



## Via Email and First Class Mail

April 13, 2009

Robert Mulle, Esq.  
Pennsylvania Office of Attorney General  
c/o Lobbying Disclosure Regulations Committee  
16th Floor, Strawberry Square  
Harrisburg, PA 17120

Dear Deputy Attorney General Mulle:

In accordance with requests made by the Lobbying Disclosure Regulations Committee (“Committee”) for input from the regulated community as to what matters should be addressed in the upcoming Lobbying Disclosure Manual (“Manual”), the Pennsylvania Association for Government Relations (“PAGR”) is providing the Committee with the following suggestions:

- 1. The phrase “in connection with” found in Paragraph (ii) to the definition of “effort to influence legislative action or administrative action” in Section 51.1 of the Lobbying Disclosure Regulations is not sufficiently clear and needs to be clarified by the Committee in the Manual.**

Paragraph (ii) to the definition of “effort to influence legislative action or administrative action” found in Section 51.1 of the Lobbying Disclosure Regulations (“Regulations”) (“Paragraph (ii)”) states as follows:

Any attempt to initiate, support, promote, modify, oppose, delay or advance a legislative action or administrative action on behalf of a principal for economic consideration. ~~The term includes any of the following:~~

(ii) Monitoring of legislation, monitoring of legislative action or monitoring of administrative action is not lobbying. However, for an individual or entity that is not exempt, the costs of monitoring are subject to the reporting requirements of the act when the monitoring occurs in connection with activity that constitutes lobbying. (Emphasis added.)

Although Paragraph (ii) clearly states that monitoring alone does not constitute “lobbying,” the phrase “in connection with” is ambiguous and subject to multiple interpretations by principals, lobbyists and lobbying firms as to how the costs of monitoring are to be properly allocated when monitoring occurs in connection with lobbying activity.

The present ambiguity of Paragraph (ii) can be summarized in the following two hypothetical situations:

1. Lobbyist X represents Principal A before the Pennsylvania General Assembly. It is Lobbyist X’s responsibility to keep Principal A informed of all legislation introduced and considered by the General Assembly in the area of agriculture. It is also Lobbyist X’s responsibility to advocate for the passage or defeat of legislation in those instances where a particular bill would affect Principal A’s interests.

For the first six months of the legislative session, Lobbyist X attends all House and Senate Agriculture Committee meetings and monitors 50 bills that have been considered by these committees without advocating the passage or defeat of any of these bills. Lobbyist X keeps Principal A informed of the status of these bills. Eventually, HB 001 comes before the House Agriculture Committee and the language of this particular bill is damaging to Principal A’s interests. After being informed by Lobbyist X that HB 001 has been voted out of the House Agriculture Committee, Principal A instructs Lobbyist X to defeat the passage of this bill when it is considered before the full House. Lobbyist X then visits various House Members’ offices actively advocating the defeat of HB 001 and also contacts Principal A’s members to engage in a letter-writing campaign opposing HB 001. Lobbyist X attends the full House session to monitor HB 001 where it is soundly defeated.

After reviewing this fact pattern, two possible interpretations of Paragraph (ii) could be deduced as to what specific costs of monitoring are to be reported by Lobbyist X:

A. Lobbyist X must report the costs of monitoring HB 001 as well as the 50 prior bills that had been considered by the House and Senate Agriculture Committees because, according to Paragraph (ii), the monitoring of all these bills occurred *in connection with activity that later constituted lobbying*.

OR

B. Lobbyist X must report the costs of monitoring HB 001 only and not the 50 prior bills that had been considered by the House

and Senate Agriculture Committees because only the monitoring of HB 001 occurred *in connection with activity that later constituted lobbying*.

2. Lobbyist Y represents Principals C, D, and E before the Pennsylvania General Assembly. It is Lobbyist Y's responsibility to keep Principals C, D and E informed of all legislation introduced and considered by the General Assembly in the areas transportation, labor and telecommunications, respectively. It is also Lobbyist Y's responsibility to advocate for the passage or defeat of legislation in those instances where a particular bill would affect the interests of Principals C, D and E.

For the first six months of the legislative session, Lobbyist Y monitors 60 bills for each respective Principal (total of 180 bills) that have been considered by the General Assembly without advocating the passage or defeat of any of these bills. Lobbyist Y keeps Principals C, D and E informed of the status of these bills. Eventually, SB 002 comes before the Senate Communications and Technology Committee and the language of this particular bill is favorable to Principal E's telecommunications interests and potentially has favorable impacts to Principal D's labor interests. After being informed by Lobbyist Y that SB 002 has been voted out of the Senate Communications and Technology Committee, Principal E instructs Lobbyist Y to work for the passage of this bill while Principal D instructs Lobbyist Y to continue to monitor SB 002. Lobbyist Y then visits various Senate Members' offices actively advocating for the passage of SB 002 and also contacts Principal E's members to engage in a letter-writing campaign supporting SB 002. Lobbyist Y attends the full Senate session to monitor SB 002 where it is passed and sent to the House for its consideration. Lobbyist Y continues to monitor SB 002 for Principal D while simultaneously advocating for the passage of SB 002 on behalf of Principal E before the House. SB 002 is eventually enacted into law.

After reviewing this fact pattern, three possible interpretations of Paragraph (ii) could be deduced as to what specific costs of monitoring are to be reported by Lobbyist Y:

A. Lobbyist Y must report the costs of monitoring SB 002 for both Principals D and E as well as costs of monitoring the 120 prior bills that had been monitored by Lobbyist Y on behalf of Principals D and E because the monitoring of all these bills occurred *in connection with activity that later constituted lobbying*.

OR

B. Lobbyist Y must report the costs of monitoring SB 002 for Principal E only, and not the costs of monitoring SB 002 for Principal D or the costs of monitoring the 120 prior bills that had been monitored by Lobbyist Y on behalf of Principals D and E because only the monitoring of SB 002 occurred *in connection with activity that later constituted lobbying*.

OR

C. Lobbyist Y must report the costs of monitoring SB 002 for both Principals D and E only, and not the costs of monitoring the 120 prior bills that had been monitored by Lobbyist Y on behalf of Principals D and E because only the monitoring of SB 002 on behalf of Principals D and E occurred *in connection with activity that later constituted lobbying*.

After examining these hypothetical fact patterns, it is apparent that any of the aforementioned interpretations of “in connection with” found in Paragraph (ii) is possible, thereby making this regulation unclear and ambiguous to principals, lobbyists and lobbying firms who are trying to comply with Act 134’s reporting requirements. Accordingly, PAGR is asking the Committee to clarify Paragraph (ii) in the Manual, preferably through the use of specific examples, so that principals, lobbyists and lobbying firms can adequately comply with Act 134 of 2006 (“Act 134”) and the accompanying Regulations.

**2. The valuation requirements listed in Section 55.1(k) of the Regulations are unclear and are in need of further explanation in the Manual by the Committee.**

Section 1305-A(b)(2) of Act 134 states in pertinent part:

Each expense report shall include the total costs of all lobbying for the period. The total shall include all office expenses, personnel expenses, expenditures related to gifts, hospitality, transportation and lodging to State officials or employees, and any other lobbying costs...

Section 55.1(k) of the Regulations states in pertinent part:

For purposes of reporting the value of gifts or transportation, lodging or hospitality to be disclosed under section 13A05 of the act, the following apply:

(1) Any gift, transportation, lodging or hospitality *item* that is returned unused, declined or is *fully reimbursed* to the registrant within 30 days of the date of receipt need not be reported. For a gift, the date of receipt is the date the State official or employee

first has possession or control of the gift. For purposes of calculating the 30 days for fully reimbursing an item of transportation, lodging or hospitality, the date of receipt is the date the State official or employee actually receives the benefit of the item.

\* \* \*

(3) The value of gifts, transportation, lodging or hospitality must equal the *costs* to the registrant if the items or services to be valued were in fact obtained by the registrant in marketplace transactions.

(4) When paragraph (3) is not applicable, the value of the gifts, transportation, lodging or hospitality must equal the fair market values as determined by the replacement costs, that is, the costs of purchasing the same or similar items or services in marketplace transactions.

(5) When paragraphs (3) and (4) are not applicable, the registrant may use any reasonable method to determine the value of gifts, transportation, lodging or hospitality. (Emphasis added.)

Section 51.1 of the Regulations defines “marketplace transaction” to include the costs for:

(i) *Goods*. The usual and normal charge for goods purchased in an arms-length transaction in the market in which they ordinarily would have been purchased.

(ii) *Services*. The hourly or piecemeal charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. (Emphasis in original.)

First, Section 55.1(k)(1) of the Regulations refers to gift, transportation, lodging or hospitality “items,” but does not define the term “item.” Is an “item” the cost of both dinner and beverages or are dinner and beverages two separate “items” that need to be separately itemized on an expense report? The Regulations on their face do not adequately answer these questions and as a result, the Committee needs to adequately define “item” in the Manual in order to facilitate compliance with Act 134.

Second, Section 55.1(k)(1) states that any gift or hospitality item that is returned unused, declined or is *fully* reimbursed to the registrant within 30 days of the date of receipt need not be reported. However, Section 55.1(k)(1) is silent when addressing cases where a State official or employee were to *partially* reimburse a registrant for a gift or hospitality item in order to drop below the \$650.00 reporting threshold. Does a registrant need to report only the portion of the gift or hospitality that it paid or must it include the portion of the amount of the gift or hospitality item reimbursed by the State official or employee? The Manual also needs to adequately address this issue.

Lastly, pursuant to Section 55.1(k)(3) of the Regulations, the value of gifts, transportation, lodging or hospitality must equal the “costs” to the registrant if the items or services to be valued were in fact obtained by the registrant in marketplace transactions. For goods, the “marketplace transaction” consists of “the usual and normal charge for goods purchased in an arms-length transaction in the market in which they ordinarily would have been purchased.” That means if a registrant were to purchase tickets to a sporting event or concert at face-value and give them as a gift to a State official or employee, then the registrant must report that value in the expense report. However, Section 55.1(k)(4) of the Regulations provides that when Section 55.1(k)(3) is inapplicable, “the value of the gifts, transportation, lodging or hospitality must equal the fair market values as determined by the replacement costs, that is, the costs of purchasing the same or similar items or services in marketplace transactions.” What does Section 55.1(k)(4) mean and how would it apply if a registrant were to purchase sporting event or concert tickets at a higher price from a ticket exchange service like Stubhub.com® or a scalper and give them as a gift to a State official or employee? Along these same lines, Section 55.1(k)(3)-(5) of the Regulations does not provide a clear calculation for valuing the costs of luxury box tickets at a sporting event or concert. Should a registrant include the cost of its annual luxury box rental fee and/or the price of the individual luxury box ticket when valuing the cost of the ticket gift in its expense report? The Regulations are unclear on this issue and thus the Manual needs to further clarify the reporting requirements found in Section 55.1(k) of the Regulations.

PAGR thanks the Committee for the opportunity to submit what PAGR’s membership thinks are the most important issues that need to be addressed in the Manual. PAGR looks forward to working with the Committee as it completes the Manual.

Sincerely yours,

A handwritten signature in blue ink that reads "Peter N. Calcara". The signature is fluid and cursive, with a long, sweeping underline.

Peter N. Calcara  
PAGR President