



Report of Random Audit of Lobbyist Garrett Wagley

January 20, 2009

Introduction

Registered lobbyist Garrett Wagley 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. Wagley provide certain audit-related information in advance of scheduling an audit interview. Mr. Wagley provided the requested information and participated in an audit interview that was held by mutual agreement on August 15, 2008. The interview took place at the offices of the Commission.

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 his 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. Wagley registered timely, but his employer registered late.
2. Mr. Wagley's employment agreement did not include any prohibited provision for paying fees contingent on lobbying success.
3. The method used by Mr. Wagley's employer to determine the portion of his compensation attributable to lobbying was reasonable, and the amount was consistent with the compensation reported by Mr. Wagley.
4. Mr. Wagley timely paid for and completed the 2008 annual training by web-based video.
5. Mr. Wagley and his employer participated in one all-legislature in-state event in 2008, and the event complied with the requirements examined in this audit with the exception that that cost of the event was slightly over-reported.

Details regarding some or all of these conclusions follow.

AUDIT CONCLUSIONS

1. Mr. Wagley registered timely, but his employer registered late.

A lobbyist is required to register within seven (7) days of entering into an agreement to provide lobbying services, regardless of when the lobbyist actually engages in lobbying.¹ Before and during the calendar 2008 registration year, Mr. Wagley has been employed as Director of Communications & Government Relations for the Knoxville Chamber.

Since his duties include lobbying, Mr. Wagley registered on January 7, 2008. Commission staff notified his employer a number of times regarding the necessity of registering. The Chamber registered on June 30, 2008, which was late.

2. Mr. Wagley's employment agreement did not include any prohibited provision for paying fees contingent on lobbying success.

3. The method used to determine the portion of Mr. Wagley's compensation that is attributable to lobbying is reasonable, and the amount reported is consistent with the amount received by Mr. Wagley.

Each employer of a lobbyist is required to report, by range of expenditures, "the aggregate total amount of lobbyist compensation paid by the employer"² for every six (6)

¹ Tenn. Code Ann. § 3-6-302(a)(2). See Op. Tenn. Ethics Comm'n, No. 06-01 (Dec. 12, 2006).

² Tenn. Code Ann. § 3-6-303(a)(1).

month period.³ The Act contemplates that the ranges reported will be checked against the information obtained from lobbyists during random audits.⁴ The random audit interview dealt with the most recent period for which expenditure reports were then on file: October 1, 2007 through March 31, 2008.

The Act requires that the Knoxville Chamber determine what portion of Mr. Wagley's time is allocated to lobbying and related activities in Tennessee and report the resulting range of compensation. "For purposes of the disclosure, compensation paid to any lobbyist who performs duties for the employer in addition to lobbying and related activities shall be apportioned to reflect the lobbyist's time allocated for lobbying and related activities in this state."⁵

According to his job description, Mr. Wagley is to lead the department of communications, to direct the advocacy efforts of the Chamber, and to staff the "volunteer Government Relations & Public Policy committee." Specific duties include "directing the government affairs efforts." Duties not related to lobbying state officials include marketing, advertising, and publicity, acting as liaison with local governments, and serving as media spokesman for the Chamber. Travel reimbursement records provided by Mr. Wagley revealed six (6) days during the reporting period were spent in whole or in part in Nashville on lobbying and related activities. There was no record of time spent lobbying state officials that did not involve travel.

The Chamber reported that the amount of Mr. Wagley's compensation attributable to lobbying and related activities for the six (6) month period from October 1, 2007 through March 31, 2008 was within the range of less than ten thousand dollars (\$10,000). The Chamber reported the same range of compensation for the succeeding six (6) month period.⁶ This figure was determined on the basis that Mr. Wagley travels to Nashville ten (10) times per calendar year for purposes of lobbying state officials. Each of these trips accounts for about thirty (30) hours of lobbying time, including time spent before and after each trip. The three hundred (300) hour total represents fifteen percent (15%) of Mr. Wagley's total compensable time. When the result is divided in half to represent a period of six (6) months, it comes to "less than \$10,000" which is the range of

³ The registration year commences on January 1, whereas the expenditure reporting periods are October 1—March 31 and April 1—September 30.

⁴ Specifically, in defining "random audit information," the Act provides as follows:

"Random audit information" also means information obtained pursuant to a review of the total lobbying and lobbying-related compensation and expenses paid to the lobbyist by an employer that will be checked against the range of expenditures reported by the employer in a random audit.

Tenn. Code Ann. § 3-6-301(4)(A).

⁵ Tenn. Code Ann. § 3-6-303(a)(1).

⁶ The report, made on October 23, 2008, may be viewed on the Commission's website.

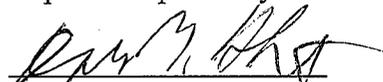
compensation reported by the Chamber. The method of allocation is reasonable, and the resulting amount is consistent with what Mr. Wagley received.⁷

4. **Mr. Wagley timely paid for and completed the 2008 annual training by web-based video.**
5. **Mr. Wagley and his employer participated in one all-legislature in-state event in 2008, and the event complied with the requirements examined in this audit with the exception that that cost of the event was slightly over-reported.**

The Act provides that entertainment, food, refreshments, meals, beverages, or health screenings that are provided in connection with an in-state event to which invitations are extended to the entire membership of the general assembly are not subject to the Act's general ban against gifts from lobbyists and employers of lobbyists to state officials, provided that certain conditions are met. Tenn. Code Ann. § 3-6-305(b)(8). A copy of the invitation must be filed with the Commission at least seven (7) days in advance of the event by the employer or lobbyist paying for the event. The per person "total aggregate cost" and "contractual cost" for the event must be less than fifty-one dollars (\$51), excluding sales tax and gratuity, and the employer or lobbyist must file, within thirty (30) days of the event, a report on these costs.

Mr. Wagley participated in an event held by the Knoxville Chamber on February 25, 2008. The invitation was filed on February 14, 2008, well in advance of the seven (7) day deadline. A cost report was filed on March 7, 2008, within the required thirty (30) days. The report showed a total aggregate cost of one thousand four dollars (\$1,004), and a per person contractual cost (based on number of persons invited) of six dollars, fifty-six cents (\$6.56). The documents provided by Mr. Wagley show that the aggregate cost, excluding sales tax and gratuity, was only eight hundred sixty-two dollars, fifty cents (\$862.50).

Report completed by:



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⁷ The specific amount of Mr. Wagley' salary is confidential random audit information and is therefore not included in this public report. Tenn. Code Ann. § 3-6-308(c). "Random audit information" is defined in Tenn. Code Ann. § 3-6-301(4)(A).