

Minutes
Indiana Lobby Registration Commission
Public Meeting
November 7, 2016 11:00 a.m.
Market Tower Conference Room
10 W. Market Street
Indianapolis, Indiana 46204

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

Member Unable to Participate: None

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

Signed-In Attendees: Brad Boswell, Christi Heiney, Brenda Kirch, Andrew Miller, and Mindy Westrick.

Call to Order

On November 7, 2016, the public meeting of the Indiana Lobby Registration Commission was called to order at approximately 11:00 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 the job performance evaluation of an individual employee 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 Micon moved for approval of the minutes of the Commission’s executive session held on June 1, 2016. His motion was seconded by Commissioner White and unanimously approved by a voice vote of the Commissioners. Commissioner White then moved for approval of the minutes of the Commission’s public meeting also held on June 1, 2016. His motion was seconded by Commissioner Scholer and unanimously approved by a voice vote of the Commissioners.

Late Fee Appeals

Mr. Harris said that the Commission had received 21 late fee appeals since June 12, 2016. He stated that 20 of those appeals have been resolved administratively with \$7,600 in late fees collected from the lobbyists who filed those 20 appeals. With respect to the one appeal that is still pending, Mr. Harris indicated that the final date for the lobbyist to accept the Commission’s settlement offer of \$300 is November 17, 2016. He said that it is staff’s recommendation that the Commission approve a late fee of

\$300 for that lobbyist should the lobbyist not accept the settlement offer on or before that date. The Commissioners approved the staff recommendation by consent.

Advice to Lobbyists-Grassroots Lobbying

Mr. Harris pointed out that the Commission had approved a draft of proposed Final Advisory Opinion (FAO) 2016-1 concerning grass roots lobbying at its June 1, 2016 public meeting. He said that proposed FAO 2016-1 was published in the Indiana Register on June 15, 2016. Mr. Harris then emphasized that interested parties were given 30 days after publication in the Indiana Register to submit written comments to the Commission by mail, by an email addressed to the Commission's Executive Director and General Counsel, or by personal deliver to the Commission's office. He informed the Commissioners that no written comments concerning proposed FAO 2016-1 were submitted to the Commission. Mr. Harris explained that the Commission may:

- (1) ratify proposed FAO 2016-1 as published in the Indiana Register;
- (2) amend the proposed FAO and then have it published as amended in the Indiana Register with another thirty (30) day comment period; or
- (3) decide not to take any action on the proposed FAO.

He also stated that the proposed FAO becomes final if the Commission ratifies it and that the final FAO is to be published in the Indiana Register a second time with each Commissioners vote recorded on the final FAO. Following a brief discussion, Commissioner Scholer moved for ratification of the FAO. Her motion was seconded by Commissioner Micon and unanimously approved by a voice vote of the Commissioners. Thus, an affirmative vote by each Commissioner for ratification of the FAO will be recorded on the final FAO. A copy of the final version of FAO 2016-1 that was published in the Indiana Register on November 23, 2016 is attached to these minutes as Exhibit A.

Fiscal Year 2016-2017 Budget Report

Mr. Harris reported on the status of the Commission's budget for fiscal year 2016-2017. He said that it had become necessary to transfer \$1,000 from the Commission's internal reserve to the personal services line item of the budget. He explained that the transfer was needed to address an increase in the Commission's share of the cost of medical insurance coverage for its employees. Mr. Harris noted that the increase will take effect during January of 2017

Budget Request for the 2017-2019 Biennium

Mr. Harris stated that the Commission's budget for fiscal year 2016-2017 was used as a starting point for its budget request for the 2017-2019 biennium. He then explained the guidelines that were applied in developing the request. Those guidelines are as follows:

Personal Services. The budget request for personal services for fiscal year 2017-2018 includes funding for salary adjustments of \$9,600 associated with promotions and corresponding position reclassifications and \$12,000 for the services of a consultant. The consultant's role will be to assist the Commission with implementation of a transition plan if the Commission's current executive director and general counsel retires before the

end of fiscal year 2016-2017. The request for fiscal year 2018-2019 merely reflects an increase of 3% in the amount requested for fiscal year 2017-2018.

Office Rent. The budget request for office rent for each fiscal year of the biennium is based on the actual base rent for that fiscal year provided for under the Commission's lease for suite 2940 in Market Tower.

Furniture and Equipment. The budget request includes funds to upgrade two work stations during each fiscal year of the biennium.

Miscellaneous. The amount requested for this line item remains at \$300, which is the same amount included in the Commission's budget for fiscal year 2016-2017.

Internal Reserve. The Commission's budget request for its internal reserve for each fiscal year of the biennium is equal to just 2% of the total of amount requested by the Commission for all other line items for that fiscal year. The Commission has strived to maintain such an internal reserve because of its need to respond to changes in its statute, namely IC 2-7, when they occur and because it does not have an open end appropriation.

All Other Line Items. For each of the other line items included in the Commission's budget request for the biennium, the request is based on an annual increase of 3% in the amount either budgeted or requested by the Commission for the preceding fiscal year.

During a discussion of the Commission's proposed budget request, it was noted that the Commission has been collecting more in registration fees and late fees from registered lobbyists than its total expenditures for the same fiscal year and that all fees collected by the Commission are credited to the state general fund. The Commissioners said that this information needs to be shared with legislative staff. Following the discussion, Commissioner Micon moved for approval of the Commission's proposed budget request for the 2017-2019 biennium. His motion was seconded by Commissioner White and unanimously approved by a voice vote of the Commissioners. A copy of the approved budget request is attached to these minutes as Exhibit B.

Database

Ms. Nicholson provided a report on additional enhancements that have been made to the Commission's on-line system. She explained that many of the improvements were designed to eliminate filing errors and that the system functioned well during the registration period that ended with the filing deadline on November 1, 2016.

Staff Reports

Mr. Harris commented on the Commission's participation in an Indiana Continuing Legal Education Forum (ICLEF) program on election and lobbying laws held on August 24, 2016. He said that the ICLEF presentation was comprehensive and touched on all facets of the lobby law. He also shared with the Commissioners a portion of the presentation that he made to the Governmental Affairs Society of Indiana (GASI) on September 15, 2016. He explained that the GASI presentation was focused on the need to better document and report entertainment expenses and the registration and reporting requirements for an entity, such as a law firm, that functions as both a compensated lobbyist and an employer lobbyist. Mr. Harris also provided the

Commissioners with a list of the 106 lobbyists whose activity reports for the 2014-2015 reporting year were audited between July 13 and October 14 of 2016.

Ms. Nicholson reported on the training session that she conducted on September 30, 2016 to help those who use the Commission's on-line system become more familiar with some of the system's features. She also distributed information indicating that 1,879 lobbyists have registered to date for the 2016-2017 registration/reporting year as compared to the 1,775 lobbyists registered for the 2015-2016 year. In addition, Ms. Nicholson reported that she would be attending COGEL's annual meeting in New Orleans between December 11 and 14.

Comments

Chairperson Gard called for comments from Commissioners or others in attendance. Brenda Kirch commented on her very positive experience with the Commission's new on-line system.

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 11:55 a.m.

INDIANA LOBBY REGISTRATION COMMISSION

Final Advisory Opinion 2016-1

DIGEST

Provides formal guidance with respect to registration and reporting requirements under IC 2-7 for those persons or entities that engage in "grassroots lobbying".

APPROVAL PROCESS

The Indiana Lobby Registration Commission (Commission) on its own initiative approved the initial draft of this Final Advisory Opinion (FAO) at its public meeting held on June 1, 2016. Pursuant to the approval process set forth in FAO 97-05, the proposed FAO was published in the Indiana Register on June 15, 2016. Following that publication, no comments concerning the proposed FAO were received by the Commission. At its public meeting held on November 7, 2016, the Commission ratified FAO 2016-1 as previously published in the Indiana Register. The votes on ratification were as follows:

Chairperson Beverly Gard-Yes

Commissioner Sue Scholer-Yes

Commissioner Joe Micon-Yes

Commissioner Terry White-Yes

With the ratification of Final Advisory Opinion 2016-1, the FAO may be relied upon by all persons until such time as it is amended or revoked by the Commission.

FINAL ADVISORY OPINION 2016-1 "Grassroots Lobbying"

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.
- (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 makes 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 "lobbyist" 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 2-7-1-9. 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 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.

EXHIBIT A

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.

Posted: 11/23/2016 by Legislative Services Agency

EXHIBIT B

Budget Request for 2017-2019 Biennium

Description	FY 2016-17	FY 2017-18	FY 2018-19
	Budget	Request	Request
Personal Services (Wages & Benefits for Employees & Fees for Services)	\$245,500	\$265,000	\$272,950
Office Rent (Suite 2940 at 10 W. Market Street)	\$34,000	\$34,000	\$35,000
Parking (Denison Garage-3 passes + Commission meetings)	\$6,330	\$6,520	\$6,715
Copier Contract	\$4,000	\$4,120	\$4,244
Data Services	\$3,100	\$3,193	\$3,289
Utilities (Telecommunication Services)	\$3,100	\$3,193	\$3,289
Furniture and Equipment	\$1,500	\$3,000	\$3,000
Office Supplies	\$3,500	\$3,605	\$3,713
Travel & Per Diem-Out of State	\$1,600	\$1,648	\$1,697
Travel & Per Diem-IN State (Employees & Commissioners)	\$3,100	\$3,193	\$3,289
COGEL Membership & Conference	\$1,700	\$1,751	\$1,804
Postage	\$1,000	\$1,030	\$1,061
Miscellaneous	\$300	\$300	\$300
Internal Reserve	<u>\$24,081</u>	<u>\$6,600</u>	\$6,800
<i>Totals</i>	<i>\$332,811</i>	<i>\$337,153</i>	<i>\$347,150</i>