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INDEPENDENT REGULATORY
REVIEW COMMISSION

2665

February 25, 2009

Honorable Arthur Coccodrilli
Chairman
Independent Regulatory Review Commission
333 Market St, 14th Floor
Harrisburg, PA 17101

Dear Chairman Coccodrilli:

The Pennsylvania Bar Association (PBA) finds that the final rulemaking of the Lobby Disclosure Regulations Committee, Title 51, Chapters 51 through 69 of 51 Pa Code, implementing Act 134 of 2006, 65 Pa.C.S. § 13A01, et seq.) as now drafted addresses the need for a lobbying-not lobbying division line. Through the revisions to the definitions in § 51.1 of "*Effort to influence legislative action or administrative action*" and "*Engaging a lobbyist*," and the revisions to §§ 53.2, 53.3, and 53.4, it is clear that, in the context of an entity engaging a third party, *an effort to influence legislative or administrative action* (i.e., "*lobbying*" under Act 134) would occur when there is a contract for lobbying. In this situation, any actions short of such a contract with clear intent to lobby (i.e., make an "effort to influence") would not constitute lobbying and would not trigger the registration and reporting requirements.

Notwithstanding the above delineation, in the situation where contract terms between an entity and one representing the entity are not clear, as may be the case with a non-written contract, the failure to register and report may be a violation of the regulation's, but not Act 134's, terms. In such case, the regulation terms would be legally untenable given Act 134. Hence, while the PBA does not object to the Committee's amendments which offer the regulatory opportunity to comport with the law, we believe that the regulation also offers the likelihood of being a trap for the unwary who have no intention of violating the law.

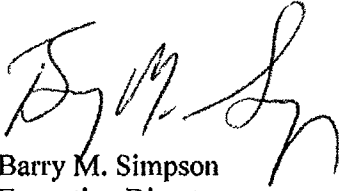
Having given considerable thought to this problem, there is a simple solution: change the language "Contracting in any form" found in the definition of *Engaging a lobbyist* and in §§ 53.2(a)(1), 53.3(a)(1), 53.4(a)(1), to "A written contract". This change would mean that absent a written contract to lobby (or, of course, the actual engagement in lobbying) no lobbying will have been considered to have occurred under the regulation, thereby preventing the unwary from lobbying unknowingly simply by agreeing to represent or be represented.

Finally, please do not interpret this letter as the PBA's agreement with the Committee's underlying legal position that mere contracting for lobbying can constitute "lobbying" under Act 134 absent direct or indirect communication (or the provision of gifts, hospitality, etc.). We have in previous submissions to, and testimony before, IRRC and the Committee expressed our reservations about the proposed final-form regulation exceeding the statutory authority of Act 134 on this point by requiring registration and reporting for activities which are not required by Act 134. We continue to have this same reservation.

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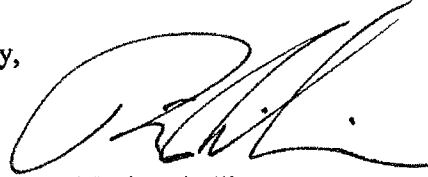
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The PBA stands ready to assist the Commission in any way with regard to this important regulatory matter. Thank you for your consideration.



Barry M. Simpson
Executive Director

Sincerely,



Nevin Mindlin
Legislative Director

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