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INDEPENDENT REGULATORY
REVIEW COMMISSION

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February 21, 2008

Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Re: Lobbying Disclosure Regulations

Dear Commission:

The purpose of this letter is to comment on and, I am afraid, complain about the continuing ambiguity, vagueness, and thus inappropriateness of two provisions in the subject regulations, both of which I have commented on and questioned on multiple occasions since these regulations were initially published about a year ago. My perspective in reviewing these regulations is as an attorney who has to determine what these regulations mean for the purpose of advising business entities how to comply with them. Each regulatory section of concern is addressed under the appropriate heading below.

Subsection 55.1 (g) (5)

Reporting "Contributions" of more than 10% of "Total Resources" for Lobbying

Subsection 55.1 (g) (5) of the regulations require a quarterly expense report to include the following:

*The name, permanent business address and daytime telephone number of any individual, association, corporation, partnership, business trust or other business entity which **contributed** more than 10% of the **total resources** for lobbying received by the principal during the reporting period. The term "total resources" includes all contributions to the principal during the reporting period. The term also includes dues and grants received by the principal. (emphasis added)*

The overarching ambiguity or problem with the above section is what does it mean to a business entity making a lobbying disclosure report? The words "contributions" and "total resources" are not defined in the regulations.

The word "contributions" has many and varied meanings. Does the word "contributions" mean something given without consideration like political contributions, in which case, business entities generally do not receive "contributions" in this sense of the word, and thus can feel secure in reporting nothing? See 25 Pa. Stat. § 4241 (b).

Or does the word "contribution" have an accounting or financial meaning? That is to say, does the word "contributions" mean a business entity's equity investments, capital or equipment loans, profits, revenues, or some other accounting statistic?

Similarly, what do the words "total resources" mean? Section 55.1 (g) (5) tell us that "total resources" include all "contributions," whatever the word "contributions" means as discussed above? Or, is "total resources" the business entity's equity, profits, revenues, or some other accounting statistic?

Until these words are defined, or in the alternative it is made clear in the regulations that this provision simply does not apply to a business entity, it is very hard to determine how this regulation applies to a business entity. I would go so far as to say that this regulatory section is so ambiguous and vague as to be meaningless to a business entity.

Subsection 57.2 (a) (5)
Exemption for Employees whose "Lobbying Activity" on behalf of their Employer
is less than 20 Hours a Quarter

To understand this issue, one has to carefully read and understand the breadth of the various definitions that comprise the definition of "lobbying" in the regulations.

First, the definition of "lobbying" itself is very broad and includes all those involved in "an effort to influence legislative action or administrative action in this Commonwealth." This definition goes on to include specifically "direct and indirect communications," "office expenses," and "gifts," etc. See definition of "Lobbying" in § 51.1.

Second, both the definitions of "direct communications" and "indirect communications" include "personnel expenses." See definitions of "Direct Communications" and "Indirect Communications" in § 51.1.

Third, the definition of “personnel expenses” includes expenditures for salaries and other forms of compensation for “lobbyists,¹ lobbying staff, research and monitoring staff, consultants, etc.”

A rigorous interpretation of who is “lobbying” and thus who is involved in “lobbying activity,”² which is not separately defined, includes all those individuals whose expenses have to be reported under the regulations because all these activities are defined as “lobbying” in the regulations. As a result, many individuals who are not lobbyists in the traditional sense of the word,³ but are merely lobbying staff, supporting the activities of the lobbyists, again using the traditional sense of the word lobbyist, are engaged in “lobbying” under the regulations and thus “lobbying activity.”

Fourth, examine how an employer is to ascertain which of its employees are exempt from registering as a “lobbyist” because of the twenty-hour-per-quarter threshold.

§ 57.2 (a) (5) of the regulations states as follows:

*The exemption in section 1306-A(5) of the act is limited to an individual who engages in lobbying on behalf of the individual's employer if the **lobbying activity** represents less than 20 hours during any reporting period. (emphasis added)*

Thus, my concern is that lobbying staff,⁴ which may spend more time preparing information for direct communications than the communicator, him or herself, may surpass the 20-hour threshold. Whereas, the communicator him or herself may not. This creates the anomaly where the support staff that has no contact with state officials and employees has to be registered as lobbyists under the regulations because of the 20-hour limitation on “lobbying activity,” whereas those who are actually doing the lobbying in the traditional sense do not.

¹ Interestingly, this part of the regulation appears to recognize there is a difference between a “lobbyist” and “lobbying staff,” although “lobbying staff” is not defined in the regulations. As discussed in this letter, the whole list of these types of individuals is still included in the definition of “personnel expenses,” which in turn is part of either “direct communications” or “indirect communications,” and in turn is included in the definition of “lobbying.”

² The amount of “lobbying activity” is used in § 57.2 (a) (5) to determine whether an employee has to be registered as a lobbyist.

³ In the traditional sense of the word, lobbyists are those who actually communicate with state officials and employees.

⁴ Again, the term “lobbying staff” is not defined in the regulations, except to be included in the definition of “personnel expenses.”

This is not the intent of the underlying legislation. The intent of the legislation was to have those who communicate with state officials and employees registered as lobbyists, but the regulations do not actually so define such individuals. Instead, the regulations define a “lobbyist” as one who engages in “lobbying,” which is then very broadly defined creating the problem discussed herein. What should have been broadly and separately defined is the term “lobbying expenses,” instead of the term “lobbying” itself.

The resolution to this problem in Section 57.2 (a) (5) is to define “lobbying” and “lobbying activity,” more narrowly in Section 57.2 (a) (5) to mean the activity of a lobbyist in a classical sense as one who communicates⁵ with state officials and employees for lobbying purposes. Otherwise, there is no logical way to differentiate between the different individuals who are “lobbying” or are engaged in “lobbying activity” as these words are very broadly defined in the regulations.

I believe reference to the Interim Guidelines for Accounting and Reporting—How to Comply with Act 134 of 2006, adopted May 30, 2007, suggests the solution. Section VII—Calculation of Direct Communication (page 111, fourth paragraph, first sentence) states as follows:

The action that triggers the expense reporting may be in any form and includes a personal visit, a telephone call, an email or a letter to a state official or employee by a registered lobbyist or principal where the purpose or foreseeable effect is to influence legislative or administrative action.

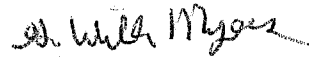
Thus, if the regulations would define “lobbying” and “lobbying activity” in § 57.2 (a) (5) to mean activities such as a personal visit, a telephone call, an email, or a letter to a state official or employee where the purpose or foreseeable effect is to influence legislative or administrative action, then employers could differentiate between its employees who may have to be registered as lobbyists because they exceed the 20-hour threshold versus the staff supporting lobbying activity regardless of the number of hours of their activities.

⁵ For example, face-to-face meetings, telephone conversations, email exchanges, and correspondence.

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I would be happy to discuss these issues further with anyone who would like to have these discussions.

Sincerely,



G. William Myers, P.E., J.D.
Sr. Vice President & General Counsel