

Minutes
Indiana Lobby Registration Commission
Public Meeting
March 4, 2016 1:00 p.m.
Suite 500, Market Tower
10 W. Market Street
Indianapolis, Indiana 46204

Members Present: Beverly Gard, Sue Scholer, Joe Micon, and Terry White

Member Unable to Attend: None

Staff Present: Charles Harris, Executive Director & General Counsel, Amy Nicholson, Assistant Director, and Kaytie Barrett, Office Manager.

Others in Attendance: Former Commission Member Jan Abbs, Brad Boswell, Christie Heiney, Brenda Kirch, Becca Polcz, and Sam Snideman.

Call to Order

On March 4, 2016, the public meeting of the Indiana Lobby Registration Commission was called to order at approximately 1:04 p.m. by the Chairperson of the Commission, Beverly Gard.

Recognition of Jan Abb's Service as a Commission Member

Before proceeding with the first item on the agenda, Chairperson Gard, read a resolution recognizing Jan Abbs for over 21 years of service as a Member of the Indiana Lobby Registration Commission. The Commissioners had unanimously approved the resolution at their September 16, 2015 meeting. Chairperson Gard noted that Jan Abbs had served as Chairperson of the Commission for several of the 21 years. She then presented Jan Abbs with a framed copy of the resolution that had been signed by all four Commissioners and Commission staff. Jan Abbs then expressed her appreciation to the Commissioners for their recognition of her service.

Approval of Minutes

Commissioner White moved for approval of the minutes of the Commission's Public Meeting held on September 16, 2015. His motion was seconded by Commissioner Scholer and unanimously approved by a voice vote of the Commissioners.

Late Fees

Mr. Harris reported that 68 of the 72 late fee appeals filed after October 18, 2015 were resolved administratively by applying the guidelines previously approved by the Commission. He said that \$26,200 had been collected from those 68 lobbyists. Mr. Harris stated that for the four appeals that are still pending the total amount due under the late fee settlement offers is \$1,400 and that the deadline for each of the four lobbyists to accept the Commission's settlement

offer is March 9, 2016 or later. He said staff anticipates that all four of the pending appeals will be resolved administratively. As a result, none of the pending appeals were brought before the Commission for its consideration at the March 4, 2016 meeting.

Fiscal Year 2015-2016 Budget Report

Mr. Harris commented on the status of the Commission's budget for fiscal year 2015-2016. He said that based on information available as of February 5, 2016 the Commission had actual expenditures of \$165,820, and the remaining balance of the Commission's \$343,728 appropriation was \$177,908, which is 51.76% of the appropriation. Mr. Harris then suggested that the Commission consider the following adjustments to its budget for fiscal year 2015-2016:

1. Reduce the amount allocated for the Office Rent line item from \$25,000 to \$16,000.
2. Reduce the amount allocated for the Moving & Relocation Expenses from \$8,130 to \$4,000.
3. Reduce the amount allocated for Travel and Per Diem-Out of State from \$2,700 to \$-0-.
4. Increase the amount budgeted for the Copier Contract from \$3,920 to \$5,500.
5. Increase the amount budgeted for Data Services from \$2,300 to \$3,000.
6. Increase the amount budgeted for Utilities (Telecommunication Services) from \$1,900 to \$3,000.
7. Increase the amount budgeted for Furniture and Equipment from \$5,000 to \$15,000.
8. Increase the amount of the Commission's Internal Reserve from \$27,146 to \$29,596.

Commissioner White moved for approval of the listed adjustments to the Commission's budget for fiscal year 2015-2016. His motion was seconded by Commissioner Micon and unanimously approved by a voice vote of the Commissioners. The budget as adjusted by the Commission is set forth in Exhibit A, which is attached to and made a part of these minutes.

Additions to Compilation of Informal Advice

Mr. Harris said that the Commission currently has a compilation of 62 questions from lobbyists and his responses to those questions posted on the Commission's website under the heading "Informal Advice to Lobbyists." In addition, he noted that the Commission has established a practice of authorizing staff to include additional sets of questions and answers in the compilation after the proposed additions are reviewed by the Commissioners. As part of the agenda packet, Mr. Harris included seven additional sets of questions and answers from the informal advice that he had provided to lobbyists since the compilation was last updated. He emphasized that his primary focus has been on issues that are more common and for which the informal advice will have a broader application.

During the discussion of the seven additional sets of questions and answers, Commissioner Scholer suggested that Mr. Harris consider whether it would be helpful to develop a more comprehensive Final Advisory Opinion concerning "grass roots lobbying." Mr. Harris said that he would do so and report back to the Commission at its next meeting. Commissioner Micon then mentioned what appears to be lobbying efforts by Political Action Committees (PACs). Mr. Harris indicated that he would discuss that matter with Brad King at the State

Election Commission and others in an effort to develop a better understanding of when PACs may be engaging in “lobbying” as defined in IC 2-7-1-9.

Following the discussion, Commissioner White moved that the seven additional sets of questions and answers be added to the compilation of informal advice posted on the Commission’s website. His motion was seconded by Commissioner Scholer and unanimously approved by a voice vote of the Commissioners. The seven sets of questions and answers are set forth in Exhibit B, which is attached to and made a part of these minutes.

Proposed Policies Related to Registration Requirements

Mr. Harris reviewed those provisions within IC 2-7-2-2(a) that required a new lobbyists to register with the Commission within 15 business days of becoming a lobbyist. He also commented on the difficulty that staff experience with determining compliance with the 15 business day requirement. He noted that the primary issue is when one actually becomes a lobbyist. He pointed out that some new lobbyists establish an account with IN.GOV, file a Memorandum of Understanding (MOU) with the Commission, but then fail to complete the registration process. He said that some of those new lobbyists have argued that they were not required to register because they had not yet received or expended \$500 for lobbying. To address this issue, Mr. Harris said that staff recommends that the Commission adopt the following policies:

1. Require a new lobbyist to enter a lobbying start date on a MOU when it is filed with the Commission.
2. Treat the start date entered on a MOU as the date that the party filing the MOU “becomes a lobbyist” for purposes of determining compliance with IC 2-7-2-2 (a), unless an earlier date is established under other facts and circumstances.
3. Require a lobbyist who terminates the lobbyist’s registration to file a new MOU setting forth a new start date if the lobbyist wants to register again.

With respect to the first policy, the start date should be the date that lobbying began or is to begin if the lobbying services are not covered by a contract between an employer lobbyist and a compensated lobbyist. If the lobbying services are covered by such a contract, the start date should be the effective date of the contract or the date that lobbying services were first provided, whichever is earlier.

Commissioner Scholer moved for approval of the three policies set forth above. Her motion was seconded by Commissioner White and unanimously approved by a voice vote of the Commissioners.

Staff Reports

Ms. Nicholson provided the Commissioners with copies of the following documents and briefly commented on each document:

1. Summary of the entertainment and gift expenditures reported by the State Colleges and Universities for the November 2014 through October 2015 reporting year.

2. Number of registered employer lobbyists and compensated lobbyists for the November 2014 through October 2015 reporting year.
3. Comparison of expenditures reported by both employer lobbyists and compensated lobbyists for the November 2013 through October 2014 reporting year and the November 2014 through October 2015 reporting year.

Ms. Nicholson also provided an update on the efforts to enhance the Commission's on-line filing system and a proposal to provide for on-line filing of MOUs. The Commissioners voiced their approval for permitting lobbyists to file MOU's electronically.

Mr. Harris pointed out that a copy of the State Board of Accounts recent audit report was included in each Commissioner's agenda packet. He noted that no issues were identified during the State Board of Account's review for the period of March 1, 2012 through December 31, 2014 that warranted a written comment.

Comments

Chairperson Gard called for comments from Commissioners and others in attendance. No additional comments were made.

Adjournment

There being no further business to come before the Commission, Commissioner Scholer moved to adjourn the meeting. Her motion was seconded by Commissioner White and unanimously approved by a voice vote of the Commissioners. The time of adjournment was approximately 1:58 p.m.

Exhibit A

ILRC Budget for FY 2015-2016

Description	Original Budget	Budget Adjustments	Revised Budget	Expended To Date	Balance Remaining	Percent Remaining
Personal Services (Wages, Benefits & Salary Per Diems)	\$251,202	\$0	\$251,202	\$148,684	\$102,518	40.81%
Office Rent (Suite 2940 at 10 W. Market Street)	\$25,000	(\$9,000)	\$16,000	\$0	\$16,000	100.00%
Moving & Relocation Expenses	\$8,130	(\$4,130)	\$4,000	\$0	\$4,000	100.00%
Parking (Denison Garage-3 passes and usage based fees)	\$6,030	\$0	\$6,030	\$3,778	\$2,252	37.35%
Copier Contract	\$3,920	\$1,580	\$5,500	\$2,546	\$2,954	53.70%
Data Services	\$2,300	\$700	\$3,000	\$1,326	\$1,674	55.80%
Utilities (Telecommunication Services)	\$1,900	\$1,100	\$3,000	\$1,907	\$1,093	36.43%
Furniture and Equipment	\$5,000	\$10,000	\$15,000	\$3,181	\$11,819	78.79%
Supplies	\$3,500	\$0	\$3,500	\$1,728	\$1,772	50.63%
Travel & Per Diem-Out of State	\$2,700	(\$2,700)	\$0	\$0	\$0	N/A
Travel & Per Diem-IN State (Employees & Commissioners)	\$3,000	\$0	\$3,000	\$849	\$2,151	71.70%
COGEL Membership & Conference	\$1,500	\$0	\$1,500	\$1,130	\$370	24.67%
Postage	\$2,100	\$0	\$2,100	\$604	\$1,496	71.24%
Miscellaneous	\$300	\$0	\$300	\$87	\$213	71.00%
Internal Reserve	<u>\$27,146</u>	<u>\$2,450</u>	<u>\$29,596</u>	<u>\$0</u>	<u>\$29,596</u>	<u>100.00%</u>
Totals	\$343,728	\$0	\$343,728	\$165,820	\$177,908	51.76%

ILRC Appropriation for FY 2015-2016

\$343,728

Based on information available on 02/05/2016.

Exhibit B

Gift to Legislator from Organization that does not Lobby

Question 1.12. If an organization that does not engage in lobbying makes a gift valued at \$200 to a state senator, does the gift trigger a requirement for the organization to register with and report to the Indiana Lobby Registration Commission?

Answer. If the organization that made the gift is not engaged in "lobbying" as defined in IC 2-7-1-9 (communication with a legislative person with the purpose of influencing legislative action), then the organization does not come under the definition of "lobbyist" set forth in IC 2-7-1-10 and is not required to register with nor report to the Commission.

Use of Phone Bank in Grass Roots Lobbying

Questions 1.32. A firm (F) engages a consultant (C) to develop a script for a phone bank (B) to use in communications with the general public. F also asks C to select B and coordinate F's payments to B. B's employees contact members of the general public by telephone, read the prepared script, and then offer to connect the individuals contacted to their state senator or representative, or both, so they can express their support for F's position on a particular legislative matter. F's payments for the services provided by B will exceed \$500 in the applicable reporting year. In addition, the compensation paid by B to each of its employees who provide those services also will exceed \$500 in the applicable reporting year. Based on these facts, which parties are required to register with and report to the Indiana Lobby Registration Commission?

Answers. Under Final Advisory Opinion 2002-01, the services provided by B constitute "lobbying" as defined in IC 2-7-1-9. Thus, F will need to register with and report to the Commission as an employer lobbyist. With respect to its activity reports, F will need to include as compensation paid to others for lobbying the payments that F funnels through C to B. B will need to register as both an employer lobbyist and as a compensated lobbyist. However, B will file activity reports as a compensated lobbyist only. Each employee of B who is engaged in providing the services for F will need to register with and report to the Commission as a compensated lobbyist of B. While C does provide services for F that facilitate F's lobbying efforts in Indiana, C is not actually engaged in lobbying as defined in IC 2-7-1-9. Thus, C will not be required to register with nor report to the Commission.

Phone Bank and Its Employees Engaged in Lobbying

Question 1.33. I was reviewing final advisory opinion 2002-01, and I had a follow up question. Would all of the employees of the phone bank service connecting calls need to register as lobbyists as well?

Answer. If the service provided by the phone bank constitutes "lobbying" under IC 2-7-1-9 and FAO 2002-01, then each employee of the phone bank engaged in providing that service would be required to register and report as a compensated lobbyist if the employee receives at least \$500 in compensation (wages, salary, cost of employer provided benefits, etc.) during the applicable registration/reporting year to provide those lobbying services.

If the firm operating the phone bank were to utilize a computer system rather than individuals to make calls and then provide the link to "legislative persons" as defined in IC 2-7-1-8, then only those employees who operate the system and who receive at least \$500 in compensation (wages, salary, cost of employer provided benefits, etc.) during the applicable registration/reporting year with respect to Indiana legislative lobbying would be required to register and report as compensated lobbyists.

If employees of the firm operating the phone bank are so required to register and report, then the firm will need to register as both an employer lobbyist and as a compensated lobbyist and then report as a compensated lobbyist. On its employer lobbyist registration, the firm will need to list each employee who is so required to register and report as a compensated lobbyist of the firm. As noted in FAO 2002-01, the entity that engages the firm operating the phone bank to so lobby will need to register and report as an employer lobbyist and to list the firm as one of the entity's compensated lobbyists on its registration statement. On its compensated lobbyist registration statement, the firm will need to list the entity as one of its clients.

Transporting Employees to State House to Lobby

Questions 2.35. If firm that is registered as an employer lobbyist brings a bus load of its employees to the State House to lobby on a particular matter how should the firm report the following expenses:

- (1) lobbying related compensation paid to the employees;
- (2) the cost of T-shirts provided to the employees, which T-shirts had a statement in support of the firm's position on the legislative matter; and
- (3) the cost of the bus transportation?

Is an employee of the firm who takes part in the lobbying effort required to register with the Commission?

Answers. An employee of the firm who came to the State House to lobby is not required to register with and report to the Indiana Lobby Registration Commission unless the employee receives at least \$500 of compensation during a reporting year related to the employee's lobbying activities. The time that such an employee spends on the bus traveling to and from the State House is not such a lobbying activity. However, the time spent at the State House wearing the T-shirt with the message in an effort to influence members of the General Assembly should be treated as time spent lobbying. With respect to each employee who participated, the firm should include in the amount that its reports on Line 1 of Section C of its activity report a reasonable allocation of the employee's compensation (wages + cost of benefits) for time spent lobbying. An acceptable method of arriving at the amount to be reported for each employee is to take the employee's hourly rate of compensation multiplied by the number of hours that the

employee spent lobbying. As we discussed, I strongly recommend that you maintain documentation in your files that indicates how the reportable compensation was determined. The documentation will prove helpful if the firm is selected for an audit. With respect to the costs of the T-shirts and the bus transportation, the firm should include those expenditures in the amount that it reports on Line 9 of Section C of its activity report.

Legislative Person--Candidate for Election to the General Assembly

Question 2.97. Is an individual who has established an exploratory committee but not designated that he is seeking a House or Senate seat a "legislative person" for whom a registered lobbyist or a state college or university IS required to report gift or entertainment expenses.

Answer. The Indiana Election Commission form to establish either a "principal committee" or an "exploratory committee" is form CFA-1. Box 12 of the form specifically states that one is not required to indicate the office sought when establishing an exploratory committee. Under IC 2-7-1-1.3, the term "Candidate" refers to a candidate for election to the general assembly, and under IC 2-7-1-8, the term "Legislative person" includes a candidate as defined in IC 2-7-1-1.3. Based on these sections, it is my opinion that one who has not actually designated a particular House or Senate seat when establishing an exploratory committee should not be considered a "Candidate." In addition, such an individual would not be a "Legislative person" with respect to whom registered lobbyists and state colleges and universities are required to report gift and entertainment expenses under IC 2-7.

How to Value Gift of Raffle Ticket and Calendar

Question 3.78. If a registered lobbyist gives a raffle ticket and a calendar to a member of the General Assembly how should the lobbyist report the gift if the normal price paid by others to purchase a raffle ticket and calendar is \$60?

Answer. If the going price paid by others to purchase a raffle ticket and calendar is \$60, then the value of the ticket/calendar package is also presumed to be \$60. Thus, if a calendar and raffle ticket are given to a legislative person by a registered lobbyist, the lobbyist is required to file a gift report under IC 2-7-3-3.3 and also report the transaction on the lobbyist's semi-annual activity report under IC 2-7-3-3 (a). Since the value of the gift is \$50 or more, the lobbyist is required to include specific information about the gift in Section E of the lobbyist's activity report. In addition, IC 2-7-5-8 provides that the lobbyist must obtain the legislative person's informed prior consent for such a gift. If such a legislative person were to pay the same amount (\$60 in this case) that others pay for the raffle ticket and calendar, than under IC 2-7-3-3.5 (f) nothing is to be reported.

Complementary Registration for Conference Participants

Question 4.75. We hosted a legislative conference in which the entire General Assembly was invited in addition to the other invitees. A few of the legislators were presenters. It is my understanding that we do not have to file a gift report, but we report the amount on Line 6 of Section C of our activity report. Do we report the dollar amount of the registrations for the number of legislators that attended? If not, what amount is to be reported on Line 6?

Answer. From our discussion, it is my understanding that the firm provides a complimentary registration to all those who participate in the firm's annual legislative conference as a panelist, speaker, etc. If that is the case, then the presumption is that the value of participation is equivalent to the registration fee. Thus, waiving the normal registration fee for such a participant should be considered a quid pro quo transaction. With respect to a "legislative person" who so participates, it has been our position that nothing is reportable based on IC 2-7-3-3.5 (e) and the informal advice that we previously provided for Question 4.70, which is included in the compilation of informal advice posted on the Commission's website.

It also is our understanding that the firm invites all members of the General Assembly to attend the legislative conference as guests of the firms. Thus, the firm does not charge a registration fee to those members who attend even if they don't participate in the conference as a panelist, speaker, etc. For each non-participant member of the General Assembly who attends the conference as a guest of the firm, the firm should include in the amount that it reports on Line 6 of Section C (all member function expenses) the normal registration fee for the conference. Reporting the waived registration fees for those members in that manner is consistent with IC 2-7-3-3.5 (c).