



Random Audit of Lobbyist Andrew Hackman

February 11, 2009

Introduction

Registered lobbyist Andrew Hackman was randomly selected for audit on June 24, 2008. He was notified of his selection by letter of that same date. By letter of July 11, 2008, Tennessee Ethics Commission ("Commission") staff requested that Mr. Hackman provide certain audit-related information in advance of scheduling an audit interview. Mr. Hackman provided the requested information and participated in an audit interview that was held by mutual agreement on August 19, 2008. The interview took place at the offices of the Commission. Mr. Hackman provided additional information after a draft audit report was provided to him.

Audit authority and Scope

Under the Tennessee Comprehensive Governmental Ethics Reform Act of 2006 ("Act"), the Commission has a duty to audit each year "the registration statements, amendments to registration statements and reports of no more than four percent (4%) of all lobbyists" to determine compliance with the Act. The lobbyists are selected randomly. Tenn. Code Ann. § 3-6-308(a)(7). The documents subject to audit are those which have been on file with the Commission less than two (2) years as of the time of the audit. Tenn. Code Ann. § 3-6-301(4)(A).

Audit objectives

The overall objective of the audit was to determine whether the statements, amendments, and reports filed concerning the lobbyist in 2007 and 2008 were timely, accurate, complete, and otherwise in compliance with the Act. In order to achieve this objective, the following specific objectives were identified:

1. To determine whether the lobbyist and his or her employer(s) registered timely in 2007 and 2008;
2. To determine whether the lobbyist had entered into any prohibited contingency fee agreement(s);
3. To determine whether the compensation reported by the employer(s) for the period from October 1, 2007 through March 31 2008 correlated with the compensation received by the lobbyist;
4. To determine whether the lobbyist attended and paid for the required annual training in 2007 and 2008; and
5. To determine whether in-state events given by the lobbyist or the lobbyist's employer were in compliance with the requirements of the Act.

Summary of Audit Conclusions

1. Mr. Hackman and his employer did not register timely.
2. Mr. Hackman's employment agreement did not include any prohibited provision for paying fees contingent on lobbying success.
3. The compensation reported by Mr. Hackman's employer for the period from October 1, 2007 through March 31, 2008, corresponds to the amount of time attributable to lobbying in Tennessee.
4. Mr. Hackman paid for and completed the 2008 annual training by web-based video after the audit interview was conducted.
5. Mr. Hackman and his employer participated in no all-legislature in-state events in 2008.

Details regarding some or all of these conclusions follow.

AUDIT CONCLUSIONS

1. Mr. Hackman and his employer did not register timely.

The Act requires that lobbyists and employers of lobbyists are both required to register within seven (7) days of entering into an agreement to provide lobbying services. Mr. Hackman is the Director of State Affairs for the Consumer Specialty Products Association (CSPA). Among other things, he is "[r]esponsible for state advocacy on CSPA's Key Public Policy Issues" and "[r]esponsible for CSPA's state legislative program activities." These program activities include "[d]irecting CSPA's response to state legislative proposals," "[s]tate legislative monitoring and response," and "[m]anaging the Association's in-state lobbyists."

The practice of CSPA has been to have Mr. Hackman only monitor legislative activity unless and until management decides that he should engage in lobbying officials of a particular state. Mr. Hackman could engage in lobbying only after obtaining approval from his supervisor, the Senior Vice President of Legislative and Public Affairs. CSPA and Mr. Hackman proceeded on the assumption that they would not be required to register in Tennessee unless Mr. Hackman actually engaged in lobbying Tennessee officials.

Accordingly, CSPA and Mr. Hackman did not register in 2008 until after Mr. Hackman had engaged in lobbying Tennessee officials. On February 26, 2008, Mr. Hackman requested oral approval to lobby Tennessee officials and written approval to travel to Tennessee to testify before the House Agriculture Committee.¹ Mr. Hackman testified before that committee on March 4, 2008.² In addition to testifying, Mr. Hackman also answered questions throughout the day about the antifreeze industry's position. After Mr. Hackman's return, he and his employer turned their attention to registration. After some initial difficulty with the online registration process, CSPA and Mr. Hackman obtained help from Commission staff and were able to register on March 12, 2008.

¹ At the same time, Mr. Hackman sought written authority to travel to Tennessee. Travel is not pre-requisite to engaging in lobbying of Tennessee officials. One can lobby Tennessee officials by telephone, email, or postal correspondence in addition to personal appearance.

² Testifying at an official hearing held by officials of the legislative branch is not "lobbying." Tenn. Code Ann. § 3-6-301(13).

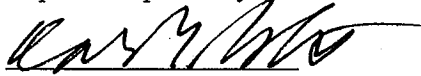
The Commission has opined that the registration requirement is triggered by the date that one enters into an agreement or arrangement to lobby for compensation, not the date one actually engages in lobbying.³ Since Mr. Hackman's employment agreement was in effect on January 1, 2008, both he and CSPA should have registered no later than January 8, 2008.⁴

After receipt of a draft of this audit report, Mr. Hackman and his employer amended his job description to provide as follows:

The Director of State Affairs will only engage in lobbying – as defined in each state's statute – upon obtaining oral approval by the Senior Vice President of Legislative and Public Affairs. The Director shall only monitor state activity until such approval has been provided.

This change could be significant because the Commission has also opined that "a person *solely* engaged in monitoring legislative and rule-making activities is not a lobbyist for the purposes of the statute and is, thus, not required to register."⁵ The question whether the change set out above would suffice to ensure that the employee was "solely engaged in monitoring" is subject to interpretation. Accordingly, the question can only be answered by a formal advisory opinion from the Commission.⁶

Report completed by:



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³ Tenn. Code Ann. § 3-6-302(a)(2). See Op. Tenn. Ethics Comm'n, No. 06-01 (Dec. 12, 2006).

⁴ Similarly, both should have registered within seven (7) days of the Act's effective date, October 1, 2006.

⁵ Opinion 06-03 (emphasis added). In a footnote to this statement, the Commission further observed:

To insure that an individual who has been retained to solely monitor for the client does not exceed the scope of engagement and engage in lobbying activities, the Commission suggests that the employment or retainer agreement specifically delineate the duties of the monitor. Provided, however, that even with such an agreement, should the monitor engage in lobbying with the client's knowledge, then both the monitor and the employer shall be subject to the registration requirements.

⁶ Tenn. Code Ann. § 3-6-117.