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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 17, 1999

Austin M. Lee, Chair
Lobbying Disclosure Committee
State Ethics Commission
309 Finance Building
Harrisburg, PA 17108-1470

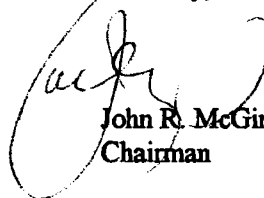
Re: IRRC Regulation #63-6 (#1997)
Lobbying Disclosure Committee
Lobbying Disclosure

Dear Mr. Lee:

The Independent Regulatory Review Commission disapproved the subject regulation at its public meeting on June 17, 1999. Our Order is enclosed and is available on our website at <http://www.irrc.state.pa.us>.

Section 7(a) of the Regulatory Review Act requires you to notify us within seven days from receipt of this letter if you will: (1) withdraw the regulation; (2) proceed with promulgation under Section 7(b); or (3) proceed with promulgation under Section 7(c).

Sincerely,



John R. McGinley, Jr.
Chairman

JRM:wbg
Enclosure

cc: Mark Corrigan, Secretary of the Senate
Ted Mazia, Chief Clerk of the House
Michael Fisher, Attorney General
Honorable Kim Pizzingrilli, Secretary
Robert Casey, Jr., Auditor General
Paul Tufano, Office of General Counsel
John J. Contino
Vincent J. Dopko

INDEPENDENT REGULATORY REVIEW COMMISSION

14th Floor, 333 Market Street
Harrisburg, PA 17101

Commissioners Present:

Public Meeting Held June 17, 1999

John R. McGinley, Jr., Chairman
Alvin C. Bush, Vice Chairman
Arthur Coccodrilli
Robert J. Harbison, III
John F. Mizner



Lobbying Disclosure Committee
Lobbying Disclosure

Regulation No. 63-6

BY ORDER OF THE COMMISSION

On January 20, 1999, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Lobbying Disclosure Committee (LDC). This rulemaking amends 51 Pa. Code by adding Chapters 31 - 45. The authority for this regulation is contained in Sections 1305(b)(3)(iii) and 1310(c) of the Lobbying Disclosure Act (Act) (65 Pa.C.S. §§ 1305(b)(3)(iii) and 1310(c)). The proposed regulation was published in the January 30, 1999 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on May 26, 1999.

This regulation is being promulgated to implement the Act. The proposed regulations, like the Act, outline what constitutes lobbying, who must register, what must be reported, and auditing and enforcement procedures.

Comments were filed on this final-form regulation by: Senators Brightbill, Mellow and Lemmond, the members of the subcommittee established by the Rules and Executive Nominations Committee; Stephen C. MacNett, General Counsel for the Senate Majority Caucus; and the Pennsylvania Association for Government Relations. On June 15, 1999, the House Judiciary Committee voted to disapprove the final-form regulation.

We have reviewed this regulation and find it not to be in the public interest. While the majority of this rulemaking tracks the language and intent of the Act, there are two areas where the regulation exceeds the authority granted by the Act.

First, in this proposal the LDC has created a new term, "de minimis" which is defined as "insignificant." This term does not appear in the Act. However, it is used in the definition of "lobbyist" and in Section 35.1(g)(6) which establishes reporting requirements for principals.

The statutory definition of "lobbyist" does not contain a de minimis exemption. Under the Act, a lobbyist is someone who "engages in lobbying on behalf of a principal for economic consideration." Furthermore, Section 1306(3) of the Act contains the only statutory exclusions from registration and reporting. It includes the following:

- (II) An individual whose compensation for lobbying, from all principals represented, does not exceed \$2500 *in the aggregate* during any reporting period.

* * * *

(IV) A principal whose total expenses for lobbying purposes do not exceed \$2500 during any reporting period. (emphasis added).

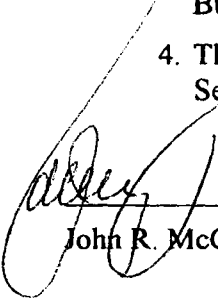
There are two problems with these provisions. First, the LDC has not specified a dollar amount that would be considered de minimis. Second, clearly the Act requires lobbyists to aggregate all compensation and requires principals to total all of their lobbying expenses. There is no provision for any compensation or expenses to be considered de minimis because of the aggregating and totaling requirements of the Act.

The other area where the LDC has exceeded its statutory authority is in the provisions governing random audits. Under Section 1308(g) of the Act, the Ethics Commission "shall initiate, by lottery, random annual audits of registration statements and disclosure reports..." The final-form-regulation, in Sections 41.2(d) and (e), would allow the Ethics Commission to examine "the relevant records of any other registrant" as part of an audit of the randomly selected registrant. However, the statute does not give the Ethics Commission the authority to require a registrant, who is not the subject of an audit, to produce any records.

There are also areas which we raised in our Comments and which have been raised by the Senate that do not meet the reasonableness or clarity criteria of the Regulatory Review Act. For example, the definition of service (of official papers) should be revised to use the postmark date, not the date of mailing. Also, inserting "related" between "other" and "practices" in Section 41.4(b) and refining the language in Sections 41.3(c)(2)(ii) and (c)(3) would clarify the conduct of audits. These changes, and the other Senate suggestions offering technical changes, would enhance the clarity of the regulation.

THEREFORE, IT IS ORDERED THAT:

1. Regulation No. 63-6 from the Lobbying Disclosure Committee as submitted to the Commission on May 26, 1999, is disapproved;
2. The Lobbying Disclosure Committee shall, within seven days of receipt of this Order, notify the Governor, the designated Standing Committees of the House of Representatives and the Senate, and the Commission of its intention to either proceed with the promulgation of the regulation without revisions, to revise the regulation, or to withdraw the regulation. Failure to submit notification within the seven-day period shall constitute withdrawal of the regulation;
3. The Commission will transmit a copy of this Order to the Legislative Reference Bureau; and
4. This Order constitutes a bar to final publication of Regulation No. 63-6 pursuant to Section 6(b) of the Regulatory Review Act.



John R. McGinley, Jr., Chairman

