



A MANUAL FOR LOBBYISTS AND EMPLOYERS OF LOBBYISTS

(April 2009 Edition)

FOREWORD

Lobbying is an integral part of our nation's democratic process and is a constitutionally guaranteed right. Government officials are continuously making public policy decisions that affect the vital interest of individuals, corporations, labor organizations, religious groups, charitable institutions and other entities. Public officials need to receive factual information from affected interests and also need to know such parties' views in order to make informed policy judgments. In exercising their rights to influence public policy, interests often choose to employ lobbyists and, today, thousands of men and women are engaged in the profession and represent virtually every type of interest. To help preserve and advance public trust and confidence in our democratic institutions and the public policy advocacy process, lobbyists and their employers have a duty to conduct themselves ethically when dealing with government officials.

The 2006 Extraordinary Session of the Tennessee General Assembly resulted in the Comprehensive Governmental Ethics Reform Act of 2006, which addressed, among other items, financial disclosure requirements for lobbyists, employers of lobbyists, legislators, state and local officials and candidates for such positions, and further prohibited certain activities. Additionally, the Act established the Tennessee Ethics Commission to interpret and enforce the provisions of the Act, and thereby to advance the public's confidence in government by enhancing the integrity and transparency of state and local government.

This manual was written to explain how lobbying regulations, financial disclosure, and ethical conduct standards affect you. The information in this manual addresses those provisions of the Act applicable to lobbyists and employers of lobbyists. It contains fundamental information concerning lobbyist and employer of lobbyist registration, disclosure reports and prohibited activities.

The Commission looks forward to working with you in creating an environment where the integrity of our system of government can be further advanced. Much has been accomplished in the past two years. The Commission will continue to seek to work with lobbyists and employers of lobbyists in implementing the law so that, together, we can continue to improve the processes of government for Tennessee's citizens.

R. Larry Brown, Chair
Charles H. Farmer
Nathaniel S. Goggans
John K. King
Linda Whitlow Knight, Esq.
Dianne Ferrell Neal
Commissioners

April 1, 2008

Important Web Addresses:

For up-to-date Commission news go to: <http://state.tn.us/sos/tec/>

To register or amend a registration statement or search for information about lobbyists, employers of lobbyists and lobbyist disclosure reports, go to: <http://www.tennesseeanytime.org/ilobby/>

For the current law including recent amendments, go to: <http://state.tn.us/sos/tec/EthicsReformAct.pdf>

For a copy of a form including the [In-State Event Disclosure Form \(ss-8007\)](#), go to: <http://state.tn.us/sos/tec/forms.htm#employer>

To review the agenda of a Commission meeting, go to: <http://state.tn.us/sos/tec/meetings.htm>

To review formal advisory opinions of the Commission, go to: <http://state.tn.us/sos/tec/opinions.htm#advisory>

For a copy of the Guiding Principles of Ethical Conduct for Lobbyists and Employers of Lobbyists, go to: <http://state.tn.us/sos/tec/GuidingPrinciplesLobbyists.pdf>

To view the biography of any current Commission member, go to: <http://state.tn.us/sos/tec/members.htm>

For more information about the Commission's website, see Section F, page 10.

The Commission can be contacted directly at the following address:

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BACKGROUND OF THE ETHICS REFORM ACT

On December 12, 2005, Governor Phil Bredesen issued a proclamation officially calling the General Assembly into a special session to consider and act upon legislation relating to ethics in government. The Governor stated:

The events of this past year, while difficult for all, have brought us to a moment of unprecedented opportunity for change. We must all work together to seize this moment by approving strong ethics legislation designed to change the culture in government and once again restore Tennesseans' confidence in their elected representatives.

Governor Bredesen called the special session to focus the attention, will, and efforts of the legislative and executive branches of government on the passage of strong ethics legislation before consideration of other matters during the regular session. The announcement of a special session came several months after the Governor's Citizen Advisory Group on Ethics in Government completed an in-depth review of the issue of ethics in Tennessee and presented Governor Bredesen with its final recommendations.

During the same time period, the General Assembly's Special Joint Committee, incorporating recommendations from the Governor's Advisory Group, began drafting comprehensive ethics reform legislation.

All of these efforts resulted in enactment of the Comprehensive Governmental Ethics Reform Act of 2006, which was signed into law by Governor Bredesen on February 15, 2006.

OVERVIEW OF THE TENNESSEE ETHICS COMMISSION

A. Responsibilities of the Tennessee Ethics Commission

In enacting the “Comprehensive Governmental Ethics Reform Act of 2006” (T.C.A. § 3-6-102) the General Assembly stated: “The Tennessee Ethics Commission is established to sustain the public’s confidence in government by increasing the integrity and transparency of state and local government through regulation of lobbying activities, financial disclosure requirements, and ethical conduct.” The Commission, among other duties, has the responsibility to:

- Promulgate rules and regulations (pursuant to the Uniform Administrative Procedures Act) to implement the provisions of the Ethics Reform Act;
- Adjudicate complaints against lobbyists, employers, and state officials, including compelling the attendance of witnesses and the production of documents.
- Conduct an annual ethics course for the Executive branch, the General Assembly, and Lobbyists and Employers of Lobbyists (*note that each Lobbyist is required to attend one ethics course annually*);
- Provide an ethics manual for Lobbyists and Employers of Lobbyists.
- Enforce the gift ban prohibitions and the registration and reporting requirements, including assessing fines.
- Annually audit the registration statements of no more than four (4) percent of all registered lobbyists.
- Recommend Guiding Principles of Ethical Conduct for Lobbyists and Employers of Lobbyists. (These were approved by the Commission in 2007 and are attached.)

B. Jurisdiction of the Tennessee Ethics Commission

The Commission’s jurisdiction over Lobbyists, Employers of Lobbyists, Legislative and State Officials was effective October 1, 2006. The Commission does not have jurisdiction to investigate or take action on any activities which occurred (or any actions which may have been required but were failed to be taken) prior to October 1, 2006. In addition, the Commission’s jurisdiction over *local* elected officials is limited to the filing of Statements of Disclosure of Interests. Finally, the Commission does not have jurisdiction over lobbyists who lobby only local governments.

C. Commission Meetings

The Commission holds regular meetings, usually monthly, which are open to the public. Notice of the meetings is posted on the Commission’s website. The Commission also attempts to post draft documents scheduled to be reviewed by the Commission in advance of the meetings.

D. Commission Members

The Commission is composed of six members: two are appointed by the Governor; two are appointed by the Speaker of the House of Representatives; and two are appointed by the Speaker of the Senate. Three members must be Republicans and three must be Democrats. After initial staggered terms, members serve four-year terms for a maximum of two consecutive terms.

The current members of the Commission are:

Mr. R. Larry Brown, Chair: Mr. Brown is Senior Vice President and Chief Human Resources Officer for FedEx Express. In this position, he is responsible for all strategic aspects of Human Resources for a worldwide work force of over 138,000 employees operating in 210 countries.

Mr. Brown is a Jackson, Tennessee native who earned his bachelor's degree from Lane College and his Juris Doctorate from the University Of Memphis School Of Law, where he was a member of the Law Review Staff, the Moot Court Board, and the National Moot Court Team. Mr. Brown joined FedEx in 1987 as Managing Director, Litigation, after five (5) years as an Assistant U.S. Attorney, Western District of Tennessee and after (two) years as a supervisory trial attorney for the EEOC. He was also a Reginald Heber Smith (REGGIE) Fellow, and Managing Attorney with Memphis Area Legal Services. Mr. Brown is Chairman of the Board of Partners in Public Education (PIPE), a board member of the Youth Education through Sports (YES) Foundation, and Co-chair of the Memphis Mentoring Partnership. He belongs to the National Bar Association (NBA), and is a past president of the Ben F. Jones (Memphis) Chapter of the NBA. Mr. Brown also holds memberships in the Omega Psi Phi, and Sigma Pi Phi Fraternities, and is past national President of Pro Duffers, USA. He has received the Thurgood Marshall Scholarship Foundation Award of Excellence, and the Pi Beta Sigma African American Image Award. Mr. Brown is a two-time recipient of the Federal Express Five Star Award.

Mr. Brown was appointed by the Speaker of the Senate as a Democratic representative.

Mr. Charles H. Farmer: Charles H. Farmer is a graduate of Bethel College in McKenzie, Tennessee, and received his law degree from the Nashville School of Law. He is a former County Attorney for Madison County and served as the Mayor of the City of Jackson from 1989 to 2007. He currently is in private practice with Spragins, Barnett & Cobb, PLC.

Mr. Farmer was appointed by the Governor as a democratic representative.

Mr. Nathaniel S. Goggans: Nathaniel Goggans is an associate attorney with Chambliss, Bahner & Stophel, P.C. He practices in the firm's litigation group, concentrating his practice on trucking litigation, property casualty defense, business and commercial litigation, product liability, and medical malpractice defense. Mr. Goggans is admitted to practice in Tennessee and before the U.S. District Courts for the Eastern, Middle and Western Districts of Tennessee and the U.S. Sixth Circuit Court of Appeals.

Mr. Goggans received his law degree in 2003 from the University of Tennessee, where he received the Outstanding Trial Advocacy Participant Award in 2001 and was also selected to

participate in the Prosecutorial Clinic. He earned his undergraduate degree, *cum laude*, from Bryan College in 2000.

A native of Chattanooga, Mr. Goggans is actively involved in his community. He is a member of the Tennessee Trucking Association, the Transportation Lawyers Association, the Chattanooga Medical Group Management Association, and the Chattanooga Chamber of Commerce. Mr. Goggans participates in the Defense Research Institute's Trucking Law and Medical Liability Committees. He is also a member of the American, Chattanooga, Memphis, and Tennessee Bar Associations, the Christian Legal Society, and the Tennessee Defense Lawyer's Association.

Mr. Goggans has served as a National Business Institute faculty member, writing and teaching on ethics and professionalism. He is chairman of the Legal Advisory Committee of the Tennessee China Chamber of Commerce. Mr. Goggans has served as Assistant Coach for Family Christian Academy's American Mock Trial invitational National Champion team.

Mr. Goggans was appointed by the Speaker of the Senate as a Republican representative.

Mr. John K. King: Mr. King is a Lewis King shareholder whose primary current practice areas are in zoning, governmental contracting, commercial litigation, and administrative law; he represents clients in waste disposal, manufactured housing, and residential/commercial development businesses. Mr. King represents clients on regulatory matters at the state and local levels.

Mr. King served as Commissioner of Revenue for the State of Tennessee from 1979-1980, with responsibility for the administration of all state tax laws, as well as providing fiscal impact analysis on legislative proposals submitted to the legislature. As Commissioner of Revenue, he likewise served on the State Board of Claims and the State Board of Equalization. He was Chairman of the Board of Directors of the Tennessee Housing Development Agency (1981-1989), by appointment of the Governor. Mr. King obtained his undergraduate degree in 1962 from the University of Memphis (formerly Memphis State University) and received his law degree in 1965 from the University of Tennessee. He is a member of the American, Tennessee, Nashville, and Knoxville Bar Associations. Mr. King is admitted to practice before all state and federal courts including the Sixth Circuit Court of Appeals and the Supreme Court of the United States. He is a member of the American Trial Lawyers Association and a certified mediator for the Federal District Courts, Eastern Division. Mr. King was listed in Tennessee Business Magazine – Best 100 Lawyers in State, 2004 – 2008.

Mr. King was appointed by the Governor as a Republican representative.

Ms. Linda W. Knight: Ms. Knight is a native of Jackson, Tennessee, where she attended public schools. After attending Sweet Briar College for two years, Ms. Knight received her B.A., *cum laude*, from Vanderbilt University, where she majored in Political Science and was elected to Phi Beta Kappa. In 1976, she graduated *magna cum laude* from Cumberland School of Law in Birmingham, Alabama. She served on the Law Review and the Moot Court Board, and was elected to Who's Who Among Students in American Colleges and Universities.

After practicing in Birmingham for four years, Ms. Knight moved to Nashville in 1980. After serving as law clerk to former Supreme Court Justice Frank F. Drowota, she entered private

practice. She has been with Gullett, Sanford, Robinson & Martin, PLLC and its predecessor, Martin & Cochran, since 1982. Her practice concentrates on insolvency and commercial law and litigation. She belongs to the American, Tennessee and Nashville Bar Associations and the Tennessee and Nashville Lawyers' Associations for Women. She has served as President, and four terms as Treasurer, of TLAW and as a Board member of LAW. She is Secretary of the Nashville Bar Association, and has served on and chaired several committees. Ms. Knight is a Hearing Officer for the Board of Professional Responsibility and is on the Board of the Tennessee Supreme Court Historical Society and the Bench-Bar Relations Committee of the Tennessee Judicial Conference. Ms. Knight has been a Board member of the Nashville Women's Political Caucus. She was one of the initial members of the Tennessee Economic Council on Women, serving from 1998 to 2004, and remains a member of the Board of the Tennessee Women's Economic Council Foundation, Inc.

Ms. Knight was appointed by the Speaker of the House as a Republican representative.

Ms. Dianne F. Neal: Formerly Chief Legal Counsel to Governor Ned McWherter and Chief Counsel to the Tennessee Public Service Commission, later Tennessee Regulatory Authority, Ms. Neal left state government to become President and CEO of the Cumberland Science Museum, now Adventure Science Center, for an eighteen-month transition to streamline operations and encourage board and patron development.

Ms. Neal was appointed to the Metropolitan Arts Commission, where she served for six years, two years as Chairman, and was a charter member of the Nashville Sports Council, which she chaired in 1996. She remains on the Executive Committee of the Council. Additionally, Ms. Neal sits on the board of the Tennessee State Museum Foundation, the Belle Meade Plantation, Habitat for Humanity Advisory Board and the Advisory Board to the Women's Fund for the Community Foundation. In 1998, Ms. Neal was asked to join the President's Circle of the National Academy of Sciences, where she served until 2002.

A graduate of Vanderbilt University School of Law, Ms. Neal received a B.A. from Baylor University and an M.A. from Tulane University. Dianne and her husband, Jim, live in Nashville, Tennessee. Ms. Neal has one daughter, Sarah, a teacher in Chicago.

Ms. Neal was appointed by the Speaker of the House as the Democratic representative.

E. Executive Director & Legal Counsel

Bruce A. Androphy, Executive Director

Mr. Androphy was hired by the Commission after a national recruitment search that resulted in the Commission receiving over 160 applicants. He previously served as General Counsel with the New York State Ethics Commission, and had been with the New York Commission since 1989. In that position, he had conducted hundreds of ethics training sessions for State officers and employees, and supervised the Commission's legal staff. He is an active member of COGEL, an international organization for government ethics officers, and is a frequent presenter at its conferences. As Executive Director of the Tennessee Ethics Commission, he oversees the Commission staff and is responsible for the Commission's day-to-day operations. A magna cum laude graduate of the University of Pennsylvania, he

received his law degree with Honors from George Washington University National Law Center in Washington, D.C. Prior to working for the Commission, he held various other positions in the public sector including serving as a prosecutor in the Office of Professional Discipline and as an assistant district attorney in the Chemung County District Attorney's Office.

David Himmelreich, General Counsel

Mr. Himmelreich became General Counsel for the Commission effective January 2, 2008. He is a career state lawyer, having previously served in three other offices during his twenty-eight years in state government. Before joining the Commission staff, he worked as counsel for the Medicaid Fraud Control Unit of the Tennessee Bureau of Investigation, Deputy Inspector General for the Office of Inspector General, and Deputy Attorney General for the Tennessee Attorney General's Office. He has worked on both provider and recipient Medicaid Fraud, has tried a number of civil and criminal jury cases in both state and federal court, has handled hundreds of appeals, and has represented many different state agencies in a variety of other legal proceedings. A graduate of Washington University in St. Louis, Mr. Himmelreich received his law degree from Vanderbilt University School of Law. He has given presentations to investigators, accountants, and auditors on the investigation and prosecution of white collar crime. He has presented a number of continuing legal education programs to fellow attorneys. He is certified by the National Institute of Trial Advocacy as an instructor, and participated as a faculty member in the Attorney General's trial advocacy training program for many years.

Willow E. Fort, Assistant General Counsel

Ms. Fort became Assistant General Counsel effective February 7, 2008. As Assistant General Counsel, Ms. Fort aids the General Counsel in giving the Commission the best possible, independent legal advice, drafting advisory opinions and rules, assisting in administrative enforcement actions, and communicating as necessary with the Attorney General's office, legislators, employers of lobbyists, lobbyists, state employees and officials and the general public. Ms. Fort graduated from the University of Tennessee, Knoxville with a 4.0 average, and received her law degree from Vanderbilt University. She came to the Ethics Commission from the Metropolitan Davidson County Public Defender's Office, where she had served as an Assistant Public Defender for five (5) years. As an Assistant Public Defender she participated in discovery and settlement negotiations, conducted investigations, and conducted bench and jury trials for indigent persons accused of crimes. During a substantial portion of her tenure as Assistant Public Defender, Ms. Fort trained young attorneys to become effective criminal defense attorneys and conducted CLEs on this subject.

F. The Commission's Website [<http://state.tn.us/sos/tec>]

The Commission maintains an active website on which any Lobbyist or Employer of a Lobbyist must electronically file his or her registration statement, electronically amend his or her registration statement, file Employer Disclosure Reports and find up-to-date information on filing requirements, Advisory Opinions, Guidelines, upcoming Commission meetings, and

other helpful information such as the dates of Lobbyist training. In addition, any member of the public can view Lobbyist, Employer of Lobbyist registration information and Employer Disclosure Reports. The Commission also posts all Legislative in-state event invitations and disclosures, Employer of Lobbyist semi-annual lobbying expenditure disclosures, as well as disclosure of interest statements filed by legislative and executive branch officials and all local elected officials in Tennessee. The Commission is also authorized to post the names of any Lobbyist or Employer who has failed to register or is delinquent with any registration statement or report required to be filed under the law. Enforcement orders are likewise posted on the Commission's website. See T.C.A. § 3-6-306.

Lobbyists and Employers are encouraged to visit the Commission's website to find the answers to many of their questions.

REQUIREMENTS FOR LOBBYISTS

The following sections contain a summary of the key requirements that apply to Lobbyists, as contained in T.C.A. §§ 3-6-301 through 308 and THE COMMISSION Rule 0580-1-1.

A. Definition of "Lobbyist":

Lobbyist: A Lobbyist is a person who communicates with state government officials for the purpose of influencing action by the executive or legislative branch. See T.C.A. § 3-6-301(15) for the full definition of the term "lobby." Specifically, **a Lobbyist is "any person who engages in lobbying for compensation."** T.C.A. §3-6-301(7) defines "compensation" as "any salary, fee, payment, reimbursement or other valuable consideration, or any combination thereof, whether received or to be received; however, "compensation" does not include salary or reimbursement of an individual whose lobbying is incidental to that person's regular employment. See Advisory Opinion No. 06-02 concerning how the definition of lobbying applies to **attorneys**.

Volunteer Lobbyist: One who does not receive any compensation for his or her services other than reimbursement of actual out-of-pocket expenses and does not engage in lobbying activities for more than ten (10) days during the calendar year. A volunteer Lobbyist who so qualifies need not register. See T.C.A. § 3-6-307(a). **Please note that a Lobbyist who receives no compensation other than actual out-of-pocket expenses but engages in lobbying activities for *more than 10 days* during the calendar year must register with the Commission and pay the required fee. See T.C.A. § 3-6-307(b). The Employer of such Lobbyist must also register. See T.C.A. § 3-6-307(c). *Commencing in 2009, Volunteer Lobbyists do not have to pay the registration fee, although they must register and pay the mandatory lobbyist training fee.***

Monitors: An individual who only monitors legislation on behalf of an Employer of a Lobbyist, and does not communicate with the intent to influence legislative or executive action, may not need to register as a Lobbyist. See Advisory Opinion No. 06-03.

Lobbying Firm: Any firm, corporation, partnership or other business entity that regularly supplies lobbying services to others for compensation. See T.C.A. § 3-6-301(16) for the full definition of the term "lobbying firm." Each individual Lobbyist within the firm must register, but the firm is not considered an "employer" of any Lobbyist within the firm for Employer of Lobbyist registration purposes.

Lobbyists for Governmental Entities: Governmental entities are not required to register as an Employer. *However*, a third party (non government employee) Lobbyist retained by a governmental entity must register. See T.C.A. § 3-6-301(15).

B. Registration:

T.C.A. § 3-6-301(17) requires that: “Not later than seven days after becoming a Lobbyist, the Lobbyist shall register electronically with the ethics commission, and the Lobbyist shall register each year thereafter if the Lobbyist continues to engage in lobbying.” *The Commission interprets the statute as requiring registration within seven days after a Lobbyist or a lobbying firm has been employed or retained to lobby.* See T.C.A. § 3-6-302.

It is not the act of *lobbying* which triggers the requirement to register, but the act of *accepting employment/retainer of employment*. (See Advisory Opinion No. 06-01) For the purposes of Lobbyist registration requirements, the Lobbyist has been employed whether the engagement is formal or informal, written or unwritten.

For the 2009 registration year, the Commission anticipates that on-line registration for Lobbyists will commence on or shortly prior to January 1, 2009. Registration must be done on-line through the Commission website, <http://state.tn.us/sos/tec/lobbyists.htm>. The information required for registration includes the following.

- His or her full contact information. The Lobbyist must also report whether he or she has an immediate family member who is a legislative or executive branch official and whether he or she has any business arrangements with such officials. This information is available on the Commission’s website.
- Identifying information concerning the Lobbyist’s Employers.
- Beginning December 15, 2007, lobbyists will additionally need, prior to registering a new Employer who has not been previously registered with the Commission, the last 5 digits of the new Employer’s federal tax identification number.
- Within thirty **(30) days** of registering, a registration fee of **\$150 per Employer** must be paid on-line via credit card.
- Within thirty **(30) days** of registering, an annual one-time **\$40** mandatory lobbyist training fee must be paid on-line via credit card.
- Within thirty **(30) days** of initially registering a **current digital photographic** portrait must be electronically submitted to the Commission. This portrait should:
 - be saved in a jpeg or gif format;
 - be smaller than 5 megabytes in total size; and
 - for best appearance, be a pixel size of 180 pixels by 255 pixels.

Photographs should be e-mailed to the Commission at ethics.pics@state.tn.us

Registration statements are public records and must be posted by the Commission on its website. Lobbyists must update their registration statements if *any event or circumstance occurs that renders the registration statement inaccurate or incomplete*. T.C.A. § 3-6-302(c).

C. Random Audits of Lobbyist Registrations

The Commission is required to annually audit, on a random basis, registration statements and other reports of no more than 4% of all Lobbyists. The Commission also has the authority, upon a finding of probable cause, to audit an Employer of a Lobbyist. In 2007, the Commission conducted eleven (11) random audits. In 2008, nineteen (19) random audits were conducted. See T.C.A. § 3-6-308(a)(7).

Lobbyist names are randomly chosen for audit by a computer program. The selection is performed by the Commission's staff at a public meeting under the observation of a representative of the Office of the Attorney General. Lobbyists chosen for a random audit will schedule a meeting with the Commission's staff and may be accompanied by an attorney or other representatives.

The Commission recommends that all lobbyists maintain their paperwork in accordance with the Guidelines for Lobbyists on Preparing for Random Audits, a copy of which is available on the Commission's website.

D. Mandatory Ethics Training

The Ethics Reform Act requires the Commission to provide an annual ethics training course for Lobbyists and Employers of Lobbyists. Attendance is voluntary for Employers, but all registered Lobbyists must annually complete a course. Please check the Commission's website (<http://state.tn.us/sos/tec/>) for further information about the availability and dates of such courses. *In 2008, The Commission conducted four (4) "live" sessions; three (3) of which were available by video conferencing. For 2009, the Commission anticipates holding "live" trainings throughout the year and videoconferencing.*

E. Information about Complaints & the Processing Thereof

Pursuant to the Act, the Commission has the authority to receive complaints or initiate complaints on its own. Valid complaints that allege acts within the jurisdiction of the Commission are referred to the Office of Attorney General for investigation. Upon receipt of the report of investigation by the Attorney General, the Commission shall conduct a probable cause hearing which, by statute, is not open to the public. If the Commission finds probable cause, a public hearing must be conducted.

The Commission has the authority to adopt rules establishing complaint procedures. The Commission has approved draft rules at its November 8, 2007 meeting and will promulgate

such rules for public comment. The text of the proposed rules is available on the Commission's website.

REQUIREMENTS FOR EMPLOYERS OF LOBBYISTS

The following sections contain a summary of the key requirements that apply to Employers as contained in T.C.A. §§ 3-6-301 through 308 and THE COMMISSION Rule 0580-1-1.

A. Definition Of "Employer"

"Employer of a Lobbyist" or "Employer" means any person or entity that employs, retains, or otherwise arranges for a Lobbyist to engage in lobbying on behalf of the person or entity for compensation. T.C.A. § 3-6-301(8).

Entities Not Defined as an "Employer" for Registration Purposes:

- Governmental entities are not required to register as an Employer. See T.C.A. § 3-6-301(15). *However*, a third party (non government employee) Lobbyist retained by a governmental entity must register.
- An entity that utilizes only the services of a **volunteer** Lobbyist is not considered an "employer of a lobbyist". See page 10, above, for the full definition of a **volunteer** Lobbyist.
- An individual who only **monitors** legislation is not considered to be a "lobbyist", and therefore the entity employing such a monitor may not need to register as an Employer of a Lobbyist. See Advisory Opinion No. 06-03.

B. Registration

Within seven (**7**) days after employing a Lobbyist, the Employer shall electronically register with The Commission. See T.C.A. § 3-6-302. Note that it is not an act of lobbying which triggers the requirement to register, but the act of accepting employment/retainer of employment. (See Advisory Opinion No. 06-01) For the purposes of Employer registration requirements, the Lobbyist has been employed whether the engagement is formal or informal, written or unwritten. The registration fee is **\$150 per Lobbyist** retained by the Employer.

Starting December 15, 2007, Employers will complete all registration and reporting requirements electronically (e.g., without the use of any paper forms). For the 2009 registration year, the Commission anticipates that on-line registration for Lobbyists will commence on or shortly prior to January 1, 2009. Registration must be done on-line through the Commission's website: <http://state.tn.us/sos/tec/lobbyists.htm>.

- The Employer's name, address, telephone number, and e-mail address; *note that if the Employer is a corporation or association, the names of the individuals performing the functions of chief executive officer and chief financial officer (or equivalent executive head) are also required;*

- The name and contact information of each Lobbyist authorized to represent the Employer are also required; and
 - Verification that the Employer has received or downloaded a copy of the Commission’s manual for Lobbyists and Employers of Lobbyists. **To meet this requirement, Employers may download the Manual from the Commission’s website. Employers with multiple Lobbyists need to download the Manual only once. The Commission adds important information regularly; however it is therefore recommended that both Lobbyists and Employers download an updated Manual a minimum of once each registration year.**

State law further requires that registration statements are publicly available documents and the information contained therein is posted on the Commission’s website. Registration statements must be updated throughout the registration year if any event or circumstance occurs which renders the statement inaccurate or incomplete (for example, the Employer terminates the Lobbyist’s employment, changes address or has a new contact person). This update must be completed within seven (7) days of the change in circumstances. Failure to update may result in civil penalties.

If an Employer retains a new or additional Lobbyist, the Employer has seven (7) days to submit a new registration form and pay the annual registration fee.

C. Semi-Annual Lobbying Expenditure Reports

Each Employer, pursuant to T.C.A. § 3-6-303, must file a “Semi-Annual Lobbying Expenditure Report for Employers of Lobbyists” for the preceding six-month period:

- Reports are due **May 15th** of each year if an Employer had a lobbyist registered at any time during the six-month period of *October 1st through March 31st*. A report is due even if the Employer did not make any actual payments to its Lobbyist or did not make any actual payments for lobbying expenses during the reporting period.
- Reports are due **November 14th** of each year if an Employer had a lobbyist registered at any time during the six-month period of *April 1st through September 30th*. A report is due even if the Employer did not make any actual payments to its Lobbyist or did not make any actual payments for lobbying expenses during the reporting period.
- Every box on the form must be completed. For Questions 5 and 7, you must check a designated range. In response to question 8, you must provide “None” or “N/A” if no in-State events were conducted during the reporting period, or if the question is otherwise not applicable to you.
- *Employer Expenditure Reports must be filed electronically (on-line) starting with the Report due May 15, 2008.*

- The Report must be signed by the person completing the Report, an authorized representative of the Employer of a Lobbyist, and a witness to the authorized representative's signature.

Additional Instructions For Completing Expenditure Reports:

Question 5: The aggregate total amount of Lobbyist compensation paid by the Employer. The report is to be in monetary ranges from less than \$10,000 to \$400,000 or more. Note that the only amounts to be reported are for compensation actually paid during the reporting period (e.g., if the services were rendered on September 1st but the Employer did not actually pay the Lobbyist for these services until October 15th the compensation would be reported on the report due May 15th, not the report due November 15th).

- Pursuant to T.C.A. §3-6-301(7), "compensation" means any salary, fee, payments, reimbursement or other valuable consideration, or any combination thereof, whether received or to be received; however, "compensation" does not include the salary or reimbursement of an individual whose lobbying is incidental to that person's regular salary. (Please reference the definition of a lobbyist, page 11.)
- The monetary value associated with Internal Revenue Service taxable benefits must be reported as compensation. For more information on what benefits are taxable, see IRS Publication 15: www.irs.gov/pub/irs-pdf/p15b.pdf.
- The percentage of a Lobbyist's salary that is attributable to lobbying activities must be reported as compensation.
- The reimbursement of expenses paid directly by the Lobbyist must be reported as compensation.

Examples:

- Lobbyist X is employed by ABC Corp. as an in-house lobbyist. ABC Corp. pays her a base salary of \$75,000, and pays \$15,000 for fringe benefits. If the fringe benefits are taxable, ABC Corp. must report the \$75,000 base salary, plus the \$15,000 taxable fringe benefits, for a total of \$90,000 in compensation. If Lobbyist X's fringe benefits are not taxable, only the salary of \$75,000 must be reported to the Commission.
- Lobbyist X is an in-house lobbyist who only spent 40% of her time lobbying for ABC Corp. If her total salary is \$75,000, ABC Corp. must report to the Commission total lobbyist compensation paid of \$30,000 (.40 X \$75,000). If she receives \$15,000 in taxable fringe benefits (as in the previous example), then ABC Corp. would report her total compensation as \$36,000 (.40 x \$90,000).

- o Lobbyist X is a contract lobbyist with ABC Corp. She was paid a base salary of \$75,000. She incurred \$15,000 of lobbying expenses, which were reimbursed by ABC Corp. ABC Corp. must, therefore, report \$90,000 as total compensation in response to Question #5 (e.g., the base salary of \$75,000 + reimbursements of \$15,000).

Question 7: The aggregate total amount of Employer expenditures incurred for the purpose of influencing legislative or administrative action through public opinion or grassroots action - excluding Lobbyist compensation [expenditures related to Lobbyist compensation should instead be disclosed in Question 5 of the report]. This report must also be filed in ranges from less than \$10,000 to \$400,000 or more in the same manner as Question 5 of the report.

Question 8: The aggregate total amount of expenditures for events sponsored in whole or in part by the Employer *to which the entire membership of the Tennessee General Assembly was invited*. If the *entire* membership of the General Assembly was not invited to the event (for example, only the local delegation was invited), then the expenditures for the event should be reported *under Question 7 rather than under Question 8*.

D. Auditing of Employer Registration and Reports:

The Commission is required by statute to perform random audits of no more than four percent (4%) of Lobbyist registrations, and in the course of such audit may review Employer registrations and reports for the purpose of verifying the Lobbyist's registration information. However, the Commission may not audit Employers unless there is "probable cause" to do so. See T.C.A. § 3-6-308(a)(7).

E. Information About Complaints and the Processing Thereof:

Pursuant to the Act, the Commission has the authority to receive complaints or initiate complaints on its own. Valid complaints that allege acts within the jurisdiction of the Commission are referred to the Office of Attorney General for investigation. Upon receipt of the report of investigation by the Attorney General, the Commission shall conduct a probable cause hearing which, by statute, is not open to the public. If the Commission finds probable cause, a public hearing must be conducted.

The Commission has the authority to adopt rules covering complaint procedures. The Commission has approved draft rules at its November 8, 2007 meeting and will promulgate such rules for public comment. The text of the proposed rules is available on the Commission's website.

PROHIBITED ACTIVITIES

T.C.A. §3-6-304 states that a Lobbyist or an Employer of a Lobbyist is prohibited from engaging in certain listed activities with respect to members of the Legislature, officials of the executive and legislative branches, and employees of either branch and their immediate families. The statutory definition of "Official in the executive branch" includes the Governor,

any member of the Governor's staff, **any** member or employee of a state regulatory commission (including directors of the Tennessee Regulatory Authority), **any** member or employee of any executive department or agency, or any member or employee of any other state body in the executive branch, and also includes any administrative governmental official or employee of any county exercising the authority set forth in § 8-17-103(b). "Official in the legislative branch" includes **any** member, member-elect, any staff person or employee of the General Assembly, or any member of a commission established by the General Assembly; the Secretary of State, Treasurer, and Comptroller and **any** employee of such office, and also includes any legislative governmental official or employee of any county exercising the authority set forth in § 8-17-103(b); (In a recent formal advisory opinion, the Commission held that officials of the Tennessee Commission of Uniform Laws (TCUL) are legislative officials.) See Advisory Opinion No. 08-09.

Thus, Lobbyists and Employers are prohibited from engaging in activities prohibited by the Act with any official in the executive and legislative branches (including *all* state employees) and their immediate families.

The question of whether or not an activity is prohibited can vary depending upon the particular factual circumstances. Thus, when considering potentially prohibited activities the Commission advises Lobbyists and Employers to err on the side of caution, and also to contact the Commission at any time for an informal staff opinion or a formal Advisory Opinion regarding the legality of the planned activity.

Prohibited Activities include the following:

Offering Anything of Value - T.C.A. §3-6-304(a) and (c)

- A Lobbyist or an Employer cannot give, nor even offer, anything of value to an official in the legislative or executive branch, or his or her immediate family to influence the official's vote, official action, or judgment. Likewise, an official in the legislative or executive branch of government may not solicit a Lobbyist or an Employer for anything of value to influence his or her vote, official action, or judgment.

Misrepresenting Matters Lobbied

- A Lobbyist or an Employer cannot make a false statement or misrepresent any information to an official in the executive or legislative branch about any subject matter that is listed on the Lobbyist's or Employer's registration statement.

Loans

- A Lobbyist cannot make a loan to any candidate for public office (state or local public office) or official in the executive or legislative branch, or to anyone on their behalf. Likewise, none of these candidates or officials may solicit or accept a loan from a Lobbyist.

Payment for Services or Property

- A Lobbyist or an Employer or anyone working for either (with or without compensation) cannot pay a candidate for public office or an official in the legislative or executive branch for property or services in excess of what the official would normally charge. In other words, they cannot pay government officials more than fair market value.

Credit Cards

- A Lobbyist or an Employer or anyone working for him or her (with or without compensation) cannot permit a candidate for public office, an official in the legislative or executive branch or member of their immediate family (spouse or minor children living at home) to use the Lobbyist's/Employer's credit, credit card, or a credit card that the Lobbyist and/or Employer controls.

Lodging Expenses

- A Lobbyist or an Employer or anyone working for him or her (with or without compensation) cannot pay the lodging expenses of an official in the legislative or executive branch, or the official's immediate family members, **unless** it falls within the exceptions under T.C.A. § 3-6-305(7)(A) & (7)(B) for expenses related to government conferences.

Campaign Contributions

- A Lobbyist cannot offer or make a campaign contribution, including an in-kind contribution, to the Governor or member of the General Assembly, or any candidate for the office of Governor or the General Assembly. This ban applies regardless of whether the General Assembly is in session.
- An Employer cannot make any campaign contributions to any candidate for Governor or member of the General Assembly during either the regular or an extraordinary legislative session (e.g., Employers may make such contributions out of session).
- If an Employer has a multi-candidate political campaign committee (PAC), the PAC cannot make any campaign contributions to any candidate for Governor or member of the General Assembly during either the regular or an extraordinary legislative session (e.g., the PAC may make such contributions out of session).
- The Commission has held that a lobbyist who also serves as a treasurer of a PAC may sign campaign contribution checks on behalf of the PAC. See Advisory Opinion No. 07-03.
- For campaign contributions to the Governor or members of the General Assembly who are running for federal or local office, please see Advisory Opinion No 07-05.

Contingent Fees

- An Employer cannot pay a fee, compensation or bonus to a Lobbyist that is contingent upon achievement of a successful outcome.
- A Lobbyist cannot solicit or accept a fee, compensation or bonus from an Employer that is contingent upon achievement of a successful outcome.

Lobbyists Serving in Certain Public Positions

- A Lobbyist cannot serve on any state board, commission or other entity of state government that regulates the business or professional activities of any of the Lobbyist's Employers.
- A Lobbyist cannot serve as a member of the State Election Commission or any County Election Commission, unless the Lobbyist was a member of a County Election Commission as of October 1, 2006, and continues to serve in that office.

GIFTS

- The general rule is that gifts, direct or indirect, from Employers and Lobbyists to a candidate for public office, an official in the legislative or executive branch (including all employees of both), or the immediate family of the candidate or official **are prohibited**; in addition, these individuals cannot attempt to solicit, directly or indirectly, a gift from a Lobbyist or an Employer. (see T.C.A. § 3-6-305.) **Note:** Certain items are, by statute, excluded from the definition of gift, including campaign contributions and the waiver of a conference or registration fee.

EXCEPTIONS TO THE GIFT PROHIBITION

PLEASE NOTE that, while there are certain EXCEPTIONS to the general PROHIBITION on gifts, discussed below, a Lobbyist or an Employer should act with caution. Where there may be a question on whether a particular gift qualifies under the exception, a Lobbyist or an Employer should contact the Commission for guidance or, in the alternative, avoid the questionable activity. In addition, please note that any individual or entity subject to the Commission's jurisdiction may ask for an Advisory Opinion on an issue. Contact the Commission office for assistance with requesting an Advisory Opinion.

PLEASE ALSO NOTE that the Commission must consider any rise in the Consumer Price Index in odd numbered years. As a result, effective January 1, 2008, the Gift threshold for certain provisions was increased from \$50 to \$51.

Items which may constitute an exception to the gift prohibition include the following:

Benefits of Employment, Etc.

- Benefits from the business, employment or outside activities of a candidate, an official in the executive or legislative branch, or immediate family – if the

benefits are customarily provided and not enhanced because of the individual's status as a public official.

Informational Materials

- Informational materials such as books, audiotapes, videotapes, etc.

Personal Gifts

- Gifts given for a non-business purpose and motivated by a close personal friendship – *but only as permitted by the rules of the Commission*. While the Commission anticipates issuing formal rules in the future, the Commission has issued informal Guidelines to assist Lobbyists and Employers of Lobbyists in determining whether a gift would fall within this exception. The Guidelines can be found on the Commission's website.

Promotional Items

- Sample merchandise, promotional items, and tokens of appreciation if they are routinely given to customers and suppliers (or potential customers and suppliers) in the ordinary course of business. Hats, t-shirts or "goodie bags" are all examples of promotional items.

Honors and Awards

- Unsolicited tokens or awards of appreciation, honorary degrees or bona fide awards in recognition of public service, as long as the token or award is not in a form that can readily be converted into cash. Trophies, plaques or desk items are examples of honors or awards.

Benefits Available to the General Public

- Discounts given to the general public or specified groups or occupations under normal business conditions.
- Prizes and awards given in public contests.
- Benefits from participating in an in-state event sponsored by or for the benefit of a charitable organization if either:
 - (1) The event is open to persons other than officials in the executive or legislative branch and their immediate families and the officials receive no enhanced benefit or
 - (2) Invitations to the event are extended to the entire membership of the General Assembly. (See T.C.A. § 3-6.305(6)(7), discussed below.)

For an application of the charitable events exception, see Advisory Opinion No. 07-02.

Expenses – Out of State Government Conferences

- Authorized expenses paid for or reimbursed by a governmental entity or by an established and recognized organization of elected or appointed officials and/or their staff.
- “Authorized expenses” include: travel, entertainment, food, refreshments, meals, beverages, amenities, health screenings, lodging and admission tickets provided in connection with, arranged with, or coordinated with an out-of-state conference, including events designated as a “State Night” or other events for attendees.

In-State Event for General Assembly - T.C.A. § 3-6-305(b)(7)

- Entire membership of General Assembly must be invited.
- An invitation must be delivered to each member of the General Assembly, *and a copy of the invitation must be filed with the Commission*, at least **seven days (7)** before the event.
- Per person cost of event must be based on number of persons invited and cannot exceed \$51 per person per day, excluding sales tax and gratuity.
- Value of “gift” cannot be reduced by dividing the cost between two or more Lobbyists or Employers.
- Report must be filed with the Commission within **30 days** after the event disclosing total aggregate cost of event, as well as per person contractual cost or actual per person cost.
- Invitations and Reports are posted on the Commission’s website.
- For examples of Invitations and Reports, please refer to the Commission’s website.

Participation in In-State Event as Speaker

Note: *Exception applies only to events sponsored by Employers and not those sponsored by Lobbyists.*

- Candidate for public office, official in executive or legislative branch, or family member thereof must be speaker or part of panel discussion at a scheduled meeting of an established and recognized membership organization that has regular meetings (e.g. Chamber of Commerce).
- Authorized expenses include: entertainment, food, refreshments, meals, amenities, or beverages not to exceed \$51 per person per day.

In-State Event for Officials in Executive or Legislative Branch

Note: *Exception applies only to events sponsored by Employers and not those sponsored by Lobbyists.*

- Limited to \$51 per person per day and not more than total of \$102 to an official during calendar year.
- Value of “gift” cannot be reduced by dividing cost among two or more Employers.
- Exception only applies to a legislator if: (1) he/she does not receive their legislative *per diem* for the day on which the event is held and (2) legislator does not receive anything that is not provided to non-legislators.
- Requires presence of an officer or management-level employee of each Employer paying for event – which does not include the Lobbyist of the Employer.

Local Travel

- Occasional or incidental local travel for which no fare is ordinarily charged.

Indirect Gifts

- If you are a Lobbyist and attend an event that is also attended by an official in the executive or legislative branch; **and**
- The official accepts a gift provided by a person who is not a Lobbyist or an Employer; **but**
- You know, or have reason to know, that the gift was provided at the suggestion or direction of a Lobbyist; **then**
- You must report the following information to the Commission within seven (7) days after the event:
 - Name of official;
 - Nature and purpose of the event;
 - Name, address and business of the person or entity that provided the gift;
 - Description of the gift; and
 - Cost of the gift, if known. If unknown, a good faith estimate of the cost.

Safe Harbor Provision

- If a prohibited gift is given by a Lobbyist or Employer to a candidate for public office, official in the executive or legislative branch, or their immediate families, **the gift will not be in violation of the law if:**
 - The gift is not used and is returned within ten (10) days after *receipt* of the gift or ten (10) days after *learning* that the gift is prohibited; or
 - Within this same time period the recipient pays for the gift a value equal to or greater than its actual value.

PENALTIES

The Commission may assess a civil penalty against an Employer and a Lobbyist for failure to timely register or to pay a registration fee. The Commission may additionally assess a civil penalty against a Lobbyist for failure to timely submit a photographic portrait, and against an Employer for failure to timely file a required report. The penalty for a violation of these requirements is not more than \$25 per day up to a maximum of \$750.

The Commission may assess a civil penalty of up to \$10,000 against a Lobbyist or an Employer who knowingly files inaccurate or incomplete statements or reports; an Employer who utilizes the services of a Lobbyist who is not registered; a Lobbyist who lobbies without registering; or either an Employer or a Lobbyist who commits a prohibited act, including campaign contribution restrictions or violates the gift prohibition.

The Commission may also administratively place on probationary status, suspend, reject, or revoke the registration of any lobbyist who knowingly and persistently (e.g., more than 3 times in a two-year period) violates the provisions of T.C.A. §§ 3-6-301 through 308.

Additionally, an intentional violation is a criminal offense and may be prosecuted by the appropriate District Attorney General. The first offense is punishable as a class C misdemeanor, and a violator may face up to 30 days imprisonment and a fine of up to \$50, or both. A second violation is a class B misdemeanor, and a violator may face not more than six months imprisonment and a fine up to \$500, or both. A third violation is a class A misdemeanor and a violator may face up to eleven months and twenty-nine days imprisonment and a fine of up to \$2,500, or both. [T.C.A. § 3-6-306]