



# **2008 ANNUAL REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY**

**TENNESSEE ETHICS COMMISSION  
201 4<sup>TH</sup> AVENUE, NORTH, SUITE 1820  
NASHVILLE, TN 37243  
(615) 253-8634  
<http://state.tn.us/sos/tec/>**

## FOREWORD

The 2006 Extraordinary Session of the Tennessee General Assembly enacted in the Comprehensive Governmental Ethics Reform Act of 2006 (“Act”). The Act addressed, among other items, financial disclosure and other reporting requirements for lobbyists, employers of lobbyists, legislators, state and local elected officials, and candidates and appointees to such positions. Further, the Act prohibited activities such as certain campaign contributions and the offer and acceptance of certain gifts. The Act established an independent Tennessee Ethics Commission (“Commission”) to interpret and enforce the provisions of the Act.

The Act was passed to advance the public’s confidence in government by enhancing the integrity and transparency of state and local government. Under the Act, the Commission is required to deliver an Annual Report to the Governor, the General Assembly, and the public. This 2008 Annual Report details the progress of the Commission in the short time since its legal existence began on October 1, 2006. In 2008, the Commission fully implemented electronic filing for lobbyists, employers of lobbyists, and local and state filers of disclosure of interests statements. The Commission also took its first enforcement actions against delinquent and late filers. As evidenced by this 2008 Annual Report, the Commission has met the legislative mandates of the Act as it further interprets, administers and enforces the law.

We, the Commissioners of the Tennessee Ethics Commission, look forward to working with the Governor, the General Assembly, state and local elected officials, lobbyists and their employers, and the public in carrying out the mandates of the Act and enhancing an ethical climate for state government.

R. Larry Brown, Chair  
Thomas J. Garland  
Linda Whitlow Knight  
Dianne Ferrell Neal

February 1, 2009

<b>Table of Contents</b>	
<b>Foreword from the Tennessee Ethics Commission</b>	<b>1</b>
<b>Table of Contents</b>	<b>2</b>
<b>Background of the Ethics Reform Act</b>	<b>3</b>
<b>The Tennessee Ethics Commission</b>	<b>3</b>
<b>The Commission’s Official Website</b>	<b>6</b>
<b>Lobbyists and Employers of Lobbyists</b>	<b>7</b>
<b>Training, Education, and Outreach</b>	<b>12</b>
<b>Disclosure of Interests Statements</b>	<b>13</b>
<b>Advisory Opinions, Informal Responses and Rules</b>	<b>15</b>
<b>In-State Events</b>	<b>17</b>
<b>Recommendations for Legislative Changes</b>	<b>17</b>
<b>Appendix: Commission Members and Staff</b>	<b>19</b>

## **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 said that:

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 upon the passage of strong ethics legislation prior to 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 its final recommendations.

During the same time period, the General Assembly's Special Joint Committee on Ethics, 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 by Governor Bredesen on February 15, 2006.

## **THE TENNESSEE ETHICS COMMISSION**

The Act created an independent Ethics Commission. Among its many mandates, the Commission has the responsibility to:

- Promulgate rules and regulations (pursuant to the Uniform Administrative Procedures Act) to implement the provisions of the Act;
- Recommend "Guiding Principles of Ethical Conduct" for the General Assembly, the executive agencies, lobbyists, and employers of lobbyists;
- Receive complaints and conduct investigations, in conjunction with the Tennessee Attorney General's office;
- Compel the attendance of witnesses and the production of documents as needed to conduct its investigations;
- Conduct an annual ethics course for supervisory personnel of the executive branch; the General Assembly, and lobbyists;
- Provide an ethics manual for lobbyists and employers of lobbyists with the employer of the lobbyist, on its initial Lobbyist Registration Statement, being required to verify receipt of the manual;

- Collect and disseminate Disclosure of Interests Statements for the General Assembly, Governor, Governor's cabinet, the Constitutional Officers, other state officials, local elected officials and candidates and appointees to such positions;
- Provide public access to the documents and forms filed with the Commission to the extent financially and technologically practical; and
- Provide an annual report to the Governor and the General Assembly by February 1st concerning the administration and enforcement of laws under the jurisdiction of the Commission, including the necessity, or lack of necessity, for any additional action or additional legislation that will serve to further the purposes of the law.

The Commission is composed of six members: two appointed by the Governor; two appointed by the Speaker of the House of Representatives; and two appointed by the Speaker of the Senate. Each appointing authority must appoint one Republican and one Democrat. After initial staggered terms, members serve four-year terms. They may serve two consecutive terms. Biographies of the Commission members are provided in the Appendix to this report.

The Commission's jurisdiction was effective October 1, 2006. Thus, the Commission does not have jurisdiction to investigate or take action on any activities which occurred prior to October 1, 2006. The Commission has held public meetings on the following dates in 2008:

January 15

February 26

March 25

April 22

May 27

June 24

July 22

August 26

September 23

October 28

November 24 and 25; and

December 11

**SUMMARY OF MANDATES COMPLETED TO DATE:**

<b><u>Mandate:</u></b>	<b><u>Date to be Completed:</u></b>	<b><u>Result:</u></b>
Members attend training course provided by AG	Prior to appointment	Completed 7/27/06
Appoint executive director	No specific	Hired effective 9/1/06
Prepare Manual for Lobbyists	10/1/06	Completed/latest revision 10/2008
Lobbyist registration	10/1/06 and annually	Completed 500+ registered annually
Employer of Lobbyist registration	10/1/06 and annually	Completed 700+ registered annually
Develop forms for "complaints, registrations, statements, and other documents"	No specific	Completed/Posted 2006
"Make as many documents filed available for viewing on the Internet as is reasonable"	No specific	Completed 2006
Issue written advisory opinions	No specific	23 issued to date (several pending)
State officials disclosure of interests statements	1/31/07 and annually	Completed Approx 200 filed and posted annually
Local elected officials and candidates disclosure of interests statements	1/31/07 and annually	Completed 8000+ filed and posted annually
Rules Pertaining to Lobbyists and Employers of Lobbyists	No specific	Filed 2/07
Ethics training - Legislature	In Session	Completed 2007, 2008
Annual Report to Legislature/Governor	Annually by 2/1	Completed 2007, 2008
In-State Consulting Services Disclosure Report	2/1/07 - ongoing	Completed
Guiding Principles - Legislature	No specific	Completed 2007
Collection of names of supervisory personnel/executive agencies	Annually by 2/1	Completed 2007, 2008
Ethics training - State agencies	Annually	Completed 2007, 2008
Members/Gov. disclosure of interests statements	4/15/07 and annually	Completed 200+ filed and posted annually
Records Rules	No specific	Published
Ethics Training - Lobbyists	Annually	Completed 5 conducted in 2007; 5 conducted in 2008 (available for videoconferencing and archived)
Collect Local Codes of Conduct	6/30/07	Collected, names posted

<u>Mandate:</u>	<u>Date to be Completed:</u>	<u>Result:</u>
Guiding Principles - Lobbyists	No specific	Completed 2007
Random Audit of Lobbyists	Annually	11 Completed in 2007; 19 completed in 2008

### THE COMMISSION'S OFFICIAL WEBSITE

One of the most important tools for carrying out the Commission's mandate is to have an up-to-date website to: (1) educate the public about the Commission; (2) provide news and other important information to the public and regulated communities; (3) provide notice of Commission meetings and agenda; (4) provide an on-line tool for registering or filing electronically; and (5) permit the public to view documents, registrations, reports and disclosure statements filed with or issued by the Commission.

To further this end, the Commission, with the assistance of the Secretary of State's Office, continuously improves and expands the information available on the Commission's website, which includes the following:

1. A lobbyist registration portal by which lobbyists register and amend their registrations electronically. **In December 2007, a new registration portal was deployed by which both lobbyists and employers of lobbyist are required to register electronically and pay fees on-line by credit card. The new portal, called "ilobby," also has enhanced public search capabilities. In May 2008, employers of lobbyists also are required to electronically file semi-annual expenditure reports.**
2. A "forms" section where employers of lobbyists, members of the General Assembly, state and local elected officials, other state officials, and candidates and appointees to these positions can download the forms and instructions which the Act requires them to file.
3. A section where the public can see current year lobbyist and employer of lobbyist registration information, and employer of lobbyist expenditure reports;
4. A section where the public can view invitations sent by lobbyists and employers of lobbyists to all members of the General Assembly;
5. Advisory Opinions and Guidelines issued by the Commission;
6. The Act; and Rules issued by the Commission;
7. News from the Commission which is updated frequently;
8. Documents prepared by the Commission such as the Manual for Lobbyists and Employers of Lobbyists.
9. Biographies of the Commission members;
10. Disclosure of Interest Statements filed by local elected officials, certain state officials, members of the General Assembly, the Governor, Governor's cabinet, and the Constitutional Officers.
11. Commission meeting notices, agendas, and draft agenda items.
12. Non-compliant individuals and entities **including Enforcement Actions;**

13. **In 2008, the Commission made lobbyist training available by teleconference or by reviewing an archived training session available at the Commission's website.**
14. **In 2009, the Commission will have available from its website, web-based ethics training for supervisory personnel in the executive branch agencies.**

In addition, the Commission maintains a separate e-mail address (ethics.counsel@state.tn.us), which it routinely monitors, whereby any individual can pose a question to the Commission and receive a response. This e-mail address and the Commission's telephone number appear on its website.

## **LOBBYISTS AND EMPLOYERS OF LOBBYISTS**

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. Individuals and entities have the right to seek to persuade public officials to take positions beneficial to them. In the marketplace of ideas, a wide range of viewpoints will be aired. In exercising their right to influence public policy, organizations and 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.

### **1. REGISTRATION**

#### **A. LOBBYISTS**

Effective October 1, 2006, lobbyist registration moved from the Registry of Election Finance to the Commission. T.C.A. § 3-6-301(17) requires that : “[n]ot 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.”

In 2007, legislation was enacted that changed the registration year for lobbyists to January 1 through December 31. Previously, it had been October 1 through September 30.

The Act requires that the lobbyist's registration information include:

- His or her full contact information;

- A current photographic portrait, which must be submitted to the Commission within thirty (30) calendar days after registration;
- Identifying information concerning the lobbyist's employers;
- A registration fee (currently set by the Commission at \$150 per employer of the lobbyist); and
- **For the 2009 registration year, lobbyists are required to pay the \$40 mandatory training fee at the time of their first registration.**

The Commission, with the assistance of its electronic portal vendor, developed an on-line registration system for lobbyists whereby lobbyists are required to register over the web and pay their registration fee by credit card. For the 2008 registration year, 535 lobbyists registered with the Commission.

The Act further requires that registration statements be updated throughout the registration year if any event or circumstance occurs which renders the statement inaccurate or incomplete. This update must be completed within seven (7) days after the change in circumstances. Thus, if a lobbyist retains a new or additional employer, the lobbyist has seven (7) days to submit a new registration form and pay the annual registration fee.

#### **B. EMPLOYERS OF LOBBYISTS**

On October 1, 2006, employers of lobbyists having existing employment relationships with lobbyists had seven (7) days within which to register with the Commission. Prior to October 1, 2006, there was no registration requirement for employers of lobbyists. In 2007, employers of lobbyists registered by electronically downloading the registration form from the Commission's website, <http://state.tn.us/sos/tec/>, and either delivering or mailing the required form and fee directly to the Commission. **In 2008, employers of lobbyists registered electronically on the Commission's website.**

T.C.A. § 3-6-302(b)(1) requires the employer's registration statement to include:

- The employer's name, address, telephone number and email address<sup>1</sup>;
- The name and contact information of each lobbyist authorized to represent the employer; and
- Verification by the Employer that it has downloaded the Manual for Lobbyists and Employers of Lobbyists.

The Act further requires that registration statements be updated throughout the registration year if any event or circumstance occurs which renders the statement inaccurate or incomplete. This update must be completed within seven (7) days after the change in circumstances. Thus, 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.

---

<sup>1</sup> If the employer is a corporation or association, the names of the individuals performing the functions of chief executive officer and chief financial officer must also be listed.

For the 2008 registration year, approximately 700 employers of lobbyists registered with the Commission.

## 2. TRAINING

As part of the registration process, employers of lobbyists are required to certify that they have received or downloaded a copy of the Commission's Manual for Lobbyists and Employers of Lobbyists ("Manual") to their employers. To this end, the Commission developed and posted the Manual on its website prior to October 1, 2006. A **revised** Manual was posted on the Commission's website in **October 2008**.

The Act requires that all registered lobbyists take an annual ethics training course. Lobbyist ethics training was held on five occasions in 2008. **In addition, in 2008, lobbyist could view the ethics training by videoconference on the day of the training or review an archived version of the lobbyist training and certify that, in either case, they viewed the training in its entirety.**

## 3. EMPLOYER DISCLOSURE REPORTS

Under the Act, each employer of a lobbyist must file an Employer Disclosure Report disclosing certain expenditures for the preceding six-month period. The first report in 2008 was due **May 15, 2008**, for the six-month period ending March 31, 2008. The second report was due **November 14, 2008** for the six-month period ending September 30, 2008. In 2007, the forms for the reports were downloaded from the Commission's website (<http://state.tn.us/sos/tec/>) and either hand delivered or sent to the Commission's address. In 2007, all disclosure reports received by the Commission were scanned and posted on the Commission's website.<sup>2</sup> **Starting with the report due May 15, 2008, the reports were submitted electronically to the Commission and were immediately available for public inspection.**

The employer disclosure report consists of three (3) parts:

- Part 1: The aggregate total amount of compensation paid to lobbyists by the employer. The report is to be in monetary ranges from less than \$10,000 to \$400,000 or more;
- Part 2: 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 be disclosed in the first part of the report.) The report must also be filed in ranges from less than \$10,000 to \$400,000 or more, in the same manner as Part 1 of the report; and
- Part 3: The aggregate total amount of expenditures for events paid for by the employer to which the entire membership of the Tennessee General Assembly was invited.

---

<sup>2</sup> All required May 15, 2007 reports were eventually received by the Commission.

The following information is derived from the May 15, 2008 Semi-Annual Lobbying Expenditure Reports reflecting employer expenditures for the six-month period ending **March 31, 2008**.

**QUESTION 5: TOTAL AGGREGATE LOBBYIST COMPENSATION  
10/01/07 – 03/31/08**

	<b>LOW RANGE</b>	<b>HIGH RANGE</b>
< 10,000: 248	0	248 x 10,000 = 2,480,000
10,000–25,000: 200	200 x 10,000 = 2,000,000	200 x 25,000 = 5,000,000
25,000–50,000: 115	115 x 25,000 = 2,875,000	115 x 50,000 = 5,750,000
50,000– 100,000: 56	56 x 50,000 = 2,800,000	56 x 100,000 = 5,600,000
100,000–150,000: 6	6 x 100,000 = 600,000	6 x 150,000 = 900,000
150,000–200,000: 3	3 x 150,000 = 450,000	3 x 200,000 = 600,000
200,000-250,000: 1	1 x 200,000 = 200,000	1 x 250,000 = 250,000
250,000-300,000: 2	2 x 250,000 = 500,000	2 x 300,000 = 600,000
300,000-350,000: 1	1 x 300,000 = 300,000	1 x 350,000 = 350,000
350,000-400,000: 1	1 x 350,000 = 350,000	1 x 400,000 = 400,000
400,000 OR MORE: 0	0	0
<b>TOTAL</b>	<b>\$10,075,000</b>	<b>\$21,930,000</b>

**QUESTION 7: LOBBYING RELATED EXPENDITURES  
10/01/07 – 03/31/08**

	<b>LOW RANGE</b>	<b>HIGH RANGE</b>
NONE: 1		
< 10,000: 585	0	585 x 10,000 = 5,850,000
10,000-25,000: 34	34 x 10,000 = 340,000	34 x 25,000 = 850,000
25,000-50,000: 7	7 x 25,000 = 175,000	7 x 50,000 = 350,000
50,000-100,000: 1	1 x 50,000 = 50,000	1 x 100,000 = 100,000
100,000-150,000: 1	1 x 100,000 = 100,000	1 x 150,000 = 150,000
150,000-200,000: 0	0	0
200,000-250,000: 1	1 x 200,000 = 200,000	1 x 250,000 = 250,000
250,000-300,000: 0	0	0
300,000-350,000: 0	0	0
350,000-400,000: 0	0	0
400,000 OR MORE: 3	5,400,000	5,400,000
<b>TOTAL</b>	<b>\$6,265,000</b>	<b>\$12,950,000</b>

The following information is derived from the November 14, 2008 Semi-Annual Lobbying Expenditure Reports reflecting employer expenditures for the six-month period ending **September 30, 2008**.<sup>3</sup>

**QUESTION 5: TOTAL AGGREGATE LOBBYIST COMPENSATION  
04/01/08 – 09/30/08**

	<b>LOW RANGE</b>	<b>HIGH RANGE</b>
NONE: 3		
< 10,000: 261	0	261 x 10,000 = 2,610,000
10,000-25,000: 206	206 x 10,000 = 2,060,000	206 x 25,000 = 5,150,000
25,000-50,000: 136	136 x 25,000 = 3,400,000	136 x 50,000 = 6,800,000
50,000-100,000: 43	43 x 50,000 = 2,150,000	43 x 100,000 = 4,300,000
100,000-150,000: 9	9 x 100,000 = 900,000	9 x 150,000 = 1,350,000
150,000-200,000: 3	3 x 150,000 = 450,000	3 x 200,000 = 600,000
200,000-250,000: 2	2 x 200,000 = 400,000	2 x 250,000 = 500,000
250,000-300,000: 1	1 x 250,000 = 250,000	1 x 300,000 = 300,000
300,000-350,000: 1	1 x 300,000 = 300,000	1 x 350,000 = 350,000
350,000-400,000: 1	1 x 350,000 = 350,000	1 x 400,000 = 400,000
400,000 OR MORE: 0	0	0
<b>TOTAL</b>	<b>\$10,260,000</b>	<b>\$22,360,000</b>

**QUESTION 7: LOBBYING RELATED EXPENDITURES  
04/01/08 – 09/30/08**

	<b>LOW RANGE</b>	<b>HIGH RANGE</b>
NONE: 0		
< 10,000: 621	0	621 x 10,000 = 6,210,000
10,000-25,000: 22	22 x 10,000 = 220,000	22 x 25,000 = 550,000
25,000-50,000: 10	10 x 25,000 = 250,000	10 x 50,000 = 500,000
50,000-100,000: 1	1 x 50,000 = 50,000	1 x 100,000 = 100,000
100,000-150,000: 2	2 x 100,000 = 200,000	2 x 150,000 = 300,000
150,000-200,000: 0	0	0
200,000-250,000: 1	1 x 200,000 = 200,000	1 x 250,000 = 250,000
250,000-300,000: 0	0	0
300,000-350,000: 0	0	0
350,000-400,000: 0	0	0
400,000 OR MORE: 2	1,500,000	1,500,000
<b>TOTAL:</b>	<b>\$2,420,000</b>	<b>\$9,410,000</b>

<sup>3</sup> The information is not complete as several employers are in non-compliance by not submitting the November 15, 2008 report.

#### **4. AUDITING ACTIVITIES**

A 2008 amendment to the Act provides that the Commission may not perform audits of more than (4%) of lobbyist registrations and reports. At its public meeting of June 24, 2008, nineteen (19) lobbyists were selected for random audit in the following order:

Jane Fabian  
Rose Cox  
Garrett Wagley  
Nick Pavlis  
Larry “Mike” Williams  
David Seivers  
Holly McDaniel  
Steve Bivens  
Andrew Hackman  
Thomas Blalack  
Tommy Haun  
Michael Butler  
Billy West  
James Hamilton  
Ron Taylor  
Steve Adams  
Charles D. Welch, Jr.  
Fred Congdon  
Brad Lampley

The Commission made several changes designed to improve the random audit process in 2008. First, Commission staff asked for key information and documents in advance of the interview, so that the lobbyist would not have to spend time waiting in the office while the documents were reviewed. Second, based on feedback received during the audits, Commission staff made arrangements which will permit lobbyists to avoid having to have separate photographs made for the Commission and for the Lobbyist Identification Badge. The photographer for the badge can, at the lobbyist’s request, forward a digital copy to the Commission at [ethics.pics@state.tn.us](mailto:ethics.pics@state.tn.us). Third, Commission staff revised the Lobbyist Random Audit guidelines to address compliance issues that were encountered during the audits.

#### **Training, Education and Outreach**

Pursuant to the Act, the Commission must conduct various ethics training for members of the General Assembly, state officials, and lobbyists.<sup>4</sup> In addition, and in furtherance of its public mission, the Commission is obligated to conduct education programs and outreach whenever possible.

---

<sup>4</sup> See above for more information about mandatory Lobbyist training.

The members of the General Assembly must attend annually an ethics training class “when the Legislature is in session.” In 2008, the training of members of the House of Representatives took place on January 9, 2008; Senate training occurred on January 10, 2008.

By February 1<sup>st</sup> of each year, all executive agencies must provide the Commission a list of their senior managers for purposes of scheduling ethics training.

In 2008, the Commission conducted training for the supervisory employees of the following agencies: Department of Education 08/25/08, Tennessee Health Services & Development Agency 08/18/08, Department of Financial Institutions 08/07/08, Department of Military 07/28/08, Department of Environment & Conservation 07/24/08, Department of Mental Retardation 07/21/08, Bureau of TennCare 07/16/08, Department of Children’s Services 07/14/08, Tennessee Higher Education Commission 07/10/08, Department of Revenue 07/11/08, Department of General Services 07/08/08, Department of Safety 06/30/08, TN Board of Probation and Parole 06/25/08, TN Student Assistance Corp. 06/26/08, Secretary of State 06/27/08, Department of Mental Health 06/23/08, Department of Economic & Community Development 06/20/08, Department of Finance & Administration 06/16/08, Department of Human Services 06/13/08, Department of Mental Health 06/09/08, Department of Commerce & Insurance 06/06/08, Department of Treasury 05/28/08, Department of Transportation 05/29/08, TN Department of Military 05/21/08, Department of Safety 05/20/08, Tennessee Bureau of Investigation 05/19/08, Dept. of Mental Health & Developmental Disabilities 05/12/08, Tricor 05/13/08, Department of Tourist Development 05/06/08, TN Commission on Children & Youth 05/05/08, Tennessee Human Rights Commission 04/29/08, Office of the Governor 04/11/08, Tennessee Wildlife Resources Agency 04/07/08, Department of Health 04/07/08, Tennessee Advisory Commission 03/14/08 and the Department of Human Resources 01/28/08.

The Executive Director, the General Counsel, and the Assistant General Counsel attended the 2008 annual conference of the Council of Government Ethics Law (“COGEL”) in Chicago. The Executive Director was a panelist on a session entitled “Conflict of Interest in University Research.” **In 2011, the international COGEL Conference will be held in Nashville.** In addition, the Executive Director was a speaker at the Society of Corporate Compliance and Ethics 6<sup>th</sup> Conference for Effective Compliance Systems in Higher Education in Austin, TX in June 2008.

#### **DISCLOSURE OF INTERESTS STATEMENTS**

The Act brought many significant changes to the process by which certain state and local elected officials file their public disclosure statements. In 2007, filers submitted paper statements to the Commission and the forms were either scanned and posted or put into a database which was posted on the Commission’s website. **In 2008, disclosure of interests statements could be electronically filed with the Commission.**

**Approximately 80% of all required filers did so electronically.** Paper forms were transferred by the Commission into an electronic format.

**1. MEMBERS OF THE GENERAL ASSEMBLY, GOVERNOR, GOVERNOR’S CABINET, CONSTITUTIONAL OFFICERS, AND CANDIDATES AND APPOINTEES TO THOSE POSITIONS**

This group was required to submit a lengthy Disclosure of Interests Statement no later than April 15, 2008. All required statements were timely received by the Commission. These disclosure statements must, by law, be posted on the Commission’s website. To this end, the Commission posted on its website all of the disclosure statements of this group.

**2. OTHER STATE OFFICIALS**

Approximately 150 state officials were required to submit a short version Disclosure of Interest Statement with the Commission no later than January 31, 2008. This group includes Justices of the Tennessee Supreme Court, Judges of the Court of Appeals and Court of Criminal Appeals, the Attorney General, District Attorneys, Public Defenders, the President of the University of Tennessee, chancellors of the University of Tennessee campuses, the Chancellor of the Board of Regents, presidents of the colleges and universities administered by the Board of Regents, members of the Board of Probation and Parole, the Alcoholic Beverage Commission, the Registration of Election Finance, the State Election Commission, the Tennessee Ethics Commission, and the State Election Coordinator and the Executive Director of the Tennessee Ethics Commission. With the exception of one disclosure statement, these statements were timely received and information made available on the Commission’s website for public review.

**3. LOCAL ELECTED OFFICIALS**

Pursuant to the Act, all local elected officials, and candidates and appointees to those positions, must submit a short version financial disclosure form no later than January 31, 2008. Candidates have 30 days from the last day they qualify for election by which to file; appointees have 30 days from the date of their appointment by which to file. Prior to the Act, local officials were required to file the disclosure statement with their county election commission. In requiring that the forms be filed with the Ethics Commission, the Legislature sought to make certain that the filing requirements were consistently being adhered to across the state and that there be a centralized repository for those forms.

Meeting this mandate was no small feat for the Commission and entails constant contact with the county election commissioners in all of the state’s 95 counties requesting names of office holders, candidates, and their current addresses. **In 2008, approximately 8000 local elected officials and candidates were required to, and completed disclosure of interests statements which are available to the public for viewing on the Commission’s website.**

## FORMAL ADVISORY OPINIONS

In 2008, the Commission issued the following advisory opinions:

- Advisory Opinion 08-09 Whether members of the Tennessee Commission on Uniform Legislation are “officials in the legislative branch” as defined by T.C.A. § 3-6-301(20), and if so whether persons communicating with such members for compensation for the purpose of influencing legislative action or administrative action are engaged in “lobbying” as defined in T.C.A. § 3-6-301(15) and must therefore register as lobbyists as required by T.C.A. § 3-6-302.
- Advisory Opinion 08-08 Interpretation of T.C.A. §§ 3-6-305(b)(2),(b)(4) and (b)(7) with respect to whether State Officials may attend a conference partially funded by employers of lobbyists, and accept free materials and promotional items provided by the employers of lobbyists in connection with the conference.
- Advisory Opinion 08-07 Interpretation of T.C.A. §§ 3-6-117 with regard to whether requests for informal responses are confidential, and whether the responses are public records.
- Advisory Opinion 08-06 Interpretation of T.C.A. § 3-6-301(11) with respect to whether an official in the executive branch whose registration fee for a conference or educational seminar is waived by an employer of a lobbyist may receive refreshments incidental to the conference or educational seminar if these refreshments are included in the registration fee.
- Advisory Opinion 08-05 Interpretation of T.C.A. §§ 3-6-301 and 3-6-305 with respect to whether the Ethics Reform Act permits an employer of a lobbyist to provide, and a general assembly member to receive, benefits provided in connection with a reception for Tennessee delegates at a national party convention.
- Advisory Opinion 08-04, Part II Interpretation T.C.A. §§ 3-6-305(b) with regard to whether any of the exceptions to the gift ban contained therein allow state officials who are members of a non-profit organization to solicit contributions from employers of lobbyists for the purpose of supporting a conference of state government officials.
- Advisory Opinion 08-04, Part I Whether T.C.A. § 3-6-305(a)(2), places restrictions on various fundraising activities of a professional association whose membership includes state officials, or upon the participation of those state officials in such activities.
- Advisory Opinion 08-03 Interpretation of T.C.A. § 3-6-305 with respect to whether the Act prohibits an employer of a lobbyist from paying the expenses of a “politically active” stroke survivor who is also an official in the executive branch to travel to Washington, D.C. to participate in an annual “Lobby Day.”

Advisory Opinion 08-02 Interpretation of T.C.A. § 3-6-301(8) with respect to acceptance of an award, reimbursement of expenses and an honorarium from a national professional organization

Advisory Opinion 08-01 Interpretation of T.C.A. § 3-6-305 with respect to an employer of a lobbyist providing commemorative bottles of wine and glasses to members of the Legislature in connection with an all-legislative and in-state event.

### **INFORMAL RESPONSES**

**In May 2008**, T.C.A. § 3-6-117 was amended and provides that the Commission attorneys and the executive director are authorized to issue informal responses to any person subject to the jurisdiction of the Commission. Since passage of the amendment, there have been 87 informal responses with the average response time to a request to be (2) two days.

### **RULES**

The Commission amended the following sets of existent Rules in 2008:

- 0580-01-01 Rules Pertaining to Lobbyists and Employers of Lobbyists
- 0580-01-02 Rules Pertaining to Access to Public Record of the Tennessee Ethics Commission

The Commission approved the following sets of new Rules in 2008.

- 0580-01-03 Rules Pertaining to Complaint Proceedings
- 0580-01-04 Rules Pertaining to Penalty Assessment Procedures
- 0580-01-05 Rules Pertaining to Prohibited Conduct
- 0580-01-06 Rules Pertaining to Filing of Disclosure of Interests Statements

### **ENFORCEMENT ACTIONS**

During calendar year 2008, the Tennessee Ethics Commission imposed administrative sanctions on twenty-five (25) local elected officials and candidates for statewide elected office for late filing of their disclosure of interest statements. Of the twenty-six (26) fines, one was vacated by the Commission and three (3) were paid for a total of \$550.00.

Of the remaining cases, three (3) have been referred to the Attorney General for collection and the remainder is still pending.

For information about all of the Commission's Enforcement Orders, please see <http://state.tn.us/sos/tec/EnforcementOrders.htm>

## COMPLAINTS

The Commission has found no probable cause as a result of one complaint referred to the Office of the Attorney General and Reporter for investigation. *In re* complaint number 07-04, filed on March 14, 2007: the Commission gave notice that formerly confidential records of proceedings in this matter had become public as of June 23, 2008 pursuant to T.C.A. § 3-6-202(a)(1)(C)(ii).

## INCREASE IN GIFT THRESHOLD AMOUNT

Pursuant to T.C.A. § 3-6-305, the gift limitation (originally \$50) shall be increased to the nearest dollar amount to reflect the percentage change in the average consumer price index (“CPI”) as published by the United States Department of Labor every odd year starting in 2007. In 2007, the CPI increased by 1.6%. **Therefore, for 2008, the gift limitation was increased to \$51.**

## IN-STATE EVENTS

Pursuant to T.C.A. § 3-6-305, one exception to the gift provision is for in-state events sponsored by lobbyists or employers of lobbyists for which invitations are extended to all members of the General Assembly provided that the Commission receives a copy of the invitation at least seven days prior to the event and that the sponsor reports within 30 days following the vents that the cost was less than \$51 per person. In 2008 as in 2007, the Commission posted all such invitations and reports that it received (See <http://tnsos.org/tec/events.php?year=2008>.) For 2008, the total cost of such in-site events was approximately \$ 520,508.

## RECOMMENDATIONS FOR LEGISLATIVE CHANGES

The Commission made several recommendations to the Special Joint Study Committee on Ethics which met during the 2008 legislative session. These recommendations were: (1) ensuring that county election commissions provide contact information to enable the Commission to notify candidates and office holders of the financial disclosure requirements under the Act; (2) creating a sanction for lobbyists who fail to attend the required training; and (3) consolidating and simplifying the in-state event exceptions to the gift ban.

In addition, there are several issues of legislative intent and interpretation of the Act for which the Commission hopes to receive direction from the Legislature. One concern is whether, when the Commission receives a complaint about a late filing of a statement of disclosure of interests, the matter must be referred to the Attorney General under T.C.A. 3-6-203 or should the Commission resolve administratively under the penalty provisions of T.C.A. 3-6-205. The second issue is whether a lobbyist, who also serves as a treasurer

of a political action committee, may sign campaign contribution checks from the political action committee to legislative officials and candidates. The third issue is whether an executive official who serves as a board member of an association of government accountability professionals may solicit employers of lobbyists for contributions to be made for the benefit of the association.

## **APPENDIX**

### **1. COMMISSION MEMBERS**

#### **R. Larry Brown, Chair**

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

The Jackson, Tennessee native earned his bachelor's degree from Lane College in Jackson, Tennessee 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 serving as an Assistant U.S. Attorney, Western District of Tennessee for five years and being a supervisory trial attorney for the EEOC for two years.

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 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 Democrat representative.

#### **Donald J. Hall (until December 31, 2008)**

Donald J. Hall is a celebrated teacher, who has served on the Vanderbilt Law School faculty since 1970. Professor Hall is the inaugural holder of the Vanderbilt University Chair for Teaching Excellence. His teaching and scholarship focus on criminal law and procedure, particularly victims' rights in the criminal process. His casebook on criminal procedure is widely used in American law schools. Active in Tennessee criminal justice issues, he has served as co-chair of the Tennessee Commission on Gender Fairness, was the reporter for the state's pattern jury instructions in criminal cases, and, while a member

of the Tennessee Sentencing Commission, helped to shape the state's revised penal code. Professor Hall is currently serving as the appointee of Tennessee Gov. Phil Bredesen on the state Ethics Commission, having previously served as a member of the Governor's Commission on Juvenile Justice Reform and on the Governor's Task Force on the Use of Enhancement Factors in Criminal Sentencing.

Mr. Hall was appointed by the Governor as a Democratic representative.

**Thomas J. Garland (until December 31, 2008)**

Thomas J. Garland was born in Kingsport, TN in 1934. He was educated in the Kingsport and Oak Ridge school systems and served in the United States Air Force from 1952-56. He graduated from East Tennessee State University with a B.A. degree in 1959 and received the Outstanding Alumnus Award in 1973. His careers in business, education, and government include: Chairman of the Board of Commerce Union Bank (now Bank of America), Greeneville, TN; Chancellor of the Tennessee Board of Regents; Interim President of Tusculum College, where he served as a member of the Board of Trustees and is the immediate past Chairman of the Board. He holds an Honorary Doctor of Law and was awarded the Distinguished Service Award by Tusculum College. He served in the Tennessee Senate from 1964-85, seventeen years as Senate Minority Leader. He also served on numerous civic and corporate boards and currently serves as senior advisor to the Niswonger Foundation, Chairman of the Tusculum Institute for Public Leadership and Policy, and is a director of Atmos Energy Corporation.

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

**Linda W. Knight**

Linda Whitlow Knight is a native of Jackson, Tennessee, where she attended public schools. After attending Sweet Briar College for two years, Linda 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, Linda moved to Nashville in 1980. She served as law clerk to former Supreme Court Justice Frank F. Drowota, and then 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 six terms as Treasurer, of TLAW and as a Board member of LAW. She was Secretary of the Nashville Bar Association in 2006, and has served on and chaired several committees. Linda 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.

Linda 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. She has been a Board member of the Nashville Women's Political Caucus.

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

### **Dianne F. Neal**

Dianne Neal has been a lawyer in State government since 1988, beginning as counsel in the Grubbs prison litigation case which led to her appointment as General Counsel to the Tennessee Department of Correction. Subsequently, Dianne became Chief Legal Counsel to Governor Ned McWherter. At the end of the McWherter administration, Dianne was named General Counsel to the Public Service Commission and remained as General Counsel to the Tennessee Regulatory Authority until 1997. In this role, Dianne appeared on behalf of the Authority before trial and appellate courts as well as legislative committees. She established the administrative procedures for the Authority to apply pursuant to the 1996 deregulation of telecommunications enacted by the General Assembly.

Dianne left state government to become President and CEO of the Cumberland Science Museum, now Adventure Science Center, leading an eighteen-month transition to streamline operations and foster board development.

Throughout her career, Dianne has served on the boards of civic organizations, locally and nationally. Dianne served on the Metropolitan Nashville Arts Commission for six years, two as Chairman. Dianne is a founding member of the Nashville Sports Council, one year as Chair, and continues to participate on the Executive Committee. In 2005, Dianne was appointed to the Tennessee State Museum Foundation Board by Governor Bredesen.

Additionally, Dianne sits on the boards of the Belle Meade Plantation, the Habitat for Humanity and the Women's Fund of the Community Foundation, and the Tennessee Breast Cancer Coalition. From 1998 to 2002, Dianne was a member of the President's Circle of the National Academy of Sciences.

A graduate of the Vanderbilt University School of Law, Dianne received a B.A. from Baylor University and an M.A. from Tulane University.

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

### **Benjamin S. Purser, Jr. (until December 31, 2008)**

Mr. Purser is Executive Vice-President and Chief Compliance Officer with the Sommet Group headquartered in Franklin, TN. He is a retired FBI executive with over twenty-nine years of diverse and unique government experiences and eight years in the corporate world identifying risks and providing solutions to those risks. Mr. Purser supervised all FBI operations and personnel in Middle Tennessee from 1981 until late 1998. He was appointed to a Management Advisory Committee by the Director of the FBI. The committee of nine FBI executives provided Counsel to the Director regarding all FBI policies, procedures, and operations. He supervised an extremely sensitive and complex public corruption investigation focusing on wrongdoing by State officials (code name Rocky Top). He managed a national health care fraud investigation for a three year period.

Mr. Purser is originally from Dayton, TN. He attended the University of Tennessee at Knoxville and graduated from William Jennings Bryan College in 1968 with a Bachelor of Science in Business Administration.

During his time in Middle Tennessee, Mr. Purser served on the boards of several non-profit organizations and is a member of the Nashville Rotary Club.

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

## **2. COMMISSION STAFF**

### **Bruce A. Androphy, Executive Director**

Mr. Androphy is the Executive Director of the independent Tennessee Ethics Commission which was created by the Ethics Reform Act of 2006 in response to the “Tennessee Waltz” scandal and which commenced operations on October 1, 2006. He 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 the Council on Government Ethics Laws (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.

### **Rebecca Bradley, Executive Assistant**

A Nashville native, Ms. Bradley has more than 27 years of administrative and office management experience. Ms. Bradley has worked in the private sector and Metro Nashville for more than ten years and seventeen years with the State of Tennessee. She served in the Department of Health, State Supreme Court, Tennessee State Senate, and the Department of Commerce and Insurance before joining the Ethics Commission.

### **David Himmelreich, General Counsel**

Mr. Himmelreich has been General Counsel since January, 2008. He is a career state lawyer, having previously served in three other agencies during his twenty-nine year legal career. These agencies include the Medicaid Fraud Control Unit of the Tennessee Bureau of Investigation, where Mr. Himmelreich was responsible for working with other states and the Attorney General on multi-state investigations of Medicaid provider fraud, the Tennessee Office of Inspector General, where he helped develop a program for criminal and civil prosecution of Medicaid recipient fraud, and the Office of the Attorney General and Reporter, where he tried white collar crime cases and various civil cases to juries in state and federal court, handled criminal and civil appeals, drafted opinions, reviewed agency rules, and represented state agencies in many different types of 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 on this subject as well as on trial advocacy. He has completed National Institute of Trial Advocacy courses in advanced trial advocacy and in teaching trial advocacy, and is certified by the Institute as an instructor. He participated for many years as a faculty member in the Attorney General's trial advocacy training program.

### **Willow E. Perkins, Assistant General Counsel**

Ms. Perkins became Assistant General Counsel effective February 7, 2008. As Assistant General Counsel, Ms. Perkins aids the General Counsel in giving the Commission the independent legal advice, drafting advisory opinions and rules, assisting in administrative enforcement actions, and communicating with the Attorney General's office, legislators, employers of lobbyists, lobbyists, state employees, officials, and the general public. Ms. Perkins graduated summa cum laude from the University of Tennessee, Knoxville 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, drafted motions and memoranda, and conducted bench trials, jury trials, and hearings on behalf of indigent persons accused of crimes. During a substantial portion of her tenure as

Assistant Public Defender, Ms. Perkins trained new attorneys to become effective criminal defense attorneys.

**Barry F. Woody, Ethics Compliance Officer**

Barry F. Woody is a native of Columbia, Tennessee and has resided in the Nashville area since 1972. Mr. Woody served for twenty-four years with the Tennessee Division of Consumer Affairs where he assisted thousands of consumers with a multitude of consumer issues and problems. He served as Assistant Director of the Division of almost of half of his time in the Division. Mr. Woody accepted the position of Executive Director of the Tennessee Motor Vehicle Commission in 2004 and supervised a staff that regulated twenty thousand licensees across the State.

Mr. Woody graduated from Columbia State Community College in 1971 and Middle Tennessee State University in 1973 with a BS in Political Science.

**Swigah Mwakipake, Ethics Compliance Officer**

Ms. Swigah Mwakipake joined the Commission on December 1, 2008 as an Ethics Compliance Officer. In this capacity, Ms. Mwakipake assists the Executive Director and the General Counsel in drafting and preparing various legal documents such as Assessment Orders, audit reports, demand letters, and preparing case referrals to the Attorney General.

Ms. Mwakipake is a graduate of Indiana University - Bloomington School of Law, and she also has a bachelor's of laws degree from Makerere University in Uganda.

Prior to joining the Ethics Commission, Ms. Mwakipake worked with the Office of Inspector General as the Lead Legal Assistant for three (3) years where she assisted and participated in TennCare fraud investigation and prosecution, administrative hearings, research, trial preparation, drafting and reviewing of agency contracts, assist in drafting and promulgation of agency rules, myriads of legal documents, and supervised other legal support staff.

Ms. Mwakipake has also worked as a state attorney with the Justice Department in her native country, Tanzania.

**Stephen Copeland, Assistant Compliance Officer**

Stephen Copeland is a native of Huntsville, Alabama but spent a major portion of his life in San Diego, California. Mr. Copeland moved to the Tennessee area in the mid 90's and has since worked in the Healthcare Information Systems area in various capacities. Mr. Copeland started with the State of Tennessee in 2008 and comes to the Commission from the Downtown District of the YMCA where he served as Membership & Program Coordinator. Mr. Copeland is an accomplished musician and is also very active doing community outreach for various organizations in Nashville and its surrounding areas.

**Judy Bennett, Administrative Assistant**

Ms. Bennett is a resident of Clarksville and has worked for the Secretary of State's Office for 6 years, first in General Services, and then in the Summons Division and now the Ethics Commission. She is a member of the Native Cultural Circle of Clarksville, TN, a local Native American organization, and is a budding wire sculptor, using copper, sterling silver as well as brass.