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Pennsylvania

Holding Power Accountable

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**Comments of Common Cause/PA
On Proposed Lobbying Disclosure Regulations**

**Presented to
The Independent Regulatory Review Commission**

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CC/PA finds that, generally speaking, the regulations proposed by the Lobbying Regulations Disclosure Committee are thorough, precise, in compliance with the intent of Act 134 of 2006, and serve to make the law more understandable for the regulated community and the general public. We commend the Committee for their efforts. (This does not mean, however, that Common Cause believes the statute itself is as comprehensive as it should be or that the statute meets all of the citizens' needs and expectations for lobbying disclosure.)

OBSERVATIONS AND RECOMMENDATIONS

It would have been useful and preferable to include the relevant language of the referenced statutes instead of just the citations. This would make compliance easier and faster.

Definitions

Definition of "Anything of value". We note that earlier drafts of the definition included additional items explaining the scope of the definition. They include things such as "a discount or rebate not extended to the public generally". These examples provide important perspective. They identify things of value that might not otherwise be considered such. CC/PA recommends reinstatement of the additional examples.

Definition of "Gift" part (F) dealing with "services to a constituent". This is new language not specified by the statute and could prove problematic. If this exemption remains in the regulations, it will have to be monitored closely, to ensure that services to "...a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official..." does not become a mechanism for enticing or reimbursing campaign contributions and other non-official benefits provided to public officials.

Definition of "Reception". Parts (ii) and (iv) of this definition may be more properly included under the reporting section. Furthermore, the \$75 and \$125 thresholds seem extremely high.

Registration

Subsections (c) of 53.2, 53.3 and 53.4 – We question the propriety of not requiring a filer to provide a street address.

Reporting

Section 55.1(e)(1) should be modified by inserting after the word “report” where it first occurs the words to include the omitted lobbying expenses of its lobbyists or lobbying firm

Section 55.1 (g)(2) -- Issue Identification. The check-off form for “general subject matter or issue being lobbied” is far too nebulous and provides very little useful information to the public. Common Cause/PA contends the language in the statute intends the information disclosed by principals to be informative -- to help the public understand the nature of lobbyists’ pursuits. In our opinion, the Committee clearly has the authority to require principals to provide information that actually enlightens the public. Common Cause/PA suggests when a principal checks one of the boxes it be required to provide a general explanation of the positions taken on the general issue. For instance, when Common Cause/PA checks the box next to “Campaign Financing”, we then should be required to include a statement such as “Advocating for enactment of contribution limits for all political candidates in Pennsylvania.” When we check “Media”, we should be required to include a statement such as “Advocating a repeal of the ban on county and municipal governments from creating community wifi systems.”

Section 55.1 (g)(6) If this section means that a principal does not need to track, record, and report aggregate expenses for gifts, hospitality, transportation or lodging with individual values of under \$10, as part of the principal’s comprehensive annual aggregate record keeping and reporting under 1305(b)(2)(i) of the act, such \$10 exemption appears contrary to the language of the act. The act intends for all lobbyist-provided perks and benefits to be recorded and reported in the aggregate reporting, and there appears to be no authority for such exemption.

Section 55.1(j)(3)(ii) and (4)(ii) with regard to “source of the gift” and “source of the payment” respectively; needs clarification as to what is meant by source. Does it mean the name of the lobbyist providing the gift or transportation, or the name of the store where the gift was purchased or the name of the airline where the ticket was purchased?

Section 55.1 (k)(2) regarding complimentary tickets to fundraisers. Common Cause/PA finds this section troubling. The value to be reported in our opinion should be the face value of the ticket. The public official benefits in the same manner as the person who pays the full face value of the ticket.

Exemptions

Section 57.2 (a)(1) To keep this exemption regarding comments on regulations parallel to those for testimony before legislative committees, it must be limited to those situations in which the comments are presented to an agency at a properly sunshined public meeting. Otherwise the activity should be considered an activity subject to the registration and reporting standards unless exempt under another exemption, such as the \$2,500 threshold.

Commission Referrals, Investigative Proceedings and Noninvestigative Proceedings

Sections 63.1(c), and 63.2(a) and (b) regarding conflicts of interest. These sections appear to misinterpret the statute and the PA Supreme Court's rules for professional conduct. The Supreme Court's amendment to the Rules of Professional Responsibility, in 2003, specifically authorizes the application of any new lobbyist disclosure law to lawyer-lobbyists with regard to disclosure and confidentiality. The role of the Board clearly is *in addition to* NOT in substitution of the role of the Commission. Basically, the Attorney Discipline Board and the Ethics Commission have concurrent authority under section 1307(d)(8) in our view.

Section 63.1(d) needs greater clarity to ensure that there is joint jurisdiction for the Commission and Board. This can be accomplished simply by inserting the word also between the term "attorney-at-law," and the word "to" on the last line of this section.

Section 63.1 (g). Common Cause/PA contends this section is errant. The following words should be deleted to make it accurate
"Except for a matter under section 1307-A(d)(8) of the act,"

Unlawful Acts

The copy of the regulations from which we worked had no section dealing directly with Section 1307 of the Act on "Prohibited Activities". We wonder if further regulatory definition of this section may be useful. Certainly including a delineation of the unlawful acts in the regulations establishes a single source reference that makes it easier for lobbyists to understand and comply with their obligations under the law.

Common Cause/PA thanks the IRRC for this opportunity to present its observations, concerns, views and suggestions regarding the proposed regulations for lobbyist disclosure and regulation. Please feel free to contact us if you have any questions.

Submitted by
Barry Kauffman, Executive Director