulemaking authority."

Because of the highly inclusive nature of the terms "statement of policy," "guidelines" and "interpretations," the possibility exists that any document promulgated by an agency, other than an adjudication or regulation, might be classified as a statement of policy or guideline. Fortunately, regulations adopted by the Joint Documents Committee reduce the possibility for confusion by requiring publication in the *Pennsylvania Code* and the *Pennsylvania Bulletin* of all statements of policy adopted on or after July 1, 1969 which are permanent or general in nature. 1 Pa.Code §§ 3.1(a)(2), 3.13(a)(3), 3.26(a), 9.302. Limited exceptions to this requirement are provided for documents filed with the Legislative Reference Bureau but not published in full in the *Pennsylvania Code* or *Pennsylvania Bulletin*, provided that a synopsis or index of these documents is published in the *Pennsylvania Bulletin*. 1 Pa.Code §§ 3.13(b) & (c), 3.31, 9.301, 13.5. Statements of policy not properly adopted pursuant to these requirements may be utilized by an agency, but are not effective as applied to members of the general public who do not have actual knowledge concerning the contents of the documents. 1 Pa.Code § 13.1(b).

Consistent with regulations adopted by the Joint Committee on Documents, the Commission should define the terms "statement of policy" and "guideline" as used in the regulations as applying only to documents published as final or for comment in the *Pennsylvania Bulletin* and the *Pennsylvania Code*. This approach will provide an objective test to determine the scope of the lobbying registration and reporting requirements and will only exclude documents which are not permanent and general in nature and which are not binding upon members of the general public.

Conclusion

I hope these comments are helpful to the Commission. Please contact me if I can provide any assistance to you. The comments provided above represent solely my personal advice based upon my experience inside and outside of state government. The comments are not intended to represent the recommendations of the law firm of Kirkpatrick & Lockhart LLP or the views of any of our clients.

Very truly yours,

Raymond P. Pepe

cc: Independent Regulatory Review Commission
Senate Rules and Executive Nominations Committee
House Judiciary Committee

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FACSIMILE COVER PAGE

DATE: March 2, 1999 **NO. PAGES** (include cover): 5 **TIME:** 3:34 PM

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Brian Preski Chief Counsel	House Judiciary Committee Room 86 E. Forum Building Harrisburg, PA 17120	772-6946	705-1860
Richard M. Sandusky Deputy Director for Regulatory Analysis	14th Floor, Harristown 2 333 Market Street Harrisburg, PA 17101	783-5430	783-5430

FROM:

☑ Raymond P. Pepe, Esq. Phone: 717 231-5988

☐ Gregg R. Taylor, Government Affairs Consultant Phone: 717 231-5836

SECRETARY:

Nancy L. Harder Phone: 717 231-5843

COMMENTS: [Click here]

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WHEN YOU ARE SENDING TO US, PLEASE BE SURE TO INCLUDE A COVER SHEET WITH YOUR TRANSMITTAL AND A TELEPHONE NUMBER WHERE YOU CAN BE CONTACTED IN CASE OF EQUIPMENT MALFUNCTION.

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March 1, 1999

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Very truly yours,

Raymond P. Pepe

cc: Independent Regulatory Review Commission
Senate Rules and Executive Nominations Committee
House Judiciary Committee

EXPLANATION OF CONCERNS

1. The proposed regulations contain several vague and overly broad definitions and inconsistent reporting periods that create a tremendous prospect for discrepancies between an individual's Statement of Financial Interests and a lobbyist's reports. Regs. § 31.1.

The Lobbyist Disclosure Regulations contain several vague, overly broad and ambiguous definitions. Utilizing these definitions, lobbyists and principals may feel compelled to include in their quarterly reports and designate as " lobbying expenses" expenditures that probably should not be so designated. Compounding the confusion, lobbyist's and principal's quarterly reports are to be filed on a quarterly basis, that includes the year before an individual would file a Statement of Financial Interests for that year. An individual who is listed as the beneficiary of a lobbyist's or principal's expenditures may be compelled to explain, defend or deny the receipt of that benefit repeatedly each year after the filing of each quarterly report.

Generally, members' Statements of Financial Interest are due by May 1st and lobbyists/ principals file quarterly reports. In election years, a member's Ethics Statement would be filed with his/ her nomination petition, probably in March. In election years, under Proposed Regulation § 31.4, lobbyists'/ principals' quarterly reports would include the periods December - February, and June - August. Thus, it is unlikely that a member would have the time and opportunity to review a lobbyist's quarterly report for the December-February period, and insure that discrepancies are clarified, before being required to file his/ her Ethics Statement with their nomination petitions. Confusion in the media or in public opinion at so hectic a time may present a candidate with the impossible task of resolution before the election. Finally, any discrepancy between the reports may trigger an audit.

The definitions that cause the concerns are the following:

"Lobbying" -- it is uncertain whether the term only includes expenditures made to provide gifts, entertainment, meals, transportation or lodging to a State official or employee in an effort to influence legislative or administrative action, or whether it also includes such expenditures made for the purpose of advancing the lobbyist's interest (including maintaining goodwill with legislators). If it is the latter, a lobbyist or principal (in response to a member's request for help for a constituent) may feel compelled to calculate the "cost" of all the professionals and staff involved in rendering that assistance and list it on a report, thereby creating the impression that the lobbyist made a large expenditure on the member's behalf.

"Effort to influence legislative or administrative action" -- this term excludes the provision of purely technical data to a State official, employee or legislative body, at his her, its request. It is unclear what "purely technical data" means and what it encompasses. It may be interpreted to include costly information provided from lawyers, accountants and financial or statistical projections which a lobbyist may choose to include in a report creating the impression that the lobbyist made a large expenditure on the members behalf.

"Gift" and "Anything of value" -- The terms means anything of any nature whatsoever which would not ordinarily be obtainable in the marketplace without consideration, of equal or greater value. These broad definitions includes services not extended free to the general public, complimentary tickets/ passes, discounts not extended to the public generally and entertainment not generally extended free of charge to the general public. Under these broad definitions, lobbyists may feel compelled to calculate the value of services previously extended to members for free and include them in their quarterly reports. A lobbyist may feel compelled to calculate the costs of the services of lawyers and other professionals and semi-professionals utilized in drafting legislation and assisting a member's constituents (as discussed above) and include them in the lobbyist's reports.

SUGGESTION.

a) The definitions should include a specific provision exempting from reporting the cost or value of the services of professionals and other staff involved in responding to assist a member's constituents, made at the request of the member; and

b) The quarterly reporting period should run concurrently with the calendar year, beginning in January and ending in December.

2. Lobbyists are given discretion or the option, exclusively, to a) calculate and attribute the value of certain gifts, transportation, meals, hospitality to one member, or b) calculate and attribute the "benefit" provided to each person in attendance at an event or occasion. Regs. § 35.1 (k) (6).

In the event that a lobbyist or principal provides gift(s), lodging, transportation, or hosts an event (such as a dinner) that may be attended by several members and/ or staff, the lobbyist may determine and report the "benefit" provided by: 1) calculating the actual benefit provided to that individual or 2) dividing the total expenditures common to more than one beneficiary by the number of beneficiaries. Thus, a lobbyist could determine that the full expenditure benefited only one of the individuals (such as the member who invited the others) and report the total expenditure as for that individual, or spread the cost proportionately over all of the invitees.

In addition, the lobbyists can add the proportionate value above to the cost of other gifts, transportation, lodging or hospitality provided to each of the invitees to determine whether the in excess of $500 quarterly-reporting threshold has been met. Individuals may therefore be surprised by being listed in a lobbyist's report as the recipients of benefits.

To avoid surprises, invitees may attempt to have a conversation regarding the lobbyist's prospective treatment and reporting of the expenditures prior to each event. Notwithstanding the conversation, the treatment and reporting of such expenditures is exclusively the decision of the lobbyist, and an understanding between the lobbyist and the invitees may not preclude a subsequent SEC investigation into the event and a determination of who really benefited from the event -- the invitees or the inviting member.

SUGGESTION.

a) Interim notification by a lobbyist or principal to a member that the expenditures attributable to that member are at a certain dollar level (e.g. $200.00) and approaching the reporting threshold level may allow lobbyists and members to better police and address the rate of expenditures; and

b) eliminate the option of calculating and attributing the benefit in order to maintain consistency among the reports of the benefits provided.

3. The proposed audit procedures allow "for cause audits", but the term is undefined and devoid of any statutory basis. Regs. 41.1 (c).

Section 41.1 (c) of the proposed regulations permit "for cause" audits. There is no statutory basis for "for cause" audits. There is no definition in the proposed regulations of what constitutes "cause" and, therefore, the application of this proposed provision would be very subjective and could involve violations of due process and equal protection. If the intent is to cover audits conducted as part of an investigation, then that should be made clear by narrowing the scope of the provision to audits conducted as part of an investigation. Otherwise, the SEC's authority to investigate at its own initiative provides a sufficient basis to uncover violations of the statute.

SUGGESTION. Delete the reference to "for cause audits" and clause (c) in its entirety. Alternatively, if the purpose of clause (c) is to protect against multiple random audits, add a clause which clarifies that no lobbyist shall be subject to a random audit more than once in a biennial period.

4. Investigations can be triggered without the filing requirements of a formal complaint, and penalties can be levied without satisfying the clear and convincing proof standards of the Ethics Act. Regs. 43.3 (a) & (e).

Section 1308 of the Lobbyists Disclosure Act provides that the Ethics Commission may conduct a hearing about negligent conduct of a lobbyist in accordance with Section 1107 and 1108 of the Ethics Act. Section 1108 of the Ethics Act clearly contemplates a two -tiered investigative process. Under 1108 of the Ethics Act, and its regulations at 51 Pa. Code §21.2, the first tier is a preliminary inquiry to determine if there is reason to believe that the Ethics Act has been violated. This inquiry can begin upon receipt of a formal complaint or the motion of the Executive Director. If there is reason to believe that a violation of the Ethics Act has occurred, then there is a full investigation. The Ethics Act regulations establish an investigative process with rules, and requirements of service, confidentiality and timeliness (investigation must be completed within 180 days). §21.5. The SEC must issue a findings report setting forth the pertinent facts and afford the person an opportunity to respond and request a hearing.

Rules are established for the hearing. §21.21-27. When the hearing is concluded, at least four members of the SEC must find a violation by clear and convincing proof. §21.28.

In contrast, the proposed lobbying regulations at Section 43.3, allow proceedings to be initiated on information that does not satisfy the criteria for a formal complaint, (e.g., information such as an anonymous phone call.) The Executive Director may then invoke the non-investigative procedures, which may result in the imposition of penalties and sanctions after the issuance of a notice of compliance.

SUGGESTION. Maintain consistency with the Ethics Act requirements for the filing of a verified complaint to commence an investigation; delete clause (4) and clarify in (5) that information must be "credible".

5. Civil penalties for negligent failure to register, or inaccurate reporting, can be imposed by less than a majority of the entire SEC membership. Regs. 43.3 (e).

When conducting hearings into alleged violations of the Ethics Act, the Commission can only "find" a violation upon the affirmative vote of at least four members based upon "clear and convincing evidence". See 1108 (G). Sec. 43.3 (e) of the proposed lobbying regulations empower the SEC to "find" a negligent failure to report or register and impose civil penalties, based upon the "majority vote of the members present" at a meeting. Presumably, the standard is preponderance of the evidence.

As the presence of only four members is required for a quorum, civil penalties could be imposed under the regulations by the affirmative vote of as few as three members of the SEC. Presumably, a lobbyist or principal could also be barred for a period up to 5 years on a similar vote. The regulations thus allow the imposition of a civil penalty and possible deprivation of a property interest upon less than an affirmative vote of the majority of the SEC members. Among other things, that result is inconsistent with the statute which states that a civil penalty can be levied by the SEC "upon majority vote of its members" (Sec. 1309 (C)), and the results also effects a denial of procedural due process.

SUGGESTION. To promote consistency, the Ethics Act requirements regarding finding violations by the affirmative vote of at least four members and "clear and convincing proof" should be set forth in the lobbying regulations.

6. An SEC enforcement proceeding (which results in the imposition of penalties and sanctions) can be commenced through "non-investigative procedures that are vaguely defined. Regs. § 43.3 (b) & (c).

Section 43.3 (b) and (c) of the Proposed Regulations place discretion in the Commission to enforce the provisions of the act by a non-investigative or investigative procedure. The Proposed Regulations list certain factors that the Commission may take into consideration in making a determination on which procedure to follow, but they are not mandatory. Under the Proposed Regulations, the non-investigative process does not require any preliminary inquiry or investigation.

Under the Proposed Regulations, the non-investigative process would begins with the Commission issuing a "notice of noncompliance" and the respondent having 20 days to cure the noncompliance. If the respondent does not cure, the Investigative Division may petition for assessment of civil penalties. At that point, the respondent can request a hearing and contest the matter. Under the non-investigative process, there is no guarantee that an investigation will be conducted into whether the respondent is in compliance. By not requiring a preliminary inquiry or investigation, the non-investigative process allows the Commission to presume noncompliance (shifting the burden to the respondent) and only if the respondent does not cure, must it consider whether an actual violation has occurred.

In any event, once a proceeding moves to the hearing stage, evidence will be presented to establish a violation. Whether the hearing began through the investigative procedure or through the non-investigative procedure, the four-member affirmative vote and clear and convincing proof standards applicable to Ethics Act investigations should apply.

SUGGESTION.

a) Adequate enforcement is ensured through the investigative procedures; the provisions regarding the "non-investigative procedures" should be deleted, or the term clarified to indicate that it refers to the "noncompliance notice" only; and

b) The four member affirmative vote and clear and convincing proof standards should be applied following a hearing for the non-investigative or noncompliance procedures.

Original: 1997
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cc: Sandusky
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May 6, 1999

Mr. John J. Contino, Executive Director
Pennsylvania State Ethics Commission
309 Finance Building
P.O. Box 11470
Harrisburg, PA 17108-1470

RECEIVED BY
LEGAL DIVISION
MAY 11 1999

STATE ETHICS COMMISSION
MAY 10 9 13 AM '99

Dear John:

This is first to thank you for your excellent presentation at the Pennsylvania Bar Association Annual meeting yesterday on the new Lobbyist Disclosure and Registration Act. You and your colleagues, particularly my old friend, David Heckler, gave some very valuable insights into this new law.

I also want to thank you for listening to my comment about the technical problem in the Act for municipal authorities, which I believe was unintended. The draftsmen of the Act, in creating an exemption for activities of an "elected or appointed official or employee of a political subdivision acting in an official capacity," used the same language as that found in the prior statute. The new Act is placed in the Codified Acts as Chapter 13, and the drafters may have assumed that the definition of "political subdivision" carried over from Chapter 11, which is a chapter containing the Ethics Act. For purposes of the Ethics Act, and some other statutes authorities are considered to be or "political subdivisions." However, the new Act does not contain a definition of "political subdivision," which may throw the definition back to the Statutory Construction Act. To avoid the problem which would be caused by that, it would seem much more consistent with the statutory intention to put in the new Regulations a definition of political subdivision modeled after the definition of that term found in the Ethics Act.

I will be happy to discuss this further with you if you would like.

Sincerely,

George M. Aman III

GMA\sw
Gma\pmaa\contino5699.ltr

cc: Mr. Douglas E. Bilheimer (PMAA)

COMMONWEALTH OF PENNSYLVANIA

Original: 1997
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cc: Sandusky
Wyatte

99 MAY 14 AM 10:28

DATE: May 12, 1999

SUBJECT: Lobbying Disclosure Proposed Rulemaking (63-06)

TO: Robert E. Nyce, Executive Director
IRRC
Honorable Joseph F. Loeper, Chairman
Senate Rules and Executive Nominations Committee
Honorable Thomas P. Gannon, Chairman
House Judiciary Committee

FROM: Vincent J. Dopko, Chief Counsel
State Ethics Commission

For your information, I am enclosing photocopies of the following comments as to the proposed Lobbying Disclosure Regulations (63-06), which comments were received *after* the deadline for the submission of public comments.

Commentator	Received at State Ethics Commission
George M. Aman III, High, Swartz, Roberts & Seidel	May 10, 1999

VJD/rmh

Enclosure
cc: Members, Lobbying Disclosure Committee

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COPIES: Sandusky
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March 18, 1999

Robert Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17101

Dear Mr. Nyce:

We sent a letter to John Contino, Executive Director of the State Ethics Commission on December 30, 1999 asking an opinion as to the application of Act 93 of 1998 and related regulations to the practices of certain entities that engage in business dealings with the Commonwealth. Mr. Contino's response is attached.

Our concern is that when a non-profit or for profit corporation enters into a contractual relationship with the Commonwealth, discussions between Commonwealth employees and agents of the corporation will take place prior to and during the term of the contract. For example, a contract with the Department of Public Welfare would require discussion of the particulars prior to entry. The services to be reimbursed, the legal terms and rates among other items would require negotiations. Additionally, after a contract has been entered, billing issues may arise as well as additional issues that would require contact. Likewise, a contract with Penn DOT would require similar contact. Negotiations prior to the entry of a contract as well as ongoing issues would require agents of a corporation to discuss issues with Commonwealth employees.

We asked Mr. Contino whether this type of contact would fall under the definition of lobbying under Act 93 of 1998 and related regulations. We ask that you consider this issue in your review of the draft regulations and provide an answer to this issue directly to us. Thank you for your consideration.

Sincerely,

GMEREK & HAYDEN, P.C.

RICHARD J. GMEREK

Pennsylvania Association
PAGR
For Government Relations

March 1, 1999

John J. Contino
Executive Director
State Ethics Commission
309 Finance Building
Harrisburg, PA 17108-1470

ORIGINAL: 1997
BUSH
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Legal

Dear Mr. Contino,

On behalf of the Pennsylvania Association for Government Relations (PAGR) I am pleased to provide you with our comments on the proposed regulations as published in the *Pennsylvania Bulletin* on January 30, 1999, implementing Act 93 of 1998, the Lobbyist Disclosure Act. As the professional association representing lobbyists in Harrisburg, PAGR has taken an active interest in Act 93 from its inception through its passage, and we wish to have as much input as possible in its implementation.

I trust that the Lobbyist Disclosure Committee will review these comments and seriously consider our suggestions for improving them. If you have any questions, or need any further information, I can be reached at the PAGR address given below, or at my office, 240 North Third Street, Suite 404, Harrisburg, PA 17108. My phone number is 717-233-1631. Please note that the PAGR phone number has been changed to 717-540-4391.

Thank you for your consideration.

Sincerely,

R. David Tive
Past President

cc: Independent Regulatory Review Commission
Sen. David J. Brightbill
Sen. Robert J. Mellow
Rep. Thomas P. Gannon
Rep. Kevin Blaum

P.O. Box 116 • Harrisburg, Pennsylvania 17108 • Telephone (717) 232-1809 • Fax (717) 232-1544 • www.pagr.org

COMMENTS ON THE
PROPOSED REGULATIONS FOR ACT 93 OF 1998
THE LOBBYIST DISCLOSURE ACT

SUBMITTED TO THE LOBBYIST DISCLOSURE COMMITTEE
MARCH 1, 1999

BY THE
PENNSYLVANIA ASSOCIATION FOR GOVERNMENT RELATIONS

INTRODUCTION

The Pennsylvania Association for Government Relations (PAGR), the professional organization representing lobbyists in Harrisburg represents over 220 members from all aspects of the lobbying community, including lobbyists from associations and corporations, as well as lawyer lobbyists, contract lobbyists and legislative liaisons for administrative departments and agencies. We were founded in 1991 with the following objectives:

(a) To provide opportunity for the exchange of experience and opinions through discussion, study and publications.

(b) To promote the art and science of lobbying and to educate members and the public in the advancement, improvement and function of lobbying.

(c) To develop and encourage the practice of high standards of personal and professional conduct among lobbyists.

(d) To conduct and cooperate in a course of study for the benefit of persons desiring to fit themselves for executive and administrative functions in the profession, to hold meetings and conferences for the mutual improvement and education of the members.

(e) To acquire, preserve and disseminate data and valuable information relative to the functions and accomplishments of the profession.

(f) To cooperate in local or regional groups of lobbyists in the common endeavor to advance lobbying as a profession.

(g) To promote the purpose and effectiveness of the profession by any and all means consistent with the public interest. Subject to prior approval of the Board of Directors, PAGR may take a position and express an opinion on issues directly and generally affecting the profession

Since it began, PAGR has spoken out on the need to reform Pennsylvania's antiquated and ineffective lobbying law, and we worked closely for two legislative sessions with the sponsors and drafters of what has become Act 93. While we feel there are some problems with the bill as finally enacted, we nevertheless have been working since its passage to achieve smooth and effective implementation in keeping with the law.

On October 10, 1998, just days after Senate Bill 254 achieved final passage, and before it was signed into law as Act 93 by Governor Ridge, PAGR President David Tive wrote to Daneen Reese, Chair of the Ethics Commission offering PAGR's input and assistance to the Lobbyist Disclosure Committee in the drafting of the regulations. Mr. Tive also requested that in keeping with the spirit of open government being fostered by Act 93 that the meetings of the Committee be open. A response was received about a month later from Austin Lee, Vice-Chair of the Commission and Ms. Daneen's designee as Chairman of the Committee. Mr. Lee declined the offer of assistance, and said that open meetings would not be feasible.

On behalf of PAGR, Mr. Tive testified on December 30 at a public hearing held by the Committee on the draft released for public comment right before Christmas. He identified some of the major problems which our necessarily quick review found in the document. We are glad to say that a number of our suggestions were adopted by the Committee before it approved the proposed regulations on January 13. Unfortunately, there are still many problems which remain and which need to be resolved before the regulations can be finally adopted. We will address a large number of those here. Our intent is to make this comment document as complete as possible, but every new reading of the proposed regulations reveals new problems. Nevertheless, the following are the areas of concern we have identified thus far.

DUE PROCESS

It is probably best if we start at the end of the proposed regulations, in Chapters 41 and 43 dealing with Compliance Audits; and Investigations, Hearings and Referrals, because it is here that the most serious problems exist.

It should be said at the start that the worst problems in the draft regulations put out for comment last December were also found in these two chapters. The most egregious of those, such as the presumption that any lobbyist appearing in front of the Ethics Commission is guilty until proven innocent, and that the accused lobbyist must present his defense first, before hearing the case of his accusers, have been removed. However, there is still much in the proposed regulations which denies lobbyists and lobbying groups due process as we have come to understand it, and much that goes against our concepts of fair play.

First of all, we need to discuss the concept of "cause". This is important in two places where it helps determine whether the Commission can take action against a lobbyist or principal. First of all, in §41.1 it says that no lobbyist or principal shall be subject to an audit more than once in every two-year session *except for cause*. However cause is never defined. It needs to be clearly spelled out so that lobbyists and principals will know when their actions may place them in jeopardy of being audited or having other disciplinary action taken against them.

The need to have clear criteria for starting audits is made even more important by provisions at §41.2 (d) and (e) which state that while auditing any lobbyist or principal, the Commission can also examine the relevant records of any other lobbyist or principal. What are "relevant records"? Again, there is no way to know. This could be interpreted as meaning that relevant records can be anything the Commission wishes them to be. Taken together, this ambiguity, and the lack of a definition of "cause", seem to give the Commission the power to audit anyone at any time for any reason. That is not what these regulations should do. They should provide registrants with safeguards, guarantees and understandable procedures. They should not provide the Commission with free reign for open-ended audits or with justifications for fishing expeditions.

Moving on to Chapter 43, the concept of cause once again becomes important. Here it relates to what constitutes cause for the Commission to open a proceeding against a lobbyist or principal. In §43.2 the grounds for opening a proceeding under §1307 of the Act, dealing with specific prohibited activities, are far too vague. Paragraph (a) of §43.2 says that the Commission must begin a preliminary hearing if it receives a signed complaint alleging a violation of §1307. However, paragraph (b) says that the Commission can start an inquiry based on "any alleged" violation. That allegation need not even be in the form of a complaint,

let alone signed, and could be anything from any source that the Commission happened to come across. As before, the absence of specificity and clarity are very troubling.

This problem becomes much more serious in §43.3. This subsection deals with cause for the Commission to open a proceeding under §1304 and §1305 of the Act, dealing with registration and reporting. Here it says that proceedings can be opened for virtually any reason at all, including a complaint, information that doesn't meet the criteria for a complaint, an audit, or the motion of the Executive Director which can be based, without limitation, on any information he may have received.

As bad as that is, it gets even worse at §43.3(b)(4) where it says "information received informally" may form the basis for opening a proceeding. Informal information is, of course, not defined, but it is not too far-fetched to view it as including such things as rumor, innuendo or malicious gossip. The problem is that once you deviate from the constitutional concept of requiring something akin to just cause in order to start a proceeding, anything at all is sufficient cause.

Unfortunately, the situation still gets worse. Following the receipt of this informal information the Commission may begin a "non-investigative process". PAGR finds the very idea of a non-investigative process to be horrifying and offensive. It says that the Commission doesn't need to be bothered finding any facts, it already knows what it needs to know. And how does the Commission know it? Very possibly through the same "informal information" discussed above. And then, to support the idea that it already knows what it needs to know without any investigation, the first thing the Commission does upon opening this non-investigative process is to send a *notice of noncompliance* to the lobbyist or principal involved.

This is done in spite of the fact that the Commission may well have no actual evidence that the registrant has done anything wrong. It may only have "informal information". It may only have a belief or idea that the registrant has done something wrong. It has not investigated anything. This is, after all, explicitly a "non-investigative process". However, the first step is to issue a notice of noncompliance.

The concept of the Commission undertaking a non-investigative process is bad enough, but to start it with an official communication indicating that it believes a registrant has done something wrong, is far worse. It says that the Commission has decided, based on possibly specious information from a potentially unreliable and unknown source, and without attempting to get any clarifying input from the accused, that a violation has occurred. This is not the way Americans have come to expect their government to operate.

The rest of the process then goes as follows. The registrant has 20 days in which to "cure the noncompliance". There may, of course, not be any noncompliance to cure, but it must be cured in any case. If it is not, a petition for civil penalties is issued. This petition must set forth the "pertinent factual averments", which, in the absence of any investigation, can have been derived from things as inconsequential or informal as party gossip. The registrant can then request a hearing in front of the Commission, and since he is no longer presumed to be guilty at the start, the Commission must prove his guilt. The standard of proof is, of course, not specified. However that may be a moot point since this is the same Commission that has already determined his guilt, as evidenced by its notice of noncompliance.

The seriousness of all this is clear when you remember that in addition to monetary penalties, the Commission can also ban a lobbyist or an organization from lobbying for up to five

years. While PAGR has significant reservations about the constitutionality of banning a group of citizens from lobbying their government, that is a provision of the law and not open to discussion here.

Our solution for all these due process and fairness problems is simple. Chapters 41and 43 should be rewritten to parallel the current Chapter 21 of Title 51 of the Pa. Code, the regulations of the Ethics Commission for public officers and employees. Those processes appear to have worked well for the past couple of decades, they have withstood court scrutiny and are easily adaptable to lobbyists and principals. PAGR does not understand the need for a separate lower and constitutionally inadequate standard of due process for lobbyists and principals, and we strongly oppose it.

The chart on the last page of these comments shows the differences between the processes for public officials and employees and those for lobbyists and principals. First of all, as grounds for opening a proceeding in Chapter 21 there must be an official complaint, which must be sworn to and signed and must allege a violation of more than *de minimus* economic impact. Under Chapters 41 and 43, virtually anything, down to and possibly including rumor and innuendo, are deemed sufficient grounds not for just an inquiry, but for issuance of a notice of noncompliance. It should also be noted at this point that under Chapter 21, an official or employee who is the subject of frivolous or harassing complaints can ask the Commission to investigate them. Lobbyists and principals are given no such right.

The next step in Chapter 21, after receipt of the official complaint, is a preliminary inquiry. Again, with regard to lobbyists and principals the Commission can opt for an explicitly non-investigative process with no inquiry. Following the preliminary inquiry in Chapter 21, the Commission can either close the case or open a full investigation if the results of the inquiry meet specific grounds for doing so, and it must notify the official or employee involved. Under Chapter 43, a notice of noncompliance is sent at the start, there is no investigation, and no standards need to be met at all.

In keeping with due process, all investigations under Chapter 21 must be carried out according to a lengthy and specific list of procedures and rules. The subject of the investigation must be kept informed of its progress, and the rights of all involved are carefully protected. For lobbyists and principals accused under §1304 and §1305 there is no investigation since the Commission has deemed them non-compliant from the start.

Finally, in the hearing process, the proposed regulations state that the hearing should be conducted in accordance with the Ethics Act and its regulations *to the extent possible*. We don't know why that qualifier is added, as it is at every citation of the Commission's regulations in this document, and we suggest that it be removed in each case.

These two processes are clearly separate and unequal. PAGR sees no justification at all for even having two processes, especially when one is so stunningly deficient in due process and fairness. We urge the Committee to rewrite the regulations to include one and only one process, and that it be the same as that contained in Chapter 21 of the Commission's current regulations.

LOBBYING ACTIVITY

The proposed regulations refer a number of times to "lobbying activity". The most obvious places it occurs are at §31.8(e)(1) where the Commission is directed to publish an

annual report on lobbying activities in the state, and §35.2 where registrants are required to keep records of all of their lobbying activity. The problem is that the term "lobbying activity" is never defined.

Mr. Tive raised this issue at the hearing in December, along with our concern that a reading of the definition of lobbying in the act and the regulations, could lead to the conclusion that lobbyists will be required to keep records of every person they talk to or contact in any way in the course of business. We felt that this went far beyond the requirements of the law.

The proposed regulations address part of our concerns by making it clear in Chapter 35 that lobbyists need not report all the persons they contact. However, since there still is no definition of lobbying activities, lobbyists still don't know exactly what it is they are supposed to keep a record of. Furthermore, the proposed regulations state that registrants may keep their records of lobbying activities separate from their records of non-lobbying activities. If they don't know what lobbying activities are, they certainly don't know what non-lobbying activities are, and are therefore completely unable to distinguish between them.

If lobbyists and principals are to be held liable, under penalty of law, for their records of lobbying activities, they must be able to know what they are. Only a clear definition of the term will serve that purpose. Anything short of that will cause people trying to conscientiously comply in full with the law to commit unknowing violations of it.

DEFICIENCIES AND DELINQUENCIES

Under the proposed regulations, failure to file complete and accurate reports in a timely manner subjects a principal or lobbyist to action by the Commission under the penalties sections of the law. This is as it should be. However, different terms are used to describe such failure, and this makes for a potentially confusing situation. Since Act 93, at §1309(c), requires a daily fine for a failure to file registration statements or reports, it is crucial for registrants to know what they could be fined for, and when.

The terms, "delinquency" and "deficiency" are not defined clearly enough to enable a principal or lobbyist to fully know which sections of the proposed regulations they may be violating, and which they are not. For example, under §31.5 failure to file registration statements and reports on time is a delinquency. However, in subsection (d) it says that a delinquent statement or report continues to be such "until received in proper form". This would qualify as a deficiency under the next section, §31.6, which says that deficiencies are statements and reports that are not properly filled out. Two questions which immediately come to mind are:

(1) does a statement or report which is filed in a delinquent manner and is then found to be deficient, become increasingly delinquent until refiled without any deficiencies? and
(2) does a statement or report filed on time but in a deficient manner, and which must be refiled at a later date, become therefore both delinquent and deficient?

A simple way to do resolve this problem would be to just use the term found in the statute and elsewhere in the regulations, compliance. Failure to comply would be a clearer concept to the registrants than trying to distinguish between deficiency and delinquency.

Our goal here, as it is with many of our other comments, is to provide regulations that enable registrants to understand what they have to do and when they have to do it. Far too often in this document there is language that is imprecise, vague or simply not defined. All that

does is to create a situation where compliance becomes excessively difficult if not impossible, and opens traps for registrants to fall into. That benefits no one.

DEFINITIONS

As mentioned above, in many places in the proposed regulations terms are used that are unclear, confusing or not defined. In other places, terms that are defined are done so in a very poor manner that leaves many questions unanswered. A number of these definitions are discussed below.

Definition of Association

The definition of "association" in §31.1 includes a wide variety of business and non-profit entities such as corporations, partnerships, limited liability companies and business trusts. It also has the catchall of "two or more persons associated in a common enterprise or undertaking". While that last phrase may be sufficient to cover all associations not specifically referred to earlier, PAGR feels that it would be better to also include direct reference to unincorporated associations. Many lobbying principals in the state are unincorporated associations, and it would be clearer for all involved if they were to be explicitly mentioned and thereby definitely included in the coverage of the proposed regulations.

Definition of Child

The definition of "child" in §31.1 includes both adopted and biological children, but makes no mention of stepchildren. Many families now contain unadopted stepchildren, and they may remain members of that family until their death or that of the parents. PAGR feels that stepchildren should be specifically included in the definition of "child" so as to avoid any potential misunderstandings or attempts at evasion.

Definition of Effort to influence legislative action or administrative action

The definition of "effort to influence legislative action or administrative action" contains a exemption for the provision of purely technical data to a state official or employee, or to a legislative or administrative body, in response to a request for the information. Many lobbyists and principals have made the assertion that most or all information a lobbyist provides is "technical data". For example, the analysis of the financial impact on a particular industry of the increase or reduction of taxes on that industry would fall into a common sense definition of technical data. Yet that analysis can be just as influential, or more so, than any other type of argument a lobbyist could present.

As for the second part of the definition, the requirement that the technical data be given in response to a request, that is no barrier at all. If a lobbyist feels that what he is doing will be exempted from the definition of lobbying merely by asking a legislator or other state official or employee if they wish to receive some information (technical data), he will certainly do so. On the other side, any legislator or other state official or employee who knows that simply by asking for information all their contact with a registrant will be considered to be non-lobbying, will certainly do so.

PAGR suspects that the purpose of this definition is to provide an exemption for individuals who are brought in as outside experts to aid the General Assembly or an administrative agency in a particularly area, even if they are associated with a lobbying principal. We applaud the Committee's efforts to do that, as we do the similar exemptions already contained in the statute. However, we feel that the wording of this definition is very

dangerous since it could lead to a great deal of misunderstanding and confusion, and provides a giant loophole for those who may be looking for a way to evade the law.

The potential impact is clear. If none of a lobbyist's discussions with a legislator of administrative agency are included in the definition of lobbying, then none of his expenses are reportable, and he may not even have to register. This definition should be amended to delete the second sentence, and the regulations should adhere to the exemptions provided in the statute, particularly at §1306(1) and (3), rather than attempting to expand them beyond what the General Assembly intended.

Definition of Service (of official papers)

The definition of "service (of official papers)" in §31.1 states that the papers are deemed served on the date mailed by the Commission. This could create problems since the regulations often provide for short response times to Commission action, in some cases twenty days or less. It is not difficult to come up with a scenario where a lobbyist would receive an official notice from the Commission when he has insufficient time left to prepare an adequate response, or perhaps not receive prior to the response deadline at all. This might not be the fault of the Commission or the lobbyist, but merely an accident of timing.

For example, if a lobbyist is on vacation for two weeks, plus weekends, he could return to his office to discover that he only has three or four days in which to draft a full response to a Commission proceeding. Or, if a principal has moved, and the Postal Service does not deliver the forwarded letters in the quickest manner, a deadline could be missed completely. In either case, or in any of several others that have been suggested, this definition puts registrants at a significant disadvantage by having some or all of their response time taken up with the simple act of mailing.

Our proposed solution is simple. Official papers that require a response should be sent by certified mail, and the date of service should be considered to be the date received and signed for. That way, everyone involved knows that the registrant has received the document and has the proper amount of time in which to respond.

CONFIDENTIALITY AND PRIVACY

Lobbying is a very competitive field. Contract lobbyists compete with each other for clients. All lobbyists compete with each other for passage or defeat of bills and amendments. Principals compete with each other to obtain the best lobbyists and to see their legislative agendas become a success. As in any other competitive situation, a certain amount of confidentiality and privacy are necessary.

Lobbying is also a business. As such, lobbyists and principals are entitled to keep certain things secret. Even though their business is trying to influence governmental policy, a right which is itself protected, there is certain proprietary information which must remain exclusively the property of the registrants.

Finally, lobbying is, as mentioned above, a right of all citizens, and lobbyists and principals are citizens. They should be free of unnecessary and illegal searches and seizures, and as discussed in the due process section, should be accorded all the rights and privileges that other citizens enjoy. Because of their unique role in our government, lobbyists and principals have extra responsibilities that are not incumbent on other citizens. PAGR has recognized this in our support of registration and reporting requirements for lobbyists and

principals, requirements that are not asked of any other profession. This does not mean that lobbyists and principals have ceded their basic rights as citizens.

There are, however, two provisions of these proposed regulations that put the confidentiality and privacy that all registrants need in jeopardy. One we feel may just have been an oversight by the Committee, but the other appears to be more serious.

Confidentiality

The Committee, in concert with the Commission, has written the proposed regulations in such a way as to allow and encourage the electronic filing of registration statements and quarterly reports. We applaud this forward thinking, and hope that it works well for everyone involved.

One of the necessary pieces of the electronic system is a way of verifying that the documents being submitted come from the appropriate person or organization. When original paper documents are used, a signature is that verification. To accomplish that same goal electronically, the Committee and Commission came up with the idea of the electronic signature. Again, PAGR feels that this is an excellent idea.

Since implementation of the Act has not yet reached the point where it is necessary for the Commission to begin assigning the electronic signatures, we do not have a clear understanding of what form they might take. However, given the competitive nature of lobbying, and the serious penalties arising from violation of the law, we would feel much more at ease if the regulations contained an explicit prohibition against anyone in the Commission who does not have proper clearance from accessing those electronic signatures. The regulations should also indicate what legal action could be taken against an individual who provides an electronic signature to anyone who is not authorized to have it. If someone were to do that, false statements and reports could be filed, possibly leading the Commission to take action against a registrant for a document filed over his electronic signature that he had no knowledge of.

We suspect that failure to include a statement limiting access to, and distribution of, the electronic signatures is just an oversight by the Committee. Indeed, such provisions may already be contained in internal Commission policies. Nevertheless, we would like to see them clearly stated in these regulations.

Privacy

Of more concern is the provision at §35.2(h) that requires lobbyists and principals to give the Commission and the Attorney General full access to their files. The proposed regulations say that all documents "reasonably necessary to substantiate reports filed under Section 1305 of the Act" must be made available to those two agencies within 30 days. This brings us back to our original concern about the need to define cause.

The proposed regulations do not required either the Commission or the Attorney General to show any cause why they need to look at the records. Nor is there, once again, any definition or idea of what "reasonably necessary" might be. Furthermore, there is nothing in the proposed regulations that indicates that either agency must identify what documents they are looking for prior to demanding access. This has led some to believe that the Commission or the Attorney General could come in and demand access to all the information a registrant has, regardless of whether it is in any way related to an investigation or alleged violation of the law.

Agencies like the Commission or the Attorney General which may impose sanctions or bring prosecution against registrants should not be given *carte blanche* to go searching through a registrant's records unless there is specific cause to do so, and unless they have identified that cause in advance and listed what documents they wish to review. As with the opening section on due process, this section deprives lobbyists and principals of key protections that all other citizens enjoy.

A related problem in §35.2(h) occurs in paragraph (2) where access to computer and electronic records is discussed. There, registrants are required to provide "all information required to access the recorded information, such as any password(s) or other privacy/security measure(s)". Once again, the Commission and Attorney General are not required to show any cause why they need access to these records, nor is there anything indicating that they must identify what they are looking for before they can demand the passwords.

Many lobbyists keep very confidential information in the computer files about such things as legislative and political strategy. Principals such as associations and corporations may well keep information on their members/employees in their computer files. The provisions of §35.2(h) pertain solely to §1305 of the Act, dealing with the quarterly reports. Outside agencies looking to search a registrant's files should be given access that is limited to just those items directly related to the reports, and only after specifically requesting what they want to see, and for what cause. Anything less would be to deny rights and protections to lobbyists and principals that are given to other citizens. PAGR believe strongly that §35.2(h) should be rewritten to provide equal treatment for registrants, and require that those wishing access to our files be required to show cause and follow due process.

REPORTS BY LOBBYISTS

Act 93, at §1305(b)(6), states "A lobbyist shall submit a separate report if, during the reporting period, the lobbyist engaged in lobbying which was not contained in the reports filed by the principal or principals represented by the lobbyist." The intent of that statement, when combined with that at §1305(b)(4) that requires a lobbyist to sign the reports of the principal(s) he represents, is to avoid having a lobbyist file for the same expenses that the principal is filing for, in other words to avoid double reporting of expenses.

A question, which the proposed regulations do not answer, has arisen as to how this is to be interpreted. It occurs in the case of a contract lobbyist who is paid a fee by a principal. The principal reports that fee as what it is, a personnel cost of lobbying. However, the lobbyist uses that money to pay a portion of all of his costs including rent, salaries, equipment, utilities, supplies and much more. All of these are reportable expenses under both the Act and the proposed regulations. The question that PAGR has is whether this still requires a second reporting of this money in spite of the intent of the law.

A solution for this would be to include language in the proposed regulations which specifically addresses this issue. What it should say is that a lobbyist is responsible for reporting only those expenses which come out of his own pocket, not those which are paid for either directly or indirectly by a principal. Under this proposal, all the expenses mentioned in the previous paragraph would be covered by the principal's report. This would also be true for expenses which are billed directly to the principal such as mailing, copying, telephone and legislative entertainment. Anything not paid for by the principal would have to be reported by the lobbyist who made the expenditure. This would ensure that all expenses by both the

lobbyist and principal would be by one or the other, but it would remove the possibility that anything would be reported twice.

UNREGISTERED LOBBYISTS

One of the clear purposes of Act 93 is to ensure that all those who attempt to influence legislative or administrative action are registered. This registration requirement, and the financial reporting that goes with it, is required of all individuals and organizations that lobby. However, in two places the draft regulations seek to include many individuals who are unregistered as well.

Language at §33.2(b)(3) includes a requirement that a principal, as part of its registration statement, must include all unregistered persons who will be lobbying on its behalf in return for economic consideration. Then later, at §35.1(g)(2), the principal is required to include the names of all unregistered lobbyists who did any lobbying during the preceding quarter.

Typically, an association is run by a volunteer board, and its lobbying activities are run by a volunteer legislative committee. Both are comprised solely of members of the association. For their efforts they are reimbursed for their travel costs by the association. That fact alone is not sufficient to require them to register under the terms of the statute. Nevertheless, the proposed regulations may require that they be included in the registration statement and the quarterly reports because they do receive something of value, the reimbursement, in return for their activity.

We do not believe it was the intention of the statute to force the identification of a large number of private citizens in an organization's lobbying registration statements and financial reports. The Act gives the Commission no right to demand the names of the unregistered lobbyists, and the Commission has not demonstrated a need for it to have them. Since the amount of the reimbursements to these individuals will certainly have to be included in the financial reports filed by the principal, we feel that the requirement for the names and addresses of the unregistered individuals to also be in those reports and the registration statements should be deleted.

REGISTRATION STATEMENTS AND FEES

Registration of lobbyists and principals is one of the key provisions of the Act, and PAGR has no objection to it, either under the current law or under Act 93. The requirement for a $100 fee to accompany the registrations is also understandable as the Commission needs funds to administer the Act and many other professions in the state pay similar fees. (It should be pointed out, however, that virtually all those other professions are regulated by a board comprised overwhelmingly of members of that profession, a situation which does not hold under Act 93.)

In spite of this, PAGR is concerned about the way in which the registration and fee language is presented in the regulations. It seems to require superfluous registrations and unnecessary duplication in payment of the fees. In both cases the language is confusing at best.

Registration Statements

In the portion of Chapter 33 which deals with the registration statements of lobbyists and principals our concerns center around §33.3. Specifically, the questions come from (a) and (f).

First of all, §33.3(a)(3) requires a separate registration statement from a lobbying firm and its lobbyists, although it is not clear why. The general rule in (a) is that the lobbyist must register. However, (a)(3) says that if a firm is engaged to lobby, the firm and all the individuals in the firm must be registered. We believe that there is no requirement in the Act for the firm to be registered. The firm is not doing the lobbying, the individual lobbyists are, and they must be registered, but since the firm has no legal status under the Act, we see no need for it to register. This also has clear implications for the payment of fees, as can be seen below.

Furthermore, if the firm and the lobbyists are both required to register, then both must file quarterly expense reports. How do you distinguish between the firm and the lobbyist when it comes to reporting costs that are not attributable back to the client? This could be a particularly difficult question for small lobbying firms with only one lobbyist. In a situation where a firm consists of only one lobbyist, some might argue that the firm is the lobbyist and vice versa. How is such a firm or lobbyist to distinguish between what must be reported by each? The proposed regulations provide no answers or guidelines on this.

This section should be rewritten to comport more closely with the statute by making it clear that it is the lobbyist, and not the firm, that needs to register and report.

Fees

The problems with the registration statements are directly translated into the payment of the $100 fee. Language in §33.1(a), when read in conjunction with §33.3(a)(3) above, seems to require duplicate payments of the registration fee. For example, if a firm is retained by a principal to provide lobbying services, under this proposal the principal would have to register, the firm would have to register, and the lobbyist(s) would have to register. Then as registrants, each would have to pay the fee. There is one payment too many there. As above, the problem lies in making the firm a reportable entity under the law. We do not read Act 93 as requiring that. It should be made explicitly clear in §33.1 that lobbying firms are not required to pay the annual fee but may pay it on behalf of the registered lobbyists they employ.

TERMINATION

The entire section on termination, §33.5, is a minefield just waiting to destroy even the most conscientious lobbyist or principal. What takes only thirteen lines to say in the Act now fills two full pages. Clarity and economy of language have given way to circular logic and confusing cross-references. A simple message has been replaced by chaos and a lack of understanding of lobbying.

The Act says simply that a lobbyist or principal may terminate registration by filing notice with the Commission. The termination must be filed within 30 days of the ending of the lobbying relationship and must be reviewed by the Commission within 90 days. No additional lobbying can take place during that time, and the Commission retains the power to investigate actions prior to the termination.

To implement that we now find paragraph after paragraph of minutiae, all of which have the effect of making it much harder to end a lobbying relationship than it is to start one in the first place. One small example is the requirement at §33.5(h) that the lobbyist sign the principal's termination report. In a situation where a lobbyist has been fired by a principal, either an employer or a client, and is not happy with that dismissal, he could cause a great deal of trouble for the principal by refusing to sign the report. If he is no longer a lobbyist, the

Commission cannot take any action against him, but the principal could be penalized severely for his failure to sign.

An example of where the proposed regulations add unnecessary requirements is at §33.5(d) and (e). Here it says that a termination statement cannot be withdrawn after it is filed and that a registration statement cannot be revived after the filing of a termination statement. First of all, those two paragraphs appear to say the same thing. They say that if you have filed a termination statement, and the situation changes, that you must wait for the termination to become effective, and then file a new registration statement. Unfortunately, the proposed regulations say that twice, and neither time is it as clear as the presentation just given above.

Furthermore, it shouldn't be necessary to say it at all. It should be possible to withdraw or cancel a termination statement that has not yet been approved by the Commission. Since it is clear from the Act and the proposed regulations that it is illegal to lobby after the filing of a termination statement, this would not open a loophole in the law, but it would be clearer and easier to comply with.

The bottom line is that here in the section on terminations, as with so many other sections of the proposed regulations, should be rewritten because it is confusing, and should also be rewritten to more closely mirror the Act's simple language and requirements.

OFFICE SPACE

One of the requirements of the Act is that the cost of offices must be included in the quarterly expense reports. While many have objected to this by pointing out that the cost of offices and the utilities and supplies to run them do not fall into the definition of lobbying contained in the Act, it is nonetheless a requirement and the Commission is mandated to enforce it. Unfortunately, there is a major failing in the language of the proposed regulations where it talks about what must be included in the report of office costs.

Section 35.1(i) lists in great detail the items that must be included in the estimate of expenses related to lobbying as required by the Act. Paragraph (5) covers what must be included as part of the office expenses, and it requires that, among other things, the rental cost of office space be included in the quarterly financial reports. However, it does not require the cost of offices that may be owned by the lobbyist or principal to be reported.

Many principals such as associations and corporations own huge and luxurious office facilities, and pay a hefty mortgage but no rent. Those costs would go unreported, while a small one person lobbying operation would have to report every penny of the rent it pays for office space. Even among the small lobbying operations there would be inequity as many such lobbyists work out of their own homes, and pay no rent, whereas others rent space in office buildings and would have to report that cost, thereby throwing the comparative numbers out of proportion.

A change should be made to §35.1(i)(5) to make it clear that mortgage, construction and maintenance costs for owned offices should be reported in the same manner as rental of office space.

SUMMARY

To summarize PAGR finds these proposed regulations to be seriously deficient in many ways. First and foremost, they do not protect the rights of those regulated under the law, but seem to seek ways to punish them. Secondly, they use terms that are not defined well or at all, and in other places are written in a very confusing manner. Third, they show little understanding of what lobbying really is and how lobbyists and principals operate. In many places they seem to assume that all lobbyists are private contract firms, and are written with that segment in mind, ignoring or not recognizing the fact that the vast majority of lobbyists are full-time employees of one and only one principal, usually either an association or a corporation. In other places they are fine for the associations and corporations but don't deal with the realities of contract lobbyists at all.

In short, we feel that these regulations have so many flaws that the best course of action is to go back, virtually to the start, and do a major rewriting. To try to amend them in a patchwork manner will only lead to more confusion and to a final product that could be seriously self-contradictory.

On behalf of PAGR let me say that we look forward to working with you and all other concerned parties to resolve the difficulties in implementing this statute. There is work to be done, and we are anxious to help do it.

COMPARISON OF CHAPTER 21 AND CHAPTER 43

TOPIC	CHAPTER 21	CHAPTER 43
Who is covered?	Public officials and employees	Lobbyists and lobbying organizations
Grounds for opening a proceeding	An official complaint which must be sworn and signed and allege a violation of more than *de minimus* financial impact	Any information received by the Commission
First step in proceeding	A preliminary inquiry for up to 60 days	Notice of noncompliance sent to registrant based on information alleging a violation
Investigation	An investigation may be opened if inquiry has produced evidence of a violation. Subject must be notified and kept informed on a regular basis. Subject may provide evidence. Many protections are put in place, and detailed procedures must be followed.	None required
Protection against frivolous or harassing complaints	Subject may ask for an investigation and the Commission is required to comply.	None
Hearing process	Very detailed rules with ample due process and civil liberties protections for the accused	Same as Chapter 21 *to the extent possible*. Accused must defend himself against a Commission that has already found him to be noncompliant.

Pennsylvania Coal Association
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GEORGE ELLIS
President

March 2, 1999

ORIGINAL: 1997
BUSH
COPIES: Sandusky
Legal

Mr. John Contino
Executive Director
Pennsylvania State Ethics Commission
309 Finance Building
Harrisburg, Pennsylvania 17108-1470

Re: Proposed Lobbying Disclosure Regulations

Dear Mr. Contino:

On behalf of the Pennsylvania Coal Association (PCA), I submit our comments on the proposed Lobbying Disclosure Regulations published in the Pennsylvania Bulletin on January 30, 1999. PCA objects to the proposed regulations on two grounds - they purport to allow an authorized government invasion of privacy and they impose overly burdensome and onerous reporting requirements.

Concerning the invasion of privacy, we ask that you delete the phrase "except as provided by the Act or these regulations," from Section 35.1(g)(3)(iii) and Section 35.2(a)(3). The Commission has no authority under the Act to obtain information about the contents of communications or the identity of communicants. For the Commission to reserve this right is improper and unlawful.

Equally objectionable is Section 35.2(c)(4), which purports to give the Commission and the Attorney General the right to have full access to computerized and electronic records. This paragraph should be deleted in its entirety. It is nowhere authorized by the Act. This paragraph gives the "big brother" of state government improper access to entirely private information in a manner reminiscent of George Orwell's novel "1984".

The Act establishes, through Section 1305, extremely onerous record keeping and reporting requirements. The proposed regulations, in excess of the statutory authority granted, exacerbate the complexity and difficulty of compliance. This is, in some measure but not entirely so, the result of the open-ended nature of the definition of the phrase "indirect communication" which appears to have no limits. We, therefore, request that the definition of "indirect communication" be rewritten to establish limits and that Chapter 35 be rewritten to clarify and simplify the reporting and bookkeeping obligations in compliance with Section 1305.

The Act calls only for a "good faith estimate" (added) of the amounts spent in lobbying for (a) personnel and office expenses, (b) direct communication and (c) indirect communication. The regulations go far beyond what is needed to make a "good faith estimate". For example, Section 35.1(i)(5) as written is not authorized by the Act. This Section is expansive and shows no limit. It uses the phrase "shall include, but shall not be limited to". This, and the details suggested by this subsection, far exceed what is needed to make a "good faith estimate".

In addition, Section 35.1(i)(1) says that any reasonable accounting method may be used to make the "good faith estimate" of the total amount spent for personnel and office expenses. The same accounting option should be made available to "good faith estimates" for "direct" and "indirect communication".

These requirements are particularly burdensome for trade associations such as PCA, which engage in "lobbying" and other entirely appropriate non-lobbying activities, making it difficult to divide or allocate portions of expenditures between the two types of activities.

In short, we urge revision of the regulations for the purpose of requiring only that documentation which is mandated by the Act for the purpose of producing "good faith estimates". Going beyond that is in excess of legislative authority and should be deleted.

Thank you for your consideration.
Very truly yours,

George Ellis, President
Pennsylvania Coal Association

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
February 10, 1999

ORIGINAL: 1997
BUSH
COPIES: Sandusky
Wyatte

SUBJECT: Lobbying Disclosure Act

TO: Robin M. Hittie
Assistant Counsel
State Ethics Commission

FROM: Cristina S. Papson
Deputy Attorney General
Review and Advice Section

As we discussed today, following are our additional comments concerning the proposed Lobbying Disclosure Act (the "Act") regulations:

1. The definitions of "child" and "immediate family" do not include step-children, although they include adopted and natural children (following the definition of "child" in the Statutory Construction Act, 1 Pa.C.S.A. §1991). Since the Act defines "immediate family" to include "like relative-in-laws," and if the regulation is attempting to be specific, we believe step-child should be included in the definition of "child."

2. The definitions of "negligent conduct" and "negligent failure to register or report" distinguish such conduct from "willful, wanton or reckless" conduct or failure. In criminal law in the Commonwealth, "willful" and "reckless" are statutorily defined. For Crimes Code purposes, "willful is synonymous with "knowing." For criminal violations of the Act, a person must act either "intentionally" or "with knowledge" (i.e., "knowingly"). Using the words "wanton" and "reckless" may cause problems since they do not appear in the provisions of the statute to which these regulations relate.

February 10, 1999

3. The reports and statements referred to in sections 31.10(b), (d) and (e) are made subject "to penalty under Section 4904 (unsworn falsification to authorities)" of the Crimes Code which suggests both § 4904(a) second degree misdemeanors as well as §4904(b) third degree misdemeanors known as "statements under penalty." Does the Commission intend that §31.10 will include both?

We call your attention to this because notice of third degree misdemeanor penalties must be authorized by law. While §1305(a) of the Act requires reports to be filed "under oath or affirmation," it does not specifically authorize criminal penalties under §4904. And although a third degree misdemeanor might be successfully prosecuted, we nevertheless suggest that the words, "penalty under" are red flags which are better deleted from §§31.10(b), (d) and (e).

4. We recommend that Section 43.1 contain a statement that nothing in the Act or the regulations prohibits the Attorney General from initiating an investigation or prosecution under the Act and that the Attorney General need not await a referral from the Commission before doing so.

5. The regulations should specify that a civil penalty by the Commission does not preclude a criminal prosecution.

6. Referring to Chapter 45 (Prohibition against lobbying as a sanction), the regulations should spell out what the Commission will do in the event that a lobbyist or principal is convicted in criminal proceedings in relation to debarring the lobbyist or principal. We suggest that a conviction would have a *res judicata* effect whereby the Commission should simply determine the appropriate period, if any, that lobbying will be prohibited.

CSP:mlm
CRA990034-01

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

January 20, 1999

ORIGINAL: 1997
Nyce
Sandusky
Gelnett

RE: State Ethics Commission Regulation #63-06

TO: Vincent J. Dopko
Chief Counsel
State Ethics Commission

FROM: Cristina S. Papson
Deputy Attorney General
Review and Advice Section

The following regulation is hereby approved for form and legality pursuant to the Commonwealth Attorneys Act.

STATE ETHICS COMMISSION
51 Pa. Code, Chs. 31, 33, 35, 37, 39, 41, 43 & 45
Lobbying Disclosure
PROPOSED FORM

CSP:mlm
CRA990034
cc: Mary S. Wyatte, Esq.

COMMONWEALTH OF PENNSYLVANIA

DATE: February 12, 1999

ORIGINAL: 1997
BUSH
COPIES: Sandusky
Wyatte

SUBJECT: Lobbying Disclosure Proposed Rulemaking (63-06)

TO: Robert E. Nyce, Executive Director
IRRC
Honorable Joseph F. Loeper, Chairman
Senate Rules and Executive Nominations Committee
Honorable Thomas P. Gannon, Chairman
House Judiciary Committee

FROM: Vincent J. Dopko, Chief Counsel
State Ethics Commission

Pursuant to Section 745.5(c) of the Regulatory Review Act, 71 P.S. §745.5(c), enclosed please find photocopies of the following comments received as to the above which was published in the Pa. Bulletin, Volume 29, Number 5 on Saturday, January 30, 1999 at page 548 et seq.

Commentator	Received at State Ethics Commission
1. Office of Attorney General	February 11, 1999

VJD/mlj

Enclosure
cc: Members, Lobbying Disclosure Committee

OFFICE
OF THE
PRESIDENT

100 SOUTH STREET / POST OFFICE BOX 186 / HARRISBURG, PA 17108-0186 / (717) 238-6715 • FAX (717) 238-1204

LESLIE ANNE MILLER

March 18, 1999

The Honorable Thomas P. Gannon
House of Representatives
Commonwealth of Pennsylvania
P.O. Box 202020
Harrisburg, PA 17120-2020

ORIGINAL: 1997
BUSH
COPIES: Sandusky
Wyatte

Re: Lobbying Disclosure Regulations (Proposed)

Dear Representative Gannon:

When the Lobbying Disclosure bill was first introduced as Senate Bill 1, the Pennsylvania Bar Association through two public hearings supported enhanced reporting requirements for lobbyists and their principals. During our review of the initial bill, we made recommendations attempting to decrease the likelihood that lawyers who are not lobbyists would need to comply with the act. As then-Senator Heckler asserted, the bill's reporting requirements were not intended to snare lawyers who did not lobby. Some of those suggestions were incorporated into the act (e.g. increased expenditure thresholds, refining "administrative action"). However, the proposed regulations through definitions create uncertainty regarding the exact dilemma we attempted to ameliorate in the bill.

As currently drafted, a professional, such as an attorney, accountant or engineer, assisting a client in dealing with state government to obtain permits, licenses or approvals, may be inadvertently engaged in lobbying if communications directed to state officials or the client may have a foreseeable effect upon legislative or administrative action. In addition, a professional providing advice to a client regarding state laws and regulations, may be inadvertently engaged in lobbying if it is foreseeable that the client or another individual based upon the advice may be encouraged to directly effect legislative or administrative action. Likewise, a professional preparing or distributing advertising or other promotional material or providing education or training which describes problems involved in compliance with existing laws or regulations may be foreseeably encouraged to directly effect legislative or administrative action. None of these activities should appropriately or legitimately fall within the scope of the Commission's lobbying registration and reporting regulations.

PRESIDENT'S OFFICE: 1700 MARKET STREET, SUITE 3000 • PHILADELPHIA, PA 19103 • (215) 246-2100 • FAX (215) 246-2144

The purpose of the Lobbying Disclosure Act is to require public disclosure of "the identity and the scope of activity of those employed to influence actions of the General Assembly and the Executive Department." The law expressly is "not intended to govern professional activities which do not include lobbying and which are properly the subject of regulation by the judicial branch of government or by any government agency." 65 Pa.C.S.1302. Professionals not providing advice or services for the purpose of influencing legislative or administrative action should be exempt from the requirements of the law and regulations because such individuals do not receive compensation for lobbying. 65 Pa.C.S.1306(3)(i).

To avoid the possibility that the Commission's regulations will inappropriately apply to professional activities not intended to constitute lobbying, the Commission should modify the definition of the term "effort to influence legislative or administrative action." As used in the regulations, the term should not apply to "professional services or activities not undertaken for the purpose of influencing legislative or administrative action, even if the services may foreseeably have an incidental effect upon legislative or administrative action." Alternatively, the Commission could clarify the meaning of the exemption provided by 1306(3)(i) by clarifying that the acceptance of compensation for other professional services shall not be deemed to constitute the acceptance of compensation for lobbying.

On behalf of our 27,000 members, I respectfully request that our comments and recommendations be included in the House Judiciary Committee's report to the Pennsylvania Ethics Commission. Please feel free to call upon us if we can provide any technical assistance regarding this matter.

With best personal regards, I am

Very truly yours,

Leslie Anne Miller

cc: House Judiciary Committee

OFFICE OF ATTORNEY GENERAL

March 29, 1999

ORIGINAL: 1997
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SUBJECT: Ethics Commission Reg. #63-06, Lobbying Disclosure

TO: Robin M. Hittie, Assistant Counsel
State Ethics Commission

FROM: Cristina S. Papson
Deputy Attorney General
Review & Advice Section
783-1111

As you requested, I am supplying language which reflects our suggested changes to Ethics Commission regulation #63-06. Additions are **underlined and in bold**, and deletions are **[bracketed and in bold]**.

Section 31.1. Definitions

* * * * *

Child--The term includes adopted and biological children **and stepchildren**.

* * * * *

Immediate family--An individual's spouse, child, **stepchild**, parent, brother, sister, mother-in-law, father-in-law, brother-in-law, or sister-in-law.

* * * * *

Negligent conduct-- . . . Negligent conduct is to be distinguished from willful **[, wanton, or reckless]** conduct, which would fall within the ambit of intentional conduct.

Negligent failure to register or report-- . . . A negligent failure to register or report is to be distinguished from a willful [**, wanton, or reckless**] failure, which would fall within the ambit of intent . . . .

Section 31.10. Filings to be originals signed under oath or affirmation.

* * * * *

(b) Registration statements, notices of termination, and amendments to such filed pursuant to the Act shall include an affirmation subject to [**penalty under**] 18 Pa.C.S. §4904 (unsworn falsifications to authorities) that the information provided therein is true and correct ot the best of the filer's knowledge, information and belief.

* * * * *

(d) A lobbyist who signs a principal's quarterly expense report, termination report, or amendment to such, shall do so under an affirmation subject to [**penalty under**] 18 Pa.C.S. §4904 (unsworn falsifications to authorities) that the information provided therein is true and correct to the best of the lobbyist's knowledge, information and belief.

(e) A lobbyist attaching a statement to a principal's quarterly expense report, termination report, or amendment to such, describing the limits of the lobbyist's knowledge concerning the expenditures contained therein, shall do so under an affirmation subject to [**penalty under**] 18 Pa.C.S. §4904 (unsworn falsifications to authorities) that the information provided in such Statement is true and correct to the best of the lobbyist's knowledge, information, and belief.

Section 43.1. Intentional violations.

* * * * *

(c) Nothing contained in the Act or regulations promulgated thereunder shall prohibit the Office of Attorney General from initiating an investigation or prosecution under the Act pursuant to its authority by law, and the Office of Attorney General need not await a referral from the Commission before initiating such an investigation or prosecution.

Section 43.3. Commission proceedings under Section 1304 or Section 1305 of the Act.

* * * * *

(e) . . . .

(4) The imposition of a civil penalty by the Commission shall not preclude a criminal prosecution for intentional violation of the Act.

Section 45.2. Procedures for imposing prohibition against lobbying.

* * * * *

(c) In the event that a lobbyist or principal is convicted in a criminal proceeding for a violation of the Act for which the penalty of prohibition of lobbying may be imposed, such conviction shall be *res judicata*, and the Commission's determination shall be limited to the amount of time, if any, that the lobbyist or principal shall be prohibited from lobbying.