



Report of Random Audit of Lobbyist David Seivers

January 26, 2009

Introduction

Registered lobbyist David Seivers 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. Seivers provide certain audit-related information in advance of scheduling an audit interview. Mr. Seivers provided the requested information and participated in an audit interview that was held by mutual agreement on July 30, 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. Seivers and his employer registered timely.
2. Mr. Seivers' employment agreement complies with the prohibition against paying fees contingent on lobbying success.
3. The method used to determine the portion of Mr. Seivers' compensation that is attributable to lobbying is reasonable, and the amount of compensation reported by his employer is consistent with compensation paid to Mr. Seivers and other lobbyists engaged by his employer.
4. Mr. Seivers paid for and attended the 2008 annual training timely.
5. Mr. Seivers and his employer participated in one (1) all-legislature in-state event in 2008, and the event complied with the requirements examined in the audit.

Details regarding some or all of these conclusions follow.

AUDIT CONCLUSIONS

- 1. Mr. Seivers and his employer registered timely.**
- 2. Mr. Seivers' employment agreement complies with the prohibition against paying fees contingent on lobbying success.**
- 3. The method used to determine the portion of Mr. Seivers' compensation that is attributable to lobbying is reasonable, and the amount of compensation reported by his employer is consistent with compensation paid to Mr. Seivers and other lobbyists engaged by his employer.**

Each employer of a lobbyist is required to report, by range of expenditures, "the aggregate total amount of lobbyist compensation paid by the employer"¹ for every six (6) month period.² The Act contemplates that the ranges reported will be checked against the information obtained from lobbyists during random audits.³ The random audit interview

¹ Tenn. Code Ann. § 3-6-303(a)(1).

² The registration year commences on January 1, whereas the expenditure reporting periods are October 1—March 31 and April 1—September 30.

³ 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).

dealt with the most recent period for which expenditure reports were then on file: October 1, 2007 through March 31, 2008.

Mr. Seivers is employed as Executive Director of the Tennessee County Services Association (TCSA). The Act requires that TCSA determine what portion of his compensation is attributable to lobbying. The Act provides that “[f]or 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.” Tenn. Code Ann. § 3-6-303(a)(1).

Mr. Seivers provided minutes of a meeting of TCAS’s Board of Directors showing that the Board expects Mr. Seivers to spend forty two percent (42%) or less of his time on lobbying. This apportionment of time appears reasonable in light of the employment agreement and other information provided in connection with the audit.

In addition to Mr. Seivers, TCSA also employed several other lobbyists during the period in question. TCSA reported total aggregate lobbyist compensation for this six month period as at least fifty thousand dollars (\$50,000) but less than one hundred thousand (\$100,000) dollars.⁴ When the sum of the amounts paid to other lobbyists is added to one-half of forty-two percent (42%) of Mr. Seivers’ annual compensation,⁵ the result is within the reported range.

- 4. Mr. Seivers paid for and attended the 2008 annual training timely.**
- 5. Mr. Seivers and his employer participated in one (1) all-legislature in-state event in 2008, and the event complied with the requirements examined in the audit.**


The Act provides that entertainment, food, refreshments, meals, beverages, or health screenings that are provided in connection to 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.

⁴ Tenn. Code Ann. § 3-6-303(a)(1)(D).

⁵ The specific amounts of Mr. Seivers’ salary and the compensation paid to other lobbyists by TCSA are confidential random audit information and are 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).

Mr. Seivers participated in an event held by his employer and another employer on April 9, 2008. The invitation was filed on March 19, 2008. A cost report was filed on April 17, 2008, reflecting a per person cost of seventeen dollars and ninety-five cents (\$17.95). The documents provided by Mr. Seivers confirm that the cost of the event was under the fifty-one dollar (\$51) per person maximum.

Report completed by:



David M. Himmelreich
General Counsel
Tennessee Ethics Commission