

2799



RECEIVED

2009 OCT 27 AM 9:39

INDEPENDENT REGULATORY  
REVIEW COMMISSION

**Via Email and First Class Mail**

October 22, 2009

Shauna C. Graves, Esq.  
Assistant Counsel  
Pennsylvania Department of State  
210 North Office Building  
Harrisburg, PA 17120-0039

**Re: Proposed Rulemaking -- Biennial Filing Fee  
Department of State Regulation #16-50 (IRRC #2799)**

Dear Ms. Graves:

In the October 17, 2009 edition of the *Pennsylvania Bulletin*, the Pennsylvania Department of State (the "Department") announced its proposed rulemaking to amend 51 Pa. Code §53.1 (relating to biennial filing fee) by increasing the biennial registration fee for individuals and entities required to be registered under the Lobbying Disclosure Act (65 Pa.C.S. Chapter 13A) (the "Act") from \$100 to \$200. Within the announcement, the section entitled "Statutory Authority" reads as follows:

Section 13A08(j) of the [A]ct (relating to administration) provides that the Department may by regulation adjust the filing fee established under section 13A10 of the [A]ct (relating to registration fees; fund established; system; regulations) if the Department determines that a higher fee is needed to cover the costs of carrying out the provisions of the [A]ct.

Section 13A08(j) of the Act, 65 Pa. C.S. §1308-A(j), states in pertinent part:

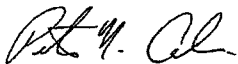
...On a biennial basis commencing in January 2009, the [D]epartment shall review the filing fee established under section 13A10 (relating to registration fees; fund established; system; regulations) and may by regulation adjust this amount if the [D]epartment determines that a higher fee is needed to cover the costs of carrying out the provisions of this chapter. The [D]epartment shall publish adjusted amounts in the *Pennsylvania Bulletin* by June 1, 2009, and by June 1 every two years thereafter as necessary. (Emphasis added.)

Section 5.2(a) of the Regulatory Review Act, 71 P.S. 745.5b(a), states in relevant part:

In determining whether a proposed...regulation is in the public interest, the commission shall, first and foremost, determine *whether the agency has the statutory authority to promulgate the regulation and whether the regulation conforms to the intention of the General Assembly in the enactment of the statute* upon which the regulation is based... (Emphasis added.)

Section 13A08(j) of the Act clearly states that if the Department wishes to increase the biennial registration fee for principals, lobbyists and lobbying firms, it "shall" publish the adjusted amounts in the *Pennsylvania Bulletin* by June 1, 2009, and by June 1 every two years thereafter as necessary. Unfortunately, the Department published the adjusted amounts in the *Pennsylvania Bulletin* on October 17, 2009, 139 days after the statutorily-mandated date of June 1, 2009. Because the Department failed to publish the fee increase by June 1, 2009 as required by the Act, the Department does not have the statutory authority to promulgate the proposed rulemaking pursuant to Section 5.2(a) of the Regulatory Review Act, and, therefore, we ask that the Department withdraw its proposed rulemaking at this time. In accordance with Section 13A08(j) of the Act, the next opportunity the Department has to increase the biennial registration fee is on June 1, 2011.

Sincerely,



Peter N. Calcara  
President

Cc: Leslie A. Lewis Johnson, Esq., Chief Counsel, Independent Regulatory Review Commission  
James M. Smith, Regulatory Analyst, Independent Regulatory Review Commission