

Minutes
Indiana Lobby Registration Commission
Public Meeting
June 1, 2016 11:00 a.m.
Market Tower 12th Floor Conference Room
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.

Signed-In Attendees: Robin Beck, Brad Boswell, Stephen Gruelius, Christi Heiney, Angela Rinehart, and Mindy Westrick.

Call to Order

On June 1, 2016, the public meeting of the Indiana Lobby Registration Commission was called to order at approximately 11:04 a.m. by the Chairperson of the Commission, Beverly Gard. Before preceding to the first item on the agenda, Chairperson Gard made the following statement:

“The Indiana Lobby Registration Commission met in executive session immediately before this public meeting. The sole purpose of the executive session was to discuss job performance evaluations of individual employees as permitted under IC 5-14-1.5-6.1 (b) (9). No other subject matter was discussed during the executive session, and the Commission took no action during the executive session.”

Approval of Minutes

Commissioner White moved approval of the minutes of the Commission’s Public Meeting held on March 4, 2016. His motion was seconded by Commissioner Scholer and approved by a voice vote of the Commissioners.

Late Fees

Mr. Harris reported that both of the late fee appeals received between March 30, 2016 and May 31, 2016 were resolved administratively and that late fees totaling \$600 were collected from the two lobbyists who filed the resolved appeals.

Fiscal Year 2015-2016 Budget Report

Mr. Harris reported on the status of the Commission’s budget for fiscal year 2015-2016. He said that the remaining balance of the Commission’s \$334,728 appropriation for fiscal year

2015-2016 as of May 6, 2016 was \$108,179 or 31.47% of the appropriation. He also indicated that no additional adjustments to the budget were necessary or anticipated.

Staff Salary Increases

Mr. Harris had previously distributed a memorandum to the Commissioners that included his salary recommendations for both Amy Nicholson and Kaytie Barrett for fiscal year 2016-2017. The following motion was made by Commissioner White, seconded by Commissioner Scholer and unanimously approved by a voice vote of the Commissioners:

“I move that Amy Nicholson’s annual salary be increased to \$67,700 and that Kaytie Barrett’s annual salary be increased to \$31,600. I further move that these salary increases take effect for the pay period that begins June 19, 2016 and for which the pay date is July 13, 2016.”

Proposed Budget for Fiscal Year 2016-2017

Mr. Harris presented the proposed budget for the Commission for fiscal year 2016-2017. During his comments he emphasized the following points:

1. The total budget of \$332,811 is consistent with the Commission’s appropriation for fiscal year 2016-2017.
2. The personal services line item amount of \$244,500 includes funds for the salary increases approved by the Commission.
3. The office rent line item of \$34,000 is sufficient to cover the base rent of \$2,750.65 per month for Suite 2940 in Market Tower that will be in effect for fiscal year 2016-2017. Under the new lease entered into on April 10, 2015, the Commission should not be responsible for any of the landlord’s operating expenses because the space leased by the Commission is exempt from property taxation under IC 6-1.1-10-2 (b).
4. The internal reserve of \$25,081 includes funds to pay the Executive Director and General Counsel for 225 of accrued vacation leave should he elect to retire during fiscal year 2016-2017.

Commissioner Micon moved approval of the proposed budget for 2016-2017. His motion was seconded by Commissioner Scholer and unanimously approved by a voice vote of the Commissioners. A copy of the approved budget is attached to these minutes as Exhibit A.

Advice to Lobbyists-Grassroots Lobbying

At the March 4, 2016 Commission meeting, the prospect of having the Commission issue formal advice on that subject of “grassroots lobbying” was briefly discussed. Mr. Harris commented on the process previously adopted by the Commission for issuance of formal advice as set forth in Final Advisory Opinion (FAO) 97-05. He noted that the Commission on its own initiative may issue an advisory opinion concerning the interpretation or applicability of IC 2-7 or any other statute governing registration and reporting by legislative lobbyists. He emphasized that the issuance of a new FAO requires consideration by the Commission of a proposed FAO during at least two Commission meetings and at least two separate publications in the Indiana Register. Mr. Harris also pointed out that after a proposed FAO is published in the Indiana

Register the public has 30 days to submit comments to the Commission, which comments are to be considered by the Commission at its next public meeting.

In response to the discussion at the March 4th meeting, Mr. Harris prepared a draft of proposed FAO 2016-1 dealing with grassroots lobbying. Following a discussion of that draft, Commissioner Scholer moved that the draft of proposed FAO 2016-1 be published in the Indiana Register. Her motion was seconded by Commissioner White and unanimously approved by a voice vote of the Commissioners. A copy of proposed FAO 2016-1 is attached to these minutes as Exhibit B.

Advice to Lobbyists-Lobbying by Political Action Committees

At the March 4, 2016 Commission meeting, one of the Commissioners said that at least one Political Action Committee (PAC) has taken an active role in the community where the Commissioner lives in communicating the PAC's position on a legislative matter. Under IC 2-7-1-10 (a), an individual or entity is required to register with and report to the Commission if the individual or entity:

- 1) engages in legislative lobbying in Indiana; and
- 2) during a registration/reporting year (November 1 through October 31) either receives or expends for lobbying at least \$500 in compensation or expenditures that are reportable under IC 2-7.

In response to the discussion at the previous Commission meeting, Mr. Harris had prepared a draft of a memorandum concerning the potential need for a PAC that engages in legislative lobbying to register with and report to the Commission. Following a discussion of the draft, Commissioner Micon moved that the memorandum be posted on the Commission's website and that an electronic copy of the memorandum be sent by email to each lobbyist that has provided the Commission with an email address. His motion was seconded by Commissioner White and unanimously approved by a voice vote of the Commissioners. A copy of the approved memorandum is attached to these minutes as Exhibit C.

Staff Reports

Ms. Nicholson provided an overview of the process used by staff to remind lobbyists by email of the May 31, 2016 deadline for filing the first period activity reports. She also reviewed some of the enhancements to the Commission's on-line system that have been completed as well as additional system improvements that are currently under development. She then said that training on use of the enhanced on-line system will be held in September.

Comments

Chairperson Gard called for other comments from Commissioners or others in attendance. Christie Heiney commented on how much she appreciates the support that Kaytie Barrett and Amy Nicholson consistently provide to lobbyists.

Adjournment

There being no further business to come before the Commission, Commissioner White moved to adjourn the meeting. His motion was seconded by Commissioner Scholer and unanimously approved by a voice vote of the Commissioners. The time of adjournment was approximately 11:35 a.m.

Exhibit A

Proposed ILRC Budget for FY 2016-2017

Description	FY 2015-16 Budget	Proposed Adjustments	FY 2016-17 Budget
Personal Services (Wages, Benefits & Salary Per Diems) 1	\$251,202	(\$6,702)	\$244,500
Office Rent (Suite 1760 at 10 W. Market Street) 2	\$16,000	\$18,000	\$34,000
Moving & Relocations Expenses 3	\$4,000	(\$4,000)	\$0
Parking (Denison Garage-3 passes and usage based fees)	\$6,030	\$300	\$6,330
Copier Contract	\$5,500	(\$1,500)	\$4,000
Data Services	\$3,000	\$100	\$3,100
Utilities (Telecommunication Services)	\$3,000	\$100	\$3,100
Furniture and Equipment	\$15,000	(\$13,500)	\$1,500
Supplies	\$3,500	\$0	\$3,500
Travel & Per Diem-Out of State	\$0	\$1,600	\$1,600
Travel & Per Diem-IN State (Employees & Commissioners)	\$3,000	\$100	\$3,100
COGEL Membership & Conference	\$1,500	\$200	\$1,700
Postage	\$2,100	(\$1,100)	\$1,000
Miscellaneous	\$300	\$0	\$300
Internal Reserve 4	<u>\$29,596</u>	<u>(\$4,515)</u>	<u>\$25,081</u>
Totals	\$343,728	-\$10,917	\$332,811

- 1** Includes funds for salary increases for FY. Reduction reflects one less pay period in the FY compared with the prior FY.
- 2** Includes rent for the entire FY. First 5 months of the prior FY were rent free & we received other rent credits.
- 3** No anticipated moving costs for the FY. Move to suite 2040 was completed in the prior FY.
- 4** Includes funds for 225 hours of Executive Director's accrued vacation leave should he retire during the FY.

ILRC Appropriation for FY 2016-2017

\$332,811

EXHIBIT B

PROPOSED FAO 2016-1

Statement of Facts:

Corporation X intends to utilize the services of firm Y to enlist the support of the general public for X's position on a bill pending before the General Assembly. The various options that X and Y have discussed include the following:

Scenario 1. Employees of Y would place calls to individuals and read a script prepared by Y. At the end of each call, Y's employee would provide the individual with the names, telephone numbers and email addresses of the state Senator and Representative for the legislative districts in which the individual resides. Y's employee also would encourage the individual to contact those legislators to voice support for X's position on the pending bill.

Scenario 2. The facts are the same as in Scenario 1 except that before completing the call Y's employee would offer to immediately connect the individual to the state Senator or Representative, or both, by telephone or email.

Scenario 3. The facts are the same as in Scenario 1 except that Y would use its automated telephone system to place the calls, read the script, provide the contact information for the individual's state Senator and Representative, and encourage the individual to contact those legislators to voice support for X's position on the pending bill.

Scenario 4. The facts are the same as in Scenario 3 except that before the call is completed Y's automated system would offer to immediately connect the individual to the state Senator or Representative, or both, by telephone or email.

Legal Analysis and Opinions:

With respect to any legal analysis of the various scenarios set forth above one must consider the definition of "legislative person" in IC 2-7-1-8, the definition of "lobbying" in IC 2-7-1-9, the definition of "lobbyist" in IC 2-7-1-10 (a), and the statement in IC 2-7-2-6 (f) concerning communications between citizens of this state and members of the General Assembly. Those statutory provisions read as follows:

IC 2-7-1-8

"Legislative person"

Sec. 8. "Legislative person" means any of the following:

- (1) A member. (*A member of the General Assembly pursuant to IC 2-7-1-10.5.*)
- (2) A candidate. (*A candidate for election to the General Assembly pursuant to IC 2-7-1-1.3.*)
- (3) An officer of the general assembly.
- (4) An employee of the legislative department of state government.
- (5) A close relative of anyone described in subdivision (1), (2), (3), or (4). However, a lobbyist who is a close relative of a legislative person is not considered a legislative person.
- (6) A paid consultant of the general assembly.

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(7) An official of an agency of the legislative department of state government.

IC 2-7-1-9

"Lobbying"

Sec. 9. "Lobbying" means communicating by any means, or paying others to communicate by any means, with any legislative person with the purpose of influencing any legislative action.

IC 2-7-1-10 (a)

"Lobbyist"

Sec. 10. (a) "Lobbyist" means any person who:

- (1) engages in lobbying; and
- (2) in any registration year, receives or expends an aggregate of at least five hundred dollars (\$500) in compensation or expenditures reportable under this article for lobbying, whether the compensation or expenditure is solely for lobbying or the lobbying is incidental to that individual's regular employment.

IC 2-7-2-6 (f)

(f) Notwithstanding the definition of "lobbying" as specified IC 2-7-1-9, in no instance shall the language of this chapter be construed to prohibit in any way free and open communication between any citizen of this state and members of the general assembly.

Each of the four scenarios set forth above make it clear that none of the individuals contacted through Y's employees or automated telephone system would be compensated for communicating with a member of the General Assembly with respect to the pending bill. Thus, under IC 2-7-1-10 (a) and IC 2-7-2-6- (f), such an individual would not be considered a "lobbyists" and would not be required to register with nor report to the Commission.

For Scenario 1 and Scenario 3, the communication from Y's employees or automated telephone system would not provide a direct communication link between the individual contacted by Y and the individual's state Senator or Representative. In other words, the individual would have to take the initiative to make such a contact without any assistance from Y. Consistent with the advice previously provided by the Commission in Final Advisory Opinion 2002-1, the services that Y would be providing to X under either Scenario would not constitute "lobbying" as defined in IC 2-7-1-10. Therefore, none of the parties involved (X, Y, and employees of Y) would be required to register with nor report to the Commission unless they engaged in other forms of lobbying that would trigger a need to so register and report.

Scenarios 2 and 4 lead to a different conclusion. For both of those Scenarios, Y would be offering to provide the direct communication link between the individual and the individual's state Senator or Representative. As a result, the services that Y would provide fall within the definition of "lobbying" as set forth in IC 2-7-1-9. If we assume that X will pay Y at least \$500 during the applicable registration/reporting year (November 1 through October 31) to provide

EXHIBIT B

those services, then X would be required to register with and report to the Commission as an employer lobbyist. In addition, Y would be required to register with and report to the Commission as a compensated lobbyist.

If Y were to pay an employee at least \$500 in total compensation (wages, salary, cost of employer provided benefits, etc.) during a particular registration/reporting year with respect to the lobbying services provided to X under either Scenario 2 or 4, then the employee would be required to register with and report to the Commission as a compensated lobbyist. In such a case, Y would be required to also register with the Commission as an employer lobbyist. However, Y would file activity reports as a compensated lobbyist only.

The Commission also has been asked to provide advice with respect to registration and reporting requirements under IC 2-7 if corporation X were to retain the services of another firm (referred to as A) to select and oversee the payments to the firm providing the lobbying services, which is Y in Scenarios 1 through 4. In such a case, it is the Commission's position that A would merely be functioning as an agent of X and as such would not be required to register with nor report to the Commission. The use of such an agent would not alter the registration and reporting requirements of X, Y, and Y's employees as previously described in this Final Advisory Opinion.

The Commission understands that there may be occasions when a firm such as Y uses the services of one who is considered an independent contractor rather than an employee in providing the lobbying services described in Scenarios 2 and 4. In such a case, the same \$500 compensation threshold would apply when determining if the independent contractor is required to register with and report to the Commission as a compensated lobbyist and if Y is required to register as an employer lobbyist.

EXHIBIT C

MEMORANDUM

TO: Legislative Lobbyists

FROM: Charles W. Harris
Executive Director & General Counsel
Indiana Lobby Registration Commission

RE: Political Action Committees that Engage in Legislative Lobbying

DATE: June 1, 2016

At the March 4, 2016 meeting of the Indiana Lobby Registration Commission (Commission), one of the Commissioners said that at least one Political Action Committee (PAC) has taken an active role in the community where the Commissioner lives in communicating the PAC's position on a legislative matter. Under IC 2-7-1-10 (a), an individual or entity is required to register with and report to the Commission if the individual or entity:

- 1) engages in legislative lobbying in Indiana; and
- 2) during a registration/reporting year (November 1 through October 31) either receives or expends for lobbying at least \$500 in compensation or expenditures that are reportable under IC 2-7.

Two other Indiana Code provisions that are relevant when determining if one is required to register with and report to the Commission are the definitions of "legislative person" and "lobbying" set forth in IC 2-7-1-8 and IC 2-7-1-9, respectively. Under IC 2-7-1-8, the term "legislative person" includes a member of the General Assembly, a candidate for election to the General Assembly, an officer of the General Assembly, an employee of the legislative department of state government, a spouse, child, or parent of such a member, candidate, officer, or employee, a paid consultant of the General Assembly, and an official of an agency of the legislative department of state government. In IC 2-7-1-9, the term "lobbying" is defined as follows:

Sec. 9. "Lobbying" means communicating by any means, or paying others to communicate by any means, with any legislative person with the purpose of influencing any legislative action.

More detailed information about the registration and reporting requirements for legislative lobbyists can be found on the Commission's website at www.in.gov/ilrc. The following are some of the more helpful documents posted on the website:

- 1) The Lobbyist Handbook.
- 2) The compilation of Final Advisory Opinions issued by the Commission.
- 3) The compilation of Informal Advice provided by the Commission's Executive Director and General Counsel.

With respect to "grassroots lobbying," Final Advisory Opinion 2002-1 and the informal advice provided for questions 1.32 and 1.33 can be helpful in determining whether a PAC will be engaging in conduct that will require the PAC to register with and report to the Commission.

EXHIBIT C

Any individual or entity that has questions about the registration and reporting requirements for legislative lobbyists in Indiana may contact the Commission's staff for advice or guidance. The telephone number for the Commission is (317) 232-9860.