COMMENTARY OF THE INDIANA LOBBY REGISTRATION COMMISSION



Indiana Lobby Registration Commission

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Letter to the Public:

The commentary in this book is designed to provide useful information for the public about registration and reporting requirements under the Indiana Lobby Registration Law found in Indiana Code Section 2-7-1 *et. seq.* (ILRL). It is intended to be a guide to the interpretation of the terms of the ILRL which, of course, is controlling in the event of <u>any</u> conflict. This commentary is not intended as legal advice or as a substitute for advice from legal counsel.

The Indiana Lobby Registration Commission (ILRC) and its staff are prepared to help you with any questions you may have about the ILRL, the requirements for completing forms, or issues related to this commentary. You may consult with the Executive Director/Counsel or use a procedure for requesting formal advisory opinions, which is described in Appendix 1 of this book.

Sincerely,

INDIANA LOBBY REGISTRATION COMMISSION

Table of Contents

I. Introduction

II. History of the Lobby Law

III. Overview of the Indiana Lobby Law

LII.	Overvie	W U	i the mulana Lobby Law	
	Who M	ust F	ïile?	12
	What M	12		
	Where 1	13		
	Registra	13		
	Record	Keep	ping Requirements	14
	Enforce		t	14
	Penaltie	es		15
IV.	The Lol	bby	Disclosure Statute	
V.	Comme	nta	ry of the Lobby Law	
C 2	-7-1-1: A	ctivi	ity report	30
IC 2	-7-1-2: C	Comp	ensation	30
	Comment	1:	contract to lobby	30
	Comment	2:	association dues	30
	Comment	<i>3</i> :	employee benefits	31
	Comment	<i>4</i> :	employee salary	32
	Comment	<i>5</i> :	partnership compensation	33
	Comment	<i>6</i> :	non lobbying services	33
	Comment	<i>7:</i>	anything of value	34
	Comment	<i>8</i> :	fair market value	35
	Comment	<i>9</i> :	reimbursement of expenses	35
IC 2	-7-1-3: E	Exper	nditure	35
	Comment	10:	contextual definition	35
	Comment	<i>11:</i>	voluntary/gratuitous transfers	36
	Comment	<i>12:</i>	gifts	36
	Comment	<i>13:</i>	contract to lobby	36
	Comment	<i>14</i> :	employee benefits	37
	Comment	<i>15</i> :	compensation	38
	Comment	<i>16</i> :	contract to monitor	38

Comment 17.	future events contingency	39
IC 2-7-1-4: Gift		39
Comment 18.	: honorarium	39
Comment 19		40
Comment 20		40
Comment 21.		41
Comment 22	<u>-</u>	41
Comment 23		42
Comment 24	personal award	43
Comment 25	degrees of kinship	43
Comment 26.		43
Comment 27.	when a lobbyist marries a legislator	44
Comment 28	campaign contributions	44
Comment 29	anything of value	45
IC 2-7-1-5: Imm	ediate family	45
Comment 30	spouses and children	45
Comment 31	dependent children	45
IC 2-7-1-6: Influ	encing legislative action	45
Comment 32	examples of "influencing legislative action"	46
Comment 33	•	47
Comment 34	payment for not lobbying	47
Comment 35	academic publications	48
Comment 36	monitoring (non lobbyist)	48
Comment 37.	monitoring (lobbyist)	48
Comment 38.	monitoring converted into lobbying	49
Comment 39.	direct communication	50
Comment 40	5	50
	: advertisements	51
	advertisements	51
Comment 43	business with legislators	51
IC 2-7-1-7: Legis	slative action	51
Comment 44	no bill pending	52
IC 2-7-1-8: Legis	slative official	52
Comment 45	general public and governor	52

IC 2-7-1-9: L	obbyi	ng	52
Comment	46:	definitional application for the employer and the compensated lobbyist	52
Comment	<i>47:</i>	corporate entity	53
Comment	<i>48</i> :	contract to lobby	53
Comment	<i>49</i> :	contract to monitor	54
Comment	<i>50</i> :	indirect communication	54
Comment	<i>51</i> :	communicate	54
Comment	<i>52:</i>	IRS definition	54
Comment	<i>53</i> :	good will	54
Comment	<i>54</i> :	payments not to lobby	54
IC 2-7-1-10: Lob	obyist		55
Comment	55:	compensated and employer defined	55
Comment	<i>56</i> :	contract to lobby	55
Comment	<i>57:</i>	association dues	56
Comment	<i>58</i> :	non lobbyist employees	56
Comment	<i>59</i> :	lobbyist employees	56
Comment	<i>60:</i>	the corporate officer who lobbies	57
Comment	<i>61:</i>	compensated and employer	57
Comment	<i>62:</i>	agreements not to lobby	57
Comment	<i>63:</i>	unincorporated associations and incorporated or unincorporated coalitions	58
Comment	<i>64</i> :	the volunteer lobbyist	58
IC 2-7-1-1: P	aymeı	nt	59
Comment	<i>65:</i>	cross reference	59
IC 2-7-1-12: Per	son		59
Comment	<i>66:</i>	associations	59
Comment	<i>67:</i>	all inclusive	59
Comment	<i>68:</i>	model law definition	59
Comment	<i>69:</i>	public entities, political subdivisions and municipal corporations	60
IC 2-7-1-13: P	ublic (employee	60
Comment	<i>70:</i>	public entity	60
Comment		- ·	60

Comment 72: hybrid entities	61
Comment 73: state agency	61
IC 2-7-1-14: Public official	61
Comment 74: hiring a lobbyist	61
IC 2.7.1.15. Designant	<i>C</i> 1
IC 2-7-1-15: Registrant	61
IC 2-7-1-16: Registration Statement	62
Comment 75: Types	62
Indiana Labbu Davistustian Commission	62
Indiana Lobby Registration Commission	62
IC 2-7-1-17: Commission	62
IC 2-7-1.6-1: Establishment	62
IC 2-7-1.6-2: Membership	62
IC 2-7-1.6-3: Terms; vacancies	62
IC 2-7-1.6-4: Chairman	63
IC 2-7-1.6-5: Powers and duties	63
Comment 76: audit procedures	63
Comment 77: advisory procedures	63
IC 2-7-1.6-6: Majority vote	64
IC 2-7-1.6-7: Per diem, mileage, travel allowances	64
IC 2-7-1.6-9: Application of chapter	64
Registration Statements	64
Registration Statements	04
IC 2-7-2-1: Filing requirement	64
To 2 / 2 Tr Trimg requirement	0.
Comment 78: agreements to lobby	65
Comment 79: fees	65
Comment 80: forms	65
IC 2-7-2-2: Time of filing; expiration; late filing; fees	65
Commant 01. angoing alignst relationship	65
Comment 81: ongoing client relationship	65
Comment 82: agreements to lobby	65
IC 2-7-2-3: Contents; lobbyists compensated for lobbying	66
, , ,	

Comment 83:	compensated lobbyist	66
Comment 84:	÷	66
Comment 85:	· · · · · · · · · · · · · · · · · · ·	66
Comment 86:	forms	67
Comment ou.	1011110	07
IC 2-7-2-4: Conter	nts; compensating lobbyists	67
Comment 87:	employer lobbyist	67
Comment 88:	forms	67
IC 2-7-2-5: Amend	dments	67
	fees and penalties	67
Comment 90:	multi-client lobbyists	67
IC 2-7-2-6: Exemp	otions	68
10 2 7 2 07 2		
Comment 91:	public entity	68
Comment 92:	-	68
Comment 93:		68
Comment 94:	· ·	69
Comment 95:	•	69
Comment 96:		69
Comment 97:	invitation to testify	69
Comment 98:	citizens	70
Comment 99:	the volunteer lobbyist	70
Comment 100:	•	70
Comment 101:	1	71
Comment 102:	•	71
Comment 103:	legislator's ownership interest in spouse's business	71
TG 6 5 6 4		=-
IC 2-7-3-1: Filing	requirement (Activity Reports)	72
Comment 104:	compensated/employer	72
Comment 105:	no activity	72
Comment 106:	agreements to lobby	72
IC 2-7-3-2: Time of	of filing	72
IC 2-7-3-3: Conter	nts	73
Comment 107.	updated registration information	73
Comment 108:	· ·	73
	. ♥	

Comment 109:	forms	73
Comment 110:	reaching threshold	73
Comment 111:	prorating	73
Comment 112:	triggering events (prorate)	74
Comment 113:	reporting both as an employer and as a	74
	compensated lobbyist	
Comment 114:	who made the gift?	74
Comment 115:	percentage of time	75
Comment 116:	associations	76
Comment 117:	contracts to monitor	76
Comment 118:	compensation to others	76
Comment 119:	partners who lobby	76
Comment 120:	reimbursements	78
Comment 121:	the formula for reporting	78
Comment 122:	taking legislators to dinner	80
Comment 123:	expenditures and gifts	80
Comment 124:	payments and gifts	81
Comment 125:	knowledge of legislator not required	81
Comment 126:	expenditures	81
Comment 127:	purchases from a legislator's retail business	82
Comment 128:	gifts	82
Comment 129:	gifts by non lobbyists	82
Comment 130:	inviting the entire general assembly	82
Comment 131:	verification for audits	83
Comment 132:	verification for audits	84
Comment 133:	relating back expenditures to the employer lobbyist	84
Comment 134:	incidental expenditures	84
Comment 135:	non lobbyist employees	85
Comment 136:	original signature	85
Comment 137:	non lobbying services	85
Comment 138:	direct communication	86
Comment 139:	influencing legislative action	86
Comment 140:	agreements to lobby	87
Comment 141:	employee benefits	87
Comment 142:	anything of value	88
Comment 143:	contract to monitor	88
Comment 144:	contingent events	89
Comment 145:	nominal business transactions	89
Comment 146:	employee purchases	90
Comment 147:	reportable at time of expenditure	90
Comment 148:	entry fees	90
	3rd degree kinship	91

Comme	nt 150:	cross references	91
IC 2-7-3-4:	Substan	ntiation; preservation of documents	91
Comme	nt 151:	failure to produce verification documents	91
IC 2-7-3-5:	Termin	nation report; contents	91
		terminating as a lobbyist	92
Comme	nt 153:	the ongoing lobbying relationship	92
IC 2-7-3-6:	Report	of gifts or purchases from lobbyists	92
Comme	nt 154:	purchase "from" rather than purchase "of"	93
Comme	nt 155:	reference to IC 2-2.1-3-2(7)	93
Comme	nt 156:	retail business	93
Comme	nt 157:	difference in activity reporting	93
		reference to IC 2-2.1-3-2(8)	93
		charitable contributions	93
Comme	nt 160:	gifts to spouses of legislators	94
Comme		-	94
		partners who are legislators	95
		honorarium	95
Comme			95
		gift or purchase threshold	96
IC 2-7-4-1:	Forms	for documents	96
IC 2-7-4-2:	Report	ing methods	96
Comme	nt 166:	forms availability	96
IC 2-7-4-3:	Docum	ents and public inspection	96
Comme	nt 167:	public records availability	96
IC 2-7-4-4:	Statem	ents and reports; index	97
IC 2-7-4-5:	Statem	ents and reports; summaries	97
IC 2-7-4-6:		ation statements and reports	97
Comme	nt 168:	cross reference to appendices	97
Comme	nt 169:	failure to produce audit verification documents	97
IC 2-7-4-7:	Violati	ons	98

Comme	nt 170: no discretion	98
IC 2-7-4-8:	Statements and reports; preservation	98
IC 2-7-5-1:	Legislative officials; compensation	98
IC 2-7-5-2:	Full-time public officials and employees	98
IC 2-7-5-3:	State central committee of political party	99
IC 2-7-5-4:	Former members of general assembly; presence	99
102755	during legislative session	00
IC 2-7-5-5:	Contingent fees	99
Comme	nt 171: services subsequent to lobbying	99
Comme	nt 172: void contracts	99
Comme	nt 173: diligent billing efforts	99
IC 2-7-5-6:	Persons forbidden to register	100
Enforcement		
IC 2-7-6-1:	Investigating and prosecuting authorities	100
IC 2-7-6-2:	Violations; offense; penalty; court order	101
Comme	nt 174: failure to file a report	101
IC 2-7-6-3:	Violations; false reports; offense	101
Comme	nt 175: what is "over reporting"?	101
	nt 176: knowingly and intentionally	102
IC 2-7-6-4:	Violations; members of the general assembly	102
IC 2-7-6-5:	Findings of hearings; sanctions	102
IC 2-7-6-6:	Failure to file report; sanctions	102
IC 2-7-7-1:	Complaints alleging violation of article; conduct of	103
	investigation	
IC 2-7-7-2:	Complaint	103
IC 2-7-7-3:	Delivery of complaint to alleged violator	103
IC 2-7-7-4:	Complaints or preliminary investigations; failing	103
IC 2-7-7-5:	to state violation of article disposition Complaints alleging violation of article;	103
10 2-1-1-3.	Preliminary investigation; probable cause	103
IC 2-7-7-6:	Commission meetings in executive session	104
IC 2-7-7:	Confidentiality	104
IC 2-7-7-8:	Subpoenas	104

VI. Appendices			105
1	Summar	y of Filing Dates	106
		ic Filing Instructions	107
3	Filing a	Compensated Lobbyist Registration	109
4	Filing an	Employer Lobbyist Registration	110
5	Filing a	Lobbyist Activity Report	111
6	Filing a	Report of Legislative Gift or Purchase	115
7	Audit Pr	ocedure	116
8	Advisory	y Opinion Procedure	118
9	Commis	sion Decisions	122
	97-01:	Parent/Subsidiary disclosure	
	97-02:	Reporting functions for all legislators	
	97-03:	Contract for lobbying	
	97-04:	Disclosure of employee and fringe benefits	
	97-05:	Request for advisory opinion	
	97-06:	Reporting of gifts when monitoring	
	97-07(a)	: Reporting of lobbying trade associations	
	97-08:	Reporting when a lobbyist hires a lobbyist	
	97-09:	Reporting expenditures made pursuant to a	
		contract to monitor is converted	
	97-10:	Direct communication	
	98-01:	Entities registered as both	
	98-02:	Reporting compensation paid to employees	
	98-04:	Political advertisements (grassroots lobbying)	
	98-05:	Reportable Expenditures	
		Synopsis of 98-05	
	98-06:	Procedure re: persons named as lobbyists	
	98-07:	Reporting entertainment expenditures when lobbyist registers both as compensated and as employer	
	98-08:	Reportability of meals/entertainment on	
		Report of Legislative Gift and/or Purchase	
	98-09:	Prorating among clients on Report of	
		Legislative Gift and/or Purchase	
	98-10:	Reporting expenditures when all members of	
		general assembly are invited and when certain	
		members of general assembly are invited	
	99-01:	When a legislator marries a lobbyist	
	99-02:	Reporting compensation paid to partners who lobby	
	99-03:	Procedures for and effects of tendering informal	
		written and verbal advice by ILRC Executive	
		Director and Counsel	

- 00-01: Whether lobbyists' contributions to the Host Committee of the Annual Meeting for the National Conference of State Legislators are reportable?
- 00-02: Whether lobbyists' contributions to the Women in Government Conference are a reportable lobbying expenditures?
- 00-03: Whether lobbyists' contributions made in the form of sponsorship fees to various non-profit organizations which host conferences which Indiana legislators attend are reportable and, if so, how are they to be reported?
- 00-04: Whether non-compensated, volunteer lobbying services donated to the World Police and Fire Games 2001 event should be reported and, if so, how?
- 00-05: Whether pass-through income paid by a Subchapter-S corporation to an individual who is a registered compensated lobbyist for that corporation must be reported as compensation for lobbying by the corporation, based on the amount of time spent lobbying by that compensated lobbyist?
- 01-01: Whether an accounting firm which provides services to a lobbying entity or on behalf of a lobbying effort must register and report as a lobbyist?

I. Introduction

The Indiana Lobby Registration Law (ILRL) does not restrict or regulate the activities of those who petition the Indiana General Assembly. The ILRL is a disclosure law. It is based on the assumption that those who make expenditures in petitioning the General Assembly (lobbyists) play an important role in informing public discussions and debate about legislative matters. The right to petition government is fundamental, and the effective exercise of that right is necessary to the democratic process.

The main purpose of the ILRL is to require a public disclosure of lobbying activities. While the right to petition government is fundamental, the public must be informed about the activities and resources devoted to influencing legislative action. The ILRL sets up a system for public disclosure of information about lobbying activities, and it is the main function of the Indiana Lobby Registration Commission (ILRC) to manage and facilitate the disclosure system.

As part of its responsibility to maintain the disclosure system, the ILRC seeks to assist the public in achieving compliance with the ILRL. Nearly all lobbyists seek to comply fully with the ILRL, but the subject of lobbying is complicated, the ILRL has been frequently amended, and it is often necessary to apply the ILRL to new circumstances or transactions. This makes full compliance more challenging and highlights the importance of the ILRC's role in helping those who seek to comply. In furtherance of this role, these commentaries are being published.

Since the enactment of the ILRL, state officers responsible for maintaining the system of disclosure have given advice and rendered informal and formal advisory opinions on various disclosure issues. Prior to 1992, the office of the Indiana Secretary of State maintained this system. Since 1992, the system has been maintained by the ILRC. Since 1996, the ILRC has employed a more formal method of adopting advisory opinions on registration and disclosure issues that involves a publication of proposed advisory opinions in the *Indiana Register* and a period of formal public comment before final adoption. The commentaries contained in this book are a compilation of the advice and opinions rendered over these years.

II. History of Indiana's Lobby Law

Before 1990

Indiana's lobby law is grounded in the principle found in Article 1, Section 19 of the Indiana Constitution of 1816 which provides "That the people have a right to assemble together in a peaceable manner, to consult for their common good, to instruct their representatives, and to apply to the Legislature for redress of grievances."

Indiana's current legislative lobbying law is based upon a 1981 Act, amended periodically in the 1980s, and then much more extensively in 1992. The 1981 Act replaced a 1915 law, and was enacted following the conviction of two successive Republican Senate presidents pro tempore on corruption charges. That early law had also called for criminal treatment of certain reporting offenses, but the courts had been most unwilling to hold those accused of wrongdoing under those standards guilty of criminal offenses. *See Day v. State*, 341 N.E.2d 209 (Ind.App. 1976); *Shunk v. State*, 326 N.E.2d 644 (Ind.App. 1975). Prior to the comprehensive 1981 revision, the most important development seemed to be the invalidation in 1974 of a loyalty oath that had been required of Hoosier lobbyists. *Raphael v. Conrad*, 371 F.Supp. 256 (S.D. Ind. 1974) (invalidating former Ind. Ann. Stat. 34-301(a) (Supp. 1961)).

The 1981 Act was advocated by, among others, then-Secretary of State Edwin J. Simcox (R), and the state's new governor, Robert D. Orr (R). On January 28, 1981, in his first *State of the State Address on General Government Issues*, Governor Orr asserted that "The General Assembly should develop and pass strong lobby reform legislation, possibly along the lines suggested by the Secretary of State. Our present law is outdated, ineffective and badly in need of modernization." Secretary of State Simcox called the new statute "an important contribution to the integrity of the Indiana General Assembly and the lobbying profession."

After its enactment, the 1981 Act had been interpreted by Secretaries of State Edwin J. Simcox (R) from 1981 - 1987, Evan Bayh (D) from 1987 - 1989, and Joseph H. Hogsett (D) from 1989 until that office's 1992 loss of responsibility for regulation of lobbyists.

The 1990 Action

In June, 1990, a member of the House of Representatives requested an Attorney General Opinion on four questions applicable to reporting by lobbyists. The request for

¹ Adapted with permission from INGroup's *Indiana Lobby Law Compliance Manual 1997*, by Edward D. Feigenbaum.

an Official Opinion was made by Rep. Stephen C. Moberly (R), the author of the 1981 lobby law. The request asked whether:

loans made to legislators are reportable by a lobbyist;

a promise to make an expenditure should be reported as an expenditure;

administrative and overhead costs for direct communications with legislative officials are reportable; and,

salaries, wages, fees, and employee benefits paid to a legislator or a legislator's family member are reportable.

On July 13, 1990, Attorney General Linley E. Pearson (R) issued *Attorney General Official Opinion No. 90-15*. The *Opinion* essentially answered each of Rep. Moberly's questions in the affirmative. The Secretary of State immediately announced his intention to enforce the law according to the terms of the Attorney General's new interpretation.

Regulating lobbyists quickly became an issue in the hotly-contested Secretary of State's race. With much fanfare, challenger William H. Hudnut III (R) unveiled a lobby reform plan in late August of 1990, and he was quickly followed by Secretary Hogsett. Both proposals called for much tougher rules and enforcement.

In late September 1990, Secretary Hogsett requested that the Attorney General clarify certain points in his earlier interpretation of the lobby law. In *Attorney General Official Opinion No. 90-23*, November 16, 1990, Attorney General Pearson clarified the earlier interpretation, and provoked further debate by requiring prorating of office expenses, reporting of credit card transactions, and claims paid on health insurance policies.

The 1991 Response

When the General Assembly reconvened in January 1991, members unanimously passed a resolution during the first week of deliberations chastising the Attorney General and Secretary of State for their respective interpretations of the law, and declaring that the true legislative intent of the law was the way the 1981 Act had been interpreted until 1990, and not the way that new interpretations were portraying it. Upon hearing of the resolution's passage, Attorney General Pearson released a statement calling his office's interpretation of the lobby law "correct, proper and consistent with public policy of full disclosure." The Attorney General said that his office would "fully support and [be] prepared to defend the Secretary of State in court, should he wish to enforce the strict disclosure provisions" of the relevant *Attorney General Opinions*.

The first wave of bills seeking to change the lobby laws was heard in the Senate Ethics Committee February 14, 1991. SB 438, authored by Sen. Robert L. Meeks (R) was the chosen vehicle for attempting lobby law changes in 1991. The bill cleared the Senate in early March by a 50-0 margin. In early April, the House Rules Committee approved an amendment prepared by Rep. John S. Keeler (R) that would remove lobby regulation from the Secretary of State's Office and invest it instead in a new Legislative Ethics Commission, appointed by legislative leaders.

After procedural problems caused SB 438 to die an untimely death on Third Reading in the House on April 16, 1991, legislators revived the language in HB 1561, a Bayh Administration-backed ethics bill. After several revisions in conference committee deliberations, the legislation died literally at the last minute in the Senate due to the lack of timely conference committee action. The conference committee version of the bill was reintroduced in the First Special Session in 1991 as a Second Reading Amendment to the Senate budget bill, but no action was taken during that bitter session.

The 1992 Legislative Changes

In preparation for the 1992 Regular Session, House Majority Leader John R. Gregg (D) requested the Legislative Services Agency to prepare a bill draft that incorporated the recommendations of the 1991 conference committee on HB 1561. Rep. Gregg was initially listed as the author of the bill, but it was ultimately introduced by Rep. William C. Cochran (D), and co-authored by Rep. Keeler.

Through an apparently unintentional oversight, the bill, HB 1406, did not fully incorporate the final 1991 conference committee recommendations, but rather represented an earlier iteration.

The new bill received a hearing in the House Rules Committee on January 14, 1992, and, after a number of crippling amendments offered by Rep. Robert K. Alderman (R) were defeated, the Committee approved the measure by a 9-1 vote (shortly after that hearing, the Senate Ethics Committee heard testimony on SB 443, Sen. Johnson's legislation that looked much the same as the House bill, and approved that bill on a 4-1 vote). Because of the fiscal impact of the measure, the House Ways & Means Committee was called upon to act on the bill, and it passed it out of Committee with only one negative vote.

On January 23, 1992, Rep. Cochran withdrew his name as author of the bill. Later that day, HB 1406, now co-authored by Reps. Gregg and Keeler, survived a barrage of Second Reading amendments from Rep. Alderman designed to keep most disclosure in a status quo mode. Other defeated amendments would have required state government and university officials and employees to disclose lobbying expenses. The bill then passed the House 72-28 on January 27, 1992.

Following a 4-0 Senate Ethics Committee vote on January 31 (during whose meeting Common Cause/Indiana vowed to file suit against the Commission's operation based upon separation of powers principles), the bill passed Third Reading in the Senate—unamended—on February 4, 1992, by a 33-15 vote. Senate sponsors were Senate Majority Leader Joseph W. Harrison (R) and Senate Minority Leader Dennis Neary (D).

Several items were prevalent in the discussion over this bill in both chambers. First, legislators made clear that they felt that they were part-time public officials, and, as such, that they should be treated as ordinary citizens in their personal pursuits. Accordingly, there was considerable criticism of the interpretation of the law which required the reporting of such things as ordinary loans, health insurance claims payments, credit card payments, and routine office overhead expenses. Legislators also took umbrage at the implications of the current regulatory scheme which they saw as suggesting that they were unable to fairly and properly regulate their own personal conduct and that of their colleagues. Legislators repeatedly pointed toward the executive and judicial branches as examples of how others have been able to regulate their own respective interests.

After waiting for the full period permitted under law for him to decide whether to sign or veto a bill, Governor Evan Bayh (D)—one of those Secretaries of State who had interpreted the law as members of the General Assembly later said was their intent—vetoed the proposal at 1:00 p.m. on February 12, 1992, with a terse message. After the conclusion of the session, the Governor revealed the motives behind his brief veto message. He stressed that at the time of the veto, there was a need to strike a balance, and that "rubbing salt in the wounds ... and writing a vitriolic, highly emotional veto message wouldn't have changed a vote upstairs." Governor Bayh told reporters, "I vetoed the bill because I felt it wasn't good for the people of Indiana," and that he was fully cognizant of the message that he was delivering to the General Assembly as a result. "A veto is an extraordinary act," he noted, observing that he had vetoed only some 20 of more than 1,000 measures sent to him for approval over the previous four legislative sessions.

In what has been described as the quickest override action in state history to that date, the House of Representatives overrode the veto by a 58-37 vote at 4:45 p.m., and by 5:12 p.m. that same day, the Senate overrode the veto by a 33-16 vote. Through 1997, the override action remains the quickest for a non-budget measure.

Genesis of the Commission

On April 15, 1992, the Legislative Council convened, and legislative leaders announced their appointments to the new Legislative Ethics Commission. In addition, Council members also passed a resolution to guide members of the Commission in their

interpretation of the new law. The resolution commended to their attention the House Concurrent Resolution, HCR 7, passed in January 1991.

The Commission, which as originally constituted included two former Federal Bureau of Investigation agents among its four members, quickly rhetorically asserted its independence from the legislative branch. The Commission also hired its own legal counsel, and took initial steps to become statutorily independent of the General Assembly, including recommending a change in the panel's name (to the Indiana Lobbying Commission), funding mechanism, and administrative home. The Commission also created an administrative procedure for issuing formal advisory opinions.

Legislative Changes in 1993

In late 1992, the Legislative Ethics Commission issued a set of comprehensive recommendations for legislative changes in several areas, including altering the Commission's name, the panel's hearing authority, key definitions ("gift" and "lobbyist"), lower registration fees for nonprofit organizations, fines, reporting dates, certain new reporting requirements (including compensation paid to lobbyists by lobbyist employers), and subpoena authority.

In January 1993, HB 1688 was introduced at the request of the Commission by House Majority Leader John R. Gregg (D), and quickly passed through the House, with only minor amendments made in the House Rules Committee. The measure did not, however, receive a hearing in the Senate Ethics Committee until late in the process, and was late in making it on to the Second Reading calendar in that body. As a result, the bill was never called down for Second Reading, and it died in the Senate.

The measure was briefly revived in a "strip-and-insert" action in another House bill, but when conferees indicated some resistance, the lobby law changes were instead inserted into HB 1126 in conference. HB 1126, which ultimately was passed by the General Assembly, included the language from the Senate Ethics Committee-amended version of the bill.

The significant changes to the lobby law brought about by enactment of the 1993 legislation are as follows:

The Legislative Ethics Commission will have its name changed to the "Indiana Lobby Registration Commission," a change apparently more reflective of the role that the leadership of the General Assembly intended for the panel to assume. A campaign contribution properly made under the state's campaign finance law is now clearly held not to be a "gift" under the definitions. This is in accordance with provisions related to disclosures of economic interests by legislators.

The definition of a "lobbyist" is clarified to cover those who, in any registration year, receive or expend an aggregate of \$500 in compensation or expenditures reportable under the law. Previous law had mentioned the "compensation or expenditure" phrase later in the same sentence of the definition, so this should be seen as merely a technical change made for the sake of clarification. The law also explicitly now excludes from its coverage a person whose lobbying services are performed without compensation.

The Indiana Lobby Registration Commission is afforded the status of a separate and independent agency within the legislative branch.

The Commission is specifically granted the authority to receive and hear complaints alleging a violation of the lobby laws, obtain information relevant to a properly conducted audit or complaint, administer oaths, and issue advisory opinions to lobbyists related to the law.

Nonprofit organizations and their salaried employee lobbyists pay a \$50 registration fee, rather than the \$100 fee required of other lobbyists.

A section of the law on non-reporting of compensation paid by a lobbyist or a lobbyist's employer to the spouse of a legislator for goods or services provided by the spouse in the ordinary course of business was amended to correct a drafting error that had arisen in the 1992 law.

Anyone who becomes a lobbyist will now be afforded a 15-day cushion, as opposed to the former five-day period, before the person must file the lobbyist registration statement. Reporting dates were also pushed back 16-days from January 15 and July 15 to January 31 and July 31. Penalties for late registration and late reporting may be waived by the Commission if the Commission determines that the circumstances make imposition of the penalty inappropriate.

Meals to which less than the entire membership of the General Assembly are invited must be reported on lobbyist activity reports, as must gifts made to an employee of the General Assembly or a member of the immediate family of an employee of the General Assembly. Lobbyist are required to file a written report with the Commission and appropriate legislator if the lobbyist gives certain gifts or makes certain purchases from a legislator (or, in certain cases, a legislator's business) or a legislator's partner, within 30-days after making the purchase or giving the gift. Failure to file such a report with a legislator may result in the Commission's revoking the lobbyist's registration, and/or assessing a civil penalty of not more than \$500 against the lobbyist, depending upon whether the failure to file the report was wilful or negligent, and any mitigating circumstances.

Authority is granted to the Commission so that the panel may conduct investigations and hearings. The Commission is required to investigate any written, signed complaint, but may dismiss the complaint if it does not allege facts sufficient to constitute a violation of the law, or if, after a preliminary investigation, the panel finds that probable cause does not exist to support an allegation of a violation of the law. A copy of the complaint is to be sent by the Commission to the alleged violator, and notice must be given to the respondent if the complaint is dismissed. If the Commission finds probable cause exists to support a potential violation of the lobby law, it must hold a hearing not more than 30-days after such The Administrative Orders and Procedures Act controls a determination. procedures. A determination that complaints do not allege sufficient facts to constitute a violation, and an investigation of complaints that does seem to allege facts sufficient to suggest that a violation has occurred may be conducted in an executive session. Commission action and records related to investigation of complaints and records from a preliminary investigation are confidential.

The Commission is afforded the ability to obtain a subpoena to compel the attendance and testimony of witnesses and the production of documents, but may not do so on the panel's own volition. Rather, upon the affirmative vote of three members of the Commission, the Commission may request subpoena authority from the Legislative Council, and if such authority is granted by the Legislative Council, the circuit or superior court of the county where a subpoena is to be served is required to enforce the subpoena.

Legislative Changes in 1999

House Bill 1377 was made into law in 1999. This bill amended Indiana Code § 2-7-3-6, by exempting from the 30-day reporting requirement any purchases made after December 31, 1998 by a lobbyist from a legislator's retail business made in the ordinary course of business at prices that are available to the general public.

Litigation

The State of Indiana was sued over the constitutionality of the lobby law by Common Cause/Indiana on March 28, 1994. Common Cause/Indiana challenged the Commission under the separation of powers doctrine, provisions exempting public university lobbyists from registration and reporting, the two-tier fee differential, and the overall nature of the fee structure (which raised more money than the costs of oversight). The State responded with a request that the court order Common Cause to pay the state's legal costs in defending the action, which the State contends was brought in bad faith and constituted an abuse of process.

The case was not scheduled for oral argument until June 1996. Following oral argument and submission of final memoranda of law, Marion Superior Court Judge

Anthony J. Metz, III ruled in favor of the State on all counts, adopting almost verbatim the State's suggested findings of law in his Memorandum Opinion. *Common Cause v. State*, No. 49D01-9406-CP-491 (Marion County Superior Court, Room 1, September 1, 1996). The unsuccessful plaintiffs appealed the ruling to the Indiana Court of Appeals.

In 1997, the Indiana Court of Appeals upheld the trial court's decision in recognizing that the legislature does have the incidental power of appointing those who assist in carrying out the legislative functions, that the regulation of lobbyists is incidental to the function of the legislative branch. The appeals court further upheld that the Commission members help carry out that administrative function, and therefore the legislature has the power to appoint members of the Commission.

Another attack on the law came in late 1997 in the form of a Motion to Dismiss the indictment of a lobbyist alleged to have committed illegal lobbying. Attorneys for the indicted lobbyist sought to have the Marion County Superior Court vacate the charges alleging that the lobby law is unconstitutionally vague, and encourages arbitrary enforcement. The attorneys argued that the prohibitions in the statute are not clearly enough defined, as required by principles of due process, to advise a reasonable person of the prohibited activity.

The Court of Appeals reviewed the lobby law definitions and agreed that the lobbyist "did not engage in any of the [lobbying] activities in an individual capacity." *Wurster v. State*, 708 N.E.2d 587 (Ind. Ct. App. 1999). The Court found that the duty of registration and reporting falls upon the association as a separate entity, and not on the officers or members of the association. While the lobby law definition fo the word "person" includes "a human being, corporation, . . . association, [or] firm," the court held that "[n]owhere in the definition of 'person' does the statute include an officer or director of a corporation. Had the legislature wished to expose such individuals to criminal liability, it would have explicitly included them in the definition." *Id*.

The Indiana Supreme Court affirmed this ruling through its denial of transfer on the case in 2000.

Commission Activities in 1994 and Beyond

As a result of concern over "what expenses are reportable under Indiana law," the Commission undertook an effort to review past Attorney General opinions, Secretary of State opinions, case law, and Commission advice to assist lobbyists in reporting. This effort was needed because the Commission recognized that while lobbyists were "making good-faith efforts to comply with the statute," it found that some lobbyists "report all expenses, no matter how far removed from direct communication, [while] others report only those expenses resulting from direct contact with legislative officials, and most report expenses somewhere in-between." This 1996 memo, from the

Commission's Director and Counsel to lobbyists, noted that "such disparate reporting procedures produces vastly different results, thereby causing two problems: you cannot be sure you are in compliance with the law; [and] the public cannot make meaningful comparisons among the activity reports." In 1998, the Commission ratified this determination in Final Advisory Opinion 98-05. The measure passed on a 3-1 vote, with Commissioner Abbs voting against ratification.

New technology and technique issues consumed much of the Commission's time in 1996 and 1997. Questions arose over the use of public advocacy campaigns—including those aimed at members or constituency groups to spur them into action; those directed at the general public in an attempt to mobilize them; and those directed at public or legislative officials through the media (directly or indirectly)—and the proper use of the Internet under the lobby law which did not contemplate such technological advancements such as e-mail and websites.

"Grassroots Lobbying" and "Astroturf Lobbying" questions became prominent on the Commission's agenda.

As recently as 1989, media campaigns to mobilize public opinion were not prominent weapons in the arsenals of Indiana interest groups, Wabash College Professor David Hadley told the *Fort Wayne News-Sentinel* in 1995. But by that point, noted State Ethics Commission chair Hadley (who has written extensively about lobbying in Indiana and served as a member of the Governor's legislative liaison staff in 1991), there were at least a half-dozen such campaigns whose costs totaled hundreds of thousands of dollars.

Indiana is one of 28 states that does not have laws that specifically cover indirect lobbying expenditures, according to a 1997 survey by the U.S. General Accounting Office. The Indiana Lobby Registration Commission was thus faced with cases that dealt with questions about newspaper advertisements, television advertisements, and variations on those two tactics that made simple "one-size-fits all" rules impossible to promulgate. Motives for seeking disclosure differ. Some seem to want to ensure that all funds dispensed related to lobbying be disclosed, Kuntz, 1995, at A18; others want to highlight how much a group on the opposite side of an issue is spending; and still others want to ensure that the public knows, for example, who the real entities are that may be "hiding behind grass roots lobbying." Gray, 1996, at 28.

Late in the 1997 session, several lawmakers, angered at what they viewed as political threats made against one of their own by a registered lobbyist, went public with their interest in drafting legislation that would afford the legislature power to sanction lobbyists whose behavior they considered to be inappropriate. Because of the timing of the incident, there was no attempt made in the 1997 session to translate this frustration into legislation. This concern has proved to be a transient concern.

The Commission also proposed draft legislative language, concentrating in the area of threshold questions and consistency in application, on the question of payments to and purchases from legislative officials.

In late 1997, the Commission adopted an advisory opinion procedure and began a process of issuing formal advisory opinions for the lobbyists and other concerned citizens.

Table of Cases

Associated Industries of Kentucky v. Kentucky, No. 93-CI-02006 (Cir. Ct. Franklin Co. Div II, Dec. 21, 1994)

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Day v. State, 341 N.E.2d 209 (Ind. App. 1976)

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Goverl Consulting Corp. v. N.Y. Temporary State Comm'n on Lobbying, 481 N.Y.S.2d 1004 (Sup.Ct. 1984), rev'd 497 N.Y.S.2d 497 (App.Div. 1986), rev'd 508 N.Y.S.2d 172 (Ct. of App. 1986)

Hazelton v. Scheckells, 202 U.S. 71 (1906)

Mandel v. O'Hara, 576 A.2d 766 (Md. 1990)

Moffett v. Killian, 360 F.Supp. 228 (D. Conn. 1973)

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Pletz v. Secretary of State, 336 N.W.2d 789 (Mich.App. 1983)

Raphael v. Conrad, 371 F.Supp. 256 (S.D. Ind. 1974)

Shunk v. State, 326 N.E.2d 644 (Ind.App. 1975)

State v. Hoebel, 41 N.W.2d 865 (Sup.Ct. Wisc. 1950)

U.S. v. Harris, 347 U.S. 612 (1954)

U.S. v. Rumely, 347 U.S. 41 (1953)

Wurster v. State, 708 N.E.2d 587 (Ind. Ct. App. 1999), trans. denied.

III. OVERVIEW OF THE LOBBY LAW

WHO MUST FILE?

A lobbyist is a person who "engages in lobbying" and who "in any registration year, receives or expends an aggregate of 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 person's regular employment." IC 2-7-1-10.

Indiana Code defines lobbying as communicating by any means, or paying others to communicate by any means, with any legislative official for the purpose of influencing any legislative action. Filing requirements apply to any lobbyist.

Indiana requires separate registrations from employer lobbyists and compensated lobbyists:

Employer Lobbyist - an organization, association, corporation, partnership, firm, or individual that compensates another to perform lobbying services on behalf of the employer lobbyist.

Compensated Lobbyist - an individual, organization, association, corporation, partnership, or firm that receives compensation for lobbying services rendered on behalf of a client or an employer.

WHAT MUST BE FILED ... AND WHEN?

Registration Statements must be filed within fifteen (15) days of becoming a lobbyist, or no later than January 15th, whichever is later, and terminate on December 31st of each year. Employers and compensated lobbyists must register separately by filing the appropriate forms accompanied by the designated registration fee.

Activity Reports must be filed semi-annually with the Commission by each registered lobbyist;

- An employer must file one activity report semi-annually.
- A compensated lobbyist must file a separate activity report semi-annually for each employer or client from which the lobbyist receives compensation or payment for performing lobbying services.

A **Report of Legislative Gift or Purchase** must be filed within thirty (30) days of giving a gift, as described in IC 2-2.1-3-2(8). This report must be filed with the General Assembly member with respect to whom the report is made and a copy must be filed with the Commission.

Amendments of Information must be filed within fifteen (15) days after a material change occurs in **any information** listed on a registration statement on file with the Commission. There is no fee for filing an amended registration, but a penalty may be assessed if the amendment is not filed within 15 days.

A **Termination Notice should** be filed within 15 days after a lobbyist ceases the activity which required lobbyist registration. Each lobbyist who files a notice of termination is required to file an activity report covering the semi-annual reporting period, or portion thereof, that immediately precedes the termination.

WHERE MUST YOU FILE?

All lobbyist forms must be filed with the Commission at the following address:

Indiana Lobby Registration Commission 251 N. Illinois St., Suite 975 Indianapolis, Indiana, 46204-1927

By mail - mailed forms will be accepted and considered filed by the <u>date of the canceled postmark</u>. Please provide the copies and a self-addressed envelope with the correct postage if you require file-stamped copies to be returned to you,

By hand - forms may be hand-delivered, Monday through Friday, during regular office hours - 8:30 AM - 4:30 PM. If you need copies to be file-stamped while you wait, please provide the copies, or the Commission can provide copies at duplicating cost. Remember that on deadline dates, the wait may be lengthy.

REGISTRATION FEES

A \$100 registration fee must accompany each lobbyist registration statement. A \$50 registration fee must accompany the lobbyist registration statements of the following:

- a non-profit organization exempt from federal income taxation under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, or
- an employee of a non-profit organization, as described above, who performs lobbying services for the employer as part of the employee's salaried responsibilities.

RECORD KEEPING REQUIREMENTS

Preserve for four years - Compensated and employer lobbyists are required to obtain and preserve documents that substantiate fully all activity reports filed with the Commission. These documents must be retained for a period of four years from the date of filing the report to which they relate.

Furnish upon request - Substantiating documents must be made available to the Indiana Lobby Registration Commission upon request to verify activity reports.

ENFORCEMENT

Audits - The General Assembly mandates the Commission to audit and review at least five percent (5%) of all registration statements and activity reports filed with the Commission.

The Commission requires the selected lobbyists to produce verifying documents that substantiate their activity reports.

Notice of errors or violations - The Commission notifies a lobbyist by certified mail within 30-days of the discovery of an error or violation. The lobbyist has 30-days from the date of notification in which to file a corrected statement or report. Failure to amend or correct a statement or report may result in the lobbyist being required to appear before the Commission in a public meeting, and in civil or criminal sanctions.

Investigations - The Commission must conduct an investigation after receiving a written complaint with probable cause which alleges a lobby law violation. A copy of the complaint is sent to the person alleged to have committed the violation. If probable cause is found to exist, an investigation shall be had, and all preliminary actions and records relating to the investigation shall be kept confidential.

Hearings - The Commission may conduct hearings whenever the Commission finds probable cause that a violation of the lobby law has occurred.

PENALTIES

Late filings - A penalty of \$10 per day, but not to exceed \$100, is imposed for any lobbyist registration filed after the statutory deadline. A penalty of \$10 per day per report, but not to exceed \$100 per report, is imposed for lobbyist activity reports filed after the statutory deadline.

Civil sanctions - The Commission may: 1) revoke a lobbyist's registration, and/or, 2) impose a civil fine in an amount not to exceed \$500.

Criminal sanctions - Violations of IC 2-7-2, -3, or -5 constitute unlawful lobbying, a class D felony. Upon consideration by the entire Commission, allegations of criminal violations may be referred to the Attorney General and to the prosecuting attorney with applicable jurisdiction.

In addition to any criminal penalty assessed for unlawful lobbying, the court may order the defendant not to engage in lobbying for a period up to 10 years. False reporting under this statute also constitutes a class D felony.

IV. The Lobby Disclosure Statute²

IC 2-7-1

Chapter 1. Definitions

IC 2-7-1-1

Sec. 1. "Activity report" means the activity report provided for by IC 2-7-3. *As added by Acts 1981, P.L.9, SEC.1.*

IC 2-7-1-1.5

Sec. 1.5. The definitions in this chapter apply throughout this article. *As added by P.L.1-1993, SEC.4.*

IC 2-7-1-2

Sec. 2. "Compensation" means anything of value given as payment for doing or refraining from doing an activity.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-1-3

Sec. 3. "Expenditure" means any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, honorarium, pledge, or subscription of money or anything of value, and any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make an expenditure.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-1-4

Sec. 4. (a) "Gift" means the voluntary transfer of anything of value without

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consideration.

- (b) The term does not include any of the following:
- (1) A gift received from a relative within the third degree of kinship of the person or of the person's spouse, or from the spouse of any such relative.
- (2) A contribution (as defined in IC 3-5-2-15).

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.9-1993, SEC.3.

IC 2-7-1-5

Sec. 5. "Immediate family" means a spouse residing in the person's household and dependent children.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-1-6

Sec. 6. "Influencing legislative action" means promoting, supporting, influencing, modifying, opposing, or delaying any legislative action by any

means.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-1-7

Sec. 7. "Legislative action" means any matter within the authority of the general assembly; it includes the drafting, introduction, consideration, modification, enactment, or defeat of any bill, resolution, amendment, report, or other matter by the general assembly or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the general assembly acting in his official capacity. "Legislative action" also means the action of the governor in approving or vetoing any bill.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-1-8

Sec. 8. "Legislative official" means a member of the general assembly, or any employee or paid consultant of the general assembly, or an agency of the general assembly. *As added by Acts 1981, P.L.9, SEC.1.*

IC 2-7-1-9

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

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-1-10

Sec. 10. "Lobbyist" means any person who:

- (1) engages in lobbying; and
- (2) in any registration year, receives or expends an aggregate of 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.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.9-1993, SEC.4.

IC 2-7-1-11

Sec. 11. (a) "Payment" means a payment, compensation, reimbursement, distribution, transfer, loan, advance, conveyance, deposit, gift, pledge, subscription, or other rendering of money, property, services, or anything else of value, whether tangible or intangible, and any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make a payment.

- (b) "Paid" means that payment has been made.
- (c) "Pay" means the act of making a payment.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-1-12

Sec. 12. "Person" means a human being, corporation, limited liability company, partnership, association, firm, or educational institution.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.8-1993, SEC.3.

IC 2-7-1-13

Sec. 13. "Public employee" means an employee of the state or federal government or a political subdivision of either of those governments and does include an official or employee of any university, college or other educational institution, presently existing or hereafter established in Indiana, for the purpose of providing programs of collegiate or university education or other post-high school education and which is supported in whole or in part by appropriations made by the general assembly.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-1-14

Sec. 14. "Public official" means an individual who holds office in the executive, judicial, or legislative branch of the state or federal government or a political subdivision of either of those governments and includes an official or employee of any university, college or other educational institution, presently existing or hereafter established in Indiana, for the purpose of providing programs of collegiate or university education or other post-high school education and which is supported in whole or in part by appropriations made by the general assembly.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-1-15

Sec. 15. "Registrant" means a person who is required to register under IC 2-7-2-1. *As added by Acts 1981, P.L.9, SEC.1.*

IC 2-7-1-16

Sec. 16. "Registration statement" means the registration statement provided for by IC 2-7-2.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-1-17

Sec. 17. "Commission" refers to the Indiana lobby registration commission established by IC 2-7-1.6.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.3-1992, SEC.5; P.L.9-1993, SEC.5.

IC 2-7-1.6

Chapter 1.6. Indiana Lobby Registration Commission

IC 2-7-1.6-1

Sec. 1. (a) The Indiana lobby registration commission is established.

- (b) The commission is a separate and an independent agency within the legislative branch of state government.
- (c) The commission shall administer this article.

As added by P.L.3-1992, SEC.6. Amended by P.L.9-1993, SEC.6.

IC 2-7-1.6-2

- Sec. 2. (a) The commission consists of four (4) members. The president pro tempore of the senate, the minority floor leader of the senate, the speaker of the house of representatives, and the minority floor leader of the house of representatives shall each appoint one (1) member.
- (b) Not more than two (2) of the four (4) members may hold the same political affiliation.
- (c) An incumbent legislator or lobbyist may not be appointed as a member of the commission. *As added by P.L.3-1992, SEC.6.*

IC 2-7-1.6-3

- Sec. 3. (a) Each member of the commission serves for a term of four (4) years, beginning January 1.
- (b) Members of the commission may be reappointed to successive terms.
- (c) The appropriate appointing authority shall fill a vacancy on the commission for the duration of the unexpired term.

As added by P.L.3-1992, SEC.6.

IC 2-7-1.6-4

Sec. 4. A chairman shall be selected for the commission to serve for a term of one (1) year. The chairman's term begins January 1. The chairman to serve in even-numbered years shall be designated by the president pro tempore of the senate, and the chairman to serve in odd-numbered years shall be designated by the speaker of the house of representatives. *As added by P.L.3-1992, SEC.6.*

IC 2-7-1.6-5

Sec. 5. (a) The commission has the powers and duties specified in this article.

- (b) The commission may do the following:
- (1) Hold meetings as necessary.
- (2) Make recommendations to the general assembly concerning administration of this article.

- (3) Subject to IC 2-7-7, receive and hear any complaint alleging a violation of this article.
- (4) Obtain information relevant to an audit conducted or a complaint filed under this article.
- (5) Administer oaths.
- (6) Act as an advisory body by providing advisory opinions to lobbyists on questions relating to the requirements of this article.
- (7) Establish qualifications for and employ the personnel required to implement this article.
- (8) Adopt rules and procedures necessary or appropriate to carry out its duties.
- (9) Make reasonable and necessary expenditures of money appropriated to the commission.
- (10) Do other things necessary and proper:
- (A) to implement this article; or
- (B) as requested by the general assembly or the legislative council.

As added by P.L.3-1992, SEC.6. Amended by P.L.9-1993, SEC.7.

IC 2-7-1.6-6

Sec. 6. The vote of at least three (3) members is required for the commission to take official action.

As added by P.L.3-1992, SEC.6.

IC 2-7-1.6-7

Sec. 7. When the commission meets, each member is entitled to receive the same per diem, mileage, and travel allowances approved by the legislative council for lay members serving on interim study committees established by the legislative council. *As added by P.L.3-1992, SEC.6.*

IC 2-7-1.6-8

(Repealed by P.L.9-1993, SEC.18.)

IC 2-7-1.6-9

Sec. 9. Nothing in this chapter affects the committees established under IC 2-2.1-3-5. *As added by P.L.3-1992, SEC.6.*

IC 2-7-2

Chapter 2. Registration Statements

IC 2-7-2-1

- Sec. 1. (a) Each lobbyist shall file annually with the commission a registration statement under oath accompanied by the registration fee required by this section.
- (b) Except as provided in subsection (c), the registration fee is one hundred dollars (\$100).
- (c) The registration fee of a lobbyist that satisfies either of the following is fifty dollars (\$50):
- (1) The lobbyist is a nonprofit organization exempt from federal income taxation under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.
- (2) The lobbyist:
- (A) is an employee of a lobbyist described in subdivision (1); and
- (B) performs lobbying services for the employer as part of the lobbyist's salaried

responsibilities.

As added by Acts 1981, P.L.9, SEC.1. Amended by Acts 1982, P.L.9, SEC.1; P.L.3-1992, SEC.7; P.L.9-1993, SEC.8.

IC 2-7-2-2

- Sec. 2. (a) Each registration statement shall be filed not later than January 15 or within fifteen (15) days after the registrant becomes a lobbyist, whichever is later. Each registration statement expires on December 31 of the year for which it was issued. The commission may accept registration statements before January 1 of the year to which they apply, as the commission determines.
- (b) Subject to subsections (c) and (d), the commission shall impose a late registration fee of ten dollars (\$10) per day for each day after the deadline until the statement is filed.
- (c) The late registration fee shall not exceed one hundred dollars (\$100).
- (d) The commission may waive the late registration fee if the commission determines that the circumstances make imposition of the fee inappropriate.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.3-1992, SEC.8; P.L.9-1993, SEC.9.

IC 2-7-2-3

- Sec. 3. The registration statement of each lobbyist who is compensated for lobbying shall include:
- (1) his name, social security number, residence address and telephone number, business address and telephone number, and the addresses and telephone numbers of any temporary living or business quarters he has in Marion County;
- (2) the name, business address, telephone number, and kind of business of each person (including the names of each officer or partner) who compensates him;
- (3) his primary occupation and the name or names of his employers if different than those specified in subdivision (2); and (4) the subject matter of his lobbying. *As added by Acts 1981, P.L.9, SEC.1. Amended by Acts 1982, P.L.9, SEC.2; P.L.6-1987, SEC.1.*

IC 2-7-2-4

- Sec. 4. The registration statement of each lobbyist who compensates a person for lobbying shall include:
- (1) his full name, business address and telephone number, kind of business, and the full name of the individual who controls the business, the partners, if any, and officers;
- (2) the full name, and business address and telephone number of each person compensated by him as a lobbyist;
- (3) the subject matter for which he has employed or contracted with a lobbyist. *As added by Acts 1981, P.L.9, SEC.1.*

IC 2-7-2-5

Sec. 5. If a material change occurs in any of the information contained in a registration statement, an appropriate amendment shall be filed within fifteen (15) days after the change. Each registered lobbyist may file a notice of termination within fifteen (15) days

after he ceases the activity which required his registration; however, this does not relieve him of the reporting requirements of IC 2-7-3.

As added by Acts 1981, P.L.9, SEC.1. Amended by Acts 1982, P.L.9, SEC.3.

IC 2-7-2-6

- Sec. 6. (a) The provisions of this chapter and IC 2-7-3 are not applicable to any full-time or part-time public official acting in his official capacity or any full-time or part-time public employee in Indiana acting within the scope of his employment.
- (b) The provisions of this chapter are not applicable to any newspaper or other periodical of general circulation, book publisher, news wire service, radio or television station (including any individual who owns, publishes, or is employed by any such newspaper or periodical, radio or television station) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisement, which directly or indirectly urge legislative action if such newspaper, periodical, book publisher, radio or television station, or individual engages in no further or other activities in connection with urging legislative action other than to appear before a committee of the legislature in support of or in opposition to such action.
- (c) The provisions of this chapter are not applicable to an individual invited, by any member of the general assembly, to testify before the general assembly or a legislative committee at the time the individual is testifying.
- (d) The provisions of this chapter are not applicable to any officer or employee of the state central committee of a political party while acting within the scope of his employment.
- (e) This chapter does not apply to a person whose lobbying services are performed without compensation.
- (f) Notwithstanding the definition of "lobbying" as specified in 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.
- (g) This article does not apply to:
- (1) an insurance policy;
- (2) a credit card agreement;
- (3) a recorded mortgage secured by real property; or
- (4) a written agreement with a financial institution (as defined in IC 28-1-1-3);
- if the insurance policy, credit card, mortgage, or agreement was issued or made in the ordinary course of business.
- (h) This article does not apply to compensation paid to the spouse of a legislator for goods or services provided by the spouse in the ordinary course of business to a lobbyist or a lobbyist's employer.
- (i) The items to which this article does not apply under subsection (g) or (h) shall not be included in activity reports filed under IC 2-7-3-3.

As added by Acts 1981, P.L.9, SEC.1. Amended by Acts 1982, P.L.9, SEC.4; P.L.3-1992, SEC.9; P.L.9-1993, SEC.10.

IC 2-7-3 Chapter 3. Activity Reports

IC 2-7-3-1

Sec. 1. Each lobbyist shall file semiannually with the commission an activity report under oath. He shall file a separate activity report relating to each person from whom he receives payment for lobbying.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.3-1992, SEC.10.

IC 2-7-3-2

- Sec. 2. (a) One (1) activity report shall be filed not later than July 31, covering the period from January 1 through June 30. The other activity report shall be filed not later than January 31, covering the period from July 1 through December 31 of the immediately preceding calendar year.
- (b) Subject to subsections (c) and (d), the commission shall impose a penalty of ten dollars (\$10) per day for each day that the person fails to file any report required by this chapter until the report is filed.
- (c) The penalty shall not exceed one hundred dollars (\$100) per report.
- (d) The commission may waive the penalty if the commission determines that the circumstances make imposition of the penalty inappropriate.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.3-1992, SEC.11; P.L.9-1993, SEC.11.

IC 2-7-3-3

Sec. 3. (a) The activity reports of each lobbyist shall include the following:

- (1) A complete and current statement of the information required to be supplied under IC 2-7-2-3 and IC 2-7-2-4.
- (2) Total expenditures on lobbying (prorated, if necessary) broken down to include at least the following categories:
- (A) Compensation to others who perform lobbying services.
- (B) Reimbursement to others who perform lobbying services.
- (C) Receptions.
- (D) Entertainment, including meals. However, a function to which the entire general assembly is invited is not lobbying under this article.
- (E) Gifts made to an employee of the general assembly or a member of the immediate family of an employee of the general assembly.
- (3) A statement of expenditures and gifts that equal one hundred dollars (\$100) or more in one (1) day, or that together total more than five hundred dollars (\$500) during the calendar year, if the expenditures and gifts are made by the registrant or his agent to benefit:
- (A) a member of the general assembly;
- (B) an officer of the general assembly;
- (C) an employee of the general assembly; or
- (D) a member of the immediate family of anyone included in clause (A), (B), or (C).
- (4) Whenever a lobbyist makes an expenditure that is for the benefit of all of the members of the general assembly on a given occasion, the total amount expended shall be reported, but the lobbyist shall not prorate the expenditure among each member of the general assembly.
- (5) A list of the general subject matter of each bill or resolution concerning which a

lobbying effort was made within the registration period.

- (6) The name of the beneficiary of each expenditure or gift made by the lobbyist or his agent that is required to be reported under subdivision (3).
- (7) The name of each member of the general assembly from whom the lobbyist has received an affidavit required under IC 2-2.1-3-3.5.
- (b) In the second semiannual report, when total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire reporting year.
- (c) An amount reported under this section is not required to include the

following:

- (1) Overhead costs.
- (2) Charges for any of the following:
- (A) Postage.
- (B) Express mail service.
- (C) Stationery.
- (D) Facsimile transmissions.
- (E) Telephone calls.
- (3) Expenditures for the personal services of clerical and other support staff persons who are not lobbyists.
- (4) Expenditures for leasing or renting an office.
- (5) Expenditures for lodging, meals, and other personal expenses of the lobbyist. As added by Acts 1981, P.L.9, SEC.1. Amended by Acts 1982, P.L.9, SEC.5; P.L.3-1992, SEC.12; P.L.9-1993, SEC.12.

IC 2-7-3-4

Sec. 4. Each lobbyist shall obtain and preserve all documents necessary to substantiate the activity reports required under this chapter for four (4) years from the date of filing of the report containing these items. The lobbyist shall make these materials available for inspection upon request by the commission.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.3-1992, SEC.13.

IC 2-7-3-5

Sec. 5. Every person who files a notice of termination as provided in IC 2-7-2-5 must file a termination report covering the semiannual reporting period or portion thereof immediately preceding the termination of his registration statement; such report shall contain the information required by section 3 of this

chapter.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-3-6

Sec. 6. (a) A lobbyist shall file a written report with respect to a member of the general assembly whenever either of the following occurs:

(1) The lobbyist has made a purchase described in IC 2-2.1-3-2(a)(7) with respect to that member. This subdivision does not apply to purchases made after December 31, 1998,

by a lobbyist from a legislator's retail business made in the ordinary course of business at prices that are available to the general public. For purposes of this subdivision, a legislator's business is considered a retail business if the business is a retail merchant as defined in IC 6-2.5-1-8.

- (2) The lobbyist has made a gift described in IC 2-2.1-3-2(a)(8) to that member.
- (b) A report required by subsection (a) must state the following:
- (1) The name of the lobbyist.
- (2) Whether the report covers a purchase described in IC 2-2.1-3-2(a)(7) or a gift described in IC 2-2.1-3-2(a)(8).
- (c) A lobbyist shall file a copy of a report required by this section with both of the following:
- (1) The commission.
- (2) The member of the general assembly with respect to whom the report is made.
- (d) A lobbyist shall file a report required by subsection (a) not more than thirty (30) days after making the purchase or giving the gift.

As added by P.L.9-1993, SEC.13. Amended by P.L.2-1997, SEC.1; P.L.205-1999, SEC.7.

IC 2-7-4

Chapter 4. Duties of the Commission

IC 2-7-4-1

Sec. 1. The commission shall prescribe forms for the registration statements, activity reports, and other documents required to be filed under this article and make the forms available to persons required to file the registration statements, activity reports, and other documents.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.3-1992, SEC.14; P.L.9-1993, SEC.14.

IC 2-7-4-2

Sec. 2. The commission shall prepare and publish a manual setting forth recommended, uniform methods of reporting for use by persons required to file statements and reports under this article.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.3-1992, SEC.15.

IC 2-7-4-3

Sec. 3. The commission shall make statements, reports, and other documents filed with the commission under this article available for public inspection and copying during regular office hours and make copying facilities available to the public at a charge not to exceed actual cost.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.3-1992, SEC.16.

IC 2-7-4-4

Sec. 4. The commission shall compile and maintain an index of all reports and statements filed with the commission under this article to facilitate public access to these reports and statements.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.3-1992, SEC.17.

IC 2-7-4-5

Sec. 5. The commission shall prepare and publish annual summaries of statements and reports filed with the commission under this article.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.3-1992, SEC.18.

IC 2-7-4-6

Sec. 6. (a) The commission shall inspect and audit at least five percent (5%) of all registration statements and reports filed with the commission under this chapter by requiring the registrant to produce verifying documents. The statements and reports inspected and audited shall be selected at random by a computer random number generator. Nothing in this chapter shall be construed as prohibiting the commission from inspecting and auditing any statement or report if the commission has reason to believe that a violation of this chapter may have occurred.

(b) Verifying documents under this section while in the possession of the commission are confidential.

As added by Acts 1981, P.L.9, SEC.1. Amended by Acts 1982, P.L.9, SEC.6; P.L.19-1983, SEC.7; P.L.3-1992, SEC.19.

IC 2-7-4-7

Sec. 7. The commission shall notify by certified mail, return receipt requested, persons required to file statements and reports under this article of any violations or errors discovered during inspections or audits conducted under section 6 of this chapter within thirty (30) days of the discovery of the errors or violations. The person required to file statements and reports under this article shall within thirty (30) days from receipt of notification file a corrected statement or report meeting all requirements set forth in this article. If no corrected statement or report is filed within thirty (30) days, or if violations remain following the filing of a corrected report or statement, then the commission shall forward to the prosecuting attorney of the applicable judicial circuit and to the attorney general reports of any violations. However, if the prosecutor has not initiated prosecution within sixty (60) days of receipt of such notice or within sixty (60) days of the written request for prosecution by the attorney general, the attorney general may prosecute on behalf of the state.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.6-1985, SEC.1; P.L.3-1992, SEC.20.

IC 2-7-4-8

Sec. 8. The commission shall preserve statements and reports filed with the commission under this article for a period of four (4) years from the date of receipt.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.3-1992, SEC.21.

IC 2-7-4-9

Sec. 9. The commission has all powers necessary to accomplish the responsibilities assigned to the commission in this chapter.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.3-1992, SEC.22.

IC 2-7-5

Chapter 5. Prohibitions

IC 2-7-5-1

Sec. 1. It is unlawful for any legislative official to receive compensation or reimbursement other than from the state for personally engaging in lobbying. *As added by Acts 1981, P.L.9, SEC.1.*

IC 2-7-5-2

Sec. 2. Subject to the provisions of IC 2-7-2-6(a), it is unlawful for any full-time public official or public employee in the state of Indiana, to receive compensation, other than the regular compensation of elected or appointed officials, for lobbying.

As added by Acts 1981, P.L.9, SEC.1. Amended by Acts 1982, P.L.9, SEC.7.

IC 2-7-5-3

Sec. 3. Subject to the provisions of IC 2-7-2-6(d), it is unlawful for any officer or employee of the state central committee of a political party to receive compensation, other than for the regular compensation of such officers and employees, for lobbying. *As added by Acts 1981, P.L.9, SEC.1*.

IC 2-7-5-4

Sec. 4. No past member of the general assembly who is a lobbyist may be on the floor of either house while that house is in session.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-5-5

Sec. 5. It is unlawful for any person to be a lobbyist for a compensation dependent upon the success of his lobbying efforts, or upon any contingency connected with the administrative action or legislative action.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-5-6

Sec. 6. The following persons may not be registered as a lobbyist under this article:

- (1) Any individual convicted of a felony for violating any law while the individual was an officer or employee of any agency of state government or a unit of local government.
- (2) Any person convicted of a felony relating to lobbying.
- (3) Any person convicted of a felony and who:
- (A) is in prison;
- (B) is on probation; or
- (C) has been in prison or on probation within the immediate past one (1) year.
- (4) Any person whose:
- (A) statement or report required to be filed under this article was found to be materially incorrect as a result of a determination under IC 2-7-6-5; and
- (B) who has not filed a corrected statement or report for that year when requested to do so by the commission.
- (5) Any person who has failed to pay a civil penalty assessed under IC 2-7-6-5.

- (6) Any person who is on the most recent tax warrant list supplied to the commission by the department of state revenue until:
- (A) the person provides a statement to the commission indicating that the person's delinquent tax liability has been satisfied; or
- (B) the commission receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.6-1985, SEC.2; P.L.6-1987, SEC.2; P.L.332-1989(ss), SEC.1; P.L.3-1992, SEC.23.

IC 2-7-6

Chapter 6. Enforcement

IC 2-7-6-1

Sec. 1. The attorney general and the applicable prosecuting attorney jointly or severally are responsible for investigating alleged or suspected violations and enforcing the provisions of this article and, in addition to the powers heretofore granted him by law, the attorney general has the powers of the prosecuting attorney of each county for the purpose of enforcing the provisions of this article.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-6-2

- Sec. 2. (a) Any person who knowingly or intentionally violates any provision of IC 2-7-2, IC 2-7-3, or IC 2-7-5 commits unlawful lobbying, a Class D felony. In addition to any penalty imposed on the defendant under IC 35-50-2-7 for unlawful lobbying, the court may order the defendant not to engage in lobbying for a period of up to ten (10) years, IC 2-7-5-6 notwithstanding.
- (b) Any person who lobbies in contravention of a court order under subsection (a) of this section commits a Class D felony.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-6-3

Sec. 3. Whoever knowingly or intentionally makes a false report under this chapter that overstates or understates the amount of any or all expenditures or gifts commits a Class D felony.

As added by Acts 1981, P.L.9, SEC.1. Amended by P.L.9-1993, SEC.15.

IC 2-7-6-4

Sec. 4. A member of the general assembly who knowingly or intentionally conspires with a lobbyist in the violation of section 2 or section 3 of this chapter commits a Class D felony.

As added by Acts 1981, P.L.9, SEC.1.

IC 2-7-6-5

- Sec. 5. (a) If the commission after a hearing conducted under IC 4-21.5-3 finds that:
- (1) a statement or report required to be filed under this article was materially incorrect;
- (2) the person filing the report was requested to file a corrected statement or report; and

- (3) a corrected statement or report has not been filed;
- the commission may invoke sanctions under subsection (b).
- (b) If under subsection (a) the commission is authorized to invoke sanctions under this subsection, the commission may do either or both of the following:
- (1) Revoke the registration of the person who has failed to file a corrected statement or report.
- (2) Assess a civil penalty on that person in an amount not to exceed five hundred dollars (\$500). As added by P.L.6-1985, SEC.3. Amended by P.L.7-1987, SEC.1; P.L.3-1992, SEC.24.

IC 2-7-6-6

- Sec. 6. (a) The commission may impose either or both of the following sanctions if, after a hearing under IC 4-21.5-3, the commission finds that a lobbyist failed to file a report with a member of the general assembly required by IC 2-7-3-6:
- (1) Revoke the registration of the lobbyist.
- (2) Assess a civil penalty against the lobbyist. A civil penalty assessed under this subdivision may not be more than five hundred dollars (\$500).
- (b) In imposing sanctions under subsection (a), the commission shall consider the following:
- (1) Whether the failure to file the report was willful or negligent.
- (2) Any mitigating circumstances.

As added by P.L.9-1993, SEC.16.

IC 2-7-7

Chapter 7. Commission Investigations and Hearings

IC 2-7-7-1

Sec. 1. The commission shall conduct an investigation under this chapter of a complaint alleging a violation of this article.

As added by P.L.9-1993, SEC.17.

IC 2-7-7-2

Sec. 2. A complaint must be in writing and be signed by the individual making the complaint. *As added by P.L.9-1993, SEC.17*.

IC 2-7-7-3

Sec. 3. When a complaint is filed, the commission shall promptly send a copy of the complaint to the person alleged to have committed the violation of this article. *As added by P.L.9-1993, SEC.17*.

IC 2-7-7-4

- Sec. 4. If the commission determines the complaint does not allege facts sufficient to constitute a violation of this article, the commission shall do both of the following:
- (1) Dismiss the complaint.
- (2) Notify the complainant and the respondent of the commission's action. *As added by P.L.9-1993, SEC.17.*

IC 2-7-7-5

- Sec. 5. (a) If the commission determines the complaint does allege facts sufficient to constitute a violation of this article, the commission shall promptly investigate the allegation.
- (b) If after a preliminary investigation the commission finds that probable cause does not exist to support an allegation of a violation of this article, the commission shall do the following:
- (1) Dismiss the complaint.
- (2) Notify the complainant and the respondent of the commission's action.
- (c) If the commission finds that probable cause exists to support an allegation of a violation of this article, the commission shall hold a hearing on the matter not more than thirty (30) days after making the determination. IC 4-21.5 applies to a hearing held under this subsection.

As added by P.L.9-1993, SEC.17.

IC 2-7-7-6

Sec. 6. The commission may meet in executive session to do either of the following:

- (1) Make a determination under section 4 of this chapter.
- (2) Investigate a complaint under section 5 of this chapter.

As added by P.L.9-1993, SEC.17.

IC 2-7-7-7

Sec. 7. The following matters are confidential:

- (1) Action of the commission and records relating to those actions under section 4 of this chapter.
- (2) Investigations and records relating to a preliminary investigation under section 5 of this chapter.

As added by P.L.9-1993, SEC.17.

IC 2-7-7-8

- Sec. 8. (a) Upon the affirmative vote of three (3) members of the commission, the commission may request from the legislative council the authority to compel either or both of the following by subpoena:
- (1) The attendance and testimony of witnesses.
- (2) The production of documents.
- (b) If the legislative council authorizes the commission to issue subpoenas after a request under subsection (a), the circuit or superior court of the county where a subpoena is to be served shall enforce the subpoena.

As added by P.L.9-1993, SEC.17.

V. Commentary of the Lobby Law

2-7-1-1 Activity report

Sec. 1. "Activity report" means the activity report provided for by IC 2-7-3. As added by Acts 1981, PL 9, SEC. 1.

2-7-1-2 Compensation

Sec. 2. "Compensation" means anything of value given as payment for doing or refraining from doing an activity. As added by Acts 1981, PL 9, SEC. 1.

Comment 1: contract to lobby

The definition of "compensation" is relevant to the triggering of a registration duty for lobbyists. IC 2-7-2-3 requires registration for each lobbyist who is compensated for lobbying and IC 2-7-2-4 requires registration for each lobbyist who compensates another for lobbying.

The Commission has determined that a contract to lobby is sufficient to trigger a duty to register. *FAO 97-03*. However, the "compensation" paid on the contract is not reportable on a lobbyist's activity report until actually made. *FAO 97-03*.

Hence, the duty to register as a lobbyist may sometimes be different than a duty to report actual expenditures / compensation.

Example: In November, 1998, "L" lobbyist enters into a contract with "C" client. The contract specifies that "C"will pay \$10,000 to "L" to lobby for "C" during 1999. "L" does not perform any services under the contract until 1999, and "C" does not render payment on the contract until August, 1999. Both "L" and "C" must register as lobbyists at the time of the making of the contract. "L" and "C" must report payment made / received on the contract during the period in which payment is made / received.

Comment 2: association dues

The Commission has interpreted "compensation" literally to mean "anything of value." For example, association dues are considered to be "compensation." *FAO 97-07(A)*.

Example: An incorporated trade association, "X," has seven members, each of which pays \$20,000 annual dues to "X." In exchange for these dues, "X" provides certain membership benefits to those members, one benefit being the lobbying of the Indiana legislature on matters that affect the industry represented by the trade association. The principal purpose of the trade association is lobbying. More than \$500 of each member's annual dues is spent by the trade association in furtherance of its principal purpose of lobbying. "X" must register as a compensated lobbyist. Each member must register as an employer lobbyist.

Example: Trade association "Y" has several hundred members who pay annual dues of \$250. "Y" uses almost all of its membership funds to lobby the Indiana legislature. Though "Y's" principal purpose appears to be lobbying, its members do not pay greater than \$500 in a registration period to meet that principal purpose. Thus, "Y" has no duty to register as a compensated lobbyist, though it must register as an employer lobbyist. Likewise, "Y's" members have no duty to register as employer lobbyists.

Example: Trade association "Z" has several hundred members, each of which pays greater than \$500 in annual dues. However, less than 50% of "Z's" total budget is spent on lobbying the Indiana legislature. Although "Z" lobbies, its principal purpose is not lobbying. Thus, "Z" has a duty to register as an employer lobbyist, but not as a compensated lobbyist. "Z's" members need not register as employer lobbyists by virtue of their membership.

Comment 3: employee benefits

Nonforfeitable, vested employee and fringe benefits are reportable as "compensation" and as "expenditures" under the lobby disclosure statute. *FAO 97-04*.

Example: "X" corporation hires "L" lobbyist as an employee and pays "L" a salary of \$30,000. "X" also pays "L" an employee benefit in the form of a retirement fund contribution, which equals 10% of "L's" income. "X" and "L" must report the retirement fund contribution as a lobbying expenditure / compensation, to the extent it is vested, at the time of vesting. Any changes in value after disclosure that are attributable to the amounts already disclosed are not amounts related to lobbying expenditures / compensation, because the receipt by "L" of those changes in value in no way depends upon "L's" providing a lobbying service to "X," since those benefits are already vested. Only changes in value that occur prior to disclosure / vesting are considered to be compensation / expenditures made for lobbying.

Example: "X" corporation hires "L" lobbyist as an employee and provides "L" with the fringe benefit of a company car. The annual value of the car is \$5,000. "X" and "L" must report the value of the car as a lobbying expenditure / compensation.

Example: "L" lobbyist participates in "X" corporation's employee stock ownership program (ESOP). "L," an employee of "X" gets a certain amount of stock options based on years of service and subject to a certain vesting schedule. "L" and "X" must report the value of "L's" stock options, to the extent they become vested, as lobbying expenses.

Example: "L" lobbyist, an employee of "X" corporation, participates in "X's" 401(k) program. "L "has obtained a loan in the amount of \$50,000 against the vested balance of his 401(k). This vested balance represents the amount contributed by "L" and also the matching amount contributed by "X" on behalf of "L." "X" and "L" need not report

the amount of the loan which is taken against the contributions made by "X" as a lobbying expenditure / compensation, because the vested portion was presumably already reported at the time of vesting.

Comment 4: employee salary

The statute requires that a lobbyist employer must report the salary it pays its employee when lobbying services are performed in exchange for that salary. Historically, the Commission has required that the hourly, salary, bonus, and other reportable employee benefits (as recognized by *FAO 97-04*) of such employees be prorated, based on the percentage of time spent performing lobbying services. In Example A, the lobby firm would report \$7,500 as a lobbying expenditure. In Example B, the corporation would report \$40,000 as a lobbying expenditure. *FAO 98-02*.

Example A: Lobby firm "A" hires an employee to lobby for "A's" clients. The employee is paid \$10,000 annually and spends 75% of her time performing lobbying services. The lobby firm must report \$7,500 of the employee's salary as a lobbying expenditure.

Example B: Corporation "C" is already registered as an employer lobbyist and hires two employees to lobby on behalf of "C." The first employee is employed as corporate counsel, is paid \$100,000, and spends only 10% of her time lobbying for "C." The second employee is paid \$30,000 and spends 100% of his time lobbying for "C." "C" would report a \$10,000 lobbying expenditure with regard to the first employee and a \$30,000 lobbying expenditure with regard to the second employee.

Comment 5: partnership compensation

A partnership which compensates its partners for lobbying must report the amount of partnership compensation attributable to lobbying. (FAO 99-02). This can be calculated as follows:

- 1. Determine the total number of billable and non-billable hours worked during the reporting period; determine the number of hours recorded for lobbying, and then determine the total time that the time spent lobbying represents;
- 2. Determine the amount of compensation allocated to the partner during the reporting period, including the value of benefits other than overhead ascribable to the partner; and

3. Determine the pro-rata amount of partner compensation reportable by the firm as an employer lobbyist based upon the percentage of partner time spent on lobbying during the reporting period. (FAO 99-02).

Comment 6: non lobbying services

There may be circumstances wherein a lobbyist provides non lobbying services to a client. The agreement with the client may not distinguish between payment for lobbying services and payment for other services. The Commission has determined that there may be a duty to register and report under such circumstances when the lobbying activities appeared to be part of the same transaction of the other [legal] services performed for the client.

In applying the "same transaction" test, the Commission relied on several factors: (1) intent of both parties to the contract with regard to lobbying services, express or implied; (2) whether the amount paid for the legal services is reasonable in light of the legal services actually performed; (3) whether the language of the contract was drafted to avoid lobby registration laws; (4) whether there was a modification of the contract, either oral or written; (5) whether the client expects lobbying services to be performed, regardless of the payment arrangement; (6) whether the client benefitted directly from the lobbying. *Informal Commission Determination (July, 1997)*.

Example: A certain number of country clubs formed an informal coalition and each paid a fixed amount (more than \$500) to an attorney lobbyist to do "legal work" on their behalf. The attorney/lobbyist, in exchange for a set amount of money, agreed to represent several country clubs in connection with the way the Indiana Department of Revenue (IDR) was interpreting a particular tax statute. After agreeing with the IDR on an interpretation of the tax statute that was more favorable to their client, someone at the IDR asked the attorney/lobbyist to submit a proposed amendment to the legislature, saying an amended version of the statute in question would clear up any lingering or future interpretation problems.

The attorney/lobbyist did submit and advocate such an amendment. The position of the attorney/lobbyist was that (1) he submitted the proposed amendment after solving his client's problem with the IDR, (2) he submitted the proposed amendment at the request of someone at the IDR, and not his client, and (3) his agreement with his client specified that lobbying would be done only at the specific request of the client and for additional fees. Thus, it was his position that any lobbying done was done for free. The Commission, applying the above 6-part analysis, determined that there was a duty to register and report.

Comment 7: anything of value

Because the statute defines "compensation" to include "anything of value," the Commission has consistently recognized an inclusive definition of "compensation" to include such things as salary, retainers, or the giving of anything of value for lobbying services on behalf of another person. Some examples of "anything of value" include, but are not limited to:

- A pecuniary item, including money, or a bank bill or note;
- A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money;
- A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;
- A stock, bond, note, or other investment interest in an entity;
- A receipt given for the payment of money or other property;
- A right in action;
- A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;
- A loan or forgiveness of indebtedness;
- A work of art, antique, or collectible;
- An automobile or other means of personal transportation;
- Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty;
- An honorarium or compensation for services;
- A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as a public official or public employee, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public. COGEL Model Lobby Regulation Act, § 304.01(a)(1-13)(1995).

Comment 8: fair market value

There is a reportable event when a lobbyist sells a legislative official a ticket to a sold-out athletic event, such as the Super Bowl, at face value, if such a ticket would not otherwise ordinarily be available to the public official on similar terms. Certain transactions, even though ostensibly fair trades for value, must be disclosed at their fair market value. Other examples of such transactions include (but are not limited to): a promise or offer of employment; any other thing of value that is pecuniary or compensatory in value to a person. *COGEL Model Lobby Regulation Act*, § 304.01(a)(14-15)(1995).

Comment 9: reimbursement of expenses

"Compensation" does not include reimbursement of expenses if: (1) the reimbursement does not exceed the amount actually expended for the expenses; and (2) it is substantiated by an itemization of expenses. *COGEL Model Lobby Regulation Act*, § 304.03(b).

Example: Lobbyist "A" incurs \$10,000 of lobbying expenses, but is reimbursed by the client for an amount of \$12,000. Thus, "A" has received \$2,000 in compensation for the efforts associated with that client. "A's" client would report the \$2,000 as "compensation to others" and the \$10,000 as "reimbursement to others." "A" would back out the \$10,000 as having been reimbursed by its client.

Expenditure

Sec. 3. "Expenditure" means any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, honorarium, pledge, or subscription of money or anything of value, and any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make an expenditure. As added by Acts 1981, PL 9, SEC. 1.

Comment 10: contextual definition

The word *expenditure*, while almost limitless in its definition, nevertheless, should be applied in light of the definition of *lobbying*, which requires "the purpose of influencing legislative action." Read together with the word *lobbying*, the word *expenditure* seems limited to transactions which are intended to influence legislative action or which have strong potential for doing so. *FAO 98-05*.

The Commission has recognized a need to be "mindful of the public's expectation for information about all economic relationships between lobbyists and legislators, including those seemingly unrelated to legislative action. There is at least the appearance that those who do business with members of the General Assembly and contribute to their livelihoods may expect special attention if and when they have interests at stake." *FAO 98-05*.

Comment 11: voluntary / gratuitous transfers

The Commission has interpreted the word "expenditure" as not restricted to voluntary or gratuitous transfers. *FAO 98-05*. "The word *expenditure* is defined expansively in the Act and includes the word *payment* in its definition, which itself is defined in an even more inclusive way. . . there is no suggestion in any of these definition sections that the word *expenditures* is to be limited to voluntary or gratuitous transfers." *FAO 98-05*.

Example: Lobbyist "A" purchases several hundred dollars worth of widgets from legislator "B's" widget business each year. The widget business is a manufacturing ,and not a retail, business. The value of the transaction is reportable by "A" on "A's" activity report and also as a "purchase" on "A's" legislative gift or purchase report.

Example: Lobbyist "B" purchases goods and/or services from a legislator's spouse's business. There are no reportable expenditures. However, if the legislator owns 50% or more of the spouse's business, the value of the transaction attributable to the legislator's ownership percentage is reportable by the lobbyist.

Comment 12: gifts

In addition to including payments, the word "expenditure" includes gifts. *FAO 98-05*. A "gift" is always an "expenditure," but an expenditure may not always be a gift. Expenditures which are transferred without consideration are both "gifts" and "expenditures," and they should be reported as both. However, expenditures which are made for consideration are only reportable as "expenditures" and not as "gifts." *FAO 97-05*.

Example: Lobbyist "A" provides a legislator with theater tickets. The lobbyist has made a gift which is reported as a gift and as an expenditure. However, the lobbyist should not double report the value of the gift/expenditure.

Example: Lobbyist "B" purchases services from a legislator's private business. The transaction has resulted in a reportable expenditure, which is not a reportable gift. The value of the transaction is reported in Section E-1 of the activity report, but is not calculated in arriving at a net lobbying figure.

Comment 13: contract to lobby

A contract or agreement to lobby has been recognized by the Commission to be an "expenditure" for purposes of registration. *FAO 97-03*.

Example: In November, 1998, "L" lobbyist enters into a contract with "C" client. The contract specifies that "C" will pay \$10,000 to "L" to lobby for "C" during 1999. "L" does not perform any services under the contract until 1999, and "C" does not render payment on the contract until August, 1999. Both "L" and "C" must register as lobbyists at the time of the making of the contract. "L" and "C" must report payment made / received on the contract during the period in which payment is made / received.

Comment 14: employee benefits

Nonforfeitable, vested employee and fringe benefits are reportable as "compensation" and as "expenditure" under the lobby disclosure statute. *FAO 97-04*.

Example: "X" corporation hires "L" lobbyist as an employee and pays "L" a salary of \$30,000. "X" also pays "L" an employee benefit in the form of a retirement fund contribution made by "X" on behalf of "L," which equals 10% of "L" is income. "X" and "L" must report the retirement fund contribution as a lobbying expenditure / compensation, to the extent it is vested, at the time of vesting. Any changes in value after disclosure that are attributable to the amounts already disclose, are not amounts related to lobbying expenditures / compensation, because the receipt by "L" of those changes in value in no way depends upon "L's" providing a lobbying service to "X," since those benefits are already vested. Only changes in value that occur prior to disclosure / vesting are considered to be compensation / expenditures made for lobbying.

Example: "X" corporation hires "L" lobbyist as an employee and provides "L" with the fringe benefit of a company car. The annual value of the car is \$5,000. "X" and "L" must report the value of the car as a lobbying expenditure / compensation.

Example: "L" lobbyist participates in "X" corporation's employee stock ownership program (ESOP). "L," an employee of "X," gets a certain amount of stock options based on years of service and subject to a certain vesting schedule. "L" and "X" must report the value of "L" stock options, to the extent they become vested, as lobbying expenses.

Example: "L" lobbyist, an employee of "X" corporation, participates in "X's" 401(k) program. "L" has obtained a loan in the amount of \$50,000 against the vested balance of his 401(k). This vested balance represents the amount contributed by "L" and also the matching amount contributed by "X" on behalf of "L." "X" and "L" need not report the amount of the loan, which is taken against the contributions made by "X" as a lobbying expenditure / compensation, because the vested portion was presumably already reported at the time of vesting.

Comment 15: compensation

Because the statutory definition for "expenditure" includes the term "or anything of value," the term "expenditure" must include "compensation." Forms of compensation that are expenditures include, but are not limited to:

• A payment to a lobbyist for salary, fee, compensation for expenses, or other purpose by a person employing, retaining, or contracting for the services of the lobbyist separately or jointly with other persons;

- A payment in support of, or assistance to, a lobbyist or the lobbyist's activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist;
- A payment that directly benefits a legislator or the legislator's immediate family;
- A payment, including compensation, payment, or reimbursement for the services, time, or expenses of an employee for, or in connection with, direct communication with a legislator;
- A payment for, or in connection with, soliciting or urging other persons to enter into direct communication with a legislator;
- A payment or reimbursement for food or beverages. (See Comment 8). *COGEL, Model Lobby Regulation Act, § 304.08(2-8)(1995).*

Comment 16: contract to monitor

Expenditures made pursuant to a contract to monitor the legislature do not have to be reflected in the reporting figures when that contract is converted into a contract to lobby. *FAO 97-09*. The Commission has never defined what is meant by "a contract to monitor" legislative activity. It should be noted that a contract or agreement to refrain from lobbying is distinguished from a contract or agreement to monitor legislative activity. In the situation of a contract or agreement to refrain from lobbying, there is a reportable event.

Example: Lobbyist "A" is paid by client "C" to monitor the legislature. "C" incurs \$1,000 in expenditures relating to "A's" monitoring efforts. During the session, "A" tells "C" that there is legislation being considered which affects "C." "C" agrees to have "A" lobby on its behalf and the original agreement between "A" and "C" is modified to reflect such. "A" actively lobbies for "C." "C" did not incur "expenditures" for purposes of lobby disclosure requirements until "C" had "A" actively lobby. "C" is therefore not required to recapture and report the expenditures relating to the monitoring efforts.

Comment 17: future events contingency

Compensation contingent upon a future event is an "expenditure" when the transaction involves a lobbyist and legislator. *Informal Commission Determination* (1996).

Example: Lobbyist "A" makes a \$250 football bet with a legislator. The lobbyist loses the bet and pays the legislator. The lobbyist must report the amount paid as a lobbying

expenditure. Had the lobbyist won the bet and had the legislator paid the lobbyist, there would have been no reportable transaction.

2-7-1-4 Gift

Sec. 4. (a) "Gift" means the voluntary transfer of anything of value without consideration.

Comment 18: honorarium

A check issued to a legislator for an honorarium must be reported as a gift, regardless of whether a legislator declines to cash it, or decides to endorse the check to a third party. The exception is when a lobbyist tenders a check, and the legislator returns it within a 30-day time period. (*Staff decision: October 1995*).

Example: Lobbyist "A" provides a legislator with a \$10,000 honorarium for speaking at a dinner event. The legislator never cashes the check, but does not return the check to the lobbyist. The lobbyist reports the value of the honorarium as a gift.

Example: Lobbyist "B" provides a legislator with a \$10,000 honorarium for speaking at a dinner event. The legislator returns the uncashed check to the lobbyist. The lobbyist has not made a gift to the legislator.

Example: Lobbyist "C" provides a legislator with a \$10,000 honorarium for speaking a dinner event. The legislator asks the lobbyist to make the check out to the legislator's favorite charitable foundation. The lobbyist delivers the check to the charitable foundation. The lobbyist has not made a gift to the legislator. However, had the check passed from the lobbyist to the legislator, and from the legislator to the charitable foundation, the lobbyist would have made a gift to the legislator. This example also assumes that the lobbyist, and not the legislator, received the tax benefit for the charitable contribution.

Comment 19: non lobbyist giving of gifts

The Commission has recognized that citizens may give gifts to legislators, and said gifts may or may not trigger a duty to report the event as a "gift" under the lobby law. If there is no legislative action upon which the agent or principal is attempting to impose influence, there is no duty to file a lobbyist's Report of Legislative Gift or Purchase, regardless of the amount of the gift. However, if the gift was given with the intention of influencing legislative action, there is a duty to register and report. *FAO 97-06*.

Additionally, the gift is reported by the person or entity who gave the gift. Thus, if a non-registered person or entity gave gifts by having a registered compensated lobbyist

deliver the gifts, the value of the gifts is reportable by the registered compensated lobbyist.

Example: Corporation "X" is not a registered lobbyist. "X" provides good will gifts in the form of tickets to a major sporting event to legislators each year, regardless of whether it is actively lobbying the legislature. In the past, "X" had an agent actively lobby on certain issues. However, "X's" agent only monitored the legislature this year. The total value of the gifts to the legislators was in excess of \$30,000 during a three month period. The tickets came directly from "X" to the legislators. "X" has no duty to register and report the gifts with the Commission.

Example: Corporation "X" is not a registered lobbyist. "X" provides good will gifts in the form of tickets to a major sporting event to legislators each year, regardless of whether it is actively lobbying the legislature. In the past, "X" had the agent actively lobby on certain issues. However, the agent only monitored the legislature this year. The total value of the gifts to the legislators was in excess of \$30,000 during a three month period. The tickets came directly from "X's" agent to the legislators. "X's" agent must report the value of the gifts if he/she is otherwise a registered compensated lobbyist.

Comment 20: rebates and discounts

A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to the person's status as a legislator. FAO 98-05; COGEL Model Lobby Regulation Act, § 304.09(a).

Example: Lobbyist "A" sells legislator "B" a new automobile at the dealer's cost because "A" has an ownership interest in an auto dealership. The value of the discount (full retail minus dealer's cost) is a lobbying gift /expenditure. It is significant to note that this transaction is also reportable on the Report of Legislative Gift or Purchase because it was a purchase by a legislator from a lobbyist's retail business, and not by a lobbyist from a legislator's retail business.

Example: Lobbyist "A" sells legislator "B" a new automobile and offers "B" a \$3,000 rebate on the vehicle. The rebate offer is part of a promotion offered to the general public. The value of the rebate is not a lobbying gift / expenditure.

(b) The term does not include any of the following:

Comment 21: printed information

Printed information material is not a "gift" under the lobby law. The intent of this is to permit the limited acceptance and use of material advertising something, such as books, reports, pamphlets, calendars, or periodicals, that would have limited value to the recipient and are clearly produced to promote an entity or product, rather than to serve as a more general gift that might be intended or used as leverage to influence legislative action. The cost of producing such materials, however, is reportable as a lobbying expenditure on the lobbyist's activity report, though not as a gift. *COGEL Model Lobby Regulation Act*, § 304.09(b)(1)(1995).

Example: As part of his lobbying efforts, lobbyist "A" distributes glossy pamphlets at the State House to legislators. The pamphlets are not a "gift" to the legislators, though the costs associated with producing the pamphlets are a lobbying expenditure reportable on "A's" activity report.

Comment 22: disclaimed gifts

A gift that is not used and is returned to the donor within 30-days after receipt or delivered by the lobbyist at the request of the legislator to a charitable organization and is not claimed by the legislator as a charitable contribution for federal income tax purposes is not a reportable gift under the lobby law. *COGEL Model Lobby Regulation Act*, § 304.09(2)(a)-(B) (1995).

Example: Lobbyist "A" makes a gift of an expensive painting to a legislator. The legislator donates the painting to the museum of art and does not take a charitable deduction for the donation. The gift of the painting is not a lobbying gift / expenditure. However, the donation of the painting by the legislator to the museum must transpire within a reasonable time of when the lobbyist donated the painting to the legislator (30-days). The legislator should communicate to the lobbyist his intention to disclaim the gift. The lobbyist, for purposes of reporting, must assume all gifts made to legislators have not been declined or disclaimed, unless there is actual knowledge to the contrary.

Example: Lobbyist "A" makes a charitable contribution to Legislator "B's" favorite charity. The contribution was made in the form of golf outing tickets for Legislator "B" and several of Legislator "B's" friends. The golf outing was a fund raising event for the charity. Legislator "B" attended the golf outing with his friends. The value of the golf outing tickets and other expenditures made by the lobbyist for this event which are attributable to Legislator "B" are reportable by "A."

Example: Lobbyist "A" makes a charitable contribution to Legislator "B's" favorite charity. The contribution was made in the form of golf outing tickets for Legislator B and several of Legislator "B's" friends. The golf outing was a fund raising event for the charity. Legislator B did not attend the golf outing, but his friends did. The value of the golf outing tickets and other expenditures made by the lobbyist for this event which are attributable to Legislator "B" are reportable by "A."

Example: Lobbyist "A" gives Legislator "B" four court side tickets to a professional sporting event. Legislator "B" hands the tickets to a staff member because he is unable to attend the event. Legislator "B" has no idea whether the tickets were used by the staff member. The value of the tickets and other expenditures made by the lobbyist for this event are reportable by "A."

Example: Lobbyist "A" gives Legislator "B" four court side tickets to a professional sporting event. Legislator "B" determined that he could not use the tickets and phoned the lobbyist to tell him he could pick up the tickets. Lobbyist "A" did not retrieve the tickets. Lobbyist "A" is unsure whether a staff member of Legislator "B" used the tickets. The value of the tickets and other expenditures made by the lobbyist for this event are reportable by "A," but should not be pro-rated as to "B" in Section E of the activity report.

Example: Lobbyist "A" gives Legislator "B" four court side tickets to a professional sporting event. Legislator "B" determined that he could not use the tickets and phoned the lobbyist to tell him he could pick up the tickets. Lobbyist "A" retrieved the tickets. Lobbyist "A" need not report the value of the tickets.

Comment 23: inheritance

A "gift" does not include a gift, device, or inheritance from a legislator's spouse, child, parent, grandparent, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of that individual, if the donor is not acting as the agent or intermediary for someone other than a person covered by this paragraph. *COGEL Model Lobby Regulation Act*, § 304.09(3)(1995).

Example: Legislator "B" inherits \$1 million from his in-laws. The inheritance is not a gift under the lobby law.

Example: Legislator "B" receives an expensive gift from his cousin. This cousin is employed by a large corporation, which corporation is a registered lobbyist. The funds for the expensive gift are provided by the corporation. The gift is a lobbying expenditure.

Comment 24: personal award

A "gift" does not include a personalized plaque or trophy with a value that does not exceed \$150. This enables legislators to receive personal recognition awards without triggering a duty to report expenditures / gift of the value of the recognition award. COGEL Model Lobby Regulation Act, § 304.09(4)(1995).

Example: Lobbyist "A" hosts a golf outing, and Legislator "B" places first in the tournament. Legislator "B" is given a plaque for his achievement, which plaque is valued at less than \$150. Legislator "B" receives no other gifts related to this golfing event. There is no gift to report.

Example: Lobbyist "A" hosts a golf outing, and Legislator "B" receives \$150 in cash for his participation. Lobbyist "A" also pays for Legislator "B's" greens fees, his lunch, and cart rental. The value of the cash award, fees, lunch and rental is a lobbying gift / expenditure.

(1) a gift received from a relative within the third degree of kinship of the person or of the person's spouse, a gift received from the spouse of any such relative.

Comment 25: degrees of kinship

Degrees of kinship:

First Degree:

(1) Parents; (2) Children.

Second Degree:

(1) Grandparents; (2) Grandchildren; (3) Brothers, Sisters.

Third Degree:

(1) Great-Grandparents; (2) Great-Grandchildren; (3) Aunts, Uncles; (4) Nephews, Nieces. *Legislative Ethics Commission Handbook* 1992 (2nd ed.), at 5.

Comment 26: family member

A family member (and a family member's spouse) who is related to a legislator (within three degrees of kinship) may give a gift to the legislator without triggering a reporting requirement under the lobby disclosure law.

Example: "D" is married to Legislator "B." "D" gives "Legislator B" birthday, anniversary, and other gifts, as is customary in a marital circumstance. The gifts by "D" are not "gifts" under the lobby law.

Example: Legislator "B" receives several gifts from his benevolent family members, including gifts from his aunts and uncles and spouses of said aunts and uncles. None of the benevolent relatives is a registered lobbyist. The gifts are not "gifts" under the lobby law.

Comment 27: when a lobbyist marries a legislator

When a spouse, who is a lobbyist, gifts the other spouse, who is a legislator, it is presumed that the gift is not made with the purpose of influencing legislative action.

Employee benefits which are shared by the legislator who is a spouse of a lobbyist are lobbying expenditures when the benefits are provided by the lobbyist-spouse. This is because employee benefits provided (as per *FAO 97-04*) to a lobbyist are reportable, and not because the spouse of the lobbyist-employee is married to a legislator. (*FAO 99-01*).

(2) A contribution (as defined in IC 3-5-2-15). As amended by PL 9-1993, SEC. 3.

Comment 28: campaign contributions

Whether campaign contributions are legislative gifts or purchases under IC 2-2.1-3-2 (Statement of Economic Interests), and, therefore, reportable under the lobbying statute, IC 2-7-3-6, is outside the Commission's authority to determine. As a practical matter, a lobbyist should report on the Report of Legislative Gift or Purchase any campaign contributions s/he made *that a member of the General Assembly has reported on his/her Statement of Economic Interest*, since the Commission staff cross reference these reports each year to locate errors. (*Staff decision: November 1995*)

Campaign contributions are not reportable lobbying expenditures for purposes of activity reporting. Lobbyists should be aware, however, of certain restrictions contained in the campaign finance law which apply to lobbyists who are involved with delivering campaign monies. Campaign contributions are not "gifts" under the disclosure statute.

Example: Lobbyist "A" makes campaign contributions to a legislator on behalf of one of his clients. The lobbyist has not incurred a lobbying expenditure with regard to the campaign money. However, if the lobbyist seeks to influence legislative action during the course of the transaction with the legislator, the time of the lobbyist must be prorated to reflect a lobbying expenditure. Moreover, when a lobbyist seeks to influence legislative action contemporaneous to a campaign donation, the appearance of impropriety is great and the issue of whether the lobbyist incurred a lobbying expenditure may be shadowed by other ethical concerns.

Comment 29: anything of value

"Anything of value" does not mean a campaign contribution properly received and reported, if reportable, as required under the Campaign Finance Act. COGEL, Model Lobby Regulation Act, § 304(a)(c).

2-7-1-5 Immediate family

Sec. 5. "Immediate family" means a spouse residing in the person's household and dependent children. As added by Acts 1981, PL 9, SEC. 1.

Comment 30: spouses and children

This definition is relevant to the activity reporting requirement set forth in IC 2-7-3-3(a)(2)(E). Thus, gifts made to spouses of legislators or spouses of employees of the General Assembly are reportable only if the spouse resides with the legislator. However, gifts made to children of legislators or employees of the General Assembly are reportable only if the children are dependents.

Example: Lobbyist "A" gives a gift to a legislator's spouse. The legislator and spouse, though married, do not reside in the same household, and thus there has been no reportable "gift."

Comment 31: dependent children

"Dependent children" include unemancipated children residing in a person's household or children claimed by the person as a dependent for tax purposes. COGEL Model Lobby Regulation Act, § 304.10 (1995).

Example: Lobbyist "A" gives a gift to a legislator's grown child. The child resides with the legislator but is not "dependent." No reportable "gift" has been made.

Example: The dependent child of a legislator receives a full-ride university scholarship from a corporation which is a registered lobbyist. The scholarship is awarded on a merit basis. The value of the scholarship is not a gift under the lobby law.

2-7-1-6 Influencing legislative action

Sec. 6. "Influencing legislative action" means promoting, supporting, influencing, modifying, opposing, or delaying any legislative action by any means. As added by Acts 1981, PL 9, SEC. 1.

Comment 32: examples of 'influencing legislative action'

The operative text is "influencing" and "by any means." The ways in which a lobbyist can influence legislative action are too numerous to specify completely. The Commission encourages lobbyists to err on the side of disclosure when presented with the question of whether a lobbyist has "influenced legislative action." Interpretations of this provision by the Commission are not intended to be construed as exhaustive.

Some examples of "influencing legislative action by any means" include, but are not limited to the following:

- Expenses incurred preparing for direct communication with legislative officials are reportable. (Staff decision: April 1995)
- o IC 2-7-3-3(c) exceptions to reportable expenses are nonetheless reportable if any involve direct communication with legislators; e.g., faxes sent directly to legislators, stationary used to write a legislator, telephone calls to legislators, etc. The idea being that direct expenses are *always* reportable, and any other interpretation of IC 2-7-3-3(c) would be contrary to the purpose of the statutes.
- Activities which constitute preparation to communicate with members of the General Assembly are reportable expenses. (Staff decision: April 1995).
- **o** Time spent drafting bills and preparing to communicate with legislators is a reportable expense. (*Staff decision: March 1995*).
- **o** General strategy, if focused on a specific lobbying agenda, is a reportable expense. (*Staff decision: April 1995*)
- Conferences between a lobbyist and a client, in which strategy for a lobbying effort is discussed, are reportable expenses. (Staff decision: April 1995)
- Acts that "move the lobbying agenda along" are reportable expenses, including drafting bills, preparing information to talk about with legislators. (Staff decision: April 1995).
- **o** The time spent by a lobbyist's staff, which drafts and reviews written communication (e.g., brochures, bill amendments, legal summaries) is a reportable expense if the communication is ultimately given to legislative officials, even though the staff has no direct contact with legislators. The staff should not register as lobbyists. (*Staff decision: September 1995*).
- o An expense incurred by a lobbyist while on retainer, which ultimately will influence legislative action, must be reported, even when the lobbyist does not address specific issues with the legislative officials involved, since the expense was incurred in hopes of creating good will that would ultimately benefit the lobbyist's client(s). If all the lobbyist's clients potentially share in the goodwill the expense is intended to generate, then the lobbyist must prorate the expense among all clients. (Staff decision: March 1995).

o If a private citizen (not a registered lobbyist) incurs copying expenses of \$500 or more to copy a petition that will be given to legislators after it is signed, then the citizen is obligated to register as a lobbyist within 15 days of distributing the petition. (Staff decision: December 1995)

Comment 33: good will

Most educational efforts arguably have a side effect of building "good will" between a lobbyist and a legislator. "Good will" of a lobbyist, though sometimes difficult to value, is a benefit which translates into client gain on other unrelated matters. Thus, expenditures related to the development of goodwill are reportable lobbying expenditures.

- o For example, if a lobbyist entertains, hosts a reception, or gives a gift to a legislative official with the idea that it will help to build rapport with the official, which in turn may benefit the lobbyist's client(s), then the lobbyist must report the expense on his/her activity reports. (Staff decision: March 1995)
- o Expenses lobbyists incur, which they cannot attribute to any particular client, must be reported by the lobbyist as an expenditure made on behalf of the lobbyist (on the lobbyist's activity report) for the reporting period in which they apply. FAO 98-09.

Comment 34: payment for non lobbying

A lobbyist may "influence legislative action" by paying others not to influence legislative action. Such payments constitute lobbying expenditures.

Example: Lobbyist "A" is hired to lobby for client "C." There is legislation pending which affects "C." "A" hires the competitor's lobbyist, "D," to refrain from lobbying against "A's" lobbying efforts. The expenses and compensation related to the agreement between "A" and "D" are reportable lobbying expenditures.

Comment 35: academic publications

A person may influence legislative action, but may not be a lobbyist or engaged in lobbying activity. For example, an author may write a book about a public policy issue that may be cited in legislative discussion or debate. The author is not, therefore, compelled to register as a lobbyist by virtue of the publication alone.

Comment 36: monitoring (non lobbyist)

When one is not a registered lobbyist, simply monitoring legislative activity is not an effort to "influence legislative action." *FAO 97-06*. If there is no legislative action upon which the agent or principal is attempting to impose influence, there is no duty to file a lobbyist's Report of Legislative Gift or Purchase, regardless of the amount of the gift. However, if it is determined that the gift was given with the intention of influencing legislative action, there is a duty to register and report.

It should be noted that an agreement to monitor legislative activity (a non-reportable event) is distinct from an agreement to refrain from lobbying (a reportable event).

Example: Corporation "X" is not a registered lobbyist. "X" provides goodwill gifts in the form of tickets to a major sporting event to legislators each year, regardless of whether it is actively lobbying the legislature. In the past, "X" had the agent actively lobby on certain issues. However, the agent only monitored the legislature this year. The total value of the gifts to the legislators was in excess of \$30,000 during a three month period. The tickets came directly from "X" to the legislators. "X" has no duty to register and report the gifts with the Commission.

Comment 37: monitoring (lobbyist)

FAO 97–06 deals only with the situation in which a gift was made by one who was not a registered lobbyist. A registered lobbyist may be presented with different concerns relating to this issue of monitoring legislative activity. The Commission encourages lobbyists to err on the side of disclosure when in doubt.

It should be noted that an agreement to lobby that is converted into an agreement to monitor legislative action will be strictly construed by the Commission. Unlike an agreement to monitor legislative action that is converted into an agreement to lobby, there is a presumption that once active lobbying begins, all subsequent activity between the lobbyist and the client is reportable, especially during any given legislative session. This presumption can be overcome only by a clear showing to the contrary.

Example: Lobbyist "A" is a multi-client lobbyist. Many of "A's" clients have similar legislative interests and goals. "A" has an agreement to monitor legislation for client "C," a corporation involved in the widget industry. "A" has another agreement with client "D" to lobby on matters affecting the widget industry. There are several bills pending which affect the widget industry. "A" lobbies to pass a bill which would benefit "D." The bill would also benefit "C." The compensation and expenditures relating to the agreement with "C" are reportable as lobbying expenditures. "C" must also register as an employer lobbyist.

Example: Lobbyist "A" represents trade association, "T," which is comprised of members of the widget industry. The agreement between "A" and "T" is that "A" will only monitor legislative activity and report to the association what matters are before the

legislature that affect "T's" industry. During a busy legislative session, "A" participates in the lobbying efforts of an unincorporated coalition of lobbyists. The associates of the coalition have a common goal in defeating certain legislation that affects the widget industry. Neither "T" nor any of "T's" members participate in the coalition's efforts. "A" must report the compensation and expenditures relating to his agreement with "T" as lobbying expenditures.

Example: Lobbyist "A" has two clients whose legislative interests have nothing in common. "A" has an agreement with client "C" to lobby actively and an agreement with client "D" to monitor legislative activity. It is well known that "A" represents both "C" and "D." While talking with legislators, "A" makes it a point to mention both clients, though there is no legislation currently pending that would affect "D." Because "A" is a registered lobbyist and because "A" is fostering goodwill for "D," which might later translate into a client benefit should some relevant legislation subsequently emerge for which "A" would lobby on "D's" behalf, "A" must report the compensation and expenditures related to his agreement with "D."

Example: Lobbyist "A" has an agreement to lobby for client "B". "A" and "B" enter into this agreement in September, 1999. "A" lobbies for six months. In February, 2000, "B" begins considering its payments to "A" as being made for monitoring legislative activity, rather than for lobbying. This arrangement will be strictly construed by the ILRC, especially if "A" is a multi-client lobbyist and continues after February, 2000, to lobby actively for other clients.

Comment 38: monitoring converted into lobbying

Expenditures made pursuant to a contract to monitor the legislature do not have to be reflected in the reporting figures when that contract is converted into a contract to lobby. *FAO* 97-09. The caveat is that the lobbyist must consider the examples provided, *supra*, to determine whether the contract to monitor was a reportable lobbying activity in the first instance.

Example: Lobbyist "A" is paid by Client "C" to monitor the legislature. During the session, "A" tells "C" that legislation is being considered that affects "C." "C" agrees to have "A" lobby on its behalf, and the original agreement between "A" and "C" is modified to reflect such. "A" actively lobbies for "C." "A" need not recapture the expenses and compensation relating to the contract to monitor.

Comment 39: direct communication

It is not necessary to have communicated directly in person with a legislator in order to have influenced legislative action. *FAO 97-10*.

Example: "A" is a registered lobbyist. "A" sends gifts to legislators, but does not speak to them in person. "A" must report the value of the gifts as a lobbying expenditure on "A's" activity report. FAO 97-10. "A" must also disclose the gifts on the Report of Legislative Gift or Purchase. PAO 98-09.

Example: Lobby firm "A" has five clients. "A" spends \$100 on a gift to a legislator. "A" is reimbursed \$20 from each client for the gift. "A" is responsible for reporting the gift because "A's" clients did not directly make the gifts. "A" must report the gift on the Report of Legislative Gift or Purchase. "A", however, may prorate the value of the gift on "A's" compensated activity reports and "A" may back out the value of the gift in arriving at a net lobbying figure on "A's" activity report. "A's" clients would report the amount reimbursed to "A" on their respective employer activity reports. FAO 98-09.

Example: Lobby firm "A" has five clients. "A" spends \$500 on a noncash gift to a legislator. "A" is reimbursed \$100 from each client for the gift. "A" is responsible for reporting the gift because "A's" clients did not directly make the gifts. "A" must report the gift on the Report of Legislative Gift or Purchase. "A" may, however, prorate the value gift on "A's" compensated activity reports and "A" may back out the value of the gift in arriving at a net lobbying figure on "A's" activity report. "A's" clients would report the amount reimbursed to "A" on their respective employer activity reports. FAO 98-09.

Example: "A" initiates a comprehensive letter campaign, which consists of "A" sending letters to legislators regarding pending or potentially pending legislation. "A" does not speak directly to the legislators regarding the subject matter of the letters. "A" is a registered lobbyist. The cost of the letter campaign exceeded \$500. The expenditures made with regard to the letters are reportable lobbying expenditures.

Comment 40: veto lobbying

If a lobbyist writes a letter to the governor regarding a bill and sends a copy of the letter to members of the General Assembly while the bill is still before the General Assembly, the lobbyist is communicating with the legislature for the purpose of influencing legislative action. *FAO 98-04*.

Comment 41: advertisements

A newspaper advertisement purchased by a non-profit association addressed to the general public, asking the general public to call the governor and ask him to veto a bill after the bill had been approved by both the House and Senate conference committees, was not lobbying. The advertisement does not communicate with any legislative official with the purpose of influencing legislative action and neither the general public nor the governor is a legislative official under IC 2-7-1-8.

Comment 42: advertisements

A newspaper advertisement in a major newspaper was an open letter addressed to the governor during the 1995 legislative session asking him to veto a bill. The advertisement appeared in the newspaper after the House had passed the bill upon third reading but prior to the Senate's concurrence. The advertisement was published on the same day that the Senate took action on the bill. Due to the timing, there was an issue as to whether the advertisement was really intended for the legislature. The Commission determined that, due to the timing of the advertisement, whether it was lobbying was "borderline." *FAO 98-04*.

Comment 43: business with legislators

The Commission is mindful of the public's expectation for information about all economic relationships between lobbyists and legislators, including those seemingly unrelated to legislative action. There is at least the appearance that those who do business with members of the General Assembly and contribute to their livelihoods may expect special attention when they have interests at stake. Thus, when a lobbyist does business with a legislator, there is always a presumption that the lobbyist is attempting to influence legislative action, regardless of actual intentions. *FAO 98-05*.

2-7-1-7 Legislative action

Sec. 7. "Legislative action" means any matter within the authority of the general assembly; it includes the drafting, introduction, consideration, modification, enactment, or defeat of any bill, resolution, amendment, report, or other matter by the general assembly or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the general assembly acting in his official capacity.

"Legislative action" also means the action of the governor in approving or vetoing any bill. As added by Acts 1981, PL 9, SEC. 1.

Comment 44: no bill pending

Lobbying can take place even when there is no bill pending before the General Assembly.

Example: Lobbyist "A" spends considerable time approaching legislators and informing them about his clients' issues and about the public policy concerns related to those issues. There are no bills pending that would affect his clients. However, "A" is

presenting to the legislators on other matters which are within the authority of the General Assembly. At any given time, a legislator might agree with "A" and introduce legislation which would benefit "A's" clients. Much of what constitutes lobbying does not involve actual bills. The compensation and expenditures related to "A's" clients are reportable lobbying expenditures.

2-7-1-8 Legislative official

Sec. 8. "Legislative official" means a member of the general assembly, or any employee or paid consultant of the general assembly, or an agency of the general assembly. As added by Acts 1981, PL 9, SEC. 1.

Comment 45: general public and governor

Neither the general public nor the governor is a legislative official. FAO 98-04.

2-7-1-9 Lobbying

Sec. 9. "Lobbying" means communicating by any means, or paying others to communicate by any means, with any legislative official with the purpose of influencing any legislative action. As added by Acts 1981, PL 9, SEC. 1.

Comment 46: definitional application for the employer and the compensated lobbyist

There are two ways to lobby: by communicating by oneself, or by paying another to communicate. When one pays another to communicate, the entire amount of compensation paid for lobbying must be reported.

Comment 47: corporate entity

Only the corporate entity that hires the lobbyist or incurs the lobbying expenditure must report and register. *FAO 97-01*. Thus, if a parent corporation hires a lobbyist, it registers and reports, and the subsidiary does not, even though the subsidiary may benefit from the lobbying efforts of the parent corporation.

This respect for corporate formality does not apply, however, in the situation where one corporation that is not a registered lobbyist conducts an extraordinary business transaction with a legislator when that corporation is related to another corporation that is a registered lobbyist.

Example: Corporation "A" is not a registered lobbyist. Corporation "A" is a wholly owned subsidiary of Corporation "B". Corporation "B" is a registered lobbyist.

Corporation "A" purchases a legislator's business. Corporation "A" has no duty to register. Corporation "B" must disclose the transaction between Corporation "A" and the legislator in Section E-1 of the activity report. Additionally, Corporation "B" must file a 30-day report within 30 days from the date of the transaction between Corporation "A" and the legislator. The purchase of a legislator's business is not a transaction made in the ordinary course of business, though it may be a good faith, arm's length transaction. The Commission has not yet determined whether the terms of the transaction are to be disclosed. However, the assertion of a private or proprietary interest in maintaining confidentiality of the terms of the transaction is compelling. In such a situation, it is likely that the disclosure of the event, and not its terms, will suffice. It is important also to note that the purchase of a legislator's business pursuant to an ongoing purchase/sale (i.e., lease) arrangement will necessitate ongoing disclosure by the lobbyist.

Example: "X" corporation is a multi-state provider of electricity and natural gas for business and consumer users. "Y" is its wholly-owned subsidiary with primary responsibilities for a geographical area within the State of Indiana. "Y" engages in lobbying activities in Indiana. "X" is not required to register as a lobbyist by virtue of "Y's" lobbying activities, even though "X" is the sole owner of "Y."

Comment 48: contract to lobby

When one enters into an agreement to have another person lobby, one is paying another to communicate. A lobbyist who enters into a contract which contains a promise to pay of greater than \$500 for lobbying services must register the contractual relationship at the time of the contract and must report the expenditures / compensation made pursuant to the contract in the respective periods in which the said expenditures / compensation are made. *FAO 97-03*.

Example: In November, 1997, "L" lobbyist enters into a contract with "C" client. The contract specifies that "C" will pay \$10,000 to "L" to lobby for "C" in the 1998 legislative session. "L" does not perform any services under the contract until 1998, and "C" does not render payment on the contract until August, 1998. Both "L" and "C" must register as lobbyists at the time of the making of the contract. "L" and "C" must report payment made / received on the contract during the period in which payment is made / received.

Comment 49: contract to monitor

A contract to monitor legislative activity is not "lobbying" for purposes of lobby disclosure. *FAO 97-06*; *FAO 97-09*. However, one must be mindful of the whether legislative action is being influenced. *See supra, comments IC 2-7-1-6*.

Comment 50: indirect communication

The communication need not be direct, but can be accomplished by any means. *FAO 97-10. See supra, comments, IC 2-7-1-6.* For example, the Commission has determined that sending an e-mail to a legislator should be treated as an ordinary letter or communication to the legislator. (*Minutes of Public Meeting, September 24, 1996*). Internet communications in which lobbyists actively seek out legislators are lobbying efforts. (*Minutes of Public Meeting, November 21, 1996*).

Comment 51: communicate

The word "communicating" is not modified by any requirement that the lobbyist initiate the communications. (*Minutes of Public Meeting, November 21, 1996*).

Comment 52: IRS definition

Indiana's definition of lobbying differs from the definition of lobbying used by the Internal Revenue Service for purposes of deductibility of lobbying expenses. 26 CFR 1.162-29(b)(6), 26 U.S.C. 162(e)(2): HR Conf. Rep. No. 213, 103 Cong., 1st Sess. 605 (1993).

Comment 53: good will

Attempts to cultivate good will between the lobbyist and the legislators are considered lobbying. *See IC 2-7-1-6, comments, supra.*

Comment 54: payments not to lobby

Paying another to communicate with the purpose of influencing legislative action is lobbying. Similarly, paying another to abstain from lobbying is also lobbying. The abstention from lobbying is a form of communication made for the purpose of influencing legislative action when the abstention is exchanged for valuable consideration. *See comments, IC 2-7-1-6, supra.*

2-7-1-10 Lobbyist

Sec. 10. "Lobbyist" means any person who:

- (1) engages in lobbying; and
- (2) in any registration year, receives or expends an aggregate of 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 the individual's regular employment. As amended by PL 3-1992; PL 9-1993, SEC. 4.

Comment 55: compensated and employer defined

There are two types of lobbyists in Indiana: lobbyists who are compensated for lobbying and lobbyists who compensate others. Additionally, it is possible both to be compensated for lobbying and also to compensate another person for lobbying. *FAO* 98-01. If such is the case, the lobbyist must register in both capacities, but need only file activity reports in its capacity as a compensated lobbyist.

Example: Lobby firm "A" has several clients. To meet the needs of those clients, "A" decides to hire two contract lobbyists and two employee lobbyists. "A" receives greater than \$500 from its clients. "A" expends greater than \$500 paying the four lobbyists it hired. Thus, "A" must register in two capacities: as one who gets compensated and as one who compensates another for lobbying.

Comment 56: contract to lobby

A lobbyist who enters into a contract which contains a promise to pay of greater than \$500 for lobbying services must register the contractual relationship at the time of the contract and must report the expenditures / compensation made pursuant to the contract in the respective periods in which the said expenditures / compensation are made. *FAO* 97-03.

Example: Corporation lobbyist "A" hires lobby firm "B" in November, 1999 to lobby. "A" pays "B" in January, 2000 on the lobbying contract. "A" and "B" must register in 1999 and 2000. "A" must report the payments it made to "B" in 2000.

Example: Corporation lobbyist "A" hires lobby firm "B" on December 20, 1999 to lobby. "A" pays "B" on December 20, 1999, for lobbying to be performed in 2000. Because payment was made in 1999, "A" and "B" must register in 1999 and in 2000. "A" must report the payments it made to "B" in 1999 on "A's" second half 1999 activity report.

Example: Corporation lobbyist "A" hires lobby firm "B" on December 20, 1999 to lobby. "A" pays "B" on January 2, 2000 for lobbying to be performed on that agreement. Because "A" and "B" must report the agreement to lobby within 15 days from its making, they may register in January, 2000. "A" reports the payments it made to "B" on its first half 2000 activity report.

Comment 57: association dues

The inquiry of whether one has received or expended \$500 may include association dues. FAO 97-07(a). An association is a "person." When the principal purpose of the

association is lobbying (greater than 50% of its total budget is applied towards lobbying), and when a member's dues are greater than \$500, the dues are compensation for lobbying. The trade association must register as a compensated lobbyist and the member(s) as employer lobbyists. *See example, supra*.

Comment 58: non lobbyist employees

The fact that a corporation is a registered lobbyist does not mean that all of its employees are lobbyists. Persons who work at influencing legislative action on behalf of the corporation are lobbyists, but the corporation's other employees who do not engage in lobbying are not lobbyists. (*Informal Commission Decision: November*, 1996).

Comment 59: lobbyist employees

An employee who lobbies on behalf of an employer is a lobbyist, to the extent the employee receives greater than \$500 in compensation. *FAO 98-02*. In determining whether an employee has met the \$500 threshold, one must consider such payments as employee and fringe benefits. *FAO 97-04*.

Example: Lobby firm "A" hires an employee to lobby for "A's" clients. The employee is paid \$10,000 annually and spends 75% of her time performing lobbying services. The lobby firm must report \$7,500 of the employee's salary as a lobbying expenditure. "A" should be cognizant of the definition of lobbying, as per the interpretations contained in this commentary, in arriving at a percentage of time spent lobbying.

Example: Corporation "C" is already registered as an employer lobbyist and hires two employees to lobby on behalf of "C." The first employee is employed as corporate counsel, is paid \$100,000, and spends only 10% of her time lobbying for "C." The second employee is paid \$30,000 and spends 100% of his time lobbying for "C." "C" would report a \$10,000 lobbying expenditure with regard to the first employee and a \$30,000 lobbying expenditure with regard to the second employee.

Comment 60: the corporate officer who lobbies

It is customary for a corporate officer to attend legislative functions and to represent the interests of the corporation on legislative matters. Time spent by a corporate officer in attempting to influence legislative action is reportable by the corporation. If the corporation is already registered as a lobbyist, it must value all time spent by the corporate officer, regardless of whether the \$500 threshold is reached with regard to that individual. If the corporation is not already registered as a lobbyist, it must do so when the value of the corporate officer's time attributable to lobbying exceeds the \$500 threshold. When \$500 of a corporate officer's compensation is attributable to lobbying

activities, that individual must register as a compensated lobbyist for the corporation. It is important for the corporation to be mindful that the corporate officer must register as a compensated lobbyist within 15 days of having met the \$500 threshold.

Example: When an officer of a company hosts a meeting with legislators to discuss and explain the complex issues in a bill and to answer questions, that officer is engaged in lobbying, and the company and the officer must register if the \$500 threshold is met. (*Staff decision: September 1995; FAO 98-02*).

Example: Similarly, a chairman/president of an organization, who writes letters or calls legislators to support or protest legislation which affects that organization, is lobbying and must register if the \$500 threshold is met. The \$500 includes the prorated amount of any regular salary s/he receives during the time spent writing or calling. (Staff decision: December 1995).

Comment 61: compensated and employer

A "compensated lobbyist" is an individual, organization, association, corporation, partnership, or firm that receives compensation for lobbying services rendered on behalf of a client or an employer. An "employer lobbyist" is an organization, association, corporation, partnership, firm, or individual that compensates another to perform lobbying services on behalf of the employer lobbyist.

Comment 62: agreements not to lobby

A person who has been compensated greater than \$500 to abstain from lobbying must register as a lobbyist. *See example, supra*.

Comment 63: unincorporated associations and incorporated or

unincorporated coalitions

Unincorporated associations/coalitions which have a principal purpose of lobbying must register and report as lobbyists. Incorporated coalitions must also register as employer lobbyists if certain conditions are met.

Example: Several lobbyists who represent clients in the insurance industry come together during a legislative session and organize their lobbying efforts with regard to a particular bill. There is no incorporated entity which is responsible for the activities of these lobbyists, though their efforts are organized. The funding for the lobbying activities is derived from the various lobbyists' clients. Each client must report the amount paid to the coalition for lobbying.

Example: Three incorporated nonprofit organizations donate the time of several employees to lobby for a particular bill about which all three organizations have an interest. One of the organizations provides expensive literature and other media material to support the lobbying efforts. One of the three organizations donates a considerable amount of funding for the lobbying efforts. The third organization lends it name and reputation to the lobbying efforts, to the extent that all legislators and other interested persons believe that entity to be the "lobbyist" supporting the efforts. All of the entities must register and report the expenditures each made, designating the entity which lent its name as the lobbyist.

Example: nonprofit Lobbying activities are conducted through an incorporated entity by several persons who join together in a common enterprise for the purpose of lobbying through the incorporated entity. The incorporated entity has no employees. The incorporated entity must register both as a compensated and as an employer lobbyist. Those persons/entities who form to place, collectively, greater than \$500 attributable to lobbying into the incorporated entity which conducts the lobbying must register as employer lobbyists. (Minutes of Public Meeting, June 2, 1998).

Comment 64: the volunteer lobbyist

The Commission was presented with the question of how to report the efforts of a volunteer lobbyist. No written request for advisory opinion was submitted. As a result, the issue of reporting volunteer lobbying efforts remains unresolved. In the spirit of disclosure, the lobbyist who is volunteering his/her lobbying services should disclose such on his/her registration statement, particularly if that person is otherwise registered as a lobbyist for another entity. The entity for whom the lobbying is being performed should likewise disclose the relationship between itself and the volunteer lobbyist. Whether such arrangements trigger a duty of registration for parties not otherwise registered has not been determined.

2-7-1-11 Payment

- Sec. 11. (a) "Payment" means a payment, compensation, reimbursement, distribution, transfer, loan, advance, conveyance, deposit, gift, pledge, subscription, or other rendering of money, property, services, or anything else of value, whether tangible or intangible, and any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make a payment.
 - (b) "Paid" means that payment has been made.
- (c) "Pay" means the act of making a payment. As added by Acts 1981, PL 9, SEC. 1.

Comment 65: cross reference

See comments, supra, IC 2-7-1-2 (compensation), IC 2-7-1-3 (expenditure), IC 2-7-1-4 (gift)

2-7-1-12 Person

Sec. 12. "Person" means a human being, corporation, limited liability company, partnership, association, firm, or educational institution. As amended by PL 8-1993, SEC. 3.

Comment 66: associations

Trade associations are "persons" under the lobby disclosure law. FAO 97-07(a). See example, supra.

Comment 67: all inclusive

The definition of "person" is all inclusive. It includes an individual and any combination of two or more individuals however organized. *Legislative Ethics Commission Handbook 1992* (2nd ed.), at 7.

Comment 68: model law definition

"Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in concert. *COGEL, Model Lobby Regulation Act § 304.16 (1995)*.

Comment 69: public entities, political subdivisions and municipal corporations

The Commission has been presented with the issue of whether public entities, political subdivisions and municipal corporations are "persons" under the disclosure statute. The issue has heretofore been resolved by the position that public entities, political subdivisions and municipal corporations come to their exemption under the statute by virtue of the public employee and public official exemption found in 2-7-2-6(a). Thus, if the person doing the lobbying for the public entity is a public employee or public official, the public entity need not register and report. If the public entity hires a contract lobbyist, it must register and report its lobbying efforts. It is likely that the Commission will re-evaluate this interpretation and will address the issue of whether public entities, political subdivisions and municipal corporations are "persons" under the statute. If it is determined that they are not "persons" under the statute, it follows that an exemption is not necessary.

2-7-1-13 Public employee

Sec. 13. "Public employee" means an employee of the state or federal government or a political subdivision of either of those governments and does include an official or employee of any university, college or other educational institution presently existing or hereafter established in Indiana, for the purpose of providing programs of collegiate or university education or other post high school education and which is supported in whole or in part by appropriations made by the general assembly. As added by Acts 1981, PL 9, SEC. 1.

Comment 70: public entity

A public entity that hires an independent contractor to lobby on its behalf must register as an employer lobbyist. The statute provides exemptions only for "public officials" and "public employees" and not for "public entities." (*Staff decision: February 1993*).

Example: A city council hires a private lobbyist to represent the interests of the city with regard to certain tax zoning legislation. The city council must register. Had the city council hired an employee to do the lobbying, however, it would have no duty to register.

Comment 71: appointed official

"Public employee" means an individual appointed to a position, including a person appointed to a position created by statute, whether compensated or not, in state, county or municipal government, including members of the judiciary. *COGEL, Model Lobby Regulation Act, § 304.17 (1995)*.

Comment 72: hybrid entities

The employees of an entity that is created by the legislature to perform a public function are public employees within the meaning of IC 2-7-1-13. This includes "hybrid" entities (separate corporations which are nonetheless instrumentalities of the State). (*Staff decision: December 1994*).

Comment 73: state agency

A "state agency" is an entity described as such in its enabling statute, with direct funding from the state, with debts that become those of the state, with employees who are paid by the state and who participate in PERF, and with the attorney general as counsel. Persons employed by such an agency are exempt from registering and reporting. (*Staff decision: December 1994*).

2-7-1-14 Public official

Sec. 14. "Public official" means an individual who holds office in the executive, judicial, or legislative branch of the state or federal government or a political subdivision of either of those governments and includes an official or employee of any university, college or other educational institution, presently existing or hereafter established in Indiana, for the purpose of providing programs of collegiate or university education or other post high school education and which is supported in whole or in part by appropriations made by the general assembly. As added by Acts 1981, PL 9, SEC. 1.

Comment 74: hiring a lobbyist

When a public official, who is exempt by statute from registering as a lobbyist, hires a private firm or person to lobby for him/her, the public official must register as an employer lobbyist. (*Staff decision: January 1994, October 1995, December 1995*). It is significant to note that it is the public official, and not the public entity which s/he represents, who is granted the exemption.

2-7-1-15 Registrant

Sec. 15. "Registrant" means a person who is required to register under IC 2-7-2-1. As added by Acts 1981, PL 9, SEC. 1.

2-7-1-16 Registration statement

Sec. 16. "Registration statement" means the registration statement provided by IC 2-7-2. As added by Acts 1981, PL 9, SEC. 1.

Comment 75: types

There are two different registration statements: one for Employer Lobbyists and one for Compensated Lobbyists.

2-7-1-17 Commission

Sec. 17. "Commission" refers to the Indiana lobby registration commission established by IC 2-7-1.6. As amended by PL 3-1992, SEC. 5; PL 9-1993, SEC. 5.

III. Indiana Lobby Registration Commission

2-7-1.6-1 Establishment

- Sec. 1. (a) The Indiana lobby registration commission is established.
- (b) The commission is a separate and independent agency within the legislative branch of state government.
- (c) The commission shall administer this article. As added by PL 3-1992, SEC. 6. Amended by PL 9-1993, SEC 6.

2-7-1.6-2 Membership

- Sec. 2. (a) The Commission consists of four (4) members. The president pro tempore of the senate, the minority floor leader of the senate, the speaker of the house of representatives and the minority floor leader of the house of representatives shall each appoint one (1) member.
- (b) Not more than two (2) of the four (4) members may hold the same political affiliation.
- (c) An incumbent legislator or lobbyist may not be appointed as a member of the commission. As added by PL 3-1992, SEC. 6.

2-7-1.6-3 Terms; vacancies

- Sec. 3. (a) Each member of the commission serves for a term of four (4) years, beginning January 1.
 - (b) Members of the commission may be reappointed to successive terms.
- (c) The appropriate appointing authority shall fill a vacancy on the commission for the duration of the unexpired term. As added by PL 3-1992, SEC. 6.

2-7-1.6-4 Chairman

Sec. 4. A chairman shall be selected for the commission to serve for a term of one (1) year. The chairman's term begins January 1. The chairman to serve in even-numbered years shall be designated by the president pro tempore of the senate, and the chairman to serve in odd-numbered years shall be designated by the speaker of the house of representatives. As added by PL 3-1992, SEC. 6.

2-7-1.6-5 Powers and duties

- Sec. 5. (a) The commission has the powers and duties specified in this article.
- (b) The commission may do the following:
- (1) Hold meetings as necessary.
- (2) Make recommendations to the general assembly concerning administration of this article.
- (3) Subject to IC 2-7-7, receive and hear any complaint alleging a violation of this article.

(4) Obtain information relevant to an audit conducted or a complaint filed under this article.

Comment 76: audit procedures

See infra, appendix 6: audit procedures. Also note that, effective for the 1998 random audits, the clients and compensated lobbyists of any compensated lobbyist randomly selected will be simultaneously audited with the randomly selected compensated lobbyist. This is to ensure adequate cross-referencing.

- (5) Administer oaths.
- (6) Act as an advisory body by providing advisory opinions to lobbyists on questions relating to the requirements of this article.

Comment 77: advisory procedures

See infra, appendix 1: advisory opinion procedure.

See also infra, appendix 7, FAO 99-03: Procedures for Effects of the Tendering of Informal Written and Verbal Advice by the ILRC Executive Director & Counsel.

- (7) Establish qualifications for and employ the personnel required to implement this article.
- (8) Adopt rules and procedures necessary or appropriate to carry out its duties.
- (9) Make reasonable and necessary expenditures of money appropriated to the commission.
- (10) Do other things necessary and proper:
 - (A) to implement this article; or
- **(B) as requested by the general assembly or the legislative council.** *As added by PL 3-1992, SEC. 6. Amended by PL 9-1993, SEC. 7.*

2-7-1.6-6 Majority vote

Sec. 6. The vote of at least three (3) members is required for the commission to take official action. As added by PL 3-1992, SEC. 6.

2-7-1.6-7 Per diem, mileage; travel allowances

Sec. 7. When the commission meets, each member is entitled to receive the same per diem, mileage, and travel allowances approved by the legislative council for lay members serving on interim study committees established by the legislative council. As added by PL 3-1992, SEC. 6.

2-7-1.6-9 Application of chapter to committees under IC 2-2.1-3-5

Sec. 9. Nothing in this chapter affects the committees established under IC 2-2.1-3-5. As added by PL 3-1992, SEC. 6.

IV. Registration Statements

2-7-2-1 Filing requirement

- Sec. 1. (a) Each lobbyist shall file annually with the commission a registration statement under oath accompanied by the registration fee required by this section.
- (b) Except as provided in subsection (c), the registration fee is one hundred dollars (\$100).
- (c) The registration fee of a lobbyist that satisfies either of the following is fifty dollars (\$50):
 - (1) The lobbyist is a nonprofit organization exempt from federal income taxation under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.
 - (2) The lobbyist:
 - (A) is an employee of a lobbyist described in subdivision (1); and
 - (B) performs lobbying services for the employer as part of the lobbyist's salaried responsibilities. As amended by Acts 1982, PL 9, SEC. 1; PL 3-1992, SEC.7; PL 9-1993, SEC. 8.

Comment 78: agreements to lobby

The duty to register and become subject to the lobbying statute arises for both parties at the time an agreement to lobby is made. FAO 97-03. See supra, example.

Comment 79: fees

Those persons / entities registering both as compensated and as employer lobbyists need only pay one registration fee. No additional fee is required when amending an original registration.

Comment 80: forms

See infra, appendix (instructions on forms).

2-7-2-2 Time of filing; expiration; late filing; fees

Sec. 2. (a) Each registration statement shall be filed not later than January 15 or within fifteen (15) days after the registrant becomes a lobbyist, whichever is later. Each registration statement expires on December 31 of the year for which it was

issued. The commission may accept registration statements before January 1 of the year to which they apply, as the commission determines.

Comment 81: ongoing client relationship

If a compensated lobbyist has an ongoing relationship with an employer lobbyist, both are required to register by January 15th each year to avoid paying a late fee. This statutory provision that one must file within 15 days after becoming a lobbyist applies to new lobbyists and to lobbyists contracting with new clients.

- (b) Subject to subsections (c) and (d), the commission shall impose a late registration fee of ten dollars (\$10) per day for each day after the deadline until the statement is filed.
 - (c) The late registration fee shall not exceed one hundred dollars (\$100).
- (d) The commission may waive the late registration fee if the commission determines that the circumstances make imposition of the fee inappropriate. As amended by PL 3-1992, SEC. 8; PL 9-1993, SEC. 9.

Comment 82: agreements to lobby

The Commission recognizes that many times an agreement to lobby may arise during the legislative session. Said agreements may or may not be reduced to writing. Regardless of the circumstances surrounding the agreement to lobby, it is unlawful under the lobby disclosure law to fail to register said agreements within 15 days from their making and to report expenditures made therewith.

2-7-2-3 Contents; lobbyists compensated for lobbying

- Sec. 3. The registration statement of each lobbyist who is compensated for lobbying shall include:
 - (1) his name, social security number, residence address and telephone number, business address and telephone number, and the addresses and telephone numbers of any temporary living or business quarters he has in Marion County;
 - (2) the name, business address, telephone number, and kind of business of each person (including the names of each officer or partner) who compensates him;
 - (3) his primary occupation and the name or names of his employers if different than those specified in subdivision (2); and
- (4) the subject matter of his lobbying. As amended by Acts 1982, PL 9, SEC. 2; PL 6-1987, SEC. 1.

Comment 83: compensated lobbyist

A compensated lobbyist is an individual, organization, association, corporation, partnership, or firm that receives compensation for lobbying services rendered on behalf of a client or employer.

Comment 84: social security numbers

Commission staff maintains a separate file of social security numbers and blocks out these numbers on activity reports that are kept in the public records files.

Comment 85: lobbyists hiring lobbyists

There does not appear to be statutory authority which would support the Commission in requiring that a compensated lobbyist disclose for which clients of an employer lobbyist he lobbies. In the general spirit of disclosure, the Commission invites, but does not require, compensated lobbyists to disclose those clients on whose behalf they are lobbying voluntarily. *FAO 97-08*.

Example: Lobbyist "A" is paid by Lobby Firm "B" to lobby for client "C." "A's" compensation for the lobbying "A" does for client "C" is paid solely by "B." "A" currently reports that he is a compensated lobbyist for "B" and does not report that he lobbies for "B's" client, "C."

Comment 86: forms

See infra, appendix (forms instructions).

2-7-2-4 Contents; statements of lobbyists compensating a person for lobbying

- Sec. 4. The registration statement of each lobbyist who compensates a person for lobbying shall include:
 - (1) his full name, business address and telephone number, type of business, and the full name of the individual who controls the business, the partners, if any, and officers;
 - (2) the full name, business address, and telephone number of each person compensated by him as a lobbyist;
 - (3) the subject matter for which he has employed or contracted with a lobbyist. As added by Acts 1981, PL 9, SEC. 1.

Comment 87: employer lobbyist

An employer lobbyist is an organization, association, corporation, partnership, firm, or individual that compensates another to perform lobbying services on behalf of the employer lobbyist.

Comment 88: forms

See infra, appendix (forms instructions)

2-7-2-5 Amendments; changes in information; notice of termination

Sec. 5. If a material change occurs in any of the information contained in a registration statement, an appropriate amendment shall be filed within fifteen (15) days after the change. Each registered lobbyist may file a notice of termination within fifteen (15) days after he ceases the activity which required his registration; however, this does not relieve him of the reporting requirements of IC 2-7-3. As amended by Acts 1982, PL 9, SEC. 3.

Comment 89: fees and penalties

There is no fee assessed for amending an original filing. However, amended filings that are filed beyond the 15 day period are subject to a late penalty.

Comment 90: multi client lobbyists

A registered lobbyist, who is registered for one or more clients and who lobbies for a client for whom he has not yet registered, must comply with the 15 day amendment provision.

Example: Lobbyist "A" has three clients for whom he is registered to lobby, all of whom share common legislative interests. "A" has a fourth client for whom he has not yet registered, but said client shares the same legislative interests as "A's" other three clients. During the session, "A" lobbies for the three clients for whom he is registered to lobby. "A" waits until 15 days after the legislative session has adjourned to register as the fourth client's lobbyist. "A" should have registered as the fourth client's lobbyist within 15 days of agreeing to lobby for that client.

2-7-2-6 Exemptions; application of this chapter and IC 2-7-3

Sec. 6. (a) The provisions of this chapter and IC 2-7-3 are not applicable to any full-time or part-time public official acting in his official capacity or any full-time or part-time public employee in Indiana acting within the scope of his employment.

Comment 91: public entity

A public entity which hires an independent contractor to lobby on its behalf must register as an employer lobbyist. The statute provides exemptions only for "public officials" and "public employees" and not for "public entities." (Staff decision: February 1993).

Example: A city council hires a private lobbyist to represent the interests of the city with regard to certain tax zoning legislation. The city council must register. However, had the city council hired an employee to do the lobbying, it would have no duty to register.

Comment 92: appointed persons

"Public employee" means an individual appointed to a position, including a person appointed to a position created by statute, whether compensated or not, in state, county or municipal government, including members of the judiciary. *COGEL, Model Lobby Regulation Act, § 304.17 (1995)*.

Comment 93: hybrid entities

The employees of an entity that is created by the legislature to perform a public function are public employees within the meaning of IC 2-7-1-13. This includes "hybrid" entities (separate corporations which are nonetheless instrumentalities of the state). (*Staff decision: December 1994*).

Comment 94: state agency

A "state agency" is an entity described as such in its enabling statute, with direct funding from the state, with debts that become those of the state, with employees who are paid by the state and who participate in PERF, and with the attorney general as counsel. Persons employed by such an agency are exempt from registering and reporting. (*Staff decision: December 1994*).

Comment 95: hiring a lobbyist

When a public official, who is exempt by statute from registering as a lobbyist, hires a private firm or person to lobby for him/her for the public entity that the public official represents, the public official must register as an employer lobbyist. (*Staff decision: January 1994, October 1995, December 1995*). It is significant to note that it is the public official, and not the public entity which s/he represents, who is granted the exemption.

(b) The provisions of this chapter are not applicable to any newspaper or other periodical of general circulation, book publisher, news wire service, radio or television station (including any individual who owns, publishes, or is employed by any such newspaper or periodical, radio, or television station) which in the

ordinary course of business publishes news items, editorials, or other comments, or paid advertisement, which directly or indirectly urge legislative action if such newspaper, periodical, book publisher, radio or television station, or individual engages in no further or other activities in connection with urging legislative action other than to appear before a committee of the legislature in support of or in opposition to such action.

Comment 96: public service announcements

If a public service announcement (PSA) is placed by a person who is not a lobbyist, and the content of the PSA was addressed to the public rather than to the General Assembly, no lobbying has occurred. However, if the PSA is produced by a lobbyist and then placed by a lobbyist, the costs of production and distribution are lobbying expenditures. (*Informal Commission Determination: November 1996*).

(c) The provisions of this chapter are not applicable to an individual invited, by any member of the general assembly, to testify before the general assembly or a legislative committee at the time the individual is testifying.

Comment 97: invitation to testify

If an individual is invited to testify before the General Assembly or a legislative committee by a member of the General Assembly, lobbying does not take place during the testimony. A person is not required to include any expenses necessarily incurred in connection with giving the testimony in determining total lobbying expenditures. Proof of invitation to testify should be retained for four years. *Legislative Ethics Commission Handbook 1992* (2nd ed.) *at 16*. However, any compensation or expenses incurred for lobbying that takes place before or after the testimony is reportable.

- (d) The provisions of this chapter are not applicable to any officer or employee of the state central committee of a political party while acting within the scope of his employment.
- (e) This chapter does not apply to a person whose lobbying services are performed without compensation.

Comment 98: citizens

The Commission has informally interpreted this provision to mean that when an individual citizen chooses to discuss legislation with members of the General Assembly, the citizen need not register and report. This provision does not apply to employees of corporations who do not ordinarily lobby but who periodically represent the interests of the corporation before the legislature.

Comment 99: the volunteer lobbyist

The issue of how to report the efforts of the volunteer lobbyist remains unresolved. Of particular interest is when the volunteer lobbyist is an otherwise registered compensated lobbyist or when the entity for which the lobbying is being performed is an otherwise registered employer lobbyist. In the spirit of disclosure, the commission encourages any otherwise registered lobbyist person/entity who participates or benefits from volunteer lobbying efforts to disclose the existence of the relationship.

(f) Notwithstanding the definition of "lobbying" as specified in 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.

Comment 100: free speech

The requirement that one must disclose lobbying activities is not, in itself, a restriction or undue burden on free speech. FAO 98-04.

- (g) This article does not apply to:
- (1) an insurance policy;
- (2) a credit card agreement;
- (3) a recorded mortgage secured by real property; or
- (4) a written agreement with a financial institution (as defined in IC 28-1-1-3); if the insurance policy, credit card, mortgage, or agreement was issued or made in the ordinary course of business.

Comment 101: statutory construction

The enumerated exemptions in this section are specific. "It is instructive that the Indiana General Assembly enacted amendments to 2-7-2-6 in 1992 and 1993. Those amendments added subsection (g), which provided that the Act does not apply to an insurance policy, a credit card agreement, a recorded mortgage secured by real property, or a written agreement with a financial institution. This language of exclusion was intended to eliminate from activity reports information that had been required by an attorney general's interpretations of (a)(3). [See Attorney General Opinions 90-15 and 90-23.] If the General Assembly had intended an inherent limitation on the meaning of the word expenditure so that only voluntary expenditures were included, it would not have been necessary to provide the additional exclusionary language of subsection (g)." FAO 98-05.

Thus, this exemption is interpreted by the Commission to be limited to only the items enumerated.

(h) This article does not apply to compensation paid to the spouse of a legislator for goods or services provided by the spouse in the ordinary course of business to a lobbyist or a lobbyist's employer.

Comment 102: application to other reports

The exception provided by IC 2-7-2-6(h), which exempts lobbyists from reporting the value of items purchased in the ordinary course of business from a corporation owned by the spouse of a legislator, also applies to IC 2-7-3-6, which requires a lobbyist to file a written report whenever a purchase of goods or services in excess of \$100 is made from a member of the General Assembly, or from a legislator's family business. (*Staff decision: January 1994*)

Comment 103: legislator's ownership interest in spouse's business

If the legislator has a 50% or more ownership interest in the spouse's business and a lobbyist purchases goods or services from that business, the lobbyist must report in Section E-1 the value of the transaction attributable to the legislator's ownership interest.

(i) The items to which this article does not apply under subsection (g) or (h) shall not be included in activity reports filed under IC 2-7-3-3. As amended by Acts 1982, PL 9, SEC. 4; PL 3-1992, Sec. 9; PL 9-1993-, SEC. 10.

Activity Reports

2-7-3-1 Filing requirement

Sec. 1. Each lobbyist shall file semi-annually with the commission an activity report under oath. He shall file a separate activity report relating to each person from whom he receives payment for lobbying. As added by Acts 1981, PL 9, SEC. 1. Amended by PL 3-1992, SEC. 10

Comment 104: compensated / employer

A registered employer lobbyist files only one activity report semi-annually. A compensated lobbyist must file a separate activity report for each employer/client.

Comment 105: no activity

Even when a lobbyist has no reportable activity during one of the reporting periods, an activity report must be filed. *Legislative Ethics Commission*, *Summary Guidelines to Indiana Law*, June 1993, at 3.

Comment 106: agreements to lobby

The duty to register and become subject to the lobbying statute arises for both parties at the time an agreement to lobby is made. *FAO 97-03*. *See supra*, *example*. The expenditures on the agreement are reported on each lobbyist's activity report during the period in which they were incurred.

2-7-3-2 Time of filing; failure to file; penalty; limitation

- Sec. 2. (a) One (1) activity report shall be filed not later than July 31, covering the period from January 1 through June 30. The other activity report shall be filed not later than January 31, covering the period from July 1 through December 31 of the immediately preceding calendar year. (b) Subject to subsections (c) and (d), the commission shall impose a penalty of ten dollars (\$10) per day for each day that the person fails to file any report required by this chapter until the report is filed.
 - (c) The penalty shall not exceed one hundred dollars (\$100) per report.
- (d) The commission may waive the penalty if the commission determines that the circumstances make imposition of the penalty inappropriate. As added by Acts 1981, PL 9, SEC. 1. Amended by PL 3-1992, SEC. 11; PL 9-1993, SEC. 11.

2-7-3-3 Contents; requisites

Sec. 3. (a) The activity reports of each lobbyist shall include the following: (1) a complete and current statement of the information required to be supplied under IC 2-7-2-3 and IC 2-7-2-4.

Comment 107: updated registration information

Lobbyists are required by this section, in essence, to register three times per year with the Commission. Although the lobbyist is not technically registering with the Commission each time s/he files an activity report, it is incumbent upon the lobbyist to provide the Commission with updated and accurate registration information at each activity report filing.

Comment 108: corporate entity

Only the corporate entity which hires the lobbyist or incurs the lobbying expenditure must report and register. *FAO 97-01*.

Comment 109: forms

See infra, appendix (forms instructions).

(2) Total expenditures on lobbying (prorated, if necessary) broken down to include at least the following categories:

Comment 110: reaching the threshold

Once it has been determined that the \$500 threshold has been crossed, all expenditures are to be reported, including those expenditures made in arriving at the \$500 threshold. *FAO 97-05*.

Comment 111: prorating

Prorating of expenditures for lobbying may only occur if necessary. Otherwise, a lobbyist must report actual expenditures for each client. Examples of when prorating may be necessary are as follows:

o An expense incurred by a lobbyist while on retainer, which ultimately will influence legislative action, must be reported, even when the lobbyist does not address specific issues with the legislative officials involved, since the expense was incurred in hopes of creating goodwill that would ultimately benefit the lobbyist's client(s). If all the lobbyist's clients potentially share in the goodwill the expense is intended to generate, then the lobbyist must prorate the expense among all clients. (Staff decision: March 1995)

For example, if a lobbyist entertains, hosts a reception, or gives a gift to a legislative official with the idea that it will help to build rapport with the official, which in turn may benefit the lobbyist's client(s), then the lobbyist must report the expense on his/her activity reports. (*Staff decision: March 1995*)

o Expenses that lobbyists incur, which they cannot attribute to any particular client, should be attributed to the lobbyist who is doing the lobbying and not to the clients of the lobbyist. *PAO 98-09*.

Comment 112: triggering events (prorating)

A lobbyist may not avoid a duty to register by virtue of prorating expenditures among various clients. If the compensated lobbyist has received in excess of \$500 to lobby, there is a duty to register as a compensated lobbyist, irrespective of the amount of expenditures made. Once the registration duty has been triggered, then such compensated lobbyist must report actual expenditures, even if those expenditures do not exceed \$500 on a pro rata basis. *FAO 97-05*.

Comment 113: reporting both as an employer and a

compensated lobbyist

Presumably, the question of pro rata expenditure reporting is only germane to the compensated lobbyist, because the employer lobbyist, who only lobbies on behalf of itself, reports total aggregate figures. *FAO 97-05*. The activity report allows compensated lobbyists certain back out provisions to avoid double reporting of expenditures.

Comment 114: who made the gift?

If the gift/purchase was made directly by the client, then the client reports the value of the gift/purchase on the Report of Legislative Gift or Purchase. If the gift was not made directly by the client, regardless of whether the lobbyist is reimbursed for the value of the gift/purchase, then the value of the gift is reportable solely by the lobbyist, and not the lobbyist's clients. The lobbyist may list the clients who benefit from the gift, however.

It is important to note that the value of the gift/purchase is reportable on the lobbyist's activity report in the same manner. If the client paid for the gift/purchase, then the gift is reportable on the client's activity report. However, if the lobbyist was directly reimbursed for the gift/purchase, then the lobbyist must report the value of the gift on his activity report, but may report the value of the gift among the client(s) who were responsible for the reimbursement, at their actual rate of reimbursement. However, if the gift/purchase was not directly reimbursed, but is attributable to certain clients, the lobbyist may pro-rate the value of the gift/purchase among those clients.

If the gift/purchase made by the lobbyist is made to generate goodwill for the lobbyist and is not directly attributable to any given client(s), the lobbyist must report the value of the gift himself. The lobbyist would file a compensated lobbyist activity report, disclosing himself as the client, and the lobbyist would report the entire gift/purchase on his Report of Legislative Gift or Purchase. (FAO 98-09).

Example: Lobby firm "A" has five clients. "A" spends \$100 on a gift to a legislator. "A" is reimbursed \$20 by each client for the gift. "A" is responsible for reporting the gift because "A's" clients did not directly make the gift. "A" must report the gift on the Report of Legislative Gift or Purchase. "A" may, however, pro-rate the value gift on "A's" compensated activity reports and "A" may back out the value of the gift in arriving at a net lobbying figure on "A's" activity report. "A's" clients would report the amount reimbursed to "A" on their respective employer activity reports.

Example: Lobby firm "A" has five clients. "A" spends \$500 on a noncash gift to a legislator. "A" is reimbursed \$100 by each client for the gift. "A" is responsible for reporting the gift because "A's" clients did not directly make the gift. "A" must report

the gift on the Report of Legislative Gift or Purchase. "A" may, however, pro-rate the value gift on "A's" compensated activity reports and "A" may back out the value of the gift in arriving at a net lobbying figure on "A's" activity report. "A's" clients would report the amount reimbursed to "A" on their respective employer activity reports.

(A) Compensation to others who perform lobbying services;

Comment 115: percentage of time

The employer lobbyist who pays a compensated lobbyist for lobbying services in advance must report the entire amount it paid as a lobbying expenditure. This is because lobbying is defined as "communicating by any means" or "paying another to communicate by any means." If the employer lobbyist pays the compensated lobbyist on a monthly basis and reports only a percentage of what it paid as a lobbying expenditure, there must be clear and convincing evidence that at the time that the employer lobbyist made the payment to the compensated lobbyist, he/she was aware of the percentage of time spent lobbying by the compensated lobbyist. Otherwise, the entire amount paid to the compensated lobbyist is reportable by the employer lobbyist.

Example: Employer lobbyist "A" enters into an agreement with compensated lobbyist "B" for lobbying services. "A" pays "B" a one-time \$20,000 retainer fee. "A" must report the entire amount paid to "B" as a lobbying expenditure.

Example: Employer lobbyist "A" enters into an agreement with compensated lobbyist "B" for lobbying services. "A" pays "B" \$1,000 per month. "B" sends "A" a monthly invoice on which "B" indicates to "A" what percentage of time "B" has spent lobbying during that month. Because "A" is aware at the time of payment that a portion of what it has paid to "B" is for non-lobbying activity, "A" need only report the percentage of compensation paid to "B" that is attributable to "B's" time spent lobbying on "A's" behalf.

Comment 116: associations

Association dues can be a lobbying expenditure. PAO 97-07(a). See comments, supra.

Comment 117: contracts to monitor

Expenditures made pursuant to a contract to monitor the legislature do not have to be reflected in the reporting figures when that contract is converted into a contract to lobby. *FAO 97-09. See comments, supra.*

Comment 118: compensation to others

All lobbyists, employer and compensated, must report compensation paid to others who perform lobbying services. A corporation, lobby firm, or law firm must report the compensation it pays its employees to lobby. *FAO 98-02*.

Example: Lobby firm "A" hires an employee to lobby for "A's" clients. The employee is paid \$10,000 annually and spends 75% of her time performing lobbying services. The lobby firm must report \$7,500 of the employee's salary as a lobbying expenditure.

Example: Corporation "C" is already registered as an employer lobbyist and hires two employees to lobby on behalf of "C." The first employee is employed as corporate counsel, is paid \$100,000, and spends only 10% of her time lobbying for "C." The second employee is paid \$30,000 and spends 100% of his time lobbying for "C." "C" would report a \$10,000 lobbying expenditure with regard to the first employee and a \$30,000 lobbying expenditure with regard to the second employee.

Comment 119: partners who lobby

As per the written recommendation of the Governmental Affairs Society of Indiana Lobby Registration and Campaign Finance Committee,³ the ILRC adopts the following methodology for reporting compensation paid to partners who lobby:

- 1. Determine the total number of billable and non-billable hours worked during the reporting period; determine the number of hours recorded for lobbying, and then determine the total time that the time spent lobbying represents;
- 2. Determine the amount of compensation allocated to the partner during the reporting period, including the value of benefits other than overhead ascribable to the partner; and
- 3. Determine the pro-rata amount of partner compensation reportable by the firm as an employer lobbyist based upon the percentage of partner time spent on lobbying during the reporting period.

Example: Partnership "A" is a registered lobbyist. "A" employs two associate attorneys who lobby on behalf of "A's" clients. "A" employs one individual who is not an attorney, but who lobbies on behalf of the clients of "A." "A" is a partnership, and three of the partners spend some time lobbying on behalf of the clients of "A." Pursuant to FAO 98-02, "A" reports the value of compensation paid to the two associate attorneys and to the individual who is not an attorney, but who lobbies on behalf of "A's" clients.

³ GASI's written recommendation is confined solely to the issue of a methodology in reporting, and not to the issue of whether such reporting should be required in the first instance.

In arriving at an aggregate reportable figure for those employees, "A" should follow the guidance of FAO 98-02.

"A" must also report the value of compensation paid to the partners who lobby, pursuant to the guidance of this opinion.

Because "A" files activity reports only in its capacity as a compensated lobbyist, "A" must determine how much compensation paid to its employees and associates is attributable to its various clients. If necessary, "A" may pro-rate the aggregate figure of compensation it pays between all of "A's" clients. "A" may not pro-rate that figure (or any other reportable expenditure) between its clients if the expenditure can be directly related to any given client. Thus, if a partner spends considerable time lobbying for one of "A's" clients, but not for the others, then "A" must attribute the compensation it pays to that partner to the client(s) for whom the partner or employee lobbied.

(B) Reimbursement to others who perform lobbying services;

Comment 120: reimbursements

All lobbyists must report reimbursement to others who perform lobbying services. The compensated lobbyist who reimburses its paid lobbyists is allowed to back out this figure in arriving at a net figure spent for lobbying. This "back out" is created to avoid double reporting of lobbying expenditures. Though by statute such a lobbyist is required to report all lobbying expenditures, certain lobbying expenditures are incurred for the benefit of clients who also are reporting the amounts paid to the compensated lobbyist. *FAO 97-05*.

Example: Lobby firm "A" represents several clients. To meet the needs of those clients, "A" hires two employees and two contract lobbyists. "A" reimburses the four lobbyists for all expenditures. "A" is reimbursed by its clients for all of "A's" lobbying expenditures. "A's" clients must report the amounts they reimbursed "A." "A" must report the amount it reimbursed the four lobbyists. However, "A" is allowed to "back out" that amount in arriving at "A's" net lobbying expenditure figure.

(C) Receptions;

Comment 121: the formula for reporting

When a lobbyist makes an expenditure, such as meal or entertainment, to benefit a member of the General Assembly and the lobbyist is present at the time the legislator consumes the item, then the expenditure is reportable only on the activity report and not on the Report of Legislative Gift or Purchase.

When any of the above expenditures are made to benefit *all members* of the GA, the value of the expenditures are not to be pro-rated in Section E among the legislators in attendance. IC 2-7-3-3(a)(4). Instead, the value of such an event is reported in the aggregate on line 6 of the activity report.

The reason the value of a given event is not pro-ratable among legislators in attendance when *all members* of the GA are invited is because there is a statutory requirement that expenditures made to benefit *all members* of the GA are not to be pro-rated. It has nothing to do with the issue of whether a legislator has given consideration or even whether said expenditure can be characterized as a gift. This provision provides for an incentive for lobbyists to invite all members of the GA to events and also eliminates having those legislators who attend such events from being penalized because not all members of the GA attend. When all members are invited, no one group or individual legislator is given preference, and no legislator walks away with anything of value.

Examples 1 & 2 in FAO 98-10 relate only to the actual costs of an event, such as a reception (IC 2-7-3-3(a)(2)(C)). Although there was food served and entertainment available, the nature of the event was a reception, and all costs associated with the event are reportable as a reception (line 3), except for the personal gifts made to legislators. However, because the statute provides for separate disclosure of expenditures made to benefit all members of the GA when all are invited, those expenditures are reported on line 6 of the activity report.

The reason that the personal gifts are separated from the computation in Examples 1 and 2 is because when a legislator walks away from an event with an item of value, then the expenditure was not made to benefit *all members* of the GA. It goes beyond the forum of full invitation to all members of the GA. Rather, it becomes an expenditure personal to the legislator, characterized only as a personal gift. A personal gift is never an "expenditure" as contemplated under IC 2-7-3-3(a)(4).

When actual costs can be determined, such as when legislators are given tickets to an event, then the actual cost attributable to the legislator is the cost of the ticket. However, when an event such as a reception is held and actual costs for each legislator cannot be ascertained, then the total reportable amount is computed as follows:

((the fixed cost of the event \div the total number of persons invited) + (unfixed costs of the event \div number of persons in attendance)) x (number of legislators in attendance).

Only when it is an event to which fewer than all members of the General Assembly are invited will there be a requirement to pro-rate the expenditures among each legislator in attendance on Section E of the activity report. (FAO 98-10).

Example: Lobby firm "A" invites 75 members of the General Assembly to a reception. The total cost of the reception is \$5,000, which includes food (\$1,500), a pianist (\$500), room rental (\$500) and a small gift (crystal ashtray with a client's logo) valued at \$100 each (\$2,500) for each legislator in attendance. Only 25 members of the General Assembly attend the event, along with 10 of "A's" clients, and five of "A's" hired lobbyists. Thus, there were 40 people in attendance. The per person cost of the event is \$62.50, which is derived by subtracting the value of the personal gifts (\$2,500), and dividing the remainder of the costs by the total number of persons in attendance (\$2,500 ÷ 40). The reportable value of the event relating to expenditures that benefited legislators is \$1,562.50 (\$62.50 x 25). The prorated amount spent on each legislator in attendance is reported in Section E of the activity report by prorating \$162.50 as the expenditure made for each legislator in attendance (\$62.50 + \$100). On line 3 (receptions) of the activity report, \$1,562.50 will be reported in aggregate, and, as in Example 1, \$2,500 (personal gifts) will be reported on line 7. The personal gifts made to legislators are also reportable on the Report of Legislative Gift or Purchase. FAO 98-10.

(D) Entertainment, including meals. However, a function to which the entire general assembly is invited is not lobbying under this article.

Comment 122: taking legislators to dinner

When a lobbyist takes a legislator and the legislator's spouse to dinner, the lobbyist need only report the amount of the bill attributable to the legislator and his/her spouse on the lobbyist's activity report. The portion of the bill attributable to the lobbyist's dinner is not reportable. This is true even when the lobbyist who is reporting the expenditure is an employer lobbyist who either paid directly for the expenditure, or reimbursed its compensated lobbyist for the entire amount of the bill. The expenditure is reported as one expense (e.g., "Senator Jones and guest") *FAO 97-05*.

The lobbyist need not file a Report of Legislative Gift or Purchase for the value of the meal/entertainment, unless the lobbyist was not in attendance when the legislator partook of the meal/entertainment. *FAO 98-10*.

Example: Lobbyist "A" entertains a legislator by taking the legislator and the legislator's spouse to a dinner theater. The value of the legislator's portion of the bill exceeds \$100, as does the value of the amount spent on the legislator's spouse. "A" must report the value of the expenditure for the legislator and the legislator's spouse on "A's" activity report, but "A" need not report either amount on the Report of Legislative Gift or Purchase. FAO 98-08.

Example: Lobby firm "A" invites 75 members of the General Assembly to the same sporting event. Only 25 of them attend the event, along with 20 of "A's" clients and

five of "A"'s hired lobbyists. The cost of each ticket was \$100, and there were 50 people in attendance. The total cost of the event was \$5,000. The net reportable amount attributable to legislators was **\$2,500**. The entire amount is reported in Section D of the activity report by prorating \$100 as the expenditure made for each legislator in attendance. This is because the entertainment expenditure was made to benefit "a member of the General Assembly" (IC 2-7-3-3(a)(3)(a)), rather than "all members of the general assembly." (IC 2-7-3-3(a)(4)). On line 4 ("entertainment") of the activity report, **\$2,500** will be reported in aggregate. FAO 98-10.

Comment 123: expenditures and gifts

When a lobbyist takes a legislator to dinner, the value of the dinner is reportable as an "expenditure." This is so, because under the lobby disclosure law, a gift is always an expenditure, but an expenditure is not always a gift. *FAO 97-05*. Double reporting is eliminated because the lobbyist may back out the value of gifts which were reported as expenditures.

Comment 124: payments and gifts

Expenditures are always reportable, whether made in the form of gifts or as part of an exchange. If made in the form of a gift, then the expenditure will always be reported on the activity report, no matter what the size of the gift. Such a gift, if made in excess of \$100 or \$250 aggregate, will also be reflected on the Report of Legislative Gift or Purchase. *FAO* 97-05.

(E) Gifts made to an employee of the general assembly or a member of the immediate family of an employee of the general assembly.

Comment 125: knowledge of legislator not required

The lobbyist who makes a gift to an employee of the General Assembly or to a member of the immediate family of an employee of the General Assembly must report the value of the gift, regardless of whether the legislator has actual knowledge of the gift.

- (3) A statement of expenditures and gifts that equal one hundred dollars (\$100) or more in one (1) day, or that together total more than five hundred dollars (\$500) during the calendar year, if the expenditures and gifts are made by the registrant or his agent to benefit:
 - (A) a member of the general assembly;
 - (B) an officer of the general assembly;
 - (C) an employee of the general assembly; or
 - (D) a member of the immediate family of anyone included in clause (A), (B), or (C).

Comment 126: expenditures

"In accordance with LRC practice and prevailing interpretations of subsection (a)(3), the dollar value of expenditures and gifts is to be reported. . . *Expenditure* includes payment, and payment is defined in very broad terms. . . If a lobbyist buys goods or services from a member of the General Assembly . . . in sufficient amount, then that purchase involves an expenditure as payment that's made for goods or services." *FAO 98-05*.

Example: Lobbyist "A" purchases several hundred dollars worth of flowers from legislator "B's" flower business each year. The value of the transaction is reportable by "A" on "A's" activity report and also as a "purchase" on "A's" legislative gift or purchase report.

Example: Lobbyist "B" purchases goods and/or services from a legislator's spouse's business. There are no reportable expenditures.

Comment 127: purchases from a legislator's retail business

Purchases made by a lobbyist from a legislator's retail business continue to be reportable in Section E-1 of the lobbyist's activity report.

Comment 128: gifts

In addition to including payments, the word "expenditure" includes gifts. *FAO 98-05*. A "gift" is always an "expenditure," but an expenditure may not always be a gift. Expenditures that are transferred without consideration are both "gifts" and "expenditures" and should be reported as both. However, expenditures made for consideration are only reportable as "expenditures" and not as "gifts." *FAO 97-05*.

Example: Lobbyist "A" provides a legislator with theater tickets. The lobbyist has made a gift that is reported as a gift and as an expenditure.

Example: Lobbyist "B" purchases services from a legislator's private business. The transaction has resulted in a reportable expenditure, which is not a reportable gift.

Comment 129: gifts by non lobbyists

If there is no legislative action upon which the agent or principal is attempting to impose influence, there is no duty to file a lobbyist's Report of Legislative Gift or Purchase, regardless of the amount of the gift. However, if it is determined that the gift was given with the intention of influencing legislative action, there is a duty to register and report.

Example: Corporation "X" is not a registered lobbyist. "X" provides goodwill gifts in the form of tickets to a major sporting event to legislators each year, regardless of whether "X" is actively lobbying the legislature. In the past, "X" had an agent actively lobby on certain issues. However, the agent only monitored the legislature this year. The total value of the gifts to the legislators was in excess of \$30,000 during a three month period. The tickets came directly from "X" to the legislators. "X" has no duty to register and report the gifts with the Commission.

(4) Whenever a lobbyist makes an expenditure that is for the benefit of all members of the general assembly on a given occasion, the total amount expended shall be reported, but he shall not prorate the expenditure among each member of the general assembly.

Comment 130: inviting the entire general assembly

When a lobbyist invites all members of the General Assembly to an event, but only some attend, the expenditures do not have to be reported on a pro rata basis. *FAO* 97-02.

Example: Lobbyist "A" invites all members of the General Assembly, their spouses, and staff members to the NCAA Final Four playoff games. "A" provides meals and lodging for the weekend event. The total expenditure amounts to \$75,000. Only 10 legislators attended the event, along with eight spouses, and 20 legislative staff members. "A" must report the cost of the entire expenditure, but "A" does not have to prorate the cost of the event among those who attended.

Example: Lobby firm "A" invites all members of the General Assembly to a reception. The total cost of the reception is \$5,000, which includes food (\$1,500), a pianist (\$500), room rental (\$500) and a small gift (crystal ashtray with a client's logo) valued at \$100 each (\$2,500) for each legislator in attendance. Only 25 members of the General Assembly attend the event, along with 10 of "A's" clients and five of "A's" hired lobbyists. Thus, there were 40 people in attendance. The per person cost of the event is \$62.50, which is derived by subtracting the value of the personal gifts (\$2,500), and dividing the remainder of the costs by the total number of persons in attendance (\$2,500) ÷ 40). The reportable value of the event relating to expenditures which benefited legislators is \$1,562.50 (\$62.50 x 25). Because this is an expenditure made to benefit all members of the General Assembly, that amount is reported on line 6 of the activity report. Additionally, the value of the personal gifts (\$2,500) made to legislators must be reported and prorated in Section E of the activity report, and must be factored into the aggregate figure reported on line 7. The personal gifts made to legislators are also reportable on the Report of Legislative Gift or Purchase. FAO 98-10.

Example: Lobby firm "A" invites all members of the General Assembly to a sporting event. The total cost of the event is \$5,000, which includes \$100 tickets for the 50

persons who attended. Only 25 members of the General Assembly attend the event, along with 20 of "A's" clients, and five of "A's" hired lobbyists. Thus, there were 50 people in attendance. The per person cost of the event is \$100. The reportable value of the event relating to expenditures which benefited legislators is \$2,500 (\$100.00 x 25). Because this is an expenditure for entertainment made to benefit *all members* of the General Assembly, that amount is reported on line 6 of the activity report. The tickets are not personal gifts because they are entertainment expenditures made to benefit all members of the General Assembly on a given occasion to be used *en masse*.

Comment 131: verification for audits

For purposes of audit verification, lobbyists must provide proof of the invitation to all members of the General Assembly.

(5) A list of the general subject matter of each bill or resolution concerning which a lobbying effort was made within the registration period.

Comment 132: verification for audits

Historically, the Commission has not required this level of reporting on the activity report. However, a lobbyist must be prepared to furnish the specific bill numbers, their general subject matters, and the client for whom the lobbying was done on any particular bill to the ILRC during the course of an audit.

- (6) The name of the beneficiary of each expenditure or gift made by the lobbyist or his agent that is required to be reported under subdivision (3).
- (7) The name of each member of the general assembly from whom the lobbyist has received an affidavit required under IC 2-2.1-3-3.5.
- (b) In the second semi-annual report, when total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire reporting year.
- (c) An amount reported under this section is not required to include the following:
- (1) Overhead costs.
- (2) Charges for any of the following:
 - (A) Postage.
 - (B) Express mail service.
 - (C) Stationery.
 - (D) Facsimile transmissions.
 - (E) Telephone calls.

Comment 133: relating back expenditures to the employer lobbyist

The compensated lobbyist should not deduct the above listed expenditures in the computation to determine what percentage of time was spent lobbying.

Example: Employer lobbyist "A" hires compensated lobbyist "B" to perform lobbying services. Just prior to the reporting cycle's end, "B" tells "A" that he spent only 75% of his time lobbying. "B" bases this determination on the fact that 25% of what "A" paid "B" was used for "B's" overhead costs. "A" reports as a lobbying expenditure only 75% of what it paid "B." "A" has under reported what it paid to "B" for lobbying. The overhead cost exemption applies only to what "B" will report as having spent for lobbying. "B's" overhead cost in no way relate to "A's" duty of disclosure.

Comment 134: incidental expenditures

The purpose of this provision is presumably to allow a lobbyist to incur incidental expenses, which are associated with the running of any business, without causing the lobbyist to have to report said incidental expenses. This provision is not intended to allow for an exemption of direct lobbying expenditures.

Example: Lobbyist "A" conducts a comprehensive letter campaign to legislators and incurs several thousand dollars worth of postage, printing, and paper expenses. All expenditures associated with this letter campaign are reportable lobbying expenditures.

Example: Lobbyist "A" conducts a sophisticated phone campaign to affect certain legislation. Citizens from all over the state phone "A's" office on a toll free watts line. "A" discusses the legislation with the callers and then connects them to the particular legislator's office. The cost of the phone campaign is a reportable lobbying expenditure.

(3) Expenditures for the personal services of clerical and other support staff persons who are not lobbyists.

Comment 135: non lobbyist employees

This provision is presumably designed to allow a lobbyist to hire support staff, which persons perform no lobbying duties, and, therefore, expenses relating to their compensation are not reportable expenditures. Such an exemption applies only if the employees are not participating in lobbying activities.

- (4) Expenditures for leasing or renting an office.
- (5) Expenditures for lodging, meals, and other personal expenses of the lobbyist. As amended by Acts 1982, PL 9, SEC. 5; PL 3-1992, SEC. 12; PL 9-1993, SEC. 12.

Comment 136: original signature

Lobbyists' activity reports must be signed by the required persons and their accuracy attested to under oath. These reports will be accepted only when they contain the original signature of an authorized signer. *Legislative Ethics Commission, Summary Guideline to Indiana Law*, June 1993, at 6.

Comment 137: non lobbying services

In those instances where the agreement encompasses both lobbying services and other services, it is incumbent upon the employer to determine and to report that portion of the compensation that is allocated to lobbying, and this amount must be reported, regardless of whether the compensated lobbyist actually communicates on the employer's behalf with a legislative official with the purpose of influencing any legislative action. *ILRC Advisory Opinion 94-01, August 24, 1995*.

Written agreements for lobbying services should clearly distinguish between lobbying and non-lobbying activities. There must be clear and convincing evidence that at the time payment was made, the employer lobbyist was aware of what portion of the payment was for lobbying activities. Absent such proof, it is presumed that all payments made to the compensated lobbyist were for lobbying services.

Comment 138: direct communication

Direct communication is not required in order to incur a lobbying expenditure. *FAO 97-10*.

Example: "A" is a registered lobbyist. "A" sends gifts to legislators, but does not speak to them in person. The gift expenditure is reportable as a lobbying expenditure.

Example: "A" initiates a comprehensive letter campaign, which consists of "A" sending letters to legislators regarding pending or potentially pending legislation. "A" does not speak directly to the legislators regarding the subject matter of the letters. "A" is a registered lobbyist. The cost of the letter campaign exceeded \$500. The expenditures made with regard to the letters are reportable lobbying expenditures.

Comment 139: influencing legislative action

An informal guideline was issued by the Commission to all registered lobbyists in 1996, which included:

o If the ultimate purpose of money spent on a member of the General Assembly is to influence legislative action, present or future, then the money/expense must be reported.

- **o** Ask: Would I be doing/spending this if I weren't hoping ultimately to benefit my clients?
- o Ask: Am I somehow attempting to advance a legislative agenda?
- Ask: Will I ultimately bill back, either directly or indirectly, the money I am spending?
- Ask: Will I ultimately build the expense into a future retainer or contract?
- **o** The law makes no distinction as to whether you are lobbying before, during or after a session. All lobbying is reportable.
- **o** The law makes no distinction between money spent to influence specific legislation and money spent to build a rapport to better influence future, unspecified legislative action.
- o Prorate the money spent among whichever clients you are trying to benefit.
- **o** Report any money spent researching legislation or preparing written materials that ultimately are distributed in some form to members of the General Assembly.

Comment 140: agreements to lobby

A contract or agreement to lobby has been recognized by the Commission to be an "expenditure" for purposes of registration. *FAO 97-03*.

Example: In November, 1998, "L" lobbyist enters into a contract with "C" client. The contract specifies that "C" will pay \$10,000 to "L" to lobby for "C" during 1999. "L" does not perform any services under the contract until 1999, and "C" does not render payment on the contract until August, 1999. Both "L" and "C" must register as lobbyists at the time of the making of the contract. "L" and "C" must report payment made / received on the contract during the period in which payment is made / received.

Comment 141: employee benefits

Under the lobby disclosure statute, nonforfeitable, vested employee and fringe benefits are reportable as "compensation" and as "expenditure." *FAO 97-04*.

Example: "X" corporation hires "L" lobbyist as an employee and pays "L" a salary of \$30,000. "X" also pays "L" an employee benefit in the form of a retirement fund contribution made by "X" on behalf of "L", which equals 10% of "L's" income. "X"

and "L" must report the retirement fund contribution as a lobbying expenditure / compensation, to the extent it is vested, at the time of vesting. Any changes in value after disclosure, which are attributable to the amounts already disclosed, are not amounts related to lobbying expenditures / compensation, because the receipt by "L" of those changes in value in no way depends upon "L's" providing a lobbying service to "X," since those benefits are already vested. Only changes in value which occur prior to disclosure / vesting are considered to be compensation / expenditures made for lobbying.

Example: "X" corporation hires "L" lobbyist as an employee and provides "L" with the fringe benefit of a company car. The annual value of the car is \$5,000. "X" and "L" must report the value of the car as a lobbying expenditure / compensation.

Example: "L" lobbyist participates in "X" corporation's employee stock ownership program (ESOP). "L", an employee of "X", gets a certain amount of stock options, based on years of service and subject to a certain vesting schedule. "L" and "X" must report the value of "L's" stock options, to the extent they become vested, as lobbying expenses.

Example: "L" lobbyist, an employee of "X" corporation, participates in "X"s" 401(k) program. "L" has obtained a loan in the amount of \$50,000 against the vested balance of his 401(k). This vested balance represents the amount contributed by "L" and also the matching amount contributed by "X" on behalf of "L." "X" and "L" need not report the amount of the loan which is taken against the contributions made by "X" as a lobbying expenditure / compensation, because the vested portion was presumably already reported at the time of vesting.

Comment 142: anything of value

Because the statutory definition for "expenditure" includes the term "or anything of value," the term "expenditure" must include "compensation." Forms of compensation that are expenditures include, but are not limited to the following:

- a payment to a lobbyist for salary, fee, compensation for expenses, or other purpose by a person employing, retaining, or contracting for the services of the lobbyist separately or jointly with other persons;
- a payment in support of or assistance to a lobbyist or the lobbyist's activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist;
- a payment that directly benefits a legislator or the legislator's immediate family;
- a payment, including compensation, payment, or reimbursement for the services, time, or expenses of an employee for or in connection with direct communication with a legislator;
- a payment for or in connection with soliciting or urging other persons to enter into direct communication with a legislator;

• a payment or reimbursement for food or beverages; COGEL, Model Lobby Regulation Act, § 304.08(2-8)(1995).

Comment 143: contract to monitor

Expenditures made pursuant to a contract to monitor the legislature do not have to be reflected in the reporting figures when that contract is converted into a contract to lobby. *FAO 97-09*.

Example: Lobbyist "A" is paid by Client "C" to monitor the legislature. "C" incurs \$1,000 in expenditures relating to "A's" monitoring efforts. During the session, "A" tells "C" that there is legislation that is being considered that affects "C." "C" agrees to have "A" lobby on its behalf, and the original agreement between "A" and "C" is modified to reflect such. "A" actively lobbies for "C." "C" did not incur "expenditures" for purposes of lobby disclosure requirements until "C" had "A" actively lobby. "C," therefore, is not required to recapture and report the expenditures relating to the monitoring efforts.

Comment 144: contingent events

Compensation contingent upon a future event is an "expenditure" when the transaction involves a lobbyist and legislator.

Example: Lobbyist "A" makes a \$250 football bet with legislator. The lobbyist loses the bet and pays the legislator. The lobbyist must report the amount paid as a lobbying expenditure. Had the lobbyist won the bet and had the legislator paid the lobbyist, there would have been no reportable transaction.

Comment 145: nominal business transactions

The Commission has recognized that certain transactions that occur when a member of the General Assembly sells goods or services to a lobbyist may require a special analysis. There may be small, routine transactions that are difficult to track and that involve something of a trap for unwary and unknowing lobbyists, particularly those who are not full-time, professional lobbyists. Consider the case in which a member of an unincorporated association that espouses environmental causes registers as a lobbyist and also purchases goods valued at \$110 from a grocery store owned by a legislator. These are personal transactions so routine and casual that it would be unfair to create an expectation that all such transactions would be identified and reported.

The lobbyist who purchases \$110 worth of groceries from a grocery store owned by a legislator has technically made an expenditure within the meaning of

IC 2-7-3-3(a)(3), because s/he expended to a legislator more than \$100 in a day. However, the ILRC in such a situation would merely remind the participants that this type of transaction might have to be reported. The failure to report this type of expenditure ordinarily would not suggest any intent to violate the law, and it is unlikely that any such single and casual expenditure would be likely to, or would be intended to, influence legislative action.

The Commission has considered this to be the case in the following circumstances:

- 1. Cases in which the lobbyist does not have reason to know that the retail store is owned by a legislator. Evidence of reason to know might be that the legislator is a member of an important legislative committee that has under consideration a bill the lobbyist wants to affect.
- 2. Cases in which the lobbyist and the legislator have no expectation of future transactions. For example, no credit account is established and no agreement for other transactions is entered.
- 3. Cases in which the lobbyist purchases products in the ordinary course of the lobbyist's personal or business activities at prices generally offered to the public. In other words, the lobbyist is shopping for value and convenience and has not gone out of his/her way to single out this store to benefit a member of the General Assembly. For example, it might be important to know whether the store is near the lobbyist's home or place of business, or whether the lobbyist traveled 50 miles to make the purchase.

The analysis might be different if a lobbyist purchases more than \$500 of merchandise during a year's time. Such an accumulation of transactions would meet the other threshold of IC 2-7-3-3(a)(3)[more than \$500 in a calendar year]. There is more of an opportunity for the accumulation of those transactions to be managed or recorded by the lobbyist. Further, several transactions per year would negate the presumption of a single, casual transaction. *Informal Commission Determination, November 15, 1996.*

Comment 146: employee purchases

It is necessary to distinguish between purchases made by a lobbyist and purchases made by the employee of a lobbyist. For example, the fact that a corporation is a registered lobbyist does not mean that all its employees are lobbyists. Persons who work at influencing legislative action on behalf of the corporation are lobbyists, but the corporation's other employees are not. As a result, absent an intent to circumvent the lobby disclosure law, if an ordinary employee of a registered lobbyist makes a purchase from a member of the General Assembly, there is no expenditure within the meaning of IC 2-7-3-3(a)(3). *Informal Commission Determination, November 15, 1996.*

Comment 147: reportable at time of expenditure

An expense must be reported by a compensated lobbyist at the time of actual expenditure, not at the time of reimbursement by the client of the lobbyist. *Minutes of Public Meeting, March 15, 1996*. The compensated lobbyist is allowed to back out the expenditure at the time of reimbursement, and the client of the lobbyist reports the same expenditure at the time it reimburses the compensated lobbyist. Thus, the expenditure will be disclosed, regardless of whether it is reimbursed. There will be no double reporting of the expenditure.

Comment 148: entry fees

Paying a legislator's entry fee into an event is a reportable transaction for the registered lobbyist, though it will not cause a duty to register for a non lobbyist. *Minutes of Public Meeting, March 15, 1996.*

Example: Lobbyist "A" pays the entry fee for legislator "B" to run in a marathon that will benefit a charitable organization. The entry fee is a lobbying expenditure.

Comment 149: 3rd degree of kinship

Despite being within a 3rd degree of kinship, certain transactions may trigger a duty to report expenditures, such as when the relative of the legislator is a registered lobbyist and hosts an event for the legislator. The exemption created by IC 2-7-1-4(b)(1) was designed to allow a legislator to accept gifts from certain family members without causing the family member to have to register as a lobbyist. However, when the family member is already a lobbyist, then the rules applicable to other lobbyists would apply to the lobbyist / family member.

Example: Lobbyist "A's" father is a legislator who is retiring. "A" hosts a retirement dinner. Due to the status of the persons involved, the expenses related to the dinner are reportable.

Comment 150: cross references

See supra, comments to IC 2-7-1-2 (compensation), IC 2-7-1-3 (expenditure), and IC 2-7-1-4(gifts) for other examples of reportable transactions.

2-7-3-4 Substantiation; preservation of documents; inspection

Sec. 4. Each lobbyist shall obtain and preserve all documents necessary to substantiate the activity reports required under this chapter for four (4) years from the date of filing of the report containing these items. The lobbyist shall make

these materials available for inspection upon request by the commission. As added by Acts 1981, PL 9, SEC. 1. Amended by PL 3-1992, SEC. 13.

Comment 151: failure to produce verification documents

Absent good cause, a lobbyist's failure to produce requested audit verification documents within the specified time period is a *per se* violation of the lobby disclosure statute.

VI. Termination Reports

2-7-3-5 Termination report; contents

Sec. 5. Every person who files a notice of termination, as provided in IC 2-7-2-5, must file a termination report covering the semi-annual reporting period or portion thereof immediately preceding the termination of his registration statement; such report shall contain the information required by section 3 of this chapter. As added by Acts 1981, PL 9, SEC. 1.

Comment 152: terminating as a lobbyist

Terminating as a lobbyist is a material change in the information contained in a lobbyist's registration statement. Hence, a lobbyist must file an amended registration statement within 15-days from the termination of a lobbying agreement. A lobbyist may also file a "Notice of Termination" for the public record. Regardless, the lobbyist who has terminated a lobbying relationship must file an activity report reflecting expenditures incurred during the active period of lobbying.

Comment 153: the ongoing lobbying relationship

Lobbying arrangements are commonly ongoing and much lobbying occurs when the legislature is not in session. Lobbying agreements that are ongoing in nature need not be terminated by filing an amended registration statement because there has been no material change in the information contained in the lobbyist's registration statement. If a lobbyist files an amended registration statement indicating a termination of the lobbying relationship, the lobbyist should be prepared to document the actual termination in an audit. Documentation for proof of termination may be supported by written agreements of termination between the parties or by the lobbying contract itself, which may specify a time period for the duration of the contract.

VII. Report of Legislative Gift or Purchase

IC 2-7-3-6

- Sec. 6. (a) A lobbyist shall file a written report with respect to a member of the general assembly whenever either of the following occurs:
- (1) The lobbyist has made a purchase described in IC 2-2.1-3-2(a)(7) with respect to that member. This subdivision does not apply to purchases made after December 31, 1998, by a lobbyist from a legislator's retail business made in the ordinary course of business at prices that are available to the general public. For purposes of this subdivision, a legislator's business is considered a retail business if the business is a retail merchant as defined in IC 6-2.5-1-8.
- (2) The lobbyist has made a gift described in IC 2-2.1-3-2(a)(8) to that member.
- (b) A report required by subsection (a) must state the following:
- (1) The name of the lobbyist.
- (2) Whether the report covers a purchase described in IC 2-2.1-3-2(a)(7) or a gift described in IC 2-2.1-3-2(a)(8).
- (c) A lobbyist shall file a copy of a report required by this section with both of the following:
- (1) The commission.
- (2) The member of the general assembly with respect to whom the report is made.
- (d) A lobbyist shall file a report required by subsection (a) not more than thirty (30) days after making the purchase or giving the gift.

As added by P.L.9-1993, SEC.13. Amended by P.L.2-1997, SEC.1; P.L.205-1999, SEC.7.

Comment 154: purchase "from" rather than purchase "of"

The above statutory language reflects an amendment made to the statute during the 1999 legislative session. The amendment applies retroactively to transactions made after December 31, 1998. The amendment exempts purchases "from" and not "of" a legislator's retail business by a lobbyist.

Comment 155: reference to IC 2-2.1-3-2(7)

IC 2-2.1-3-2(7) describes goods and/or services as those in excess of \$100 that are purchased from a General Assembly member or a legislator's sole proprietorship or family business, or goods and/or services in excess of \$1,000 that are purchased from a General Assembly member's partner.

Comment 156: retail business

Indiana Code § 6-2.5-1-8 defines "retail merchant" as "a person who is described as a retail merchant in IC 6-2.5-4 or who is required to hold a retail merchant's certificate under IC 6-2.5-8."

Comment 157: difference in activity reporting

Ordinary course transactions between a lobbyist and a legislator's retail business continue to be reportable in Section E-1 of the lobbyist's activity report.

Comment 158: reference to IC 2-2.1-3-2(8)

IC 2-2.1-3-2(8) describes a gift as: (a) any cash gift, (b) a single non-cash gift with a fair market value in excess of \$100, (c) gifts other than cash having a fair market value in the aggregate in excess of \$250.

Comment 159: charitable contributions

Contributions made by a lobbyist to a charitable organization (as defined in Section 501(c) of the Internal Revenue Code) in connection with a social or sports event attended by legislators are not reportable unless the contribution is made in the name of the legislator.

Example: In a situation in which a lobbyist has paid a sponsorship fee for an overall event (e.g., the Pan Am Games) and purchases "a large number of individual tickets" to assorted components of the event, "the lobbyist should not be required to report the cost of sponsoring the [event] or the cost of tickets that a sponsor was required to purchase that were not given to members of the Indiana General Assembly. AG Official Opinion No. 87-2, June 19, 1987.

Comment 160: gifts to spouses of legislators

The Legislative Gift or Purchase Report technically requires that only gifts made to the legislator be reported, whereas the activity reporting section of the statute expressly requires that gifts made to a legislator's spouse be reported in the activity report. Because the payment for the legislator's guest benefits the legislator when the guest is the spouse of the legislator, the Commission has required that the amounts for both be reported on the Report of Legislative Gift or Purchase. *FAO 97-05*. After the Commission ratified FAO 97-05, it was asked for further clarification on this issue. The Commission determined that only the amount attributable to the legislator, *and not the spouse*, is reportable on the Report of Legislative Gift or Purchase. The value of both gifts is reportable on the activity report (and proratable in Section E), but only the value of the gift to the legislator is to be disclosed on the Report of Legislative Gift or Purchase. *FAO 98-08*.

Example: Lobbyist "A" provides a legislator and the legislator's spouse each with one \$62 dinner theater ticket. The combined value of both tickets is \$124. "A" would report

\$124 as an expenditure on his activity report and \$62 as a reportable gift on his Report of a Legislative Gift or Purchase.

Example: Lobbyist "A" takes a legislator and the legislator's spouse to dinner. "A" must report the value of only the legislator's meal on his Report of Legislative Gift or Purchase.

Comment 161: regular purchases from legislators

If a lobbyist makes a regular monthly purchase of goods from a business in which a legislator has an ownership interest, and each monthly payment exceeds \$100, the lobbyist must file a Report of Legislative Gift or Purchase after each purchase once the \$250 threshold is exceeded. If the monthly purchase transpires on one day during the month, the lobbyist has met the \$100 daily threshold and must report each gift as it is made. *FAO 97-05*.

Example: Lobbyist "A" purchases \$100 worth of goods from Legislator "B's" business each month. The purchase each month is made on the third Tuesday of the month. "A" must file a Report of Legislative Gift or Purchase within 30 days after each purchase.

Example: Lobbyist "A" purchases \$100 worth of goods from Legislator "B's" business each month by spending \$25 four times per month. "A" must file a Report of Legislative Gift or Purchase within 30 days of the tenth \$25 purchase. "A" must file a Report of Legislative Gift or Purchase within 30 days of each purchase made thereafter during the reporting period.

Comment 162: partners who are legislators

All legal fees paid to law firms where a partner at the firm is a member of the General Assembly must be reported on the Report of Legislative Gift or Purchase, even when the member is performing none of the legal work and the fees are not paid for any lobbying activity. *Indiana Lobby Registration Commission*, "Summary of Answers Given to Lobbyists Pertaining to Reportable Events," February 10, 1996, at 3; AG Opinion 90-23.

Example: Legislator "B" is a partner at a law firm which does no lobbying. The firm must register as a lobbyist and all fees paid to the firm must be disclosed on the Report of Legislative Gift or Purchase.

Comment 163: honorarium

A check issued to a legislator for an honorarium must be reported as a gift, regardless of whether a legislator declines to cash it, or decides to endorse the check to a third party. The exception is when a lobbyist tenders a check and the legislator returns the check within a reasonable time (e.g., 30 days). *See example, supra.*

Comment 164: transactions with a legislator's spouse

The exception provided by IC 2-7-2-6(h), which exempts lobbyists from reporting the value of items purchased in the ordinary course of business from a corporation owned by the spouse of a legislator, also applies to IC 2-7-3-6, which requires a lobbyist to file a written report whenever a purchase of goods or services in excess of \$100 is made from a member of the General Assembly, or from a legislator's family business. (Staff decision: January 1994)

However, if the legislator has a 50% or more ownership interest in the spouse's business, the lobbyist must report the value of the transaction attributable to the legislator's percentage of ownership interest.

Comment 165: gift or purchase threshold

The lobbyist may not file one Report of Legislative Gift or Purchase at the end of the year or reporting period which encompasses all gifts. Once the \$250 threshold has been reached, a report must be filed within 30 days of reaching that threshold. All gifts made in arriving at the threshold amount must be reported. All gifts made thereafter during that reporting period must be reported within 30 days of making the gift. *FOA 97-05*.

VIII. Forms and Documents, Public Availability

2-7-4-1 Forms for documents

Sec. 1. The commission shall prescribe forms for the registration statements, activity reports, and other documents required to be filed under this article and make these forms available to persons required to file the registration statements, activity reports, and other documents. As added by Acts 1981, PL 9, SEC. 1. Amended by PL 3-1992, SEC. 14; PL 9-1993, SEC. 14.

2-7-4-2 Reporting methods; publication

Sec. 2. The commission shall prepare and publish a manual setting forth recommended, uniform methods of reporting for use by persons required to file statements and reports under this article. As added by Acts 1981, PL 9, SEC. 1. Amended by PL 3-1992, SEC. 15.

Comment 166: forms availability

All forms for lobby disclosure are available from the Commission. As a courtesy, the Commission mails these forms to currently registered lobbyists. If a lobbyist does not receive the necessary forms for filing, it is the lobbyist's responsibility to obtain the proper forms from the Commission. *Legislative Commission Handbook 1992* (2nd ed.), at 25. Additionally, forms may be downloaded from the ILRC web site at: *http://www.ai.org/ilrc/*.

2-7-4-3 Documents; availability for public inspection

Sec. 3. The commission shall make statements, reports, and other documents filed with the commission under this article available for public inspection and copying during regular office hours and make copying facilities available to the public at a charge not to exceed the actual cost. As added by Acts 1981, PL 9, SEC. 1. Amended by PL 3-1992, SEC. 16.

Comment 167: public records availability

All public records filed with the Commission are available for inspection at the Commission office. Current lists of registered lobbyists and lobbying expenditures are available on the Commission's web site at http://www.ai.org/ilrc.

The public may also obtain lists of current delinquent filers, a list of those lobbyists being audited, and copies of requests for advisory opinions at the Commission office.

2-7-4-4 Statements and reports; index

Sec. 4. The commission shall compile and maintain an index of all reports and statements filed with the commission under this article to facilitate public access to these reports and statements. *As added by Acts 1981, PL 9, SEC. 1. Amended by PL 3-1992, SEC. 17.*

2-7-4-5 Statements and reports; summaries; publication

Sec. 5. The commission shall prepare and publish annual summaries of statements and reports filed with the commission under this article. As added by Acts 1981, PL 9, SEC. 1. Amended by PL 3-1992, SEC. 18.

2-7-4-6 Registration statements and reports; inspection and audit; confidential documents

Sec. 6. (a) The commission shall inspect and audit at least five percent (5%) of all registration statements and reports filed with the commission under this chapter by requiring the registrant to produce verifying documents. The statements and reports inspected and audited shall be selected at random by a

computer random number generator. Nothing in this chapter shall be construed as prohibiting the commission from inspecting and auditing any statement or report if the commission has reason to believe that a violation of this chapter may have occurred.

(b) Verifying documents under this section while in the possession of the commission are confidential. As amended by Acts 1982, PL 9, SEC. 6; PL 19-1983, SEC. 7; PL 3-1992, SEC. 19.

Comment 168: cross reference

See appendix, infra, Audit Procedures.

Comment 169: failure to produce audit verification documents

Failure to produce the requested audit verification documents within the time specified is a *per se* violation of the statute.

2-7-4-7 Violations; notification to persons required to file statements and reports; failure to file; reporting for prosecution

Sec. 7. The commission shall notify by certified mail, return receipt requested, persons required to file statements and reports under this article of any violations or errors discovered during inspections or audits conducted under section 6 of this chapter within thirty (30) days of the discovery of the errors or violations. The person required to file statements and reports under this article shall within thirty (30) days from receipt of notification file a corrected statement or report meeting all requirements set forth in this article. If no corrected statement or report is filed within thirty (30) days, or if violations remain following the filing of a corrected report or statement, then the commission shall forward to the prosecuting attorney of the applicable judicial circuit and to the attorney general reports of any violations. However, if the prosecutor has not initiated prosecution within sixty (60) days of receipt of such notice or within sixty (60) days of the written request for prosecution by the attorney general, the attorney general may prosecute on behalf of the state. As added by Acts 1981, PL 9, SEC. 1. Amended by PL 6-1985, SEC. 1; PL 3-1992, SEC. 20.

Comment 170: no discretion

This provision of the statute provides the IRLC with no discretion as to whether to make a referral to the prosecutor when there has been a failure by the lobbyist to correct a discrepancy discovered in a statement or report during an audit. It should be noted, however, that no lobbyist will ever be referred to the prosecutor by the ILRC without first having had the opportunity to cure the filing defect in question.

2-7-4-8 Statements and reports; preservation

Sec. 8. The commission shall preserve statements and reports filed with the commission under this article for a period of four (4) years from the date of receipt. As added by Acts 1981, PL 9, SEC. 1. Amended by PL 3-1992, SEC. 21.

VIII. Prohibitions

2-7-5-1 Legislative officials; compensation

Sec. 1. It is unlawful for any legislative official to receive compensation or reimbursement other than from the state for personally engaging in lobbying. As added by Acts 1981, PL 9, SEC. 1.

2-7-5-2 Full-time public officials and employees; compensation

Sec. 2. Subject to the provisions of IC 2-7-2-6(a), it is unlawful for any full-time public official or public employee in the state of Indiana, to receive compensation, other than the regular compensation of elected or appointed officials, for lobbying. As amended by Acts 1982, PL 9, SEC. 7.

2-7-5-3 State central committee of political party; compensation

Sec. 3. Subject to the provisions of IC 2-7-2-6(d), it is unlawful for any officer or employee of the state central committee of a political party to receive compensation, other than for the regular compensation of such officers and employees, for lobbying. As added by Acts 1981, PL 9, SEC. 1.

2-7-5-4 Former members of general assembly; presence during legislative session

Sec. 4. No past member of the general assembly who is a lobbyist may be on the floor of either house while that house is in session. As added by Acts 1981, PL 9, SEC. 1.

2-7-5-5 Contingent fees

Sec. 5. It is unlawful for any person to be a lobbyist for a compensation dependent upon the success of his lobbying efforts, or upon any contingency connected with the administrative action or legislative action. As added by Acts 1981, PL 9, SEC. 1.

Comment 171: services subsequent to lobbying

A person who previously contracted to provide lobbying services and who completes that contract can subsequently contract in a different capacity with the project that was the subject of the successful lobbying effort without violating the restrictions on contingency fees, assuming that at no time had there been any understanding that the person might be hired by the project later. *ILRC Advisory Opinion 1993-1, July 16, 1993*.

Comment 172: void contracts

The U.S. Supreme Court has ruled that contracts for compensation contingent upon getting legislation are void. *See Hazelton v. Scheckells*, 202 U.S. 71 (1906).

Comment 173: diligent billing efforts

Lobbyists should be diligent in their billing activity, so as to avoid appearances of contingency agreements. For example, when a client pays for "overage" on a billing after a successful legislative outcome has been guided by the lobbyist, factors support a finding of contingency arrangement between the lobbyist and the client.

2-7-5-6 Persons forbidden to register

- Sec. 6. The following persons may not be registered as a lobbyist under this article:
 - (1) Any individual convicted of a felony for violating any law while the individual was an officer or employee of any agency of state government or a unit of local government.
 - (2) Any person convicted of a felony relating to lobbying.
 - (3) Any person convicted of a felony and who:
 - (A) is in prison;
 - (B) is on probation; or
 - (C) has been in prison or on probation within the immediate past one (1) year.
 - (4) Any person whose:
 - (A) statement or report required to be filed under this article was found to be materially incorrect as a result of a determination under IC 2-7-6-5; and
 - (B) who has not filed a corrected statement or report for that year when requested to do so by the commission.
 - (5) Any person who has failed to pay a civil penalty assessed under IC 2-7-6-5.
 - (6) Any person who is on the most recent tax warrant list supplied to the commission by the department of state revenue until:
 - (A) the person provides a statement to the commission indicating that the person's delinquent tax liability has been satisfied; or

(B) the commission receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k). As added by Acts 1981, PL 9, SEC. 1. Amended by PL 6-1985, SEC. 2; PL 6-1987, SEC. 2; PL 332-1989(ss), SEC. 1.; PL 3-1992, SEC. 23.

IX. Enforcement

2-7-6-1 Investigating and prosecuting authorities; powers and duties

Sec. 1. The attorney general and the applicable prosecuting attorney jointly or severally are responsible for investigating alleged or suspected violations and enforcing the provisions of this article and, in addition to the powers heretofore granted him by law, the attorney general has the powers of the prosecuting attorney of each county for the purpose of enforcing the provisions of this article. As added by Acts 1981, PL 9, SEC. 1.

2-7-6-2 Violations; offense, penalty; court order against lobbying

- Sec. 2. (a) Any person who knowingly or intentionally violates any provision of IC 2-7-2, IC 2-7-3, or IC 2-7-5 commits unlawful lobbying, a Class D felony. In addition to any penalty imposed on the defendant under IC 35-50-2-7 for unlawful lobbying, the court may order the defendant not to engage in lobbying for a period of up to ten (10) years, IC 2-7-5-6 notwithstanding.
- (b) Any person who lobbies in contravention of a court order under subsection (a) of this section commits a Class D felony. As added by Acts 1981, PL 9, SEC. 1.

Comment 174: failure to file a report

Failure to file a report or statement required by the disclosure statute is a violation of the statute.

2-7-6-3 Violations; false reports; offense

Sec. 3. Whoever knowingly or intentionally makes a false report under this chapter that overstates or understates the amount of any or all expenditures or gifts commits a Class D felony. As added by Acts 1981, PL 9, SEC. 1. Amended by PL 9-1993, SEC. 15.

Comment 175: what is "over reporting"?

At the June 2, 1998, public meeting, the Chairman of the ILRC stated that the ILRC would not refer lobbyists to the prosecutor who had inadvertently or unintentionally over reported expenditures on their activity reports filed with the ILRC.

That comment was made in response to a lobbyist who had demonstrated a concern that, when faced with a "grey area" of the law, if a lobbyist reported certain expenditures, the lobbyist could be accused of over-reporting. The Chairman recognized that, at times, the law may not be as clear as is desired, and recommended that, when in doubt, it is better to err on the side of disclosure. When good faith interpretations can be made concerning ambiguous portions of the law, the reporting of such expenditures relating to those interpretations would never be classified by the ILRC as a knowing or intentional overstatement of expenditures.

It is important to distinguish the context of the above described situation with the situation in which a lobbyist has intentionally or knowingly over-reported. For example, if a lobbyist reports his campaign contributions to the ILRC as lobbying expenditures, it is a clear case of over-reporting, because the statute is unambiguous as to the fact that campaign money is not reportable lobbying activity. Likewise, if a lobbyist reports expenditures made which relate to the executive branch of government (State Administration) as lobbying expenditures, it is a clear case of over-reporting, because the statute is unambiguous as to the fact that only expenditures made in influencing legislative action, involving legislative officials, are reportable as lobbying expenditures.

In the above described latter cases of clear over-reporting, it will be presumed that the lobbyist knowingly and intentionally over reported his/her lobbying expenditures.

Comment 176: knowingly and intentionally

When a lobbyist has been requested by the ILRC to correct a statement or report and the lobbyist fails to amend or to provide good cause for his/her failure to so amend within the required time period, it is presumed that the defect in the report or statement remains knowingly and intentionally.

2-7-6-4 Violations; members of the general assembly; conspiracy; offense

Sec. 4. A member of the general assembly who knowingly or intentionally conspires with a lobbyist in the violation of Section 2 or Section 3 of this chapter commits a Class D felony. As added by Acts 1981, PL 9, SEC. 1.

2-7-6-5 Findings of hearings; sanctions

Sec. 5. (a) If the commission after a hearing conducted under IC 4-21.5-3 finds that:

- (1) a statement or report required to be filed under this article was materially incorrect;
- (2) the person filing the report was requested to file a corrected statement or report; and

- (3) a corrected statement or report has not been filed; the commission may invoke sanctions under subsection (b).
- (b) If under subsection (a) the commission is authorized to invoke sanctions under this subsection, the commission may do either or both of the following:
 - (1) Revoke the registration of the person who has failed to file a corrected statement or report.
 - (2) Assess a civil penalty on that person in an amount not to exceed five hundred dollars (\$500). As added by PL 6-1985, SEC. 3. Amended by PL 7-1987, SEC. 1.; PL 3-1992, SEC. 24.

2-7-6-6 Failure to file report; sanctions

- Sec. 6. (a) The commission may impose either or both of the following sanctions if, after a hearing under IC 4-21.5-3, the commission finds that a lobbyist failed to file a report with a member of the general assembly required by IC 2-7-3-6:
 - (1) Revoke the registration of the lobbyist.
 - (2) Assess a civil penalty against the lobbyist. a civil penalty assessed under this subdivision may not be more than five hundred dollars (\$500).
- (b) In imposing sanctions under subsection (a), the commission shall consider the following:
 - (1) Whether the failure to file the report was willful or negligent.
 - (2) Any mitigating circumstances. As added by PL 9-1993, SEC. 16.

X. Commission Investigations and Hearings

2-7-7-1. Complaints alleging violation of article; conduct of investigation

Sec. 1. The Commission shall conduct an investigation under this chapter of a complaint alleging a violation of this article. As added by PL 9-1993, SEC. 17.

2-7-7-2. Complaint

Sec. 2. A complaint must be in writing and be signed by the individual making the complaint. As added by PL 9-1993, SEC. 17.

2-7-7-3. Delivery of complaint to alleged violator

- Sec. 3. When a complaint is filed, the commission shall promptly send a copy of the complaint to the person alleged to have committed the violation of this article. As added by PL 9-1993, SEC. 17.
- 2-7-7-4. Complaints or preliminary investigations; failing to state violation of article disposition

- Sec. 4. If the commission determines the complaint does not allege facts sufficient to constitute a violation of this article, the commission shall do both of the following:
 - (1) Dismiss the complaint.
 - (2) Notify the complainant and the respondent of the commission's action. *As added by PL 9-1993, SEC. 17.*

2-7-7-5. Complaints alleging violation of article; preliminary investigation; probable cause findings

- Sec. 5. (a) If the commission determines the complaint does allege facts sufficient to constitute a violation of this article, the commission shall promptly investigate the allegation.
- (b) If after a preliminary investigation the commission finds that probable cause does not exist to support an allegation of a violation of this article, the commission shall do the following:
 - (1) Dismiss the complaint.
 - (2) Notify the complainant and the respondent of the commission's action.
- (c) If the commission finds that probable cause exists to support an allegation of a violation of this article, the commission shall hold a hearing on the matter not more than thirty (30) days after making the determination. IC 4-21.5 applies to a hearing held under this subsection. As added by PL 9-1993, SEC. 17.

2-7-7-6. Commission meetings in executive session

- Sec. 6. The commission may meet in executive session to do either of the following:
 - (1) Make a determination under section 4 of this chapter.
 - (2) Investigate a complaint under section 5 of this chapter. As added by PL 9-1993, SEC. 17.

2-7-7. Confidentiality

Sec. 7. The following matters are confidential:

- (1) Action of the commission and records relating to those actions under section 4 of this chapter.
- (2) Investigations and records relating to a preliminary investigation under section 5 of this chapter. As added by PL 9-1993, SEC. 17.

2-7-7-8. Subpoenas

Sec. 8.(a) Upon the affirmative vote of three (3) members of the commission, the commission may request from the legislative council the authority to compel either or both of the following by subpoena:

- (1) The attendance and testimony of witnesses.
- (2) The production of documents.
- (b) If the legislative council authorizes the commission to issue subpoenas after a request under subsection (a), the circuit or superior court of the county where a subpoena is to be served shall enforce the subpoena. *As added by PL 9-1993, SEC.* 17.

APPENDICES

SUMMARY OF FILING DATES

Registration: January 15, or within 15 days of becoming a lobbyist

Activity Reporting: July 31st and January 31st

Legislative Gift within 30 days of making a gift or

or Purchase: **purchase**

Amendment: within 15 days after ANY information change

Termination: within 15 days after lobbying activity ceases (Termination is

optional.)

Electronic Filing Instructions

ILRC'S ONLINE SERVICES

REGISTRATION. ACTIVITY AND GIFT REPORTING ONLINE

OVERVIEW

Access Indiana, in cooperation with the Indiana Lobby Registration Commission, has developed four new interactive services, geared toward helping lobbyists interact more efficiently with the State of Indiana. This document will take you through the easy process of, the onetime pre-registration setup necessary to access these online services and, also, through submitting an online filing. This new online system allows third party filing, also, so this document will also walk you through that modified process.

ONETIME PRE-REGISTRATION PROCESS

Because the ILRC filings contain confidential information, these new online services have enhanced security features such as requiring a lobbyist to enter a username and password prior to logging into the application. In order to obtain this login information, a lobbyist must have a network subscription to Access Indiana* and, also, file a memorandum of understanding (MOU) with ILRC. The subscription agreement to the network can be found in this packet of information and must be renewed annually. The MOU will be available online within the next couple of weeks or can be obtained through ILRC's office, this process need only occur once. The Access Indiana ID must be included on the MOU so ILRC can properly process the lobbyist's information before he/she can use the online services.

* If a lobbyist wishes to have a third party prepare these documents on their behalf, an MOU is still required by the lobbyist but the ID and password is only required by the preparer.

LOBBY REGISTRATION/ACTIVITY/GIFT REPORTING (FILING WITHOUT A PREPARER)

The process is simple for those lobbyists submitting their filings without the use of a preparer. The process is outlined below and involves the lobbyist logging onto the application, completing the form and pressing submit. This information is automatically transmitted to ILRC, without the normal delays of completing the filing on paper and mailing it in. Another time saving benefit is the reuse of information already stored in ILRC's system. Once you register as a lobbyist, the system "remembers" who you are and will pre-fill your contact information for each sequential filing. If your information has changed, you simply update the information as you file and continue with the report. The system then "remembers" your new information for future filings.

LOBBY REGISTRATION/ACTIVITY/GIFT REPORTING (FILING USING A PREPARER)

What if you normally have a third party prepare your filings for you? No problem! ILRC's system has been designed to accommodate the way you currently do business with the state. Your preparer can complete your information, send you an email for your approval, then submit it to ILRC with a simple click. It's that easy!

PRICING

Access Indiana, in cooperation with ILRC, is offering these services to you for a small convenience fee outlined below. A subscription to Access Indiana costs \$50 annually and has many benefits beyond being able to file lobbyist reports online. These benefits include, new hire reporting with the Dept. of Workforce Development and Secretary of State's corporate filings. There are many additional online services that are highlighted in this packet and at the following URL: http://www.state.in.us/premium

There is nominal total cost of \$1 per filing for an activity or gift report when filing online and a total cost of \$105 when filing your annual registration statement online. There are additional charges for late submissions.

CONCLUSIONS

The Lobby Registration Commission has worked diligently to streamline their filing process to make it even easier to file your reports. After the onetime pre-register process, you will be able to register or renew your lobbyist status or file your activity and gift reports online, without ever reentering your contact information. This is just another example how we are transforming relationships between business and government, one interaction at a time.

General Instructions for Completing and Filing a Compensated Lobbyist Registration

- 1. Indicate whether you are filing an original or an amended registration.
- 2. A \$100 registration fee must accompany the lobbyist registration with the following exception: an employee/member of a non-profit organization pays a \$50 fee if the employer files under IRS Code Sections 501(c)(3) or 501(c)(4). Please list the tax exempt number assigned by the IRS.
- 2. **Section A:** List the full legal name of the compensated lobbyist. <u>Include your social security number on Line 7</u>, if you are an individual registrant, or the corporate tax identification number, if the registrant is not an individual, e.g., corporate registrant. Social security numbers, which will be maintained in a separate index and file, are used to determine a person's eligibility to register as a lobbyist.
- 3. **Section B:** List **each employer or client** who will compensate you for providing lobbying services on their behalf.
- 4. **Section C:** Identify all subject matters for which you have contracted to lobby. If no subject category applies, specify your area of lobbying interest in the space marked "Other."
- 5. **Section D**: An individual registrant must answer all questions by checking the yes/no boxes.
- 6. **Section E**: Corporate registrants filing as compensated lobbyists must list all persons in their employ who will lobby on behalf of the clients identified in Section B of this statement. Each of these persons also will register as a compensated lobbyist.
- 7. **Section F**: Only the original signature of the registrant whose name is listed in Section A, line 1, will be accepted by the Commission. For corporate registrants, only the signature of an officer of the registrant will be accepted.

General Instructions for Completing and Filing an Employer Lobbyist Registration

- 1. Indicate whether this is an original or an amended registration.
- 2. **Section A**: List the employer registrant's full legal name, correct business address, and telephone number. On line, list the name of a contact person within the organization with whom the Commission may communicate.
- 3. **Section B**: The lobbyist registration fee is \$100, with the following exception: a non-profit organization, filing as an employer registrant, pays a registration fee of \$50, if the organization files under IRS Code Sections 501(c)(3) or 501(c)(4). As proof of tax exempt status, please list the tax exempt number assigned by the IRS.
- 4. **Section C**: List the names, titles, and addresses of no more than five of the controlling persons or officers of your organization. The Commission will accept only the signature of one of these persons on registration and activity reports filed by your organization.
- 5. **Section D**: Include the name, address, and phone number of **each lobbyist** whom your organization will compensate for lobbying services and indicate whether each lobbyist is an employee or an independently contracted lobbyist. **Each identified person also must register as a compensated lobbyist.**
- 6. **Section E**: Identify all subject matters for which you will compensate the individuals listed in Section C. If no subject category applies, designate your area of lobbying interest in the space provided under "Other."
- 7. **Section F**: The registration statement must be signed and dated by a controlling person or an officer of the registrant. **The Commission will accept only the original signature of one of the persons listed in Section B, lines a-e.**

Completing and Filing a Lobbyist Activity Report

File your activity report on time to avoid a late fee. Filing deadlines are <u>on or before July 31</u> for the first reporting period and <u>on or before January 31</u> for the second period. (If due date falls on a weekend, filings are due the Monday following the weekend.) Indicate for which period you are filing and whether you are terminating as a lobbyist.

- 1. In the box at the top right hand side of the first page:
 - a. indicate for which reporting period you are filing;
 - b. indicate whether you are terminating as a lobbyist;
 - c. indicate whether you are filing as an employer lobbyist or as a compensated lobbyist.

NOTE: IF YOU ARE REGISTERED AS BOTH AN EMPLOYER LOBBYIST AND AS A COMPENSATED LOBBYIST, YOU FILE YOUR ACTIVITY REPORT(S) ONLY AS A COMPENSATED LOBBYIST.

Section A. Identification

- -- **EMPLOYER REGISTRANT:** complete Section A, lines 1-6.
- -- **CORPORATE COMPENSATED REGISTRANT:** complete Section A, lines 1-6.
 - -- **COMPENSATED REGISTRANT:** complete Section A, lines 1-5.
- *Line 1*: If registrant is an organization, business, or company, list the complete business name. Do not use an acronym.
- Line 2: List the business telephone number.
- *Line 3*: List the complete **business address**
- Line 4: List the business **mailing address** if different than the business address listed on line 3.
- *Line 5*: List the name, title, and phone number of the person completing the activity report.
- Line 6: List between 3 and 5 persons who are responsible for the activities of the registrant (e.g., president, secretary, executive director). For the employer lobbyist, this information should mirror the information provided in Section C of the employer registration statement on file with the Commission. Activity report(s) will be considered invalid if signed by other than one of these designated persons.

PLEASE NOTE: ONLY COMPENSATED LOBBYISTS ARE TO COMPLETE SECTION B. (Complete an activity report for each client for whom you provided lobbying services.)

Section B. Identification of Client(s) of the Registrant On each activity report you are completing:

- *Line 1*: List the **name** of the **client**.
- *Line 2*: List the **complete business address** of the **client**.
- *Line 3*: List the **business phone number** of the **client**.
- *Line 4*: List the type of **business** of **client**.
- Section C. Lobbying Expenditures -- An employer registrant files one activity report. However, a registrant who received compensation for lobbying and who compensated another to lobby must file a separate activity report for EACH person/entity from whom he received payment for lobbying.
- Line 1: Report all compensation that **you** paid in the form of salary, wages, benefits, or retainer to an employee, or to anyone who was thus compensated by you for performing lobbying services during this reporting period. **This figure is to include the amount of compensation that an independent lobbyist paid himself for lobbying.**
- *Line 2*: Report the total reimbursements you made to anyone for performing lobbying services during this reporting period.
- Line 3: Report all direct payments you made in sponsoring all or part of a legislative reception. Expenditures for **receptions** where lobbying occurs should be reported when the expenditures are <u>incurred directly</u> by a lobbyist. Include any expenses associated with the giving of a legislative reception that are paid by a lobbyist. The **costs of all receptions** must be reported on this line only when **fewer than** all general assembly members are invited.
- *Line 4*: Report total amounts spent for entertainment, including meals. Lobbyist do not report their portion of entertainment.
- Line 5: Report all gifts made to employees of the general assembly, or to immediate family members of the employees of the general assembly. This requires disclosure of gifts made for less than \$100 in one day.
- Line 6: Report expenditures made for the benefit of all members of the general assembly. For example, cost of receptions to which all members of the general assembly are invited are reported on this line.
- Line 7: Report on this line total expenditures and gifts reported in Section D (and not reported elsewhere on the form). There may be certain expenditures listed in Section D of the form that already have been reported on other lines of this form. Subtract the value of those expenditures in arriving at a figure for line 7.

- *Line* 8: Report all registration and late fees.
- *Line 9:* Report all other expenditures made for lobbying that have not been reported on other lines.
- Line 10: Report total lobbying expenditures (add lines 1 through 9).
- Line 11: If you are a compensated lobbyist (or if you are registered both as a compensated lobbyist and as an employer lobbyist), you may subtract out all of line 10, except for expenses incurred to lobby on your own behalf or expenses that were not attributable to any client. For example, if you incurred expenditures to lobby for yourself (e.g., a law firm lobbying on tort reform), you may not back out those expenditures. Similarly, if you used money from non-lobbying clients or from non-lobbying revenue to support your lobbying efforts, you may not back out those dollars.
- Line 12: NET FIGURE (subtract line 11 from line 10).
- **Section D. Affidavit of Non Legislative Income** Identify all general assembly members from whom the lobbyist has received an affidavit required under IC 2-2.1-3-3.5. NOTE: Please contact the legislator from whom you should have received an affidavit if the legislator has not sent you the required affidavit.
- Section E is comprised of three subsections. Please read the directions associated with each subsection.
- Section E-1. Good-Faith Exchange Transactions (are reported only in Section E-1) DO NOT REPORT ANY TRANSACTIONS FROM E-1 IN SECTION C. A lobbyist must report in Section E-1 any purchases of goods or services from a legislator's sole proprietorship, partnership, or family business (if purchase is in excess of \$100/day or \$500 aggregate for the year. NOTE: Lobbyists must continue to report in this section any purchases made from a legislator's retail business.
- Section E-2. Gifts (the value of any gifts listed in E-2 must be reported also in Section C, lines 5 or 7) Report in Section E-2 gift(s) given to members of the general assembly, officers of the general assembly, employees of the general assembly, or immediate family members, officers, or employees of the general assembly if gift is in excess of \$100/day or \$500 aggregate for the year.

Insurance policies, credit card agreements, recorded mortgages secured by real property, or written agreements with financial institutions made in the <u>ordinary course of business</u>, **shall not** be reported.

Expenditures or payments made to a legislator or to a family member employed or retained by the lobbyist as an employee, an independent contractor, speaker or presenter are to be reported.

Section E-3. Other Expenditures Not Reported in Sections E-1 and E-2 (to be reported in Section C, line 7)

Report in Section E-3 any expenditure(s) not reported in Sections E-1 and E-2 that exceeded \$100/day or \$500 aggregate for the year. Such expenditure(s) include meals, entertainment and receptions to which fewer than all members of the general assembly were invited.

Section F. Subject(s) of Lobbying

Lobbyists must identify all Subject(s) of Lobbying for which they lobbied. Specific bill numbers for which lobbyist efforts were made must be listed in the space marked "Specific Legislation." NOTE: Lobbyists must provide a list of bill numbers and correlating subject matter. Additionally, compensated lobbyists should do this for each client.

Section G. Sworn Statement. Section G is a sworn statement and requires a registrant's original signature. An activity report will be accepted **ONLY** when it bears the **original signature** of the registrant, or when the registrant is an employer lobbyist, the **original signature** of one of the persons listed in Section C of the Employer Registration on file with the Commission. An activity report with a stamped or faxed signature, the signature of a person other than the registrant, a signature made by a third party – or, for an employer lobbyist, the signature of a person not listed in Section C of the Employer Registration statement, will be returned as an unfiled report and will be subject to late filing penalty.

Completing and Filing a Report of Legislative Gift or Purchase

A Report of Legislative Gift or Purchase must be filed only when a gift or purchase, as described below, is made. This report, which is available upon request from the Commission office, is to be filed within 30 days of giving the gift or making the purchase.

This report must be filed with the member of the General Assembly identified in Section A and with the Indiana Lobby Registration Commission.

Section A

Identify the lobbyist who made the gift or purchase and include the lobbyist's complete business address and telephone number.

Identify the General Assembly member who was the beneficiary of the gift or from whom the purchase was made.

Section B

If a purchase of goods or services (as described on the form) was made, check the appropriate box and give the purchase date.

Section C

If a gift (as described on the form) was made, check the box that most appropriately identifies the gift and note the date the gift was given.

Section D

The report must bear the original signature of the lobbyist and the date the report is submitted.

Audit Procedure

- A. Commission staff chooses lobbyists to audit in two ways:
 - 1. By random selection. IC 2-7-4-6 mandates at least 5% of reports are to be audited randomly each year. Since July, 1992, the Commission has maintained a policy of auditing 10% of reports each year.
 - 2. To examine a discrepancy in a registration or report.
- B. Lobbyists selected for audit are notified by letter, using the address that appears on their registration forms. Letters to employer lobbyists are addressed to the contact persons listed on the registration forms. Letters to compensated lobbyists are addressed to the registrants.
- C. Each lobbyist being audited must submit documentation that substantiates the data provided on the activity report and the registration form. The Commission expects lobbyists to provide complete information within the time period specified in the notification letter -- usually three weeks -- unless special circumstances warrant an extension of time.
- D. The following documentation can be used to substantiate information:
 - cash register receipts, expense account statements
 - affidavits, canceled checks
 - charge slips, bank statements
 - invoices for billable hours, tax returns, IRS form 1099
 - payroll check stubs, time sheets, accounting department payroll sheets
 - contracts, business diaries, and calendars
 - other records kept during the regular course of business.
- E. Lobbyists being audited can mail or deliver supporting documentation to the Commission office. As necessary, staff will contact each lobbyist to request further documents and to schedule a meeting to

discuss the audit. Any lobbyist being audited can schedule a meeting with Commission staff to ask questions and clarify information. All documents provided in support of an audit are kept confidential while in the possession of the Commission.

F. Whether an audited lobbyist has submitted sufficient documentation to support his/her activity report is to be determined by the Director/Counsel of the Commission.

Advisory Opinion Procedure

Introduction

One of the functions of the Indiana Lobby Registration Commission (Commission) is to assist the public by rendering advisory opinions with respect to the interpretations and applicability of Indiana Code Section 2-7. In furtherance of this role, and pursuant to Indiana Code 2-7-1.6-5(a)(6), the Commission has adopted the following guidelines with regard to the issuance of advisory opinions.

Each advisory opinion represents a formal policy determination of the Commission and may be relied upon in making filing and reporting decisions. Oral advice provided by staff of the Commission is intended to help citizens to analyze their particular circumstances and to make decisions on their own about compliance with the lobby registration law. There should be no specific reliance on oral advice of this kind.

Procedure

- §1. (a) The Commission will render advisory opinions with respect to the interpretation and applicability of Indiana Code 2-7 and, in appropriate circumstances, other statutes or rules governing the registration and reporting of lobbyists. There is no right to an advisory opinion, and the Commission will render advisory opinions as a matter of discretion.
 - (b) An advisory opinion may be requested by any lobbyist, legislator, other interested party, or may be issued by the Commission of its own initiative.
 - (c) Requests for advisory opinions shall be made in writing, signed by the person making the request, and shall be titled, "Request for Advisory Opinion."
 - (d) A request for an advisory opinion shall state all material facts necessary for the Commission to understand the circumstances and to make a complete analysis. Typically, the request for an advisory opinion must be based on actual facts and circumstances confronting the person making the request. Persons also may ask the Commission to issue advisory opinions with respect to hypothetical cases. It is less likely that the Commission will exercise its discretion to issue an

advisory opinion in response to hypothetical cases. Only if the matter seems to be of general interest will the Commission exercise discretion to issue an advisory opinion.

- (e) In requesting an advisory opinion, it is not necessary that an agent disclose the name of its principal, which may be a matter of attorney-client privilege. The agent making the request should be prepared to certify that there is an undisclosed principal.
- (f) Upon receipt of a Request for Advisory Opinion, the Executive Director shall send an information copy to each Commissioner for review in preparation for the next meeting of the Commission.
- (g) At that next meeting, the Commission will determine whether to exercise its discretionary powers to issue an advisory opinion on the matter set forth in the request.
- (h) Requests for advisory opinions must be received at the Commission office at least 10-days prior to the meeting of the Commission at which it is expected to be considered. The decision to include a request for an advisory opinion on the agenda is a matter of discretion with the Commission. Generally, that decision of the Commission will be made by the Chair, but the Chair will ordinarily honor the request of any member of the Commission to place a matter on the agenda.
- (i) If a request for an advisory opinion is placed on the agenda of the Commission meeting, the Executive Director will give notice of the agenda, as well as the time and place of the meeting, to the person who requested the advisory opinion. It is the responsibility of the person who requested the advisory opinion to appear at the scheduled Commission meeting to address the request. A failure on the part of the person requesting an advisory opinion to attend the meeting of the Commission will militate against the issuance of an advisory opinion.
- (j) The Commission may decide on an advisory opinion in the public meeting at which the request is presented, or it may take the matter under advisement. When a matter is taken under advisement, it must come back to a public meeting of the Commission for further discussion and resolution.
- (k) Following a decision by the Commission to issue an advisory opinion, the Executive Director shall prepare the written expression of the advisory opinion and send a copy to each Commissioner for

comment. If, during the period of comment by Commissioners, it appears that there is a material disagreement over the manner in which the advisory opinion is to be presented, the Executive Director will ask the Chair to place the request for an advisory opinion on the agenda of the next scheduled meeting of the Commission. If there is no material disagreement over the draft of the advisory opinion, the Executive Director will forward the opinion for publication on the Commission's web site in the form of a proposed advisory opinion.

- (1) The Commission will accept written comment on any proposed advisory opinion for 30-days after the date of its publication on the Commission's web site. At its next meeting, the Commission will consider any commentary that has been made during the 30-day period and will vote whether to ratify the advisory opinion as written or whether to amend it. If the advisory opinion is amended at that meeting of the Commission, it will be published on the Commission's web site under the procedure outlined above and held available for an additional comment period of 30-days.
- (m) When the Commission ratifies a proposed advisory opinion, the final advisory opinion will be published on the Commission's web site. The vote of each Commissioner will be recorded by way of a signature on the final advisory opinion (FAO). The Executive Director shall also sign final advisory opinions prior to submission to the Commission's web site.
- (n) The Commission will permit any person to submit memoranda, briefs, or other relevant written material, or to provide oral testimony on any subject that is to be incorporated in an advisory opinion.
- (o) Any final advisory opinion, until amended or revoked, may be relied upon by all persons.
- (p) Within 15-days of ratification of an advisory opinion, the Executive Director shall send a written copy of the opinion to the party who requested it.

Request for Reconsideration from Final Advisory Opinion

§ 2 (a) The person who made the inquiry and any person directly affected by the Commission's advisory opinion may request reconsideration or clarification from the Commission of the advisory opinion.

(b) Any such request for reconsideration shall be made in writing to the Commission within 15 days of receipt of the advisory opinion sent pursuant to §1(p) of this statement.

Public Record

- §3 (a) The Commission staff will periodically publish the accumulated advisory opinions in an appropriate format.
 - (b) a summary of the Commission's advisory opinions will be included and published in the annual report.

COMMISSION DECISIONS

FINAL ADVISORY OPINION 97-01: Parent / Subsidiary Disclosure

Determination: Only the corporate entity which hires the lobbyist or incurs the lobbying expenditure must report and register.

Example: X" corporation is a multi-state provider of electricity and natural gas for business and consumer users. "Y" is its wholly-owned subsidiary with primary responsibilities for a geographical area within the State of Indiana. "Y" engages in lobbying activities in Indiana. "X" is not required to register as a lobbyist by virtue of "Y's" lobbying activities, even though "X" is the sole owner of "Y."

Rationale: "Lobbying" means "communicating by any means, or paying others to communicate by any means . . ." IC 2-7-1-9. When a subsidiary, or otherwise related corporation, hires its own lobbyist, the parent corporation is not hiring the lobbyist. The parent corporation itself has not communicated with the legislature, nor has it paid another to communicate under such facts. Likewise, when a parent corporation hires a lobbyist, the subsidiary or otherwise related corporation has not communicated with the legislature, nor has it paid another to communicate by virtue of the parent corporation's lobbying activities.

The corporate entities authorized by law are observed, and the corporate veil will not be pierced for the purposes of requiring disclosure on behalf of the parent corporation, unless it appears that the parent is using a subsidiary corporation as a means of avoiding the lobbying registration laws. Such arrangements may not be used to avoid lobby disclosure laws willfully. A parent corporation may not do all of its lobbying through its subsidiary corporations with the intent of avoiding disclosure. Subsidiary corporations may not exist as "lobbying shells." If the primary reason for the existence of the subsidiary corporation is that the subsidiary corporation may hire lobbyists whose lobbying efforts benefit primarily the parent corporation, then the parent corporation must register and report as the employer lobbyist for those lobbying efforts.

FINAL ADVISORY OPINION 97-02:

Reporting Functions for All Legislators

Determination: When a lobbyist invites all members of the General Assembly to an event, but only some attend, the expenditures do not have to be reported on a pro rata basis.

Example: "L" lobbyist invites the members of the entire General Assembly, their spouses, and staff members to the NCAA Final Four playoff games. "L" provides meals and lodging for the weekend event. The total expenditure amounts to \$75,000. Only 10 legislators attended the event, along with eight spouses, and 20 legislative staff members. "L" must report the cost of the entire expenditure, but "L" does not have to prorate the cost of the event among those who attended.

Rationale: Indiana Code § 2-7-3-3(a)(4) states that "whenever a lobbyist makes an expenditure that is for the benefit of all members of the General Assembly on a given occasion, the total amount expended shall be reported, but the lobbyist shall not prorate the expenditure among each member of the General Assembly." Another provision of the statute requires reporting of "[a] statement of expenditures and gifts that equal one hundred dollars (\$100) or more in one (1) day, or that together total more than five hundred dollars (\$500) during the calendar year, if the expenditure and gifts are made by the registrant or his agent to benefit (a) a member of the General Assembly." *IC* § 2-7-3-3(a)(3).

Because IC § 2-7-3-3(a)(4) follows IC § 2-7-3-3(a)(3), we presume the legislature drafted (a)(4) with (a)(3) in mind. The effect and validity of (a)(4) applies in situations where expenditures are made on legislators as a group, whereas the effect and validity of (a)(3) pertains to the situations wherein expenditures are made on individual legislators. The goal of disclosure amplified by the statute is met by reading the statutory provisions to pertain respectively to both situations.

The burden is on the lobbyist when subject to an audit pursuant to IC § 2-7-4-6, to establish that an expenditure reported under § 2-7-3-3(a)(4) was intended to benefit all members of the General Assembly.

FINAL ADVISORY OPINION 97-03:

Contract for Lobbying When No Performance Yet Rendered and No Consideration Yet Paid

Determination: A lobbyist who enters into a contract which contains a promise to pay of greater than \$500 for lobbying services must register the contractual relationship at the time of the contract and must report the expenditures / compensation made pursuant to the contract in the respective periods in which the said expenditures / compensation are made.

Example: In November, 1997, "L" lobbyist enters into a contract with "C" client. The contract specifies that "C" will pay "L"\$10,000 to lobby for "C" in the 1998 legislative session. "L" does not perform any services under the contract until 1998, and "C" does not render payment on the contract until August, 1998. Both "L" and "C" must register as lobbyists at the time of the making of the contract. "L" and "C" must report payment made / received on the contract during the period in which payment is made / received.

Rationale: Indiana Code § 2-7-1-9 defines "lobbying" as "communicating by any means, or paying others to communicate by any means, with any legislative official with the purpose of influencing any legislative action." a contract for lobbying involves the paying of another to communicate with the purpose of influencing legislative action. The operative terms are: (1) "paying"; (2) "to communicate"; and, (3) "with the purpose of influencing legislative action."

"Pay" is defined as "the act of making payment." *IC* § 2-7-1-11(c). "Payment" means "any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make a payment." *IC* § 2-7-1-11(a). Thus, a contract, agreement, or promise to lobby is a "payment" under the statute.

The statute requires not just a "paying," but a "paying to communicate." Accordingly, to the extent the contract is a contract to monitor⁴ rather than a contract to lobby, then the contract is not a "paying to communicate." However, the statute does not require that actual communication take place, but only that payment for communication be made to trigger a duty to register. To the extent a contract, agreement, or promise is made in which consideration greater than \$500 is to be paid under the contract in exchange for communication, there is a duty to register the relationship at the making of the contract, agreement or promise.

123

⁴ The issue of contracts made to monitor the legislature was addressed at the Commission's public meeting of September 9, 1997. That decision is reflected in Final Advisory Opinion 97-06.

The statute defines the word "expenditure" in two ways: one for the purposes of determining a duty to register, and the second for the purpose of determining a duty to report on the activity report. In the section which defines "lobbyist", the word "expenditure" is defined in the broadest possible way and includes "anything of value . . . and any contract. . .to make an expenditure." *IC* § 2-7-1-3. Therein lies the duty to register.

In a separate part of the statute which governs activity reporting, *IC* § 2-7-3-3, <u>et.al.</u>, the word "expenditure" is modified in that it requires reporting of expenditures based upon certain categories. This modification of the word "expenditure" in this part of the statute contemplates an actual transfer of value, and not just a contract to make such expenditures. As such, when a contract for lobbying is involved, there is no "expenditure" for the purpose of activity reporting until payment has been made under the contract.

Whether the contract is made in anticipation of influencing legislative action is fact specific, and such a discussion will be considered by the Commission during its consideration of the issue of contracts made to monitor legislative action. To the extent, however, the contract, agreement or promise is made to influence legislative action, the aforementioned duties with regard to registering and reporting apply.

FINAL ADVISORY OPINION 97-04: Disclosure of Employee & Fringe Benefits Paid to Lobbyists

Determination: Nonforfeitable, vested employee and fringe benefits are reportable as "compensation" and as "expenditures" under the lobby disclosure statute.

Example: "X" corporation hires "L" lobbyist as an employee and pays "L" a salary of \$3,000. "X" also pays "L" an employee benefit in the form of a retirement fund contribution made by "X" on behalf of "L," which equals 10% of "L's" income. Both "X" and "L" must report the retirement fund contribution as a lobbying expenditure / compensation, to the extent it is vested, at the time of vesting. Any changes in value after disclosure, which are attributable to the amounts already disclosed, are not amounts related to lobbying expenditures / compensation, because the receipt by "L" of those changes in value in no way depends upon "L's" providing a lobbying service to "X," since those benefits are already vested. Only changes in value which occur prior to disclosure / vesting are considered to be compensation / expenditures made for lobbying.

Example: "X" corporation hires "L" lobbyist as an employee and provides "L" with the fringe benefit of a company car. The annual value of the car is \$5,000. "X" and "L" must report the value of the car as a lobbying expenditure / compensation.

Example: "L" lobbyist participates in "X" corporation's employee stock ownership program (ESOP). "L," an employee of "X," gets a certain amount of stock options, based on years of service, and subject to a certain vesting schedule. "L" and "X" must report the value of "L's" stock options, to the extent they become vested, as lobbying expenses.

Example: "L" lobbyist, an employee of "X" corporation, participates in "X's" 401(k) program. "L" has obtained a loan in the amount of \$50,000 against the vested balance of his 401(k). This vested balance represents the amount contributed by "L" and also the matching amount contributed by "X" on behalf of "L." "X" and "L" need not report the amount of the loan which is taken against the contributions made by "X" as a lobbying expenditure / compensation, because the vested portion was presumably already reported at the time of vesting.

Rationale: IC 2-7-1-10 defines a "lobbyist" as any person who "receives or expends an aggregate of five hundred (\$500) in compensation or expenditures" for lobbying. "Compensation" is defined as "anything of value." *IC 2-7-1-2*. "Expenditure" is defined also as "anything of value." To the extent an employee benefit or fringe benefit has an aggregate value in excess of \$500,

and is not forfeitable upon termination of the employee, it is reportable under the statute.

Certain exemptions exist under the statute. The exclusion of an "insurance policy" from the statute ($IC\ 2-7-2-6(g)(1)$) was promulgated when questions arose as to whether a lobbyist who does business with a member of the General Assembly must report the purchase of an insurance policy when the policy was acquired in the ordinary course of business. However, an insurance policy which serves as part of a lobbyist's compensation package is not what was contemplated by the legislature when it drafted this exemption.

However, employer-provided group life, health, disability and other insurance policies which are contingent upon employment and are forfeitable upon termination are not reportable as lobbying expenditures / compensation because they do not belong to the employee/lobbyist, are not generally considered to be employment income in other areas of law, and are difficult to value because of the nature of the group benefit.

Nonvested retirement funds are not reportable as a lobbying expenditure / compensation, because "payment" is defined as "a rendering of money . . . or anything else of value . . whether tangible or intangible" IC 2-7-1-11. An unvested, forfeitable amount has no value to the employee / lobbyist until it vests. Upon vesting, the value of the fund at the time of vesting is the amount to be reported as the lobbying expenditure / compensation. Any changes in valuation which occur after such time are not expenditures / compensation made in anticipation of lobbying, but are a result of the employee / lobbyist's decision to remain with the employer and, thus, to leave the value of the assets in the plan fund.

The employee and fringe benefits discussed are not "overhead" costs or other costs enumerated in Indiana Code 2-7-3-3(c)(1) - (5). This portion of the statute, which lists certain expenditures as exemptions under the disclosure statute, was promulgated into law by PL 3-1992, Sec. 12. As a result, a certain portion of Attorney General Opinion 90-23 was rendered void. That AG opinion stated that the items enumerated by PL 3-1992, Sec. 2, were reportable as lobbying expenditures / compensation. AG Opinion 90-23 did not contemplate vested, nonforfeitable employee and fringe benefits. The statutory changes do not reflect an express exclusion of such. The object of statutory construction is to determine, give effect to, and implement the intent of the legislature. *Indiana Family and Social Services Administration* v. Patricia Day, 1997 WL 346387 (Ind. 1997). Unless the legislature expressly excludes nonforfeitable, vested employee and fringe benefits as a lobbying expenditure / compensation, it is considered a reportable expense.

The Commission recognizes some of the practical difficulties associated with valuing such benefits and advises that lobbyists make a good faith effort to accurately value the total compensation being paid in the form of employee benefits.

FINAL ADVISORY OPINION 97-05: Request for Advisory Opinion

- This written Request for an Advisory Opinion, submitted by the agent of an undisclosed principal, contains five (5) primary hypothetical questions, some of which reflect subquestions. None of the questions provide specific factual or contextual information. The following opinion recites the verbatim questions, and the Commission's determination on each question. The Commission's determination is based on current form reporting requirements.
- If a lobbyist takes a legislator and spouse out for dinner, does the lobbyist have to report the entire amount of the bill, or only that portion attributable to the legislator and spouse?
- A lobbyist need only report the amount of the bill attributable to the legislator and spouse on the lobbyist's activity report. This is true, even when the lobbyist who is reporting the expenditure is an employer lobbyist, who either directly paid for the expenditure or reimbursed its compensated lobbyist for the entire amount of the bill.
 - (a) Must a lobbyist report such an expense for the legislator, spouse and family as one or separate entities?
- On the activity report, the expenditure is reported as one expense (e.g., "Senator Jones and guest"). The Legislative Gift or Purchase Report technically requires only that gifts made to the legislator be reported. However, because the payment for the legislator's guest benefits the legislator, the Commission has required that the amounts for both be reported on the Legislative Gift or Purchase Report.
 - (b) Does the lobbyist report the expense as an "expenditure" or as a "gift"?
- Indiana Code § 2-7-1-3 defines an "expenditure" as "any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, honorarium, pledge, or subscription of money or anything else of value, and any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make an expenditure."
- Indiana Code § 2-7-1-4(a) defines a "gift" as "the voluntary transfer of anything of value without consideration."
- Accordingly, a gift is always an expenditure, but an expenditure may not always be a gift. Expenditures which are transferred without consideration are both

"gifts" and "expenditures." They should be reported as both. However, expenditures which are made for consideration are only reportable as "expenditures" and not as "gifts."

(c) Does the lobbyist report the expense on its Activity Report, Report of Gift or both?

Expenditures are always reportable, whether made in the form of gifts or as part of an exchange. If made in the form of a gift, then the expenditure will be always reported on the activity report, no matter what the size of the gift. Such a gift, if made in excess of \$100 or \$250 aggregate, will also be reflected on the Legislative Gift or Purchase Report. It is recommended that the lobbyist notate somewhere on the form, when the same expenditure is reported on both forms.

The current requirements mandate a lobbyist report gifts exceeding, in the aggregate, \$250 in a given reporting period. Can the lobbyist file one report at the end of each reporting period which encompasses all gifts which must be reported in the reporting period, or must the lobbyist report each gift once the \$250 threshold has been satisfied?

Indiana Code § 2-7-3-6 requires that a lobbyist file a Legislative Gift or Purchase Report with the Commission and with the respective member of the General Assembly within thirty (30) days after making a purchase or giving a gift described in IC 2-2.1-3-2(7) and (8). The lobbyist, therefore, may not file one report at the end of the reporting period which encompasses all gifts. Once the \$250 threshold has been reached, a report must be filed within thirty (30) days of reaching that threshold and within thirty (30) days of any gift or purchase made thereafter in that reporting period.

(3)

How should a lobbyist report legislator related expenditures exceeding the \$500 threshold?

Once it has been determined that the \$500 threshold has been crossed, all expenditures are reportable, including those expenditures made in arriving at the threshold.

(a) Is the expenditure to be included on the "Activity Report?" If so, can the lobbyist prorate the expense to all the lobbyist's clients, and on which line is the expense to be reported?

- All expenditures made must be included on the activity report. The lobbyist may choose to prorate the expense among all of the lobbyist's clients. IC § 2-7-3-3(a)(3). The determination of what line on which the expense is to be reported depends upon whether the lobbyist is reporting as an Employer Lobbyist or as a Compensated Lobbyist.
- The Compensated Lobbyist activity report requires a breakout of what expenditures were made with regard to each individual client, though prorating may be done at the option of the lobbyist. The Compensated Lobbyist must fill out a separate report for each client. Expenditures are reflected on that report on lines 1-9.
- If reporting as an Employer Lobbyist, the expenditures are reported in lump sums on lines 1-9. Thus, the concept of prorating among various clients is not relevant to the Employer Lobbyist for reporting purposes, but may become relevant in the event of an audit.
- Staff from the Commission are available to answer questions relating to the specific forms.
- (b) If the expenditure is prorated among the lobbyist's clients and the expenditure is then less than the reporting threshold, must the expenditure be reported?
- If reporting as a Compensated Lobbyist, the duty to report turns upon the amount of compensation received, even though the Compensated Lobbyist activity report does not require that the Compensated Lobbyist to report how much any given client is compensating the Compensated Lobbyist. If the Compensated Lobbyist has received in excess of \$500 to lobby from any one given client, then there is a duty to report as a Compensated Lobbyist with regard to that client, irrespective of the amount of expenditures made. Once there is a duty to register as a Compensated Lobbyist, then such a Compensated Lobbyist must report actual expenditures, even if those expenditures do not exceed \$500 on a pro rata basis.
- Presumably, the question of pro rata expenditures reporting for the Employer Lobbyist is only germane to the Employer Lobbyist who is also a Compensated Lobbyist, because the Employer Lobbyist who only lobbies on behalf of itself is not presented with the issue of prorating.
- If reporting as an Employer Lobbyist, expenditures will be reported on a lump sum basis. However, in determining whether one must factor into the lump sum computation the expenditures made on behalf of any one given client, the Employer Lobbyist must examine whether the total expenditures made for the client exceed the \$500 threshold. If those expenditures do not exceed

\$500 for that client, then the expenditures will not be reported by the Employer Lobbyist. However, to the extent the Employer Lobbyist has a duty with regard to that client to register and report as a Compensated Lobbyist, by virtue of the fact that the Lobbyist was compensated by the client in excess of \$500, those expenditures, which were not otherwise reportable on the Employer Lobbyist activity report, are reportable on the Compensated Lobbyist activity report, even though they do not exceed \$500.

(c) How does a lobbyist distinguish between an "expenditure" and a "gift" for reporting purposes?

See answer (1)(b).

(4)

If an individual compensated lobbyist is reimbursed at 100% of his expenses by its corporate employer lobbyist, may it file activity reports showing no activity but making reference to, and incorporating, the report filed by its employer? For example, may the individual compensated lobbyist who is paid in salary by a corporate compensated lobbyist incorporate the reports filed by the corporate lobbyist?

The individual Compensated Lobbyist must report all expenditures made by the individual Compensated Lobbyist on lines 1-10 of the activity report. Line 11 allows for the reimbursement made by the employer to the Compensated Lobbyist to be reflected.

(5)

If a lobbyist makes regular monthly purchases of goods from a business in which a legislator has an ownership interest and each monthly payment exceeds \$100, must the lobbyist file a report each month or may it file one report each six (6) months reflecting all such purchases?

The Lobbyist must file a Legislative Gift or Purchase Report within thirty (30) days from the time of each purchase.

FINAL ADVISORY OPINION 97-06:

Reporting of Gifts When There is a Contract to Monitor

Determination:

- If there is no legislative action upon which the agent or principal is attempting to impose influence, there is no duty to file a lobbyist's Report of Legislative Gift or Purchase, regardless of the amount of the gift. However, if it is determined that the gift was given with the intention of influencing legislative action, there is a duty to register and report.
- *Example:* Corporation "X" is not a registered lobbyist. "X" provides goodwill gifts in the form of tickets to a major sporting event to legislators each year, regardless of whether it is actively lobbying the legislature. In the past, "X" had the agent actively lobby on certain issues. However, the agent only monitored the legislature this year. The total value of the gifts to the legislators was in excess of \$30,000 during a three month period. The tickets came directly from "X" to the legislators. "X" has no duty to register and report the gifts with the Commission.
- **Rationale:** IC 2-7-3-6(a) requires that "a lobbyist shall file a written report with respect to a member of the General Assembly whenever either of the following occurs: (1) The lobbyist has made a purchase described in IC 2-2.1-3-2(7) with respect to that member; (2) The lobbyist has made a gift described in IC 2-2.1-3-2(8)."
- IC 2-2.1-3-2(8) requires a legislator to report on its statement of economic interest "the name of any person or entity from whom the member . . . received the following: (A) any gift of cash from the lobbyist. (B) Any single gift other than cash having a fair market value in excess of one hundred dollars (\$100). (C) Any gifts other than cash having a fair market value in the aggregate in excess of two hundred fifty dollars (\$250)." Thus, the aggregate value of the tickets would cause the gifts to be reported by legislators on their statements of economic interest.
- The gift alone does not trigger a duty to register as a lobbyist. It must be determined whether "X" or its agent was "engaged in lobbying." "Lobbying" means "communicating by any means, or paying others to communicate by any means, with any legislative official with the purpose of influencing legislative action."

IC 2-7-1-9.

An agent who merely monitors the action of the legislature is not communicating with the legislators. Although an entity or person, in giving gifts to legislators, is communicating by any means, each time a gift is given to a legislator does not mean the communication was done with the "purpose of influencing legislative action."

To the extent there is no legislative action upon which the agent or principal is attempting to impose influence, there is no duty to file a lobbyist's Report of Legislative Gift or Purchase, regardless of the amount of the gift. It should be noted, however, that facts and circumstances which support a finding that there was an intent to influence legislative action with the gift will be carefully considered by the Commission.

FINAL ADVISORY OPINION 97-07(a): Reporting of Lobbying for Trade Associations and Members

Determination:

Trade associations whose principal purpose is lobbying must register and report as compensated lobbyists. Members of those associations must register and report as employer lobbyists if the principal purpose of the trade association is lobbying and more than \$500 of their individual annual dues are used for lobbying activities.

Example: An incorporated trade association, "X", has seven (7) members. Each member pays \$20,000 annual dues to "X." In exchange for these dues, "X" provides certain membership benefits to those members, one benefit being the lobbying of the Indiana legislature on matters which affect the industry represented by the trade association. The principal purpose of the trade association is lobbying. More than \$500 of each member's annual dues is spent by the trade association in furtherance of its principal purpose of lobbying. "X" must register as a compensated lobbyist. Each member must register as an employer lobbyist.

Example: Trade association "Y" has several hundred members who pay annual dues of \$250. "Y" uses almost all of its membership funds to lobby the Indiana legislature. Though "Y's" principal purpose appears to be lobbying, its members do not pay greater than \$500 in a registration period to meet that principal purpose. Thus, "Y" has no duty to register as a compensated lobbyist, though it must register as an employer lobbyist. Likewise, "Y's" members have no duty to register as employer lobbyists.

Example: Trade association "Z" has several hundred members, each of which pays greater than \$500 in annual dues. However, less than 50% of "Z's" total budget is spent on lobbying the Indiana legislature. Although "Z" lobbies, its principal purpose is not lobbying. Thus, "Z" has a duty to register as an employer lobbyist, but not as a compensated lobbyist. "Z's" members need not register as employer lobbyists by virtue of their membership.

Rationale: The issue is whether an association must register under IC 2-7-2-3 or IC 2-7-2-4. The distinction between the two statutory provisions is that Section 3 requires registration for one *who is compensated for lobbying* and Section 4 requires registration for one *who compensates*. . . for lobbying.

There are two primary factual issues: (1) whether the trade association has a principal purpose of lobbying; and (2) whether the members of such an association are

paying compensation in the form of annual dues, \$500 or more of which is attributable to the trade association's principal purpose of lobbying.

A. Definitions

- When a lobbyist registers as a compensated lobbyist, the lobbyist must disclose its clients on the reporting form. *IC* 2-7-2-3(2). An employer lobbyist must disclose those lobbyists whom it employs or compensates to lobby on its behalf. *IC* 2-7-2-4(2).
- A "lobbyist" is "any person who (1) engages in lobbying; and (2) in any registration year, receives or expends an aggregate of 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* 2-7-1-10(2).
- "Person" means a human being, corporation, limited liability company, partnership, association, firm, or educational institution. *IC 2-7-1-12*. Moreover, other known bodies of law define "associations" as "persons". Specifically, the Sherman Act states, in pertinent part, "[t]he word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any state, or the laws of any foreign country." *15 U.S.C. § 7 (1964); id. § 12.*
- "'Lobbying' means communicating by any means, or paying others to communicate by any means, with any legislative official with the purpose of influencing any legislative action." *IC 2-7-1-9*. Most trade associations which lobby are registered as employer lobbyists.
- "Compensation means anything of value given as payment for doing or refraining from doing any activity." *IC 2-7-1-2*. Dues are "anything of value." Additionally, "payment" means "a payment, compensation, reimbursement, distribution, transfer, loan, advance, conveyance, deposit, gift, pledge, subscription, or other rendering of money, property, services, or anything else of value, whether tangible or intangible, and any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make a contract." *IC 2-7-1-11*. Dues can be considered transfers, conveyances, subscriptions, other rendering of money, and anything else of value.

B. Principal Purpose (the "includer")

The laws of Indiana and other states specifically authorize the formation of trade associations, many of which are incorporated. The Indiana Lobby Registration Commission has recognized the right of individuals to form associations and corporations and has determined that it will not look beyond these entities to hold members or shareholders responsible for the obligations of the entity under the lobby registration laws. In those cases, however, where it appears that the purpose of forming the entity is to avoid the lobby registration laws, it is the position of the Commission that the substance of the transaction should govern the application of the lobby registration laws, not the form. In other words, there may be cases where the true dynamics of the relationships cause the entity to be simply a "lobbying shell."

If a trade association is formed and conducts a variety of different types of activities and services, including lobbying, the members of the association will not necessarily have to register and report. Of course, the association, itself, is responsible for registering and reporting as an employer lobbyist as long as more than \$500 is expended during the reporting period. Where the principal purpose of the trade association is lobbying, a different result will follow. In such a case, the trade association may be a lobbying shell and the real relationship may be one in which the members are employer lobbyists and the trade association is a compensated lobbyist.

The determination of whether a trade association has a principal purpose of lobbying is fact specific and must be decided on a case-by-case basis. One factor to be considered is whether greater than 50% of the trade association's total budget goes toward lobbying activities. If so, then the principal purpose of the association is lobbying and the association must register as a compensated lobbyist, and those members whose dues attributable to lobbying exceed \$500 in annual dues must register as employer lobbyists.

If more than 50% of the trade association's total budget is expended on lobbying activities, then the principal purpose of that trade association will be presumed to be lobbying. This presumption that the principal purpose is lobbying can be overcome only with substantial factors to the contrary. Where the presumption is not overcome, then the association must register as a compensated lobbyist and those members whose dues attributable to lobbying exceed \$500 in a registration year must register as employer lobbyists.

It should be noted, however, that in the case where a member enters into an additional agreement or contract with the association for lobbying activities and pays the association greater than \$500 in a reporting period, in addition to the

regular annual membership dues, the member is required to register and report as an employer lobbyist, and the association is required to register and report as a compensated lobbyist for that specific member.

C. Greater than \$500 (the "excluder")

Even if the principal purpose of a trade association is lobbying, it will not be necessary for all members automatically to register as employer lobbyists. a member will be required to register only if more than \$500 of the member's annual dues are applied to lobbying activities. If the proportionate part of a member's annual dues applied to lobbying activities does not amount to \$500, then the statutory requirement for the definition of lobbying has not been met and the members will not have to register and report.

FINAL ADVISORY OPINION 97-08: Reporting When a Lobbyist Hires a Lobbyist

Determination:

- There does not appear to be statutory authority which would support the Commission in requiring that a compensated lobbyist disclose for which clients of an employer lobbyist he lobbies. In the general spirit of disclosure, the Commission invites, but does not require, compensated lobbyists to voluntarily disclose those clients on whose behalf they are lobbying.
- Example: Lobbyist "A" is paid by Lobby Firm "B" to lobby for client "C." "A's" compensation for the lobbying "A" does for client "C" is paid solely by "B." "A" currently reports that he is a compensated lobbyist for "B," and does not report that he lobbies for "B's" client, "C."
- **Rationale:** The statute does not require that "A" disclose for which clients of "B" that "A" lobbies. However, a general sense of this type of disclosure can be obtained by looking at "B's" compensated lobbyist form, which will list those employer lobbyists who compensate "B."
- It should be noted that if the facts were changed, and if "C" pays "A" directly, or if "B" served as a mere conduit between "A" and "C," then "A" would need to report as "C's" compensated lobbyist.

FINAL ADVISORY OPINION 97-09:

Reporting Expenditures Made Pursuant to a Contract to Monitor the Legislature When the Contract Is Converted into a Contract to Lobby

Determination:

Expenditures made pursuant to a contract to monitor the legislature do not have to be reflected in the reporting figures when that contract is converted into a contract to lobby.

Example: Lobbyist "A" is paid by Client "C" to monitor the legislature. During the session "A" tells "C" that there is legislation being considered which affects "C." "C" agrees to have a lobby on its behalf, and the original agreement between "A" and "C" is modified to reflect such. "A" actively lobbies for "C."

Rationale: The Commission determined in Proposed Advisory Opinion 97-06 that, "[a]n agent who merely monitors the action of the legislature is not communicating with the legislators." As such, it was agreed that when there is a contract only to monitor the legislature, there is no duty to report as a lobbyist. It is only when lobbying occurs, or when a contract for lobbying exists (PAO 97-03), that there is an obligation to register and report.

Hence, only those expenditures related to the agreement to lobby are reportable expenditures. Expenditures related to the agreement to monitor are not reportable.

FINAL ADVISORY OPINION 97-10: Direct Communication Between a Lobbyist and a Legislator

(a) *Example*: "A" is a registered lobbyist. "A" sends gifts to legislators, but does not speak to them in person. Must "A" report the value of the gifts as a lobbying expenditure on "A's" activity report?

Determination:

The gift expenditure is reportable as a lobbying expenditure.

- Rationale: The Commission determined in its "Pending Interpretation Issues Regarding Reportable Expenditures" Memorandum (Indiana Register, Vol. 19, No. 12, Sept. 1, 1996), that, "all expenditures, whether purchases, gifts, or other payments, would have to be reported" [on the lobbyist's activity report].
- As recognized by that pending interpretation, the accurate reporting of such a lobbying expenditure will require a modification of the current activity reporting forms.
- We should recognize that these facts are distinguishable from the facts presented in Proposed Interpretation 97-06, wherein the donor of the gift was not a registered lobbyist.
- **(B)** *Example:* "A" initiates a comprehensive letter campaign, which consists of "A" sending letters to legislators regarding pending or potentially pending legislation. "A" does not speak directly to the legislators regarding the subject matter of the letters. "A" is a registered lobbyist. The cost of the letter campaign exceeded \$500.

Determination:

The expenditures made with regard to the letters are reportable lobbying expenditures.

Rationale: Indiana Code § 2-7-1-9 defines "lobbying" as "communicating by any means, or paying others to communicate by any means, with any legislative official with the purpose of influencing any legislative action." Sending the letters is a form of "communicating by any means," and, hence, causes the expenditures related to the letters to be reportable lobbying expenditures.

FINAL ADVISORY OPINION 98-01: Entities Registered as both Compensated and Employer Lobbyists

Determination:

The statute requires that lobbyists who are compensated for lobbying register and report and that lobbyists who compensate others for lobbying register and report. The duty exists to register as both a compensated and an employer lobbyist when a lobbying entity which hires lobbyists is also compensated for lobbying by third parties. However, expenditures on the activity report, a report separate from the registration report, should be reflected such that double reporting of expenditures does not occur.

Example: Lobby firm "A" has ten clients, all of whom compensate "A" \$1,000 annually to lobby. "A," in turn, pays compensation in excess of \$500 each to one in-house and two independent contractor lobbyists who lobby on behalf of "A's" clients. "A" must register and report as both an employer lobbyist and as a compensated lobbyist. "A's" clients will register and report as employer lobbyists, listing "A" as their compensated lobbyist. "A's" hired lobbyists will register and report as compensated lobbyists, listing "A" as their employer lobbyist.

Rationale: The statute states the following with regard to registration requirements:

- 2-7-2-3 Contents; lobbyists compensated for lobbying
 - Sec. 3. The registration statement of each lobbyist who is compensated for lobbying shall include:
 - (1) his name, social security number, residence address and telephone number, business address and telephone number, and the addresses and telephone numbers of any temporary living or business quarters he has in Marion County;
 - (2) the name, business address, telephone number, and kind of business of each person (including the names of each officer or partner) who compensates him;
 - (3) his primary occupation and the name or names of his employers if different than those specified in subdivision (2); and
 - (4) the subject matter of his lobbying.
- 2-7-2-4 Contents; statements of lobbyists compensating a person for lobbying
 - Sec. 4. The registration statement of each lobbyist who compensates a person for lobbying shall include:
 - (1) his full name, business address and telephone number, type of business, and the full name of the individual who controls the business, the partners, if any, and officers:

- (2) the full name, business address, and telephone number of each person compensated by him as a lobbyist;
- (3) the subject matter for which he has employed or contracted with a lobbyist.

A plain reading of the above statutory language supports the conclusion that the legislature most likely intended for any lobbyist who is compensated for lobbying (in excess of \$500) to register as a compensated lobbyist and for any lobbyist who compensates another (in excess of \$500) for lobbying to register as an employer lobbyist. Thus, if an entity both is compensated and compensates for lobbying (greater than \$500), it must register as both an employer lobbyist and as a compensated lobbyist. However, the activity report should be completed in such a manner as to avoid double reporting of expenditures.

FINAL ADVISORY OPINION 98-02: Reporting Compensation Paid to Employees Who Lobby

Determination:

- The statute requires that a lobbyist employer must report the salary it pays its employee when lobbying services are performed in exchange for that salary. Historically, the Commission has required that the hourly, salary, bonus and other reportable employee benefits (as recognized by Final Advisory Opinion
- 97-04) of such employees be prorated, based on the percentage of time spent performing lobbying services. In Example A, the lobby firm would report \$7,500 as a lobbying expenditure. In Example B, the corporation would report \$40,000 as a lobbying expenditure.
- NOTE: The Commission has not been presented with the issue of how to reflect expenditures made to partners who perform lobbying services for entities which lobby. Thus, the determination of this Proposed Advisory Opinion is restricted to the facts surrounding non-partner employee lobbyists of lobby / law firms and non-partner employee lobbyists of entities otherwise registered as employer lobbyists.
- **Example** (A): Lobby firm "A" hires an employee to lobby for "A's" clients. The employee is paid \$10,000 annually and spends 75% of her time performing lobbying services. The lobby firm must report \$7,500 of the employee's salary as a lobbying expenditure.
- **Example (B):** Corporation "C" is already registered as an employer lobbyist and hires two employees to lobby on behalf of "C." The first employee is employed as corporate counsel, is paid \$100,000, and spends only 10% of her time lobbying for "C." The second employee is paid \$30,000 and spends 100% of his time lobbying for "C." "C" would report a \$10,000 lobbying expenditure with regard to the first employee and a \$30,000 lobbying expenditure with regard to the second employee.
- **Discussion:** IC 2-7-3-3(a)(2)(a) states that "the activity reports of each lobbyist shall include the following: total expenditure on lobbying (prorated, if necessary) broken down to include at least the following categories: Compensation to others who perform lobbying services." This section of the statute requires *each* lobbyist to report such an expenditure, which means that both compensated and employer lobbyists must report how much they pay others to perform lobbying services.

There are two types of scenarios wherein this query becomes relevant:

In the first scenario, as depicted by Example (A), the employee lobbyist is lobbying for the lobby firm's clients, and not for the lobby firm. The Commission determined in PAO 97-08, that such an employee lobbyist would list the lobby firm, and not the lobby firm's clients, as the employer lobbyist. The Commission recognized that the lobby firm is not lobbying for itself and that the employee and contract lobbyists the lobby firm hires are not lobbying for the lobby firm. They are lobbying for the clients of the lobby firm, yet the statute requires only that the employee and contract lobbyists disclose who directly compensates them for their lobbying efforts. Consistent with that determination would be a determination that any compensation paid to the employee lobbyist by the lobby firm would be reportable as "compensation paid to others." Many lobby firms hire independent contractor lobbyists and report the compensation paid to those independent contractors as "compensation paid to others."

Whether a lobbyist who works for a lobby firm is an employee or an independent contractor is not a material distinction, in terms of the reportability of the compensation paid. Both the employee and the independent contractor are performing the same task of lobbying for the lobby firm's clients, though the employee's time may be prorated if the employee performs other, non lobbying duties for the employer.

If a lobby firm is currently registered as an employer lobbyist, it must report on its employer lobbyist activity report the compensation it paid to its employees to perform lobbying services. This includes expenditures made to compensate employees who perform non lobbying activities, but who, nonetheless, perform non-statutorily exempt lobbying services.

In the second scenario, as depicted in Example (B), the Commission has determined whether a corporation which engages in lobbying through its employees must report the compensation to the employee who lobbies on behalf of the corporation.

The distinction from the first scenario is that a corporation which is registered as an employer lobbyist⁵ and which employs certain individuals (in-house) to perform lobbying services on behalf of the corporation is, in essence, lobbying for itself.

Accordingly, an examination of certain statutory exemptions under the lobby disclosure law is necessary. However, because this POA presumes the corporation is already a registered lobbyist, we analyze the statutory exemptions to

⁵ This POA presumes that the corporation is already registered as an employer lobbyist.

determine only whether certain expenditures made by the corporation employer lobbyist are reportable, and not whether the corporation has a duty to register as an employer lobbyist.

Indiana Code § 2-7-2-6 (c) states that "[t]he provisions of this chapter are not applicable to an individual invited, by any member of the General Assembly, to testify before the General Assembly or a legislative committee at the time the individual is testifying." Thus, to the extent the employee has been invited by a member of the General Assembly to testify, any expenditure related to providing said testimony is not reportable as a lobbying activity, regardless of whether the individual testifies as to the facts and circumstances of the employer.

Indiana Code § 2-7-2-6 (f) states that "notwithstanding the definition of "lobbying" as specified in 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." A corporation, though considered to be a "person," is not a "citizen" and, therefore, would not receive this exemption. Moreover, mere disclosure of said communication activities does not prohibit in any way the communication. The communication is not what is disclosed, but rather, disclosure of the expenditures made pursuant to the communication is what is required by Indiana's lobby disclosure statute.

Indiana Code § 2-7-2-6 (e) states that "[t]his chapter does not apply to a person whose lobbying services are performed without compensation." For purposes of this opinion, the "person" in question is the employee who is compensated for lobbying.⁶

The threshold question is whether an employee can be a "person" separate from the employer for purposes of lobby disclosure requirements. In other words, is a corporation merely paying itself to lobby when it pays its employee to lobby on behalf of the corporation and are such expenditures reportable under the lobby disclosure statute?

The Commission determined in FAO 97-01, that "only the corporate entity which hires the lobbyist or incurs the lobbying expenditure must report and register." Because it is the employer-corporation which has hired the lobbyist, and not

⁶ The Commission has not been presented with the issue of whether a corporation which is not compensated for lobbying but which is a "lobbyist" pursuant to IC 2-7-1-10, and must register pursuant to IC 2-7-2-4, is ever exempted by the fact that the corporation does not receive compensation for lobbying.

the employee, the Commission's determination might be read to support having only the employer-corporation register.

However, the issue before the Commission when it reached its determination in FAO 97-01, was whether a parent or a subsidiary must register as an *employer* lobbyist. The issue before the Commission in this PAO is not whether a corporation must register as an employer lobbyist, but whether expenditures paid to an employee-lobbyist are reportable lobbying expenditures and, hence, whether said employee-lobbyist must therefore register as a *compensated* lobbyist. To that extent, the Commission determination in FAO 97-01 is not dispositive on this issue, or in any issue before the Commission wherein the question relates to the reporting requirements of a lobbyist whose [potential] status is that of a compensated lobbyist.⁷

The issue is whether, when the legislature included the term "to others," it meant for that term to include an employee who lobbies on behalf of his/her employer. If the employer lobbyist is not required to disclose compensation expenditures related to the in-house lobbying efforts of its employees, then disclosure of compensation as a lobbying expenditure could be avoided altogether in Indiana by conducting all employer lobbyist activities in-house. It is doubtful that the legislature intended that there be no duty to disclose compensation as a lobbying expenditure, simply by virtue of the fact that the lobbyist is in-house.

⁷ The distinction between an *employer* lobbyist and a *compensated* lobbyist is significant. The Commission in FAO 97-01 was asked to determine which entity should register and report as an *employer* lobbyist. Either the subsidiary or the parent would have been required to register and to report as an employer lobbyist any expenditures made for lobbying. The net reporting result of total expenditures would have been the same, regardless of which entity registered, because both the subsidiary and the parent were postured as *employer* lobbyists. The question in FAO 97-01 was not *whether*, but was *whom* should register. In recognizing the corporate formality, the Commission was not led to a conclusion in FAO 97-01 which would have resulted in less net lobbying expenditures being reported.

In this PAO, the Commission is asked to determine *whether* a corporation which is registered as an employer lobbyist must report compensation paid to its employees who lobby as lobbying expenditures, and hence, whether the employee-lobbyist must register as a *compensated* lobbyist. The employer-corporation is presumably already registered as an employer-lobbyist, though a Commission determination requiring the reporting of compensation paid to employees who lobby on behalf of the corporation may result in a reporting duty on behalf of *some* corporate entities which have engaged in lobbying through employees, but have not heretofore registered said lobbying activities. However, *many* corporations *already* register as employer lobbyists, recognizing their employees' lobbying activities as reportable lobbying expenditures. Likewise, many in-house corporate employee-lobbyists register as compensated lobbyists.

FINAL ADVISORY OPINION 98-04: Political Advertisements (Grassroots Lobbying)

Rationale: The Commission voted that two newspaper advertisements purchased by a non profit association was not lobbying under the Lobby Registration Act, given the following circumstances:

- **o** The association is not a registered lobbyist.
- Advertisement #1 asked the general public to call the governor and ask him to veto a bill. The advertisement appeared after being approved by both the House and Senate Conference Committees.
- Advertisement #2 was an open letter addressed to the governor during the 1995 legislative session asking him to veto a bill. The advertisement appeared in the *Indianapolis Star* after the House passed the bill upon third reading but prior to the Senate's concurrence.

Commissioners also agreed that if a lobbyist writes a letter to the governor regarding a bill and sends a copy of the letter to members of the General Assembly while the bill still is before the General Assembly, then the lobbyist would be communicating with a legislator for the purpose of influencing legislative action under the Lobbying Act.

Background

In a letter dated April 3, 1996, the Commission was asked for an advisory opinion on the following question:

Whether two advertisements, purchased by an association that is not a registered lobbyist, constitute lobbying under the Indiana Lobby Registration Act and requires the association to register as a lobbyist. One ad was addressed to the governor, asking him to veto a bill, and one ad asked the general public to write the governor and urge him to veto the bill.

A member of the association's board of directors appeared before the Commission and explained that the national staff of the association had advised the local chapter to run advertisement #2 early, to avoid a similar situation that had been encountered in Texas where the governor signed a bill before anyone realized that the second house had passed it. The association member stated

it was a coincidence that the advertisement appeared prior to the Senate taking action.

Rationale re: Advertisement #1

An advertisement addressed to the general public, after the bill in question had been passed in Conference Committee by both the House and the Senate, does not "communicate with any legislative official with the purpose of influencing any legislative action" [see IC 2-7-1-9] and so does not constitute lobbying. Although the governor's act of approving or vetoing a bill is legislative action under IC 2-7-1-7, neither the general public nor the governor is a legislative official under IC 2-7-1-8.

Rationale re: Advertisement #2

If advertisement #2 was directed only at the governor, then it is not lobbying for the same reasons advertisement #1 is not lobbying. However, because advertisement #2 was published on a day when the Senate took action on the bill, and so the bill could not have been in the hands of the governor, the question presented is whether the advertisement was actually directed to members of the General Assembly (defined as legislative officials under IC 2-7-1-8) for the purpose of influencing legislative action under IC 2-7-1-7, even though the advertisement was addressed to the governor. Commission members expressed the following concerns prior to voting:.

- o The ad was clearly addressed to the governor and so outside the Commission's jurisdiction. IC 2-7-1-9 defines lobbying as "communicating by any means ... with any legislative official." IC 2-7-1-8 defines legislative official as "a member of the general assembly" and does not relate to the governor.
- The U.S. Supreme Court has held several times that regulating lobbying activities implicates the First Amendment. While there is a strong state interest in the public disclosure of lobbying activities and, therefore, some regulation is constitutional, the regulations must be narrowly drawn to serve the interest. An openly addressed attempt to influence legislation (such as a newspaper advertisement) seems either to fall outside or severely dilute the state's legitimate interest in disclosure; it is more like any group of concerned citizens that purchases ad space to voice its position about an issue. The state's interest that ordinarily justifies lobbying regulation isn't present in such a case and, therefore, probably would not be present in the question before the Commission.
- o Although there may be first amendment concerns, the Commission isn't trying to regulate what views lobbyists express in their advertisements or in what manner they advertise such views. However, the Commission is charged with providing the

public with information about how lobbyists express their views and how lobbyists spend their money related to legislators. The intent of the statute is to provide the public with access to information about a lobbyist's financial activities as related to legislators.

- The state's interest in requiring a party to register and report a newspaper advertisement may be hard to justify on the basis of an interest in disclosure. An advertisement run in a newspaper discloses the party's position on a legislative issue--their position appears in print for all interested parties to read. If an advertisement also identifies the party who purchased the ad and identifies the persons the ad is intended to influence, then the public already receives the information collected under the lobbying regulations, except the cost of purchasing the advertisement, which is readily obtainable by calling the newspaper. Advertisement #2 clearly discloses the identity of the party running the ad and the party's position on an issue. The question is whether the ad discloses the persons it intended to influence.
- o Although the ad was addressed to the governor, a person familiar with the legislative process would have known the bill would be in the General Assembly for a few days. It may not be fair to impute knowledge and understanding of the legislative process to all lobbyists; nonetheless, the Commission should focus on more than the language contained in an advertisement when deciding whether it has the purpose of influencing legislative action. The Commission should also examine the ad's intent and effect and the overall situation.
- Regardless to whom the advertisement was addressed, the final passage of a bill does not occur until the conference committee report is approved by both Houses and, therefore, whether the association intended so or not, running an advertisement during that particular time period assured it of being read by legislative officials and thereby of influencing legislative action under IC 2-7-1-6. Many bills die in conference committee after having been passed by both houses. a lobbyist is probably aware that a bill in conference committee can die any place along the line. The bill was still in a win-or-lose situation and so subject to lobbying influence.

The case of advertisement #2 is borderline. Because of the question of intent, if the association runs an advertisement next year during a similar time frame the Commission would want to take another look at the issue.

FINAL ADVISORY OPINION 98-05: Reportable Expenditures

Rationale:

1. Background

We begin by restating a commitment that is shared by all Commissioners. The ILRC is committed to ensuring that the public has ample and accurate information concerning the activities of those who lobby the Indiana General Assembly and their financial relationships with its members. At the same time, the ILRC does not have discretion in determining what information must be put on the public record. Instead, it is charged with administering the Indiana Lobby Registration Act (Act), and issuing advisory opinions on its requirements.

The Act was enacted in 1981, and has been amended in seven subsequent sessions of the General Assembly. These amendments, coupled with the inherent complexity of the Act's subject matter, have raised questions concerning the interpretation of the Act and the status of early interpretations, especially those rendered prior to the amendments.

Many of these questions relate to the reporting of information required by the Act. To clarify reporting requirements, the ILRC has begun the process of compiling and reconciling advisory opinions and other interpretations of the Act. In the course of this work and in keeping with the ILRC's commitment to a thoroughly public process, there have been some frank and open public discussions about several provisions of the Act. In these discussions, concerns have been expressed about the different transactional characteristics and implications of reporting lobbyists' gifts to legislators, on the one hand, and lobbyists' payments to legislators for goods or services made in the regular course of business, on the other. Many lobbyists are large companies that consume and provide significant volumes of goods and services. In a state, such as Indiana, which mandates a citizen legislature, it is not surprising that those lobbyist companies would buy goods and services from entities that are owned by, or include, members of the General Assembly, or engage in other transactions with legislators -- transactions that may be unrelated to any legislative action. A concern about certain of these transactions caused the Indiana General Assembly in 1992 to exclude from the Act credit card agreements, insurance policies, recorded mortgages, and investment accounts when made in the ordinary course of business. See *Indiana Code Section 2-7-2-6(g).*

In addition, several other provisions of the Act make a clear distinction between giving gifts and making payments for goods and services. Indiana Code Section 2-7-3-6(a) distinguishes between and requires lobbyists to make separate reports of purchases [(a)(1)] and gifts [(a)(2)]. This distinction also is found in the statement of economic interest required of legislators under Indiana Code Section 2-2.1-3-2(a)(7) (purchases) and (8) (gifts).

During the meeting on May 22, 1996, Commissioner Jerry Bepko posed a question about whether the distinction between gifts and other transactions should guide interpretation of the reporting requirements of Indiana Code Section 2-7-3-3(a)(3), which requires lobbyists to file a *statement of expenditures* and gifts to any member of the General Assembly. First, there is a minor threshold point. Buried in the expression *expenditures* and gifts is a drafting or interpretation issue. The word *expenditures* is defined in the broadest terms. It specifically includes gifts. (See Indiana Code Section 2-7-1-11(a).) As a result, the expression *expenditures* and gifts is redundant and seems to call for further interpretation.

In accordance with ILRC practice and prevailing interpretations of subsection (a)(3), the dollar value of expenditures and gifts is to be reported. Subsection (a)(7) of Indiana Code Section 2-7-3-3 provides for an additional report that refers to Indiana Code Section 2-2.1-3-3.5. Under the latter section, a member of the General Assembly must file an affidavit with any lobbyist who has provided more than one-third of the member's non-legislative income. In turn, under subsection (a)(7), the lobbyist must include in the activity report the name of each member from whom the lobbyist has received an affidavit under Indiana Code Section 2-2.1-3-3.5. The question posed on May 22 was whether (a)(3) should be interpreted to require only the reporting of gifts and *voluntary* expenditures, while non-legislative income, such as may be received in exchange for goods or services, was to be addressed only in subsection (a)(7).

With Commissioner Jan Abbs' concurrence, Commissioner Bepko asked that counsel, Annette Fancher, work with him to develop an interpretive statement using this line of reasoning so that the Commission could explore this possibility. Primary emphasis was placed on the interpretation of the language of the Act and its internal consistency. Ms. Fancher had already indicated that she, too, saw some merit in this reasoning and agreed that it should be explored as part of the continuing effort to compile guidelines and clarify reporting requirements.

In asking that counsel work with him to develop such a statement, Commissioner Bepko noted that there was no proposal before the ILRC, that there would have to be much more study and discussion, that he and the others were only "leaning" in the direction of this interpretation as a way of achieving the goal of internal consistency in the Act and avoiding the inclusion of some transactions that have no relationship to legislative action, that he was far from certain about the conclusion that should be reached, and that counsel and other Commissioners were uncertain as well. In addition, he expressed a concern that the narrow reading of 2-7-3-3(a)(3) could reduce the information available to the public and asked that we develop the statement in a way that did not significantly reduce the information now filed. He specifically referred to the problem of not requiring reporting of some transactions that, by virtue of their intent or volume, would relate to, or likely influence, legislative action.

- It should be noted that, no matter what interpretation is placed on Indiana Code Section 2-7-3-3, there are other provisions of the Indiana Code that require reporting regarding these types of transactions. As mentioned earlier, Indiana Code Section
- 2-2.1-3-2(a)(7) requires a legislator to provide a statement of economic interest, which is to be filed with the Principal Clerk of the House or Secretary of the Senate. It must be in the form of a written statement for the preceding calendar year and must report the name of any lobbyist who purchased from the member or the member's family business, goods or services for which the lobbyist paid in excess of \$100, or purchased from the member's partner goods or services for which the lobbyist paid in excess of \$1,000. Also, pursuant to subsection (a)(8), the legislator must report the name of any lobbyist from whom the member received any gift of cash or any single gift other than cash having a fair market value in excess of \$100. In correlated reporting requirements found in the Act at Indiana Code Section 2-7-3-6, a lobbyist must file a written report with respect to a member of the General Assembly when the lobbyist has made a purchase described in Indiana Code Section 2-2.1-3-2(a)(7) or the lobbyist has made a gift described in Indiana Code Section 2-2.1-3-2(a)(8). According to Indiana Code Section 2-7-3-6(b), this written report must include the name of the lobbyist and whether the report covers a purchase or gift. The ILRC's practice is to require, in addition, the dates of purchases or gifts and the amount of cash gifts, but not the amount of purchases. It was through these requirements that we thought the public might be accorded adequate information, even if Indiana Code Section 2-7-3-3(a)(3) was construed narrowly.

The Indiana Code references and analysis set forth thus far in this memo serve as a foundation for one final thought on the minds of some Commissioners. We have noted that the Act makes a distinction between gifts and other transactions in which there is an exchange of value between a lobbyist and a member of the General Assembly. There is a further distinction that prompted an exploration of the interpretation of Indiana Code Section 2-7-3-

3(a)(3), which requires reporting of *expenditures*. The other reporting provisions, such as those found in the requirement for a legislator's statement of economic interest and the correlated lobbyist reporting requirements, apply to *purchases* of goods or services from members. Subsection (a)(3) covers much more ground; it may apply both to the purchase of goods and services from, and the sale of goods or services (for present value or on credit) to a member of the General Assembly. In other words, if a legislator buys online computer services from a company registered as a lobbyist, the transaction may have to be reported as an expenditure under subsection (a)(3). It is the potential breadth of transactions in this latter category that has troubled many observers, caused the Indiana General Assembly to exclude some transactions, and served as an additional basis for looking at the potential limiting relationship between the requirements of Indiana Code Section 2-7-3-3(a)(3) and (a)(7).

2. Result of the Review

Since the discussion on May 22, we have conducted a more thorough study of the particular language of the Act. That study has made it increasingly clear that the word *expenditure* in 2-7-3-3(a)(3) is not to be limited to *voluntary* transactions and is not affected by 2-7-3-3(a)(7). The conclusion is based on several factors:

- 1. The word *expenditure* is defined expansively in the Act and includes the word *payment* in its definition, which itself is defined in an even more inclusive way. *See Indiana Code Sections 2-7-1-3 and 2-7-1-11(a)*. There is no suggestion in any of these definition sections that the word *expenditures* is to be limited to voluntary or gratuitous transfers.
- 2. The intent of legislation is often determined by the manner in which persons have responded to the law. Many who have been responsible for interpreting the Act have presumed, over a considerable period of time, that the word *expenditure* in (a)(3) is to be interpreted broadly, not narrowly. On this point, it is instructive that the Indiana General Assembly enacted amendments to 2-7-2-6 in 1992 and 1993. Those amendments added subsection (g), which provides that the Act does not apply to an insurance policy, a credit card agreement, a recorded mortgage secured by real property, or a written agreement with a financial institution. This language of exclusion was intended to eliminate from activity reports some information that had been required by an Attorney General's interpretations of (a)(3). [See Official Opinions 90-15 and 90-23.] If the General Assembly had intended an inherent limitation on the meaning of the word *expenditure*, so that only voluntary expenditures were included, it would not have been necessary to provide the additional exclusionary language of subsection (g).

- 3. A narrower reading of Indiana Code Section 2-7-3-3(a)(3) would result in a reduction of information now available to the public, and there does not appear to be a good alternative basis for its reporting, as we had speculated that there might be in the meeting on May 22. The ILRC currently requires lobbyists to report the dollar amount of the gifts and expenditures made under Section 2-7-3-3(a)(3). Other provisions of the Act do not appear to require the *amount* involved in transactions. Indiana Code Section 2-7-3-6(a) requires a written report with respect to purchases and gifts that are described in Indiana Code Section
- 2-2.1-3-2(7) and (8). At a minimum, this report requires the lobbyist to report the name of the lobbyist and whether the report covers a purchase or a gift. As noted earlier, the ILRC's practice also requires the dates of purchases or gifts and the amount of cash gifts, but ILRC's practice has not required the amount of purchases.
- 4. As noted by Commissioner Bepko in the meeting on May 22, the separate report required by 2-7-3-3(a)(7) of those cases in which a lobbyist has provided one-third of the legislator's non-legislative income is important in its own right, and therefore was not necessarily meant to imply that non-legislative income should be excluded from 2-7-3-3(a)(3). Payments for services could be reported under (a)(3), but the impact of those expenditures may not be easily evaluated. The reporting of the transferred amount alone would not reveal the relationship between the payment and the legislator's total income. It is reasonable to assume that a payment which represents a small percentage of a legislator's total income would have less potential for influencing legislative action than a payment that represents a substantial percentage. It is only under (a)(7) that this information is reported and adds an additional dimension to the report of expenditures.
- 5. Throughout the analysis we have been mindful of the public's expectation for information about all economic relationships between lobbyists and legislators, including those seemingly unrelated to legislative action. There is at least the appearance that those who do business with members of the General Assembly and contribute to their livelihoods may expect special attention if and when they have interests at stake.

3. Recommendations

Accordingly, we recommend that the ILRC publish in the *Indiana Register* a proposed interpretation that would reaffirm that under Indiana Code Section 2-7-3-3(a)(3), all expenditures, whether purchases, gifts or other payments, would have to be reported. The conclusion is that the definition of "expenditure" is not limited by Indiana Code Section 2-7-3-3(a)(7). This answers the question that was raised at the meeting on May 22.

Under our current practices, these reports are to be made in Section C of the ILRC's activity report form. Lobbyists can designate in Section C whether the

transfers made to members of the General Assembly are for expenditures or gifts. Nevertheless, there is still some potential for a misleading commingling of different types of transactions in this section of the activity report form. To address this potential, we recommend that the activity report form be modified so that reports of expenditures will be made in one section of the form, and reports of gifts will be made in another section.

Finally, we also may wish to have a third section of the activity report form for transactions that would be otherwise excluded by Indiana Code Section 2-7-2-6(g), but where the transaction is not made in the ordinary course of business. An example might be where a mortgage loan is issued to a legislator for a significantly lower interest rate on significantly more favorable terms than are provided to the general public.

Our revised activity report form might then have three sections to substitute for existing Section C:

- (1) transfers that constitute gifts to a member of the General Assembly;
- (2) transfers that constitute expenditures pursuant to some exchange relationship;
- (3) credit card transactions, insurance policies, recorded mortgages, and written agreements with a financial institution if not made in the ordinary course of business.

These proposals were discussed in the meeting of the ILRC on July 10, and were approved by the ILRC. In accordance with ILRC policy, these conclusions are now published for comment in the *Indiana Register* by way of this memo. Any comments from the public on these proposals will be discussed at the first ILRC meeting held at least 30 days following publication, and these conclusions will automatically become final absent further action taken by the ILRC at that meeting.

4. Recommendations for Future ILRC Consideration

The conclusions set forth above do not resolve all of the vexing questions that gave rise to this study. For example, these conclusions do not resolve the question of whether reports must be made when legislators purchase goods and services in the regular course of business from corporations that are lobbyists, such as in the case of a legislator who buys online computer services from a company registered as a lobbyist. The delivery of the services would likely be the "rendering . . . of anything . . . of value" within the meaning of Indiana Code Section 2-7-1-11 (defining the word payment), which would cause it to be an expenditure (the word expenditure includes payments under Indiana Code Section 2-7-1-3) and thus reportable under Indiana Code

Section 2-7-3-3(a). This issue has not been raised for the Commission and is not before the Commission in a formal sense. Nevertheless, we believe we should take this opportunity to address the matter in preliminary fashion as part of the effort to develop helpful guidelines.

- In analyzing the issue, it is useful to refer to House Concurrent Resolution 7, adopted in 1991, which expressed an intent to exclude some transactions from the definition of lobbying. The resolution states:
- That individuals and institutions who make commitments with members of the Indiana General Assembly in the ordinary course of the members' normal personal, religious, business, cultural and other affairs, and who later keep those commitments, are not "lobbying" within the meaning of the statute.
- The language of this concurrent resolution is similar to a distinction made by the Indiana Attorney General in Official Opinion 90-23. In that opinion a distinction was made between transactions in the ordinary course of business and other transactions. This also accords with new federal rules enacted in 1995. House Rule 52 and Senate Rule 35 both allow for purchases, if the recipient pays the market value. Both also allow congressional members to take advantage of "opportunities and benefits" that either are available to the general public, to large segments of the general public, or are offered to members of an organization in which membership is unrelated to congressional employment.

In defining its intent in House Concurrent Resolution 7, the General Assembly states:

- "That to expand the meaning of the word "lobbying" beyond the literal statutory words goes beyond the proper construction of the statute and is contrary to the intent of the Indiana General Assembly."
- The word *expenditure*, while almost limitless in its definition, nevertheless should be applied in light of the definition of *lobbying*, which requires "the purpose of influencing any legislative action." [The language of an act must be presumed to be applied in a logical manner, consistent with the legislation's underlying goals and policies. See <u>Collins v. Thakker</u>, 552 N.E.2d 507, Ind.Ct.App. (1990).] Read together with the word *lobbying*, the word *expenditure* seems limited to transactions which are intended to influence legislative action, or which have a strong potential to do so.
- Unfortunately, this formulation leaves some considerable uncertainty for persons seeking guidance on reporting requirements. To provide an appropriate measure of certainty we propose for discussion the following guidelines for interpreting Indiana Code Section 2-7-3-3(a). When a lobbyist purchases

goods or services from a member of the General Assembly, even if those purchases are made in the regular course of business on terms that are available to the general public, the amount paid must be reported. It is an "expenditure." The lobbyist is contributing to the business by which the member of the General Assembly earns a living. To that extent, we would presume an intent to influence, or at least a strong potential to influence, legislative action. The case is different if the member of the General Assembly purchases goods or services from a lobbyist, such as the online services purchase cited earlier. If the terms of this purchase are more favorable than those offered to the general public, then it seems that the more favorable terms would be designed to influence legislative action or would have the strong potential to do so. In such a case, the matter should be reported. If, however, the terms are identical to the terms offered to the public in general, then there does not seem to be the requisite intent or potential for influencing legislative action and the expenditure (by way of transferring goods or services) would not have to be reported. If the ILRC adopts this approach, we may wish to create a separate part of the activity report form that provides for reporting these types of expenditures to members of the General Assembly.

FINAL ADVISORY OPINION 98-06:

Procedure *re***: Persons Named as Lobbyists** on Another Lobbyist's Activity or Registration Reports

The following procedure will be used when a person has been identified as a compensated or employer lobbyist on another lobbyist's registration form or activity report:

- 1. Executive Director/Counsel will first try to resolve the issue by contacting the named person through telephone and regular mail.
- 2. If the matter is not resolved, Executive Director/Counsel will send a certified letter to the named person, stating the letter serves notice under the statute of an apparent error/violation and the Commission requests the person to take action.
- 3. If the matter is not resolved, Executive Director/Counsel will bring the matter before the Commission, and it will decide what additional steps to take and whether to convene a formal hearing and hear evidence on the matter. A hearing could be convened whether or not the party appears. The results of a hearing would determine whether the Commission refers the matter to the appropriate prosecutor.

FINAL ADVISORY OPINION 98-07:

Reporting Entertainment Expenditures When a Lobbyist Registers Both as a Compensated and an Employer Lobbyist

Determination:

- A lobbyist who registers both as an employer and as a compensated lobbyist should report entertainment expenditures on the lobbyist's compensated lobbyist report, to the extent the lobbyist has been reimbursed by employer clients for the expenditures. The lobbyist may, if necessary, prorate the entertainment expenditures among the clients on whose behalf the entertainment expenditures were made.
- **Example:** Lobby firm "A" has five clients. "A" spends \$250 entertaining a legislator and lobbying on behalf of those five clients. "A" registers both as an employer and as a compensated lobbyist. "A" should report the entertainment expenditures on "A's" compensated lobbyist activity report and "A" may, if necessary, prorate the expenditure among the clients on whose behalf the entertainment expenditures were made.
- **Rationale:** Both employer and compensated lobbyists are subject to the same activity reporting requirements. *IC* 2-7-3-3. Thus, to the extent an employer lobbyist has reported an expenditure made to a compensated lobbyist, it would be double reporting to require another employer lobbyist to report that same expenditure as an employer lobbyist expenditure.
- The compensated lobbyist who also reports as an employer lobbyist is susceptible to such double reporting problems. Therefore, if a compensated lobbyist also registers as an employer lobbyist, it is unnecessary for the compensated lobbyist to report expenditures made on behalf of its clients on the employer lobbyist activity report of the compensated lobbyist if the compensated lobbyist's employer lobbyist client has already reported the expenditure.
- However, the compensated lobbyist must report the expenditures on the compensated lobbyist report and, if necessary, may prorate the expenditure among the clients on whose behalf the lobbying was performed. The compensated lobbyist activity report contains a back out line for the compensated lobbyist to subtract any amounts from the total lobbying expense figure that were reimbursed by clients. Double reporting is therefore avoided, while substantial disclosure of expenditures is accomplished.
- The new activity reporting form, effective July 1998, will clarify this issue further, because compensated and employer lobbyists will be completing the same activity report.

FINAL ADVISORY OPINION 98-08:

Reportability of Meals/Entertainment on Report of Legislative Gift or Purchase

Determination:

- Lobbyist "A" entertains a legislator by going with the legislator and legislator's spouse to a dinner theater. The value of the legislator's portion of the bill exceeds \$100, as does the value of the amount spent on the legislator's spouse. "A" must report the value of the expenditure for the legislator and the legislator's spouse on "A's" activity report, but "A" need not report either amount on the Report of Legislative Gift or Purchase.
- When a lobbyist has made a gift described in IC 2-2.1-3-2(8) to a member of the General Assembly, the lobbyist must report the gift on the legislative gift or purchase form. *IC* 2-7-3-6(a)(2). The gift described in IC 2-2.1-3-2(8) is (A) any gift of cash from a lobbyist; (B) any single gift other than cash having a fair market value in excess of one hundred dollars (\$100); (C) any gifts other than cash having a fair market value in the aggregate in excess of two-hundred fifty dollars (\$250).
- The issue is whether, when a lobbyist pays for a legislator's & spouse's dinner, a gift has been made to the legislator by the lobbyist. IC 2-2.1-3-2(8) does not expressly define such an expenditure as a gift. We must, therefore, look to the lobby disclosure statute for definitional guidance.
- The activity reporting section of the statute, I.C. 2-7-3-3, distinguishes between "gifts" (E) and "entertainment, including meals" (D). Therefore, the meal/entertainment is not considered to be a "gift" under the lobby disclosure statute. Rather it is an "expenditure". As previously noted by the Commission, "a gift is always an expenditure, but an expenditure may not always be a gift. Expenditures which are transferred without consideration are both 'gifts' and 'expenditures.' They should be reported as both. However, expenditures which are made for consideration are only reportable as 'expenditures' and not as 'gifts." FAO 97-05.

Historically, the Commission has not required that the lobbyist report such an expenditure on the Report of Legislative Gift or Purchase. Disclosure of the gift has presumably been made, in accordance with this determination, on the lobbyist's activity report.

FINAL ADVISORY OPINION 98-09: Pro-rating Among Clients on the Report of Legislative Gift or Purchase

Determination:

- If the gift/purchase was made directly by the client, then the client reports the value of the gift/purchase on the Report of Legislative Gift or Purchase. If the gift was not made directly by the client, regardless of whether the lobbyist is reimbursed for the value of the gift/purchase, then the value of the gift is reportable solely by the lobbyist, and not the lobbyist's clients. The lobbyist may list the clients who benefit from the gift, however.
- It is important to note that the value of the gift/purchase is reportable on the lobbyist's activity report in the same manner. If the client paid for the gift/purchase, then the gift is reportable on the client's activity report. However, if the lobbyist was directly reimbursed for the gift/purchase, then the lobbyist must report the value of the gift on his activity report, but may report the value of the gift among the client(s) who were responsible for the reimbursement, at their actual rate of reimbursement. However, if the gift/purchase was not directly reimbursed, but is attributable to certain clients, Lobbyist "A" may pro-rate the value of the gift/purchase among those client.
- If the gift/purchase made by "A" is made to generate goodwill for "A," and is not directly attributable to any given client(s), "A" must report the value of the gift himself. "A" would file a compensated lobbyist activity report, disclosing himself as the client, and "A" would report the entire gift/purchase on "A's" Report of Legislative Gift or Purchase.
- **Example** (A): Lobby firm "A" has five clients. "A" spends \$100 on a gift to a legislator. "A" is reimbursed \$20 by each client for the gift. "A" is responsible for reporting the gift because "A's" clients did not directly make the gifts. "A" must report the gift on the Report of Legislative Gift or Purchase. "A" may, however, pro-rate the value gift on "A's" compensated activity reports and "A" may back out the value of the gift in arriving at a net lobbying figure on "A's" activity report. "A's" clients would report the amount reimbursed to "A" on their respective employer activity reports.
- **Example (B):** Lobby firm "A" has five clients. "A" spends \$500 on a noncash gift to a legislator. "A" is reimbursed \$100 by each client for the gift. "A" is responsible for reporting the gift because "A's" clients did not directly make the gifts. "A" must report the gift on the Report of Legislative Gift or Purchase. "A" may, however, pro-rate the value gift on "A's" compensated activity reports and "A" may back out the value of the gift in arriving at a net

lobbying figure on "A's" activity report. "A's" clients would report the amount reimbursed to "A" on their respective employer activity reports.

Rationale: I.C. 2-7-3-3(a)(3) requires that a lobbyist report on his activity report "a statement of expenditures and gifts that equal one hundred dollars (\$100) or more in one (1) day, or that together total more than five hundred dollars (\$500) during the calendar year, if the expenditures and gifts are made by the registrant or his agent to benefit: (A) a member of the General Assembly; (D) a member of the immediate family of anyone included in clause (A)"

When a lobbyist has made a gift described in IC 2-2.1-3-2(8) to a member of the General Assembly, the lobbyist must report the gift on the legislative gift or purchase form. *IC* 2-7-3-6(a)(2). The gift described in IC 2-2.1-3-2(8) is (A) Any gift of cash from a lobbyist; (B) Any single gift other than cash having a fair market value in excess of one hundred dollars (\$100); (C) any gifts other than cash having a fair market value in the aggregate in excess of two-hundred fifty dollars (\$250).

The statute gives little guidance on this matter. There are some practical considerations:

First, *all* gifts of cash made from a lobbyist are reportable on the report of legislative gift or purchase. *IC* 2-2.1-3-2(8)(A). It is not allowable, therefore, to avoid disclosure of gifts of cash, regardless of whether the amounts are prorated.

However, non-cash gifts present a more perplexing matter.

If a gift, which is made by a lobbyist but reimbursed by a client, is reportable by the client, and not the lobbyist, the following scenario could arise: a lobbyist may be reimbursed by 25 clients for a non-cash gift of \$2,475 (25 x \$99) made to each legislator, which gifts are not reportable unless the aggregate \$250 threshold is met. The lobbyist could, in fact, make such a gift to each legislator on two separate occasions without crossing the aggregate threshold and triggering a duty of disclosure on behalf of the clients. The lobbyist could even make a third non-cash gift of \$1,225 (25 x \$49), and not cross the \$250 threshold. Thus, each legislator could get total non-cash gifts valued at \$6,175 from the lobbyist, which aggregate gift would go unreported because the lobbyist has prorated the value of the non-cash gift among the 25 clients, has spread out the non-cash gift to three giving events and has gifted an amount just under the aggregate threshold amount of \$250.

This "loophole" is enhanced when a lobbyist increases the number of clients on whose behalf the non-cash gifts are made. A lobbyist could give significantly larger non-cash gifts if a lobbyist is able to pro-rate the value of the gift

among 100 clients ($(100 \times 99) \times 2 + (100 \times 949)$) = **\$24,700**. A multi-client lobbyist who represents several clients could gift a large non-cash gift without triggering a disclosure requirement on behalf of the clients.

- The clients, who are presumably registered as employer lobbyists, would nonetheless be required to report their portion of the non-cash gift(s) on their respective activity reports.
- However, there is a difference in disclosure with regard to the two reports. The activity report has a higher threshold of \$500. Because of the increased threshold and the fact that none of the client's total non-cash gifts exceeded an aggregate value of \$250, it is possible that the gifts would go unreported altogether.
- Another significant difference in disclosure between the two reports relates to the timing of the disclosure. The Report of Legislative Gift or Purchase must be made within 30 days of the making of the gift or purchase. Thus, large gifts would be reportable in a timely fashion. This is particularly relevant when gifts are made during session. Whereas, the activity reports are filed only bi-annually.
- One final interesting distinction between the two forms of disclosure is that gifts/expenditures made to legislator's family members and staff are not reportable on the Report of Legislative Gift or Purchase, but are reportable on the activity report.

FINAL ADVISORY OPINION 98-10:

Reporting expenditures related to events to which all members of the General Assembly are invited and to which only certain members of the General Assembly are invited

- Example 1: Lobby firm "A" invites all members of the General Assembly to a reception. The total cost of the reception is \$5,000, which includes a fixed food cost (\$1,500), a pianist (\$500), room rental (\$500) and a small gift for each legislator in attendance, valued at \$100 each (crystal ashtray with a client's logo) (\$2,500). Only 25 members of the GA attend the event, along with ten of "A's" clients, and five of "A's" hired lobbyists. Thus, there were 40 people in attendance. The per person cost of the event is \$15.15, which is derived by subtracting the value of the personal gifts (\$2,500) and dividing the remainder of the fixed costs by the total number of persons invited ($\$2,500 \div (150+15)$). The reportable aggregate value of the event relating to expenditures which benefitted legislators is \$378.75 (\$15.15 x 25). Because this is an expenditure made to benefit all members of the GA, that amount is reported on line 6 of the activity report. Additionally, the value of the personal gifts (\$2,500) made to legislators must be reported and pro-rated in Section E of the activity report, and must be factored into the aggregate figure reported on line 7. The personal gifts made to legislators are also reportable on the Report of Legislative Gift or Purchase. There were no unfixed costs relating to this event. Had there been unfixed costs, those costs would have been divided by the number of persons in attendance, rather than by the number of persons invited.
- Example 2: Lobby firm "A" invites 75 members of the General Assembly to the same reception depicted in Example 1. Only 25 of them attend the event, along with ten of "A's" clients and five of "A's" hired lobbyists. As in Example 1, there were 40 people in attendance. The cost of the reception is \$5,000, including the same expenditures as described in Example 1. The per person cost of the event is \$27.78 (\$2,500 ÷ (75+15)). The entire amount spent on each legislator in attendance is reported in Section E of the activity report, by pro-rating \$127.78 as the expenditure made for each legislator in attendance (\$27.78 + \$100). \$694.50 (\$27.78 x 25) will be reported in aggregate on line 3 (receptions) of the activity report. And, as in Example 1, \$2,500 (personal gifts) will be reported on line 7. The personal gifts made to legislators are also reportable on the Report of Legislative Gift or Purchase.
- **Example 3:** Lobby firm "A" invites *all members* of the GA to a sporting event. The total cost of the event is \$5,000, which includes \$100 tickets for the 50 persons who attended. Only 25 members of the GA attend the event, along with 20 of "A's" clients and five of "A's" hired lobbyists. Thus, there were

50 people in attendance. The per person cost of the event is \$100. The reportable value of the event relating to expenditures which benefitted legislators is **\$2,500** (\$100 x 25). Because this is an expenditure for entertainment made to benefit *all members* of the GA, that amount is reported on line 6 of the activity report. The tickets are not personal gifts because they are entertainment expenditures made to benefit all members of the GA on a given occasion, to be used *en masse*.

- **Example 4:** Lobby firm "A" invites 75 members of the General Assembly to the same sporting event depicted in Example 1. Only 25 of them attend the event, along with 20 of "A's" clients and five of "A's" hired lobbyists. As in Example 1, there were 50 people in attendance. The cost of the event is \$5,000. The net reportable amount is the same as in Example 1 (\$2,500), only the entire amount is reported in Section E of the activity report, by prorating \$100 as the expenditure made for each legislator in attendance. This is because the entertainment expenditure was made to benefit "a member of the general assembly" (IC 2-7-3-3(a)(3)(A)), rather than "all members of the general assembly." (IC 2-7-3-3(a)(4)). Thus, \$2,500 will be reported in aggregate on line 4 ("entertainment") of the activity report.
- **Discussion:** When a lobbyist makes an expenditure such as meal or entertainment to benefit a member of the General Assembly and the lobbyist is present at the time the legislator consumes the item, then the expenditure is reportable only on the activity report, and not on the Report of Legislative Gift or Purchase.
- When any of the above expenditures are made to benefit *all members* of the GA, the value of the expenditures are not to be pro-rated in Section E among the legislators in attendance. IC 2-7-3-3(a)(4). Instead, the value of such an event is reported in the aggregate on line 6 of the activity report.
- The reason the value of a given event is not pro-ratable among legislators in attendance when *all members* of the GA are invited is because there is a statutory requirement that expenditures made to benefit *all members* of the GA are not to be pro-rated. It has nothing to do with the issue of whether a legislator has given consideration or even whether said expenditure can be characterized as a gift. This provision provides for an incentive for lobbyists to invite all members of the GA to events, and also eliminates having those legislators who attend such events from being penalized because not all members of the GA attend. When all members are invited, no one group or individual legislator is given preference, and no legislator walks away with anything of value.

Examples 1 and 2 relate only to the actual costs of an event, such as a reception. IC 2-7-3-3(a)(2)(C). Although there was food served and entertainment available,

the nature of the event was that is was a reception, and all costs associated with the event are reportable as a reception (line 3), except for the personal gifts made to legislators. However, because the statute provides for separate disclosure of expenditures made to benefit all members of the GA, when all are invited, those expenditures are reported on line 6 of the activity report.

- The reason that the personal gifts are separated from the computation in Examples 1 and 2 is because when a legislator walks away from an event with an item of value, then the expenditure was not made to benefit *all members* of the GA. It goes beyond the forum of full invitation to all members of the GA. Rather, it becomes an expenditure personal to the legislator, characterized only as a personal gift. A personal gift is never an "expenditure" as contemplated under IC 2-7-3-3(a)(4).
- When actual costs can be determined, such as when legislators are given tickets to an event, then the actual cost attributable to the legislator is the cost of the ticket. However, when an event such as a reception is held, and actual costs for each legislator cannot be ascertained, then the total reportable amount is computed as follows:
- ((the fixed cost of the event \div the total number of persons *invited*) + (unfixed costs of the event \div number of persons *in attendance*)) x (number of legislators in attendance).
- Only when it is an event to which less than all members of the General Assembly are invited will there be a requirement to pro-rate the expenditures among each legislator in attendance on Section E of the activity report.

FINAL ADVISORY OPINION 99-01:

When a Legislator Marries a Lobbyist

Facts:

- An Employer Lobbyist ("A") employs a compensated lobbyist ("B") who is married to a legislator. "A" provides normal employee and fringe benefits to "B," and compensates "B" in a customary manner.
- *Discussion:* IC 2-7-1-9 defines "lobbying" as "communicating by any means, or paying others to communicate by any means, with any legislative official with the purpose of influencing legislative action." When a spouse gifts the other spouse who is a legislator, it is presumed that any material communication is not made with the purpose of influencing legislative action. Similarly, gifts made incidental to a marriage relationship are not made for the purpose of influencing legislative action. Accordingly, there is no duty to report such as lobbying expenditures.
- When "A" provides "B" with such things as insurance, salary, or other normal employee benefits, it is not making a gift to the legislator. "A" must report the value of "B's" salary and benefits as reportable lobbying expenditures, regardless of the fact that "B" is married to a legislator. (See, FAO 97-4; FAO 98-02).
- Employee benefits which are shared by the legislator who is a spouse of "B" are lobbying expenditures. "A" reports the value of the benefit given to "B," and not the value of the benefit as received by the legislator. For example, if "A" provides "B" with a whole life insurance policy, "A" reports as a lobbying expenditure the amount it paid to fund the whole life policy. "A" need not report as a lobbying expenditure the proceeds paid to the legislator on the policy in the event of "B's" death.
- Gifts made by "A" to the legislator/spouse are reportable lobbying expenditures, unless they are gifts made to the legislator by "A" in the legislator's capacity as "B's" spouse. "A" gift made to the legislator which was a gift made to all spouses of "A's" employees would not, for example, be considered a reportable lobbying expenditure for "A." If the legislator receives a gift from "A" which was not given to other spouses of "A's" employees, it is reasonable to infer that the gift was made by "A" for the purpose of influencing legislative action.
- An exception is made for those gifts given by "A" to "B" and the legislator/spouse when the gift was a wedding gift. Wedding gifts are presumed to have been made to both "B" and the legislator/spouse, and not to the legislator/spouse.

FINAL ADVISORY OPINION 99-02: Report Compensation Paid to Partners Who Lobby

Facts:

Partnership "A" is a registered lobbyist. "A" employs two associate attorneys who lobby on behalf of "A's" clients. "A" employs one individual who is not an attorney, but who lobbies on behalf of the clients of "A." "A" is a partnership, and three of the partners spend some time lobbying on behalf of the clients of "A." Pursuant to FAO 98-02, A reports the value of compensation paid to the two associate attorneys and to the individual who is not an attorney, but who lobbies on behalf of "A's" clients. In arriving at an aggregate reportable figure for those employees, "A" should follow the guidance of FAO 98-02.

"A" must also report the value of compensation paid to the partners who lobby, pursuant to the guidance of this opinion.

Because "A" files activity reports only in its capacity as a compensated lobbyist, "A" must determine how much compensation paid to its employees and associates is attributable to its various clients. If necessary, "A" may prorate the aggregate figure of compensation it pays between all of "A's" clients. "A" may not pro-rate that figure (or any other reportable expenditure) between its clients if the expenditure can be directly related to any given client. Thus, if a partner spends considerable time lobbying for one of "A's" clients, but not for the others, then "A" must attribute the compensation it pays to that partner to the client(s) for whom the partner or employee lobbied.

Discussion: As per the written recommendation of the Governmental Affairs Society of Indiana Lobby Registration and Campaign Finance Committee, the ILRC adopts the following methodology for reporting compensation paid to partners who lobby:

- 1. Determine the total number of billable and non-billable hours worked during the reporting period; determine the number of hours recorded for lobbying, and then determine the total time that the time spent lobbying represents;
- 2. Determine the amount of compensation allocated to the partner during the reporting period, including the value of benefits other than overhead ascribable to the partner; and

⁸ GASI's written recommendation is confined solely to the issue of a methodology in reporting, and not to the issue of whether such reporting should be required in the first instance.

3. Determine the pro-rata amount of partner compensation reportable by the firm as an employer lobbyist based upon the percentage of partner time spent on lobbying during the reporting period.

GASI provided the ILRC with a written conclusion to the above recommendation, which states: "Although the committee recognizes that there may be certain nuances to partner compensation which vary from firm to firm, it believes that the recommendation calculation described above will generally result in meaningful and consistent comparison among reporting firms."

⁹ Letter from Dan Seitz, Chairperson, GASI Lobby Registration and Campaign Finance Committee, to Executive Director & Counsel, Sarah Nagy, dated December 21, 1998.

FINAL ADVISORY OPINION 99-03:

Procedures for and Effects of the Tendering of Informal Written and Verbal Advice by the ILRC Executive Director & Counsel

The introductory statement of the ILRC's Advisory Opinion Procedure states, "[each advisory opinion represents a formal policy determination of the Commission and may be relied upon in making filing and reporting decisions. Oral advice provided by staff of the Commission is intended to help citizens to analyze their particular circumstances and to make decisions on their own about compliance with the lobby registration law. There should be no specific reliance on oral advice of this kind."

The above statement is recognized by the Commissioners to be an accurate representation of current Commission policy and practice relating to oral advice given by individual ILRC staff members and Commissioners. At the request of the Executive Director, the Commissioners now clarify the procedure for and effects of informal written advice tendered by ILRC staff.

Requests for informal written advice from staff should be made by the requesting party in writing. All necessary facts must be provided. The informal written advice of staff will apply only to the specific facts given by the requesting party. Requests for informal written advice may be framed in the form of a hypothetical and may be submitted on behalf of an undisclosed principal, to the extent the requesting party states in writing that there is a principal. All requests for informal advice and responses thereto are part of the public record, unless the request refers to specific audit verification documents.

The effect of informal written advice provided by ILRC staff is very similar to the effect of oral advice given by ILRC staff. Though the informal written advice of the Executive Director presents some level of weight, informal opinions do not represent official positions of the Commission and should not be relied upon as such. The purpose of informal written advice by staff is solely to assist and guide the requesting party in his or her effort to comply with the disclosure statute.

FINAL ADVISORY OPINION 2000-01:

Whether lobbyists' contributions to the Host Committee of the Annual Meeting for the National Conference of State Legislators are reportable?

Contributions made to the NCSL Host Committee are not lobbying expenditures because they are not being made with the intention of influencing legislative action in Indiana. However, should specific facts arise which support a finding that contributions were made with the intention of influencing legislative action, then a reporting duty is triggered.

To remain as non-reportable to the Lobby Commission, funds contributed to the NCSL Host Committee must be used for the Annual Meeting only. Funds contributed by a registered lobbyist to the NCSL Annual Meeting which are designated to be used for the direct benefit of any Indiana legislator are considered to be reportable lobbying expenditures. Likewise, sponsorship of events during the NCSL Annual Meeting, such as "Indiana Night," creates a reporting obligation for the registered lobbyist.

FINAL ADVISORY OPINION 2000-02:

Whether lobbyists' contributions to the Women in Government Conference are a reportable lobbying expenditures?

Contributions made in the form of sponsorship fees to the Women in Government Conference when an Indiana legislator attends the conference are not lobbying expenditures because they are not being made with the intention of influencing legislative action in Indiana. However, should specific facts arise which support a finding that contributions were made with the intention of influencing legislative action, then a reporting duty is triggered.

To remain as non-reportable to the Lobby Commission, funds contributed by a lobbyist to the Women in Government Conference must be used for the Conference only. Funds contributed by a registered Indiana lobbyist which are designated to be used for the direct benefit of any Indiana legislator are considered to be reportable lobbying expenditures.

It is the Commission's understanding that registration is open to members of the public at large and that legislators who attend the Conference will receive no greater benefit from lobbyists' sponsorship than those benefits received by members of the public attending the conference.

FINAL ADVISORY OPINION 2000-03:

Whether lobbyists' contributions made in the form of sponsorship fees to various non-profit organizations which host conferences which Indiana legislators attend are reportable and, if so, how are they to be reported?

Contributions made in the form of sponsorship fees to various non-profit organizations which host conferences which legislators attend are not reportable if the legislator will not and does not personally benefit from the contribution. However, should specific facts arise which support a finding that contributions were made with the intention of influencing legislative action, then a reporting duty is triggered.

Funds contributed by a registered Indiana lobbyist to a non-profit organization which are designated to be used for the direct benefit of any Indiana legislator are considered to be reportable lobbying expenditures. For example, if the non-profit organization hosts a golf outing, and the lobbyist makes a contribution to the non-profit organization and part of the contribution is designated by the lobbyist to pay for the legislator's meal, cart and green fees, the value of the meal, cart and green fees is a reportable lobbying expenditure.

FINAL ADVISORY OPINION 2000-04:

Whether non-compensated, volunteer lobbying services donated to the World Police and Fire Games 2001 event should be reported and, if so, how?

The World Police and Fire Games (WPFG) is currently registered as an employer lobbyist. It has filed its report as an "informational" filing only. WPFG has requested an advisory opinion regarding whether it has a statutory duty to register and report as an Indiana lobbyist.

The facts, as presented by WPFG that the WPFG is a non-profit entity, which organizes an event participated in every four years by police and fire fighters from around the globe. The event is held in a different location similar to the Pan American games or the Olympics. The 2001 event is to be held in Indianapolis. WPFG has many committees to meet this task, with each committee being voluntarily staffed. There is a significant expense involved in hosting the event. The event requires a direct appropriation from the federal budget. The event also requires an appropriation from the host state; in this case the State of Indiana. There are registered lobbyists who donate lobbying services to WPFG for the purpose of securing this legislative appropriation. -Those lobbyists are otherwise registered lobbyists, and the donated lobbying services to WPFG did not cause their registration. None of the lobbyists is compensated by WPFG for lobbying efforts. No expenses are reimbursed by WPFG to the lobbyists. WPFG may incur some direct expenditures relating to lobbying (receptions, etc.).

Based on the given facts, there is no statutory duty for a lobbyist who volunteers lobbying services to the WPFG to register and report that activity. WPFG need not register and report unless it incurs lobbying expenditures. If another lobbyist incurs expenditures on behalf of WPFG relating to lobbying, then it must report that amount.

FINAL ADVISORY OPINION 2000-05:

Whether pass-through income paid by a Subchapter-S corporation to an individual who is a registered compensated lobbyist for that corporation must be reported as compensation for lobbying by the corporation, based on the amount of time spent lobbying by that compensated lobbyist?

Summary of Decision:

Pass-through income paid to a corporate officer by a Subchapter-S corporation is a reportable lobbying expenditure when the officer lobbies on behalf of the corporation, even though the pass-through income may be provided to the officer as a shareholder. The amount of pass-through income which is to be reported as a lobbying expenditure depends upon the amount of time spent lobbying and also upon whether the corporate officer receives a reasonable salary, as per the IRS definition.

The facts which brought rise to this advisory opinion are that a Subchapter S corporation, which is a registered lobbyist, employs a non-paid corporate officer. This non-paid corporate officer receives pass-through income by virtue of his standing as a corporate shareholder. He also performs lobbying services on behalf of the corporation. Those lobbying services include lobbying the Indiana General Assembly.

A "lobbyist means any person who (1) engages in lobbying; and (2) in any registration year, receives or expends an aggregate of five hundred dollars (\$500) in compensation or expenditures reportable under this article for lobbying, whether the compensation or expenditures is solely for lobbying or the lobbying is incidental to the individual's regular employment." IC 2-7-1-10. "Compensation" means anything of value given as payment for doing or refraining from doing any activity. IC 2-7-1-2. The idea of "compensation", therefore, is clearly not restricted under the statute to mean only salary or payment for services.

"Payment" means a payment, compensation, reimbursement, distribution, transfer, loan, advance, conveyance, deposit, gift, pledge, subscription, or other rendering of money, property, services, or anything else of value, whether tangible or intangible, and any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make a payment." I.C. 2-7-1-11.

A threshold issue is whether the agreement between the corporate officer and the corporation for lobbying services triggers a registration duty

on behalf of the corporate officer. The Commission has determined that a contract to lobby is sufficient to trigger a duty to register. *FAO 97-03*. However, the "compensation" paid on the contract is not reportable on a lobbyist's activity report until actually made. *FAO 97-03*. Hence, the duty to register as a lobbyist may sometimes be different than a duty to report actual expenditures / compensation. *1999 Commentary of the Lobby Law*, p. 7

The next question is whether the pass-through income received by the corporate officer is to be reported as lobbying income on a time-prorated basis. For purposes of the lobby disclosure statute, a stock is considered "anything of value." 1999 Commentary of the Lobby Law, p. 12. To the extent a stock is given in consideration for lobbying services, the value of the stock is reported as a lobbying expenditure.

The fact that a corporation is a registered lobbyist does not mean that all of its employees are lobbyists. Persons who work at influencing legislative action on behalf of the corporation are lobbyists, but the corporation's other employees who do not engage in lobbying are not lobbyists. (*Informal Commission Decision: November, 1996*); *Comment 55, 1999 Commentary of the Lobby Law.*

An employee who lobbies on behalf of an employer is a lobbyist, to the extent the employee receives greater than \$500 in compensation. *FAO* 98-02. In determining whether an employee has met the \$500 threshold, one must consider such payments as employee and fringe benefits. *FAO* 97-04. *Comment* 56, 1999 Commentary of the Lobby Law

It has been previously determined by the Commission that when an officer of a company hosts a meeting with legislators to discuss and explain the complex issues in a bill and to answer questions, that officer is engaged in lobbying, and the company and the officer must register if the \$500 threshold is met. (*Staff decision: September 1995; FAO 98-02*).

Similarly, a chairman/president of an organization, who writes letters or calls legislators to support or protest legislation which affects that organization, is lobbying and must register if the \$500 threshold is met. The \$500 includes the prorated amount of any regular salary s/he receives during the time spent writing or calling. (Staff decision: December 1995); Comment 60, 1999 Commentary of the Lobby Law.

Likewise, it was determined by the Commission in June, 1998, that when lobbying activities are conducted through an incorporated entity, expenditures must be reported when several persons join together in a

common enterprise for the purpose of lobbying through the incorporated entity and when the incorporated entity has no employees. The Commissioners agreed that the incorporated entity must register both as a compensated and as an employer lobbyist. Those persons/entities who form to place, collectively, greater than \$500 attributable to lobbying into the incorporated entity which conducts the lobbying must register as employer lobbyists. By analogy, this created a precedent wherein lobbying services were performed but not paid for by the lobbying entity and a reporting obligation was triggered for the corporation and for those individuals doing the lobbying.

By other analogy, under the federal tax law, S corporations are generally exempt from income taxation and the net earnings of the corporation are attributed to the individual shareholders for income tax purposes. The shareholders are then not required to pay income tax when these earnings are distributed as dividends on the corporation=s stock. Because compensation paid to employees is subject to social security and federal unemployment taxes, shareholder-employees of S corporations have an incentive to enter into arrangements with their corporations under which money paid to the shareholders by the corporation is characterized as dividends on their stock rather than compensation for services.

The IRS has a long-standing position that amounts paid to a shareholder of an S corporation as dividends in lieu of reasonable compensation for services performed for the corporation are really wages paid to an employee for services and therefore subject to FICA tax. See Rev. Rul. 74-44, 1974-1 C.B. 287. The Service=s position has been upheld by the courts. For example, in *Joseph Radtke, S.C. v. United States*, 895 F.2d 1196 (7th Cir. 1990), a lawyer who was the sole shareholder of a subchapter S professional corporation was paid \$18,225 in dividends in 1982, but nothing for the services he performed for the corporation that year. The court upheld a determination by the Service that these payments were actually wages paid for services and therefore subject to FICA and FUTA taxes.

Radtke was followed by the Ninth Circuit in Spicer Accounting, Inc. v. United States, 918 F.2d 90 (9th Cir. 1990), which involved an accountant who was the president, treasurer, and director of an S corporation owned 50% each by him and his wife. He did not have a formal employment agreement with the corporation and was not paid a salary as such. Instead, he purportedly donated his services to the corporation and, in his capacity as a stockholder, withdrew earnings in the form of dividends. Siding with the IRS, the court concluded: AMr. Spicer clearly performed substantial services for [the corporation], and accordingly, these >dividends= were in reality remuneration for employment and therefore subject to FICA and FUTA. @

The foregoing demonstrates that there is precedent for treating dividends paid to S corporation shareholders as compensation for services if the shareholders do not otherwise receive reasonable compensation for services performed for the corporation. An important factor for non-family owned corporations may be whether the amount distributed to the shareholder performing services is disproportionately larger than distributions to the other shareholders. Even if the distributions are proportionate to stock ownership, however, there is some precedent for treating dividends as compensation for services if no other compensation was paid. See *Dunn & Clark, P.A. v. Commissioner*, 853 F. Supp. 365 (D. Idaho 1994), *aff=d*, 57 F.3d 1076 (1995) (unpublished opinion) (dividends paid to attorneys practicing through an S corporation recharacterized as wages).

This issue generally hasn=t arisen in connection with partnerships because partners are subject to different rules with respect to social security taxes. Partners are ordinarily not considered to be employees of their partnerships for income tax purposes, Rev. Rul. 69-184, 1969-1 C.B. 256, but they are subject to the tax on self-employment income under IRC ' 1401. General partners must include both guaranteed payments for services and their distributive shares of partnership income from any trade or business carried on by the partnership, in their net earnings from self-employment under IRC ' 1402(a). Thus, it doesn=t matter for purposes of this tax whether a general partner who performs services in connection with a partnership=s business is paid a guaranteed amount or simply given a share of the partnership=s net income.

In the case of a limited partner, however, IRC '1402(a)(13) provides that the partner=s share of partnership income is not subject to the tax on self-employment income except to the extent the partner receives a guaranteed payment for services rendered to the partnership. At the time this rule was enacted, it applied only to limited partners in a limited partnership. With the advent of limited liability companies (LLCs), which are treated like partnerships for tax purposes, there is currently uncertainty about whether members in these organizations should be viewed as limited partners or general partners. If a member performs services for his LLC and is properly viewed as a limited partner, then the issue could arise whether some or all of the member=s share of income is actually compensation for services.

In this regard, IRC '707(a)(2)(A) provides that allocations of income and distributions to a partner who performs services for a partnership may be treated as if it were a payment by the partnership to someone who is not a partner if Athe allocation and distribution, when viewed together, are properly [so] characterized....@ The legislative history of this provision indicates that one of the most important factors in determining whether a partner is receiving an income allocation and distribution in his capacity as

a partner is whether the amount of the payment is subject to the entrepreneurial risks of the business. Thus, the IRS could take the position that part or all of a limited partner=s share of partnership income is really compensation for personal services, particularly where the amount of the payment is essentially fixed.

The corporation which provides a non-paid corporate officer with pass-through shareholder income from a Subchapter S corporation should report a portion of the pass-through income as a lobbying expense. The formula which should be applied is: [percentage of time spent lobbying] x [IRS definition of income imputed onto a non-paid corporate officer who receives shareholder income].

FINAL ADVISORY OPINION 2001-1:

Whether an accounting firm which provides services to a lobbying entity or on behalf of a lobbying effort must register and report as a lobbyist?

Summary of Decision:

An accounting firm which provides services to a lobbying entity or on behalf of a lobbying effort is not required to register and report as a lobbyist, unless the accounting firm has the intention of influencing legislative action or unless the accounting firm communicates directly with member(s) of the General Assembly or testifies in front all or part the General Assembly on behalf of the lobbying effort when that firm has not been invited to testify by a member of the General Assembly.

Decision:

The facts which brought rise to this advisory opinion are that Crowe Chizek, a certified public accounting firm and consulting firm headquartered in Indiana is not currently registered as a lobbyist under IC 2-7-1 et seq. Crowe Chizek has described the functions it performs for various lobbying entities in its formal request for advisory opinion, which is attached and incorporated by reference into this advisory opinion.

A "lobbyist means any person who (1) engages in lobbying; and (2) in any registration year, receives or expends an aggregate of five hundred dollars (\$500) in compensation or expenditures reportable under this article for lobbying, whether the compensation or expenditures is solely for lobbying or the lobbying is incidental to the individual's regular employment." IC 2-7-1-10.

A threshold issue is whether the agreement between Crowe Chizek and its lobbying entity clients triggers a registration duty on behalf of Crowe Chizek. If the agreement specifies that Crowe Chizek is to perform lobbying services on behalf of its client, then Crowe Chizek must register and report as a lobbyist. The Commission has determined that a contract to lobby is sufficient to trigger a duty to register. *FAO 97-03*. However, the "compensation" paid on the contract is not reportable on a lobbyist's activity report until actually made. *FAO 97-03*. Hence, the duty to register as a lobbyist may sometimes be different than a duty to report actual expenditures / compensation. *1999 Commentary of the Lobby Law, p. 7*

The next question is whether Crowe Chizek has a duty to register and report as a lobbyist when the agreement with its client is either silent as to whether Crowe Chizek will perform lobbying duties, or when Crowe Chizek performs the duties it has enumerated in its formal request for advisory opinion.

The fact that a client of Crowe Chizek is a registered lobbyist does not mean that efforts made by Crowe Chizek on behalf of the lobbying efforts of its client causes Crowe Chizek to have a duty of registration and reporting under the lobby law. In general, persons who work at influencing legislative action on behalf of the corporation are lobbyists, but the corporation's other employees who do not engage in lobbying are not lobbyists. (*Informal Commission Decision: November, 1996*); *Comment 55, 1999 Commentary of the Lobby Law*.

By way of analogy, it has been determined that an employee who lobbies on behalf of an employer is a lobbyist, to the extent the employee receives greater than \$500 in compensation. FAO 98-02. It has also been previously determined by the Commission that when an officer of a company hosts a meeting with legislators to discuss and explain the complex issues in a bill and to answer questions, that officer is engaged in lobbying, and the company and the officer must register if the \$500 threshold is met. (Staff decision: September 1995; FAO 98-02). Similarly, a chairman/president of an organization, who writes letters or calls legislators to support or protest legislation which affects that organization, is lobbying and must register if the \$500 threshold is met. The \$500 includes the prorated amount of any regular salary s/he receives during the time spent writing or calling. (Staff decision: December 1995); Comment 60, 1999 Commentary of the Lobby Law.

Presumably, the client of Crowe Chizek which is the lobbying entity (or should be registered as a lobbying entity), is reporting all expenditures it makes on behalf of its lobbying efforts. The client's duty of reporting would include the duty to report payments made to Crowe Chizek for the services Crowe Chizek has described that it performs for its lobbyist clients. To the extent that those expenditures are reported in the public record, there is no value in having Crowe Chizek file as a compensated lobbyist with regard to those expenditures. Indeed, to require Crowe Chizek to register and report as a lobbyist would impose an undue and unreasonable burden upon it, because Crowe Chizek is not always aware of why its services are being requested, or whether the product of its services will ultimately be used for some lobbying purpose.

To the extent that Crowe Chizek demonstrates an intention to influence legislative action, which intention can be derived from its conduct or disclosures, then Crowe Chizek would have a duty to register and report as a lobbyist, regardless of the nature of the original agreement with its client. One factor which can be used to determine the intention of Crowe Chizek is whether it testifies before all or part of the General Assembly on behalf of its lobbyist client when it has not been invited to do so by a member of the General Assembly.