

Form #3

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Robert M. Fung

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 20, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Ethics Commission, 210 Brooks Street

Suite 300, Charleston, WV 25301 1838

LEGISLATIVE RULE TITLE: Lobbying

1. Authorizing statute(s) citation W.Va. Code 6B-3-1 et. seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

May 17, 2005

b. What other notice, including advertising, did you give of the hearing?

A postcard was sent to all registered lobbyists notifying them about the proposed rule and public comment period.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

June 17, 2005

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X

No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Theresa M. Kirk, Legal Counsel

210 Brooks Street, Suite 300

Charleston, WV 25301 1838

tkirk@wvadmin.gov

(304) 558-0664

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Lewis G. Brewer, Executive Director

Theresa M. Kirk, Legal Counsel

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

BRIEF SUMMARY OF COMMENTS RECEIVED; AGENCY RESPONSE; AND AMENDMENTS

A brief summary of the comment received and the response of the Ethics Commission are incorporated herein.

BUSINESS AND INDUSTRY COUNCIL

Comment 1: Clarification of the definition of lobbyist. Stated that as the definition of "lobbyist" is written in subsection 3.8 of the Rule, it might be misunderstood as applying to "any individual employed by a lobbying firm," which is clearly not what the Legislature intended. A "lobbyist" should be any person employed by lobbying firm who also "communicate directly or through his or her agents with any elected state official, agency official, or legislative official for the purpose of promoting, advocating, opposing or otherwise attempting to influence" decisions of the Legislature or certain activities of the executive branch. It would be helpful if the Commission would confirm that the mere fact that an individual is employed by a lobbying firm does not make him or her a lobbyist; there must also be an effort by that person to attempt to influence legislation or executive action.

Response: We agree with your concern and comment. However the language in the rule parallels the language in the Ethics Act. (W.Va. Code § 6B-3-1(8)). In our opinion when the language in the Act and rule are read in their entirety, it is clear that a clerical worker or office assistant employed at a "lobbying firm" is not required to register as a lobbyist; Provided, that the individual does not communicate with public officials for the purpose of influencing legislative or administrative proceedings. If in the future a lobbying firm questions whether the lobbying provisions apply to a particular employee, the firm may direct an inquiry to the Commission.

Amendment: None.

COMMENT 2: The purpose of the Act is to identify who is lobbying, what they are lobbying on, how much they spend, and on whom. In the case of lobbying firms, there will often be two or more persons in the firm working on a single matter who will need to provide that information. In some of those situations, providing the information needed for establishing compliance with the Act could be accomplished more easily with a single registration or reporting form on which all lobbying information could be reported. We suggest that the Commission offer lobbying firms the option of submitting joint reports and registrations for all lobbyists in the firm. This would relieve lobbying firms

with multiple lobbyists working on a single issue from filing multiple reports and would simplify reporting of expenditures made in support of the lobbying effort.

Registrations and reports could be signed by all lobbyists for whom the report is submitted, in order to comply with the requirement of the Act that mandates a signed report by all lobbyists.

Response: In the near future, the Commission will begin revising its reporting forms in order to ensure that they are consistent with the new reporting requirements. The Commission plans to involve interested lobbyists in that process to get input and comments. During that process the Commission may conclude that members of a lobbying firm may submit a joint report. However, until the feasibility of this proposal is further explored, the Commission declines to amend the rule.

Amendment: None.

COMMENT 3: Registration fees. We believe that the registration fees required for each statement of representation mandated by subsection 4.d of the Rule are excessive. The \$100.00 assessment per client should apply only once to every lobbying firm, not to each lobbyist in the lobbying firm who works for that client. We believe the Act can be fairly interpreted to allow payment of the \$100.00 fee once by a lobbying firm, rather than payment by every lobbyist at the firm who works for the same client.

Response: The language in the rule regarding fees parallels the language in the Act. W.Va. Code § 6B-3-3a. The Commission has no authority to alter the fees.

In regards to the payment of \$ 100.00 per client per lobbyist, the Commission recently issued A.O. 2005-08 wherein it held that pursuant to the plain language of the statute, that each lobbyist who lobbies on behalf of a client must submit the fee regardless of their business association with someone who has registered to represent the client, and has submitted a separate fee. Any changes to this code provision must be addressed through the Legislative process.

Amendment: None

COMMENT 4: Reporting forms. While BIC has an interest in the process for submitting reports and registrations that is described in the Rule, our members are also interested in the content of the reports that must be filed with the Commission. If these will be changed in any significant way from the current registration and reporting forms, we believe they should be made available to the public for review and comment.

Response: As set forth in response to Comment 2, it is our intention to involve lobbyists in this process and circulate various drafts of the form in order to obtain additional input from registered lobbyist. Our goal is to make the form consistent with the Act while at the same time making it user friendly.

Amendment: None.

STEPHEN HAID AND ASSOCIATES

COMMENT 1: §157-12-2. Legislative intent. For this section you recommend adding the following underscored language.

2.2. These rules apply only to professional lobbyists. Persons who lobby without compensation and make no expenditure for or on behalf of any government officer or employee in connection with such lobbying are not required to register or report as Lobbyists

Response: There is no definition of professional lobbyist in the West Virginia Ethics Act. We decline to add the term professional due to concern that a person may argue that as they do not meet the requirements of being a “professional lobbyist” they are not subject to the rules or more importantly the reporting requirements. .

Amendment: None.

COMMENT 2: §158-12-5. Lobbyist Booklet. You recommend adding the following underscored language.

5.1. At least annually, the Commission shall publish a booklet containing each registered lobbyists’ name and business address, photo and employer and lobbying information.

Response: We agree that the addition of the term “business” address is appropriate and is consistent with what the Commission has historically required.

Amendment: Term “business” added before address in §158-12-5.

COMMENT 3: §158-12-7. Lobbyist Duties. For this section you recommend adding the following underscored language.

7.3. Lobbyists shall maintain the professional and ethical standards established by state law, these rules and any professional lobbying association to which they belong.

Response: The Commission declines to adopt the proposed language. The Ethics Act sets forth the legal duties of lobbyists. If this provision is adopted, then lobbyists may be subject to complaints based upon standards which have not been specifically addressed in legislation. Such a situation could create confusion and due process challenges.

Amendment: None.

COMMENT 4: You propose amending a section title to read: “§158-12-9. Lobbyist

Educational Standards and Training.”

Response: We agree that it is appropriate to amend the title of this section to read “Education of Lobbyist Through Required Training Courses.”

Amendment: See response.

COMMENT 5: You propose adding the underscored language. 9.1. In order to maintain the professional integrity of a lobbyist, enhance the body of knowledge required for the profession, to maintain registration and engage in lobbying activities, a lobbyist must satisfy the educational standards and training requirements of this rule and complete one training course per year.

Response: The Commission adopts the proposed language, in part, for 9.1. However the Commission declines to adopt the proposed language which reads, “satisfy the educational standards.”

Amendment: The Commission will amend the section to read: . 9.1. In order to maintain the professional integrity of a lobbyist, enhance the s body of know1edge required for the profession, to maintain registration and engage in lobbying activities, a lobbyist must satisfy the training requirements of this rule and complete one training course per year

COMMENT 6: You recommend a new section be added to read: 9.1.a. Beginning on July 1 2005. any person who registers as a professional lobbyist with the Commission must hold at least a four-year college degree or possesses the recognized expertise or knowledge in a specialized field. In addition to the training requirements of this rule a newly registered lobbyist must complete a one-session internship working with another professional lobbyist registered with the Commission who supervises or mentors the intern. The Commission may waive the internship requirements upon a showing of good cause. The requirements of this subsection shall not apply to any lobbyist registered with the Commission prior to July 1. 2005.

Response: In regards to the proposed section, 9.1.a., the Commission declines to adopt the proposed language. In the opinion of the Commission, the requirement that the lobbyist hold a four (4) year degree exceeds the rule making authority of the Commission. Further there are concerns that this stringent requirement would adversely impact the ability of citizens to represent common interests. Last, there are generally no education requirements for elected officials. In our opinion it would appear contradictory to require citizens who petition their government, even if compensated as a lobbyist, to be required to hold a college degree.

Amendment: None.

COMMENT 7: You propose the following change to subsection 9.1.b. 9.1.b Lobbyists who are registered on or after July 1, 2005 shall complete an initial training program provided by the Commission not later than December 31, 2006. Thereafter, a lobbyist shall complete at least one continuing education training course provided by the

Commission, or a public or private provider or a professional lobbying association.

Response: The Commission agrees that this language accurately summarizes its intent in regards to training courses. Hence the Commission agrees to adopt the language.

Amendment: The proposed amendment set forth in the comment is adopted verbatim.

COMMENT 8: You propose modifying subsection 9.4b to read:

The maximum fee charged to any lobbyist or prospective lobbyist for a continuing education training program offered by the Commission shall not exceed one hundred dollars (\$100.00).

Response: The Commission agrees with this change. If another public or private organization uses its time and resources to conduct a program and have it approved, then they should be entitled to determine the fair market value of the course.

Amendment: The proposed amendment set forth in the comment is adopted verbatim

COMMENT 9: You propose to add the underscored language in the following two subsections:

9.5. Once a registered lobbyist has completed an initial lobbyist training course provided by the Commission, the lobbyist may fulfill the annual continuing education requirement by completing an approved lobbyist training course provided by another public or private provider or by a professional lobbying association.

9.7.a. To be accredited, a course shall deal primarily with the specialized body of knowledge required of a professional lobbyist or other matters directly related to lobbying (which includes ethics, professional standards and the administration of lobbyist reporting); it shall be taught by persons who are qualified by practical or academic experience in the subjects covered and preferably should include the distribution of good quality written materials pertaining to the subjects covered.

Response: The Commission agrees that the proposed language enhances the rule. It hereby agrees to adopt.

Amendment: The proposed amendment set forth in the comment is adopted verbatim.

COMMENT 10: Your proposed change is: 9.9. A lobbyist who completes an accredited training course provided by an entity other than the Commission is responsible for certifying ~~their~~ his or her attendance, within the time limits specified in this rule, on a form to be provided by the Commission.

Response: Technical amendment.

Amendment: Adopted.

**WEST VIRGINIA CHAMBER OF COMMERCE
BRENDA HARPER NICHOLS**

COMMENT 1: 3.2 "Employer" or "lobbyist's employer" – Although this definition is a restatement of § 6B-3-1(2), the definition needs to be clarified. §6B-1-3 is a more succinct definition. Most lobbyists are employees of companies, businesses, associations, public relations firms, law firms, or other types of business organization. Most contracts to acquire lobbying services are with the business, not with the individual lobbyists; yet the express intent of the statute is that the individual lobbyist be held responsible for all reporting (see sub§ 6.3 of the proposed regulations), sanctions and conduct, even sub-section 3.8 of this section defines a lobbyist as an individual.

Response: When the cited definition of employee is read in its entirety, it is evident that the language was drafted with the intent of defining who is an employee in the public sector. The definition, as found in the Ethics Act, reads:

"Employee" means any person in the service of another under any contract of hire, whether express or implied, oral or written, where the employer or an agent of the employer or a public official has the right or power to control and direct such person in the material details of how work is to be performed and who is not responsible for the making of policy nor for recommending official action. (W. Va. Code, § 6B-1-3)

Based upon the present language, in our opinion applying the same definition to lobbyists would not be a workable solution.

Amendment: None.

COMMENT 2: 3.6 – "Lobbying or "lobbying activity" – This definition is silent upon the activities of encouraging the appointment or naming of individual to offices, commissions, boards or other public bodies. The present definition is limited to only the influence of legislations, rules, rates, and fees. Confusion will result with no guidance on this type of activity to attempt to influence appointments.

Response: The West Virginia Code defines lobbying as follows:

(6) "Lobbying" or "lobbying activity" means the act of communicating with a government officer or employee to promote, advocate or oppose or otherwise attempt to influence:

(i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

(ii) *The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative or quasi legislative action to be taken or withheld by any executive department.* (W.Va. Code 6B-3-1(6)).

There is no language in the Act which defines lobbying as the act of attempting to influence appointments.¹ The Commission cannot expand the statutory language through the rule making process. At some point the Legislature may elect to consider whether the stated activity should be included in the definition of lobbying.

Amendment: None.

COMMENT 3: 3.7 "Lobbying firm" – Since the enabling statute is silent on a definition for this term, its inclusion in the regulations only adds to the confusion. All reporting and sanctions are focused on the individual lobbyist who works to influence through communications with government officials. . Further, most business entities are founded for more purposes than just lobbying activities, *i.e.* – law firms are employed to represent clients in multiple ways; public relations firms provide varied services. Depending upon the business structure and plan of the private business, all employees of the firm could be considered lobbyists but have no direct communication with government officials. The inclusion of this definition does not add anything but confusion.

Response: The term lobbying firm is defined at W.Va. Code § 6B-3-1(7). We agree that this term may create some confusion. However, as the definition is included in the Ethics Act, we will have to address on a case by case basis, through advisory opinions, if the inclusion of the term in the Ethics Act affects any of the rights or duties of individual lobbyists. As this issue must be addressed on a case by case basis, the rule is not being amended. Further, the definition of lobbying and lobbying activity are included in the Act and Rule. The definitions reflect that a lobbyist is an individual who communicates with an elected official to influence legislation or other designated activities. Historically the Commission has never interpreted this provision as imposing registration and reporting requirements upon clerical staff.

Amendment: None

COMMENT 4: There is no definition of what a "contribution" means embraced in these rules but present Ethics Commission Lobbyists forms require a report of contributions. Is it the intent of the form that all political contributions be reported? Does the form want all non-profit contributions? Does that include reporting dues contributions to associations and organizations? Does that include contributions to an employer's political action committee? It is our suggestion that if there is no definition in the law or the regulations, then there will be an inconsistency in interpretation of various lobbyists as to what should be reported. This needs to be defined or deleted from the reporting form.

¹ The appointment of officers is an executive function. It does not involve a delegated legislative function. Hence under the Ethics Act it is not lobbying. *See State ex rel. West Virginia Citizens Action Group v. West Virginia Economic Development Grant Committee*, 213 W.Va. 255, 580 S.E.2d 869 (W.Va.,2003)

Response: It has always been the Commission's interpretation that all campaign contributions to individuals must be reported. The Ethics Act requires disclosures of expenditures and/or campaign contributions made on behalf of individual elected officials. (W.Va. Code § 6B-3-4). Hence under the Act the lobbyist is not required to report contributions to political action committees or non-profit organizations. (See also A.O. 90-147 wherein the Commission addressed this issue in regards to contributions to a PAC. The opinion is attached hereto). As the Act only requires reports of expenditures on individuals, and as the law has been interpreted in that manner by the Commission since 1989, it is the opinion of the Commission that the rule does not require amendment.

Amendment: None

COMMENT 5: 3.8 c.4. - What does the phrase "total expenditures in connection with lobbying activities" mean? Is that phone bills and secretarial time or does it mean buying lunch for a legislator? It is clear that travel expenses are not considered compensation, but are they "expenditures"?

Response: The term "total expenditure" means money actually expended upon the elected official. For instance, an actual expenditure is the value of a lunch. It does not include the cost of office resources or personnel to arrange the lunch. Travel expenses incurred by lobbyists for their own travel are not expenditures. The Ethics Act specifically states that lobbyists are not required to report any travel expenses or expenses incurred for telephone and office expenses, including salary and wages paid to staff. W.Va. Code § 6B-3-4(c). Due to the specific language in the Act, the Commission declines to amend the rule.

Amendment: None

COMMENT 6:

158-12-4. Registration.

4.5.b – Each lobbyist is required to submit a "recent" photograph of the lobbyist. A quick review of the Lobbyists Booklet shows that many lobbyists are using photographs that are over a decade old. Since the purpose of the photograph is to make lobbyists readily identifiable to government officials, other lobbyists and the public at large, it is our suggestion that the Ethics Commission require photos taken within the last three years as a better definition than "recent" photographs.

Response: The Commission reserves the right to reject any photograph which in its opinion does not accurately depict a lobbyist. It does not believe that an actual time frame needs to be inserted into the rule.

Amendment: None

COMMENT 7: 4.5.e – Fees – Although § 6B-3-3 of the statute requires "each lobbyist to pay the Commission a base registration fee of one hundred dollars, plus one hundred dollars for each employer represented," this appears to be burdensome to the employer community. An employer may hire a law firm to represent it in the governmental process, the law firm may have four registered lobbyists in its government relations division, and does that mean that each of the lobbyists must pay \$100 for that client? This would mean that the employer business would have to pay \$400 in

registration fees to ensure that proper registration is done. It is arguable that the intent of the statute is that any business that retains a lobbyist should be sure that \$100 is paid to register. As presently interpreted by this draft regulation, businesses are penalized financially for the type of business entity that one chooses to represent it in the government arena. Is the purpose of the regulation to discourage the use of law firms, public relation firms or those businesses with multiple purposes from performing lobbying services?

Response: The language in the rule parallels the language in the Act. The Commission recently issued A.O. 2005-08 wherein it held that pursuant to the plain language of the statute, that each lobbyist who lobbies on behalf of a client must submit the fee regardless of their business association with someone who has registered to represent the individual, and has submitted a separate fee. Any changes to this code provision must be addressed through the Legislative process.

Amendment: None

COMMENT 8: §158-12-6. Reporting.

Several subsections of this part of the regulations speak of fines being imposed as sanctions; it would be helpful if there was a clarification of the level of fines for different infractions or acts of non-compliance. Standardization of fines will ensure that all lobbyists are treated the same way for the same violation.

It is also interesting that in subsection 6.12 that reports of the composite report is made available to the legislative bodies and the press, but not the executive branch or the general public. It is our suggestion that the composite reports be made publicly available.

Response: There is a fine of \$ 10.00 for each day that a lobbyist report is overdue. The fine is not to exceed \$ 250.00. The language in § 158-12-6.7 parallels the language found in W.Va. Code 6B-3-4(b).

If a complaint is filed against a lobbyist, and if it is found that they have violated the Ethics Act, then they are subject to the sanctions set forth in W.Va. Code 6B-2-49(r). (See W.Va. Code § 6B-3-9). The severity of the sanction is dependent upon the conduct in question and lies within the discretion of the Commissioners exercising their quasi-judicial powers. The Commission is of the opinion that the Legislature specifically granted them this discretionary power and declines to modify the same.

In regards to the composite report, the Commission considers these reports public documents which are available upon request.

COMMENT 9: § 158-12-8. Employer Duties

In subsection 8.3, an employer is charged with the responsibility to insure that all expenditures on behalf of the lobbyist's activities are included on the activity report of the lobbyist. Yet, all the reporting requirements are the individual lobbyist's responsibility. If the lobbyist does not submit the Activities Report to the Employer, how will the employer know that all expenses have been included? The language needs to be clarified that the employer must review prior to submission or has the right to request amendment once the activities report is made public. To impose a duty upon the employer for a report that is an individual responsibility seems unfair to the employer.

Response: This section imposes a duty on an employer to ensure that any expenditures made by the employer for lobbying activities, are reported by the lobbyist. For instance, if the employer (a private company) sends twenty (20) gift baskets to twenty members of the legislature, and each basket costs \$ 25.00, then the employer has a duty to inform his or her lobbyist of this expenditure in order that the lobbyist can report the same. If the employer fails in his or her duty, then the employer may be in violation of the Ethics Act because the employer has expended money on these public officials but has failed to: (1) register as a lobbyist; or, (2) report the expenditures. Of course had they required their lobbyist to report the expenditure, then they would comply with the act. If the employer is concerned that his or her lobbyist is failing to accurately report the information, the employer can request that their lobbyist provide them with a copy of any documents filed with the Commission.

Your comment may also be construed as a concern that lobbyists may be held responsible for failure to report expenditures of which they lack knowledge. However, the language of the rule is directed at imposing upon the employer of the lobbyist a duty to keep their lobbyist informed of expenditures made. If a lobbyist has no actual knowledge of an expenditure made, then he or she cannot be held liable for any unintentional omission on the reports.

COMMENT 10: §158-12-9. Lobbyist training.

It is unstated in the regulations whether professional training in ethics obtained from professional licenser training is an acceptable alternative to the continuing education requirement of the statute, although 9.6 says that other organizations training may be accredited by the commission upon request of the lobbyist. Can another organization solicit the accreditation from the Commission?

There are many professional continuing education classes offered which require "ethics" training. It seems a little burdensome that the Ethics Commission will only offer two classes a year and each year each lobbyist is required to complete training. Lobbyists with regional or multiple states responsibilities will have a most difficult time complying with the training and will have to totally rely upon the taped training for their compliance.

Ethics training in lobbying activities only may become a little limited in content and therefore become quite boring to the participants of the training. Annual ethics training will be expensive and unnecessary. Most states require an initial training session, then only require additional training if there are significant changes in the laws.

Response: Pursuant to the plain language in the rule, a lobbyist is only required to undergo his or her first training session through the Ethics Commission. Otherwise, professional trade associations and even individuals may seek to have the Commission accredit any course which in the opinion of the Commission satisfies the requirements of this section.

Amendment: None

COMMENT 11: Finally, how does a non-profit handle reporting of activities of its board of directors when legislators/governmental officials serve as members of its board of directors? The legislator/governmental official is representing his/her employer

while in service on the board and meals are served at board meetings, but there is no intent to influence the legislator/governmental official, although there will be discussions at board meetings the might include issues that will be considered by the legislative process. Guidance on balancing the ability of public officials serving in varied capacities to accept meals or things of value that is provided to other board members would be helpful.

Response: If a member of the Legislature or other public official serves on the Board of Directors of a nonprofit, and if the nonprofit pays for meals of the board members, including the elected official, there is no requirement that this expenditure be reported. In this case the elected official is receiving the meal due to the nature of his or her position on the board. All board members are provided meals. Likewise, if an elected official is also an attorney at a law firm, then the attorney/elected official can attend law firm luncheons, but the law firm has no duty to register as a lobbyist or report this expenditure.

While the Ethics Commission would welcome the opportunity to address this issue through a formal advisory opinion, in its opinion it is too fact specific to incorporate into a rule. Hence it declines to amend the rule.

Amendment: None.

TONKIN MANAGEMENT COMPANY

Comment: 3.8.c.5. Lobbying for non-profit organizations: I am pleased that representatives will not have to register for representing these organizations.

Response: The Ethics Act and rule state that persons who lobby on behalf of a non-profit organization, without compensation, for less than twenty days of the regular session, do not have to register. However, if they lobby for more than the allotted time, then they are required to register. It is the opinion of the Commission that the plain language of the statute and rule adequately state when registration is required. Hence the Commission declines to amend the rule.

Amendment: None.

Comment: 4.5.c. Registration fee for lobbyists: I am more than willing to pay a registration fee but am concerned about your requirement for an additional \$100 per client. Currently, I have six legislative clients and this would require me to pay \$700 annually to lobby to represent my clients. I believe that is excessive expense as many of my clients are small but they have a right to be represented at the state house. Additionally, my practice has been to register and pay for another person to lobby with me on behalf of these clients. This would in turn, cost Tonkin Management Group \$1400 to represent these six clients.

Some firms have a second or third person registered to represent the company or individual. In the "Lobbyist Book", they are listed as representing the company or the individual, not the specific clients that the "lead" individual is actually working for. If the purpose of the registration is to identify for whom you are lobbying, then all individuals

should have to list each specific client. However, with your \$100/client proposed rule, this will get to be quite expensive. I respectfully suggest that you allow multiple people from the same firm to register on behalf of clients for some reduced rate.

Response: The language in the rule regarding the fee parallels the language in the Act. W.Va. Code § 6B-3-3a. The Commission has no authority to alter the fee.

In regards to the payment of \$ 100.00 per client per lobbyist, the Commission recently issued A.O. 2005-08 wherein it held that pursuant to the plain language of the statute, that each lobbyist who lobbies on behalf of a client must submit the fee regardless of their business association with someone who has registered to represent the individual, and has submitted a separate fee. Any changes to this code provision must be addressed through the Legislative process.

Amendment: None.

Comment: **4.5.f. Credit Cards:** Thank you for this advancement.

Response: None required.

Amendment: None

Comment: **6.1.1. Lobbying Activities:** Nowhere do you really define lobbying activities and does this statement mean we have to list all of our contacts, letters written, phone calls made or does it just refer to any financial expenditures? This is not clear.

Response: The term "lobbying activity" is defined at W.Va. Code 6B-3-1(6) and in the rule at 158-12-3.6. The Ethics Act also specifically states that lobbyist are not required to report any travel expenses or expenses incurred for telephone and office expenses, including salary and wages paid to staff. W.Va. Code § 6B-3-4 (c). Due to the specific language in the Act, the Commission declines to amend the rule.

Amendment: None

Comment: **6.6. Late Fees:** I believe this fee structure is very onerous and is not justified.

Response: The language regarding the late fees parallels that found in the Ethics Act at W.Va. Code § 6B-3-4(b). The late fees are statutory. Hence they cannot be modified via legislative rule.

Amendment: None.

LEAGUE OF WOMEN VOTERS

Comment: The League of Women Voters supports adoption of the proposed rule.

Agency Response: Express appreciation for comment.

Amendment: None.

BRIEF SUMMARY OF PROPOSED RULE
Title 158, Series 12

During the January 2005 Special Session, the Legislature made extensive changes to the Ethics Act, including the portion of the Act which governs lobbyists. (W.Va. Code § 6B-3-1 *et. seq.*). The proposed amendments are intended to make the rule consistent with the new legislation.

The proposed rule contains the following changes: adds new terms to the definition section; reflects the increase in registration fees for lobbyists; sets forth the new filing dates for lobbyists' reports and the statutory late fee for untimely filed reports; and, establishes standards for the annual training of lobbyists.

STATEMENT OF CIRCUMSTANCES
Title 158, Series 12

The Legislature amended the West Virginia Ethics Act during the January 2005 Special Session. Extensive revisions were made to W.Va. Code § 6B-3-1, et. seq. This article governs lobbyists. The proposed amendments are necessary to make the existing Legislative Rule consistent with the new legislation.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Lobbying

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Ethics Commission

Address: 1207 Quarrier Street, Suite 407
Charleston, WV 25301-1836

Phone Number: (304) 558-0664 Email: tkirk@wvadmin.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

During the 2005 Special Session, extensive changes were made to the Ethics Act, including the portion of the Act which governs lobbyists. One significant change is that lobbyists are now required to undergo annual training in order to maintain their registration. (W.Va. 6B-3-3c).

The Ethics Commission is authorized to collect a reasonable fee for the training. The proposed rule states that the fee shall not exceed \$ 100.00 per year. The first training course must be completed by December 31, 2006. While a fee will be collected, the revenues will be used to offset the cost of the training, including the preparation and distribution of written materials. It is anticipated that the costs and revenues will be equal.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	CURRENT Increase/Decrease (use "-")	NEXT Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	10,000.00	10,000.00	20,000.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues	10,000.00	10,000.00	20,000.00

Rule Title: Lobbying

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

It is estimated that by the conclusion of 2005 that there will be 400 registered lobbyists. The Commission anticipates that the registration fee for the initial training session will be \$ 50.00. It is further anticipated that the actual cost per person to conduct the initial training is \$ 50.00. Hence the revenues are offset by the costs.

Lobbyists must undergo their first training session by December 31, 2006. Therefore the projected costs and revenues have been allocated between two fiscal years.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: 7/20/05

Signature of Agency Head or Authorized Representative

Louis D. Burns, Executive Director

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

SERIES 12
LOBBYING

FILED

2005 JUL 27 A 10:57

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§158-12-1. General.

1.1. Scope. -- These legislative rules establish the guidelines concerning lobbying under the WV Governmental Ethics Act.

1.2. Authority. -- W. Va. Code §§6B-3-1, 6B-3-2, 6B-3-3, 6B-3-3a, 6B-3-3c, 6B-3-4, ~~and~~ 6B-3-5, 6B-3-7 ~~and~~ 6B-3-11.

1.3. Filing Date. --

1.4. Effective Date. --

§158-12-2. Legislative Intent.

2.1. It is the expressed intent of the Legislature that citizens be permitted and encouraged to consult with their government representatives without incurring registration or reporting obligations under the West Virginia Governmental Ethics Act.

2.2. Persons who lobby without compensation and make no expenditure for or on behalf of any government officer or employee in connection with such lobbying are not required to register or report as Lobbyists.

§158-12-3. Definitions.

3.1. "Compensation" means money or any other thing of value received or to be received by a lobbyist from an employer for services rendered.

3.2. "Employer" or "lobbyist's employer" means any person who employs or retains a lobbyist.

3.3. "Expenditure" means payment, distribution, loan, advance deposit, reimbursement, or gift of money, real or personal property or any other thing of value; or a contract, promise or agreement, whether or not legally enforceable.

~~3.2.~~ 3.4. "Government officer or employee" means a member of the Legislature, a legislative employee, the Governor and other members of the Board of Public Works, heads of executive

departments and any other public officer or public employee of under the executive or legislative branch of state government who is empowered or authorized to make policy and perform nonministerial functions. In the case of elected offices included herein, The the term "government officer or employee" includes candidates who have been elected but who have not yet assumed office.

3.5. "Legislation" means bills, resolutions, motions, amendments, nominations and other matters pending or proposed in either house of the Legislature and includes any other matters that may be the subject of action by either house or any committee of the Legislature and all bills or resolutions that, having passed both houses, are pending approval or veto by the Governor.

3.6. "Lobbying" or "lobbying activity" means the act of communicating with a government officer or employee to promote, advocate or oppose or otherwise attempt to influence:

3.6.a. The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

3.6.b. The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative or quasilegislative action to be taken or withheld by any executive department.

3.7. "Lobbying firm" means any business entity, including an individual contract lobbyist, which meets either of the following criteria:

3.7.a. The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of lobbying on behalf of any other person, or any partner, owner, officer or employee of the business entity.

3.7.b. The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elected state official, agency official or legislative official for the purpose of lobbying on behalf of any other person.

3.1. 3.8. "Lobbyist" means a person who any individual employed by a lobbying firm or who is otherwise employed or contracts for economic consideration other than reimbursement for reasonable travel expenses, through communication to communicate directly or through his or her agents with a government officer or employee any elective state official, agency official or

legislative official promotes, advocates or opposes for the purpose of promoting, advocating, opposing or otherwise attempts attempting to influence:

a. 3.8.a. the passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this State; or

b. 3.8.b. the adoption or rejection of any rule, ~~regulation,~~ legislative rule, standard, rate, fee, or other delegated legislative or quasi-legislative action to be taken or withheld by any executive department.

c. 3.8.c. The term "Lobbyist" ~~shall~~ does not include the following persons, who are exempt from the registration and reporting requirements set forth in this rule, unless ~~such persons~~ they engage in activities which would otherwise subject them to the registration and reporting requirements:

(1) 3.8.c.1. Persons who limit their lobbying activities to appearing before public sessions of committees of the Legislature, or public hearings of state agencies.

(2) 3.8.c.2. Persons who limit their lobbying activities to attending receptions, dinners, parties or other group functions and make no expenditure in connection with such lobbying.

(3) 3.8.c.3. Persons who engage in news or feature reporting activities and editorial comment as working members of the press, radio, or television, and persons who publish or disseminate such news, features or editorial comment through a newspaper, book, regularly published periodical, radio station, or television station.

(4) 3.8.c.4. Persons who lobby without compensation or other consideration, other than reimbursement for reasonable travel expenses, for acting as lobbyists, who are not employed by a lobbying firm or lobbyist employer, and whose total expenditures in connection with ~~such~~ lobbying activities do not exceed ~~twenty-five~~ one hundred fifty (\$150) dollars during any calendar year. The ~~exemption~~ exemptions contained in this ~~subdivision~~ paragraph and in paragraph (2) ~~is~~ are intended to permit and encourage citizens of this state to exercise their constitutional rights to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances. Accordingly, such persons may lobby without incurring any registration or reporting obligation under this rule. Any person exempt under this ~~subdivision~~ paragraph or paragraph (2) may at his or her option register and report under this rule.

(5) 3.8.c.5. Persons who lobby on behalf of a non-profit organization with regard to legislation, without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature. Any person exempt under this ~~subdivision~~ paragraph may at his or her option register and report under this rule.

(6) 3.8.c.6. The governor, members of the governor's staff, members of the board of public works, officers and employees of the executive branch who communicate with a member of the Legislature on the request of that member, or who communicate with the Legislature, through the proper official channels, requests for legislative action or appropriations which are ~~considered~~ deemed necessary for the efficient conduct of the public business or which are made in the proper performance of their official duties.

(7) 3.8.c.7. Members of the Legislature.

(8) 3.8.c.8. Persons employed by the Legislature for the purpose of aiding in the preparation or enactment of legislation or the performance of legislative duties.

(9) 3.8.c.9. Persons rendering professional services in drafting proposed legislation or in advising or rendering opinions to clients as to the construction and effect of proposed or pending legislation.

~~3.2 "Government officer or employee": any public officer or employee of the executive or legislative branch of state government who is empowered to make policy and perform nonministerial functions. The term includes candidates who have been elected but not yet assumed office.~~

~~3.3.~~ 3.9. "Person" means any individual, partnership, trust, estate, business trust, association, or corporation; any department, commission, board, publicly supported college or university, division, institution, bureau, or any other instrumentality of the State; or any county, municipal corporation, school district, or any other political subdivision of the State.

§158-12-4. Registration.

4.1. Before engaging in any lobbying activity, or within ~~30~~ thirty (30) days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register with the West Virginia Ethics Commission by filing a lobbyist registration statement.

4.2. A person who is required to register may not lobby until he or she has registered with the Ethics Commission. The Ethics

Commission will notify lobbyists in writing when their registration is completed. Lobbying prior to registration is a violation of W. Va. Code §6B-3-9(b).

4.3. A lobbyist must register on forms provided by the Commission. Lobbyists may not submit registration and reporting forms by facsimile machine (FAX).

4.4. The Commission will process registration forms within ~~24 hours~~ one business day of receipt. The Commission will return incomplete applications without action and lobbying privileges will be delayed.

4.5. An application for registration requires the submission of all the following:

~~a. 4.5.a. A completed, signed Lobbyist Registration Statement. for each employer the lobbyist is going to represent.~~

~~b. 4.5.b. Two~~ One recent 2" x 2" passport style ~~photographs~~ photograph of the lobbyist.

~~c. 4.5.c. A check or money order for the \$60 one hundred dollar (\$100) base registration fee, required by W. Va. Code §6B-3-3(a), payable to the WV Ethics Commission. However, a lobbyist filing his or her initial registration after the first of January during an even-numbered year is only required to submit a \$30 check payable to the Ethics Commission.~~

4.5.d. A completed, signed Statement of Representation for each entity the lobbyist represents.

4.5.e. A check or money order for one hundred dollars (\$100), payable to the WV Ethics Commission, shall accompany each Statement of Representation filed with the Commission.

4.5.f. The Commission may, in its discretion, implement a process for accepting payment through credit or debit cards for any fees or penalties authorized under this rule.

4.6. Registered Lobbyists must re-register by the 2nd Monday in January of each odd-numbered year. Failure to do so terminates the lobbyist's registration and the person may not lobby until the registration is renewed. Each registered lobbyist shall file a new registration statement, revised as appropriate, not later than the Monday preceding the second Wednesday in January of each odd-numbered year. Until a lobbyist has renewed his or her registration, the person may not engage in lobbying activities, unless he or she is otherwise exempt under the provision of this rule.

4.7. Lobbyists must report in writing any change, withdrawal or termination of employment or representation to the Commission within one week, by filing an amended registration statement reflecting such change, modification or termination.

4.8. Lobbyists who elect to terminate their registration and cease to lobby may do so by filing a Notice of Termination with the Commission within one week of the termination.

4.9. Any person wishing to engage in lobbying activities may register as a lobbyist with the Commission, notwithstanding there is no requirement to do so.

§158-12-5. Lobbyist Booklet.

5.1. At least annually, the Commission shall publish a booklet containing each registered lobbyist's name and business address, photo and employer and lobbying information. ~~The Commission will include lobbyists who are registered by the second Friday in January in the booklet.~~

5.2. Midway through a regular legislative session the Commission may publish a supplement to the booklet if a significant number of lobbyists have been registered since publication of the booklet.

5.3. The Commission will mail copies of the booklet and any supplement to registered lobbyists at the "Business Address" shown on their Lobbyist Registration Statement.

§158-12-6. Reporting.

6.1. Lobbyists are required to file with the Commission periodic signed reports of their lobbying activities, on forms provided by the Commission. The reports shall be filed three times a year as follows:

6.1.a. On or before the fifteenth of May, a lobbyist shall report all lobbying activities in which he or she engaged from the first day of January through the thirtieth day of April.

6.1.b. On or before the fifteenth day of September, a lobbyist shall report all lobbying activities in which he or she engaged from the first day of May through the thirty-first day of August.

6.1.c. On or before the fifteenth day of January, a lobbyist shall report all lobbying activities in which he or she engaged from the first day of September through the thirty-first day of December.

~~6.2. All lobbyists must file an annual report on or before the second Monday in January of their activities of the prior calendar year.~~

~~6.3. Lobbyists engaged in legislative lobbying must also make a report:~~

~~a. on or before the 45th day of a regular session, of their activities from the first of the year through the 42nd day of the session and,~~

~~b. on or before the 21st day after the adjournment of the regular session, of their activities from the first of the year, or since filing their last report, through the end of the session and,~~

~~c. on or before the 21st day after the adjournment of any extraordinary session, of their activities from the first of the year, or since filing their last report, through the end of the session.~~

~~6.4. With the exception of the annual report, a lobbyist is not required to file a report if no lobbying activity took place during the reporting period. If lobbying activity occurred, the lobbyist must file a report even though no lobbying expenditures were made.~~

6.2. The Commission shall prepare and provide forms on which registered lobbyists shall report their lobbying activities, including whether any lobbying activity took place and whether any reportable lobbying expenditures were made during the current reporting period.

6.3. Registered lobbyists are personally responsible for completing and submitting each required activity report within the time limits required.

6.4. Reports sent to the Commission by United States mail will be considered timely filed if they are postmarked by the due date for the report. Reports sent by any other means must be received at the Commission's office by close of business on the due date of the report.

6.5. When the date a report is due falls on a Saturday, Sunday, or legal holiday, the report will be considered timely filed if it is postmarked or delivered not later than the next business day.

~~6.5. The Commission will send Lobbyist Activities Report forms and Notice of No Activity forms to all registered lobbyists as required. It is the responsibility of the lobbyist to~~

~~complete and return either the Report or the Notice on a timely basis.~~

6.6. If a registered lobbyist files a late lobbyist activity report, the lobbyist shall pay the Commission a fee of ten dollars (\$10) for each late day, not to exceed a total of two hundred and fifty dollars (\$250).

~~6.6.~~ 6.7. If the Commission has not received a required Report or Notice lobbyist activity report within five (5) 5 working days of the due date, it shall notify the lobbyist in writing of the delinquency.

~~6.7.~~ 6.8. If the Commission has not received the required Report or Notice lobbyist activity report within 10 ten (10) working days of the date on which the Notice of Delinquency written delinquency notice was mailed, the Commission shall suspend the Lobbyist's registration. The lobbyist may not engage in lobbying activities until the Report or Notice is received by the Commission and registration is restored. send written notice by registered mail, return receipt requested, that the lobbyist's lobbying privileges are suspended until the lobbyist has satisfactorily complied with all reporting requirements and paid all applicable fines.

6.9. Lobbyist reports which are incomplete or inaccurate may be returned by the Commission for completion or correction. The lobbyist is responsible for submitting a correct and complete report within ten (10) working days of the date the returned report was mailed.

6.9.a. Lobbyists who fail to file a corrected report within the required time limit shall be subject to fines and suspension under the same conditions that apply to their original periodic lobbyist reports.

6.10. Once a lobbyist has been notified that his or her lobbying privileges have been suspended, the Commission may notify the respective houses of the Legislature of the lobbyist's suspension and place notice of the suspension on its web site. Once a suspended lobbyist has complied with all reporting requirements and paid all applicable fines, notice of the lobbyist's reinstatement will be communicated in a similar manner.

~~6.8.~~ 6.11. The Commission shall prepare a composite report of the Lobbyist Activities Reports filed for each reporting period within 10 working days of the due date. The report shall contain the names of those making returns and list any expenditures reported. The Commission shall identify and list separately those failing to report or give required notice.

~~6.9.~~ 6.12. The Commission shall send copies of the composite report to both the House and Senate Clerks for distribution to the members. The Commission shall also provide copies to the press.

§158-12-7. Lobbyist Duties.

7.1. A lobbyist who is not exempt from registration shall register with and make all required reports to the Commission in a professional and timely manner, so that the members of the Legislature and the public may be kept aware of lobbying activities in the state.

7.2. A registered lobbyist shall obtain and preserve for ~~five~~ two years all accounts, bills, receipts, books, papers and documents necessary to substantiate financial reports filed with the Commission. These shall be made available for inspection by the Commission at any time.

§158-12-8. Employer Duties.

8.1. It is a violation for any person to employ another to lobby who is not registered with the Commission, except upon condition that such person register and the person does in fact so register as soon as practical.

8.2. No lobbyist may be registered to lobby on behalf of another without having filed with the Commission a ~~Lobbyist Registration Statement~~ statement of representation signed by the employer.

8.3. Any person who employs a registered lobbyist and makes expenditures on behalf of the lobbyist's lobbying activities is responsible to insure that such expenditures are included on the Lobbyist Activities Report(s) filed by the lobbyist.

8.4. Employers who require their lobbyist to turn over to them the records necessary to substantiate the filed Lobbyist Activities Reports must preserve those records for a period of at least ~~five~~ two years.

§158-12-9. Educational of Lobbyist Through Required Training Courses.

9.1. In order to maintain the professional integrity of a lobbyist, enhance the specialized body of knowledge required for the profession, and to maintain registration and engage in lobbying activities, a lobbyist must satisfy the training requirements of this rule and complete one training course per year.

9.1.a. Lobbyists who are registered on or after July 1, 2005 shall complete an initial training program provided by the Commission not later than December 31, 2006. Thereafter, a lobbyist shall complete at least one continuing education training course provided by the Commission, or a public or private provider or a profession lobbying association approved by the Commission, each calendar year.

9.1.b. A registered lobbyist who fails to complete a training course within the required time period shall be subject to suspension by the Commission and may not engage in lobbying activity until the required training course is completed.

9.2. The Commission will provide at least two lobbyist training courses each year, one of which will be held in January.

9.3. A written notice for each course provided by the Commission will be sent via U.S. Mail, or electronic mail, when available, to each registered lobbyist and posted on the Commission's website.

9.4. The Commission may collect a reasonable fee from each registered lobbyist or prospective lobbyist to offset the costs of providing the training program.

9.4.a. The Commission may adopt a fee schedule which reflects the costs of presenting training through a particular medium such as video teleconference or audio and video recording.

9.4.b. The maximum fee charged to any lobbyist or prospective lobbyist for a continuing education training program offered by the Commission shall not exceed one hundred dollars (\$100).

9.5. Once a registered lobbyist has completed an initial lobbyist training course provided by the Commission, the lobbyist may fulfill the annual continuing education requirement by completing an approved lobbyist training course provided by another public or private provider or by a professional lobbying association.

9.6. Lobbyist training courses sponsored by other organizations may be accredited by the Commission upon the request of a lobbyist in accordance with this rule.

9.7. Accreditation for Courses. Only the Commission may accredit courses and programs for purposes of the mandatory continuing education requirements for lobbyists.

9.7.a. To be accredited, a course shall deal primarily with the specialized body of knowledge required by a professional

lobbyist or other matters directly related to lobbying (which includes ethics, professional standards, and the administration of lobbyist reporting); it shall be taught by persons who are qualified by practical or academic experience in the subjects covered and preferably should include the distribution of good quality written materials pertaining to the subjects covered.

9.7.b. In order to be accredited for satisfying the requirement for annual continuing education training for lobbyists, a course must be of at least one hour in duration.

9.7.c. Ordinarily, the following may not be counted toward this one hour minimum: coffee breaks; introductory remarks; keynote speeches; business meetings; and dinner speeches.

9.7.d. The Commission may refuse to accredit or change or remove the accredited status of any provider which misrepresents the extent to which a course or program is qualified under this rule.

9.7.e. In cases where accreditation could not be reasonably obtained in advance for a given course, an individual lobbyist may request, in accordance with these rules, accreditation for a course after he or she has attended such course.

9.7.f. A written outline or written materials must be presented to the Commission at the time of submission for approval and must be distributed at the course.

9.7.g. Any course for which accreditation is sought must be open to observation, without charge, by the members of the Commission and the Commission's staff.

9.7.h. The provider must keep records of who attends, and those records must be made available to the Commission upon request.

9.7.i. All decisions of the Commission concerning accreditation shall be final.

9.8. Lobbyists who complete a continuing education course provided by the Commission will be issued a certificate of completion reflecting the calendar year for which the course satisfies the annual training requirement.

9.9. A lobbyist who completes an accredited training course provided by an entity other than the Commission is responsible for certifying his or her attendance, within the time limits specified in this rule, on a form to be provided by the Commission.

9.10. For good cause shown, the Commission may, in individual cases involving extreme hardship or extenuating circumstances, grant conditional, partial, or complete exemptions from these lobbyist training requirements.

9.11. The Commission may, in its discretion, develop and make available lobbyist training on video cassette, audio cassette, DVD, the Internet, or other electronic or written media. Lobbyists who obtain the required training through any one of these available methods, other than personal attendance at a course provided by the Commission, will be required to certify, on a form provided by the Commission, his or her completion of the annual training requirements.

§158-12-9. Grass Roots Lobbying Campaigns.

9.1. A grass roots lobbying campaign is a program addressed to the public, a substantial portion of which is intended primarily to influence legislation by the West Virginia Legislature. Such programs are directed at the public rather than legislators or other governmental policy makers.

9.2. Any person who spends more than \$200 in one month, or more than \$500 in a three month period, presenting a grass roots lobbying campaign is required to register with the Commission within 30 days of making the expenditures.

9.3. Sponsors of grass roots lobbying campaigns are required to report their activities to the Commission for the same time periods required of registered lobbyists. The Commission will mail forms necessary for reporting to sponsors as required.

9.4. Sponsors must, within 30 days of the termination of the campaign, give notice of termination and make a final report including total contributions and expenditures made on behalf of the campaign.

RECEIVED
WV ETHICS COMMISSION
2005 MAY 31 PM 1:00



COPY

WV Ethics Commission
Suite 407
1207 Quarrier Street
Charleston, WV 25301

RE: Comments on Title 158 Legislative Rule
Lobbying

Thank you for the opportunity to comment on the proposed rule, Title 158, Series 12 on Lobbying. I have lobbied since 1978 in the West Virginia legislature for associations as a staff member and now as a contract lobbyist for select clients. I am suggesting some clarifications and changes in your proposed rules:

3.8.c.5. Lobbying for non-profit organizations: I am pleased that representatives will not have to register for representing these organizations.

4.5.c. Registration fee for lobbyists: I am more than willing to pay a registration fee but am concerned about your requirement for an additional \$100 per client. Currently, I have six legislative clients and this would require me to pay \$700 annually to lobby to represent my clients. I believe that is excessive expense as many of my clients are small but they have a right to be represented at the state house. Additionally, my practice has been to register and pay for another person to lobby with me on behalf of these clients. This would in turn, cost Tonkin Management Group \$1400 to represent these six clients.

Some firms have a second or third person registered to represent the company or individual. In the "Lobbyist Book", they are listed as representing the company or the individual, not the specific clients that the "lead" individual is actually working for. If the purpose of the registration is to identify for whom you are lobbying, then all individuals should have to list each specific client. However, with your \$100/client proposed rule, this will get to be quite expensive. I respectfully suggest that you allow multiple people from the same firm to register on behalf of clients for some reduced rate.

4.5.f. Credit Cards: Thank you for this advancement.

6.1.1. Lobbying Activities: Nowhere do you really define lobbying activities and does this statement mean we have to list all of our contacts, letters written, phone calls made or does it just refer to any financial expenditures? This is not clear.

Suite 220
2110 Kanawha Boulevard East
Charleston, West Virginia 25311

304.345.6808 Voice
304.344.4139 Fax
www.tonkinmanagement.com



Page 2.

6.6. **Late Fees:** I believe this fee structure is very onerous and is not justified.

Thank you for the opportunity to comment on the proposed rules. If you have any questions, do not hesitate to contact me at 304-345-6808.

Sincerely yours,

A handwritten signature in black ink that reads "Nancy S. Tonkin". The signature is written in a cursive style with a large, sweeping "N" and a long horizontal line extending from the end.

Nancy S. Tonkin
President and CEO

STEPHEN E. HAID & ASSOCIATES

1600 LOUDON HEIGHTS ROAD
CHARLESTON, WV 25314
(304) 343-1855 FAX (304) 343-1856

E-mail: shaid@newwave.net

CORTLAND ROAD
HC 70, BOX 80
DAVIS, WV 26260
(304) 866-2750

June 15, 2005

Teresa Kirk, Esq.
West Virginia Ethics Commission
1207 Quarrier Street
Charleston, WV 25301

RE: Title 158 CSR Series 12
Lobbying Rules

RECEIVED
WV ETHICS COMMISSION
2005 JUN 16 AM 11:30

Dear Ms. Kirk:

Thank you for taking the time to meet with our little lobbyist coalition on Tuesday afternoon. We most appreciate your willingness to discuss the proposed rules and the impact they will have on our profession.

Pursuant to your request, we suggest the friendly amendments noted below. The underscoring refers to new suggested language to the rules as proposed:

§157-12-2. Legislative intent.

- 2.2. These rules apply only to professional lobbyists. Persons who lobby without compensation, and make no expenditure for or on behalf of any government officer or employee in connection with such lobbying are not required to register or report as Lobbyists.

§158-12-5. Lobbyist Booklet.

- 5.1. At least annually, the Commission shall publish a booklet containing each registered lobbyists' name and business address, photo and employer and lobbying information.

§158-12-7. Lobbyist Duties.

- 7.3. Lobbyists shall maintain the professional and ethical standards established by state law, these rules and any professional lobbying organization to which they belong.

§158-12-9. Lobbyist Educational Standards and Training.

9.1. In order to maintain the professional integrity of a lobbyist, enhance the specialized body of knowledge required for the profession, to maintain registration and engage in lobbying activities, a lobbyist must satisfy the educational standards and training requirements of this rule and complete one training course per year.

9.1.a. Beginning on July 1, 2005, any person who registers as a professional lobbyist with the Commission must hold at least a four-year college degree or a recognized expertise or knowledge in a specialized field. In addition to the training requirements of this rule, a newly registered lobbyist must complete a one-session internship working with another professional lobbyist registered with the Commission who supervises or mentors the intern. The Commission may waive the internship requirements upon a showing of good cause. The requirements of this subsection shall not apply to any lobbyist registered with the Commission prior to July 1, 2005.¹

9.1.b Lobbyists who are registered on or after July 1, 2005 shall complete an initial training program provided by the Commission not later than December 31, 2006. Thereafter, a lobbyist shall complete at least one continuing education training course provided by the Commission, or a public or private provider or a professional lobbying association.²

¹ The evolution of the government relations field has proceeded along the lines that have occurred previously in other disciplines. A general strengthening of the standards of practice and preparation for practice has been a distinctive trend in almost every profession over the last century. This addition to the Rules is consistent with the intent of the statute and the desire of the general public and the Legislature to ensure high standards of practice for lobbyists, as well as reporting requirements and public accountability. Higher educational standards acquired through pedagogical education or through the valuable apprenticeships of life experience and work support the objectives of higher professional conduct, performance and accountability.

² There are several national lobbying associations to which West Virginia lobbyists may belong. However, it is the intent of a cadre of senior lobbyists to create a West Virginia Professional Lobbyists Association. It is their intent to devise, implement and promote a code of professional conduct that will ensure voluntary compliance with the spirit and intent of the contemporary regulatory structure. The Association looks forward to working with the West Virginia Ethics Commission to further this mutual purpose.

9.5.a.

9.4.b. The maximum fee charged to any lobbyist or prospective lobbyist for a continuing education training program offered by the Commission shall not exceed one hundred dollars (\$100.00).

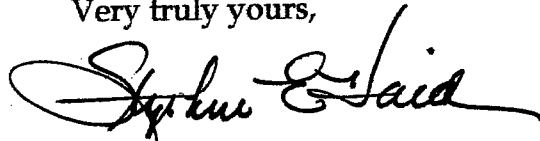
9.5. Once a registered lobbyist has completed an initial lobbyist training course provided by the Commission, the lobbyist may fulfill the annual continuing education requirement by completing an approved lobbyist training course provided by another public or private provider or by a professional lobbying association.

9.7.a. To be accredited, a course shall deal primarily with the specialized body of knowledge required of a professional lobbyist or other matters directly related to lobbying (which includes ethics, professional standards and the administration of lobbyist reporting); it shall be taught by persons who are qualified by practical or academic experience in the subjects covered and preferably should include the distribution of good quality written materials pertaining to the subjects covered.

9.9. A lobbyist who completes an accredited training course provided by an entity other than the Commission is responsible for certifying ~~their~~ his or her attendance, within the time limits specified in this rule, on a form to be provided by the Commission.

If you have any questions regarding these proposals, please do not hesitate to contact me. Thank you again for your kind consideration.

Very truly yours,



Stephen E. Haid

**COMMENTS OF THE WEST VIRGINIA BUSINESS AND INDUSTRY COUNCIL
REGARDING WEST VIRGINIA ETHICS COMMISSION
LEGISLATIVE RULE, TITLE 158, SERIES 12**

RECEIVED
WV ETHICS COMMISSION
2005 JUN 17 PM 2:10

June 17, 2005

The West Virginia Business and Industry Council ("BIC") is comprised of many organizations that qualify as lobbying firms or that hire lobbyists. BIC offers the following comments with regard to proposed 158 C.S.R. 12, *Lobbying* ("the Rule") that has been proposed for promulgation by the West Virginia Ethics Commission.

1. Clarification of the definition of lobbyist.

Many of the proposed changes to 158 C.S.R. 12 were intended to reflect the changes made by Senate Bill 1003 to *West Virginia Code* Chapter 6B, Article 3. One of these was the definition of "lobbyist" in subsection 3.8 of the Rule. As the definition is written, it might be misunderstood as applying to "any individual employed by a lobbying firm," which is clearly not what the Legislature intended. A "lobbyist" should be any person employed by lobbying firm who *also* "communicate[s] directly or through his or her agents with any elected state official, agency official, or legislative official for the purpose of promoting, advocating, opposing or otherwise attempting to influence" decisions of the Legislature or certain activities of the executive branch. It would be helpful if the Commission would confirm that the mere fact that an individual is employed by a lobbying firm does not make him or her a lobbyist; there must also be an effort by that person to attempt to influence legislation or executive action.

2. Reporting by lobbying firms.

The purpose of the Act is to identify who is lobbying, what they are lobbying on, how much they spend, and on whom. In the case of lobbying firms, there will often be two or more persons in the firm working on a single matter who will need to provide that information. In some of those situations, providing the information needed for establishing compliance with the Act could be accomplished more easily with a single registration or reporting form on which all lobbying information could be reported. We suggest that the Commission offer lobbying firms the option of submitting joint reports and registrations for all lobbyists in the firm. This would relieve lobbying firms with multiple lobbyists working on a single issue from filing multiple reports and would simplify reporting of expenditures made in support of the lobbying effort.

Registrations and reports could be signed by all lobbyists for whom the report is submitted, in order to comply with the requirement of the Act that mandates a signed report by all lobbyists.

3. Registration fees.

We believe that the registration fees required for each statement of representation mandated by subsection 4.d of the Rule are excessive. The \$100.00 assessment per client should apply only once to every lobbying firm, not to each lobbyist in the lobbying firm who works for that client. We believe the Act can be fairly interpreted to allow payment of the \$100.00 fee once by a lobbying firm, rather than payment by every lobbyist at the firm who works for the same client.

4. Reporting forms.

While BIC has an interest in the process for submitting reports and registrations that is described in the Rule, our members are also interested in the content of the reports that must be filed with the Commission. If these will be changed in any significant way from the current registration and reporting forms, we believe they should be made available to the public for review and comment.

Thank you for the opportunity to offer these comments. We hope they will be given careful and favorable consideration.

West Virginia Business and Industry Council

Hand delivered



RECEIVED
WV ETHICS COMMISSION

2005 JUN 17 PM 17:16
WEST VIRGINIA CHAMBER OF COMMERCE
Voice of Business in West Virginia

June 17, 2005

West Virginia Ethics Commission
1207 Quarrier St, Suite 407
Charleston, WV 25301-1836

Re: Title 158, Series 12
Lobbying

To: W V Ethics Commission

Attached are the written comments of the West Virginia Chamber of Commerce for the above referenced rule. Thanks for the opportunity to comment.

Sincerely,

Brenda Nichols Harper, Esq.
Vice President and General Counsel.

COMMENTS
WEST VIRGINIA CHAMBER OF COMMERCE
CONCERNING WEST VIRGINIA ETHICS COMMISSION
LEGISLATIVE RULE, TITLE 158, SERIES 12

June 17, 2005

The West Virginia Chamber of Commerce is a non-profit membership organization whose members employ over half of West Virginia's private sector workforce and represents 5,000 businesses in West Virginia of various size and legal structure. One of the sixteen committees that function in the West Virginia Chamber of Commerce is the government relations committee which is comprised of registered lobbyists that lobby in this state.

I. Definitions need to be clearer in § 158-12-3.

3.2 "Employer" or "lobbyist's employer" – Although this definition is a restatement of § 6B-3-1(2), the definition needs to be clarified. §6B-1-3 is a more succinct definition. Most lobbyists are employees of companies, businesses, associations, public relations firms, law firms, or other types of business organization. Most contracts to acquire lobbying services are with the business, not with the individual lobbyists; yet the express intent of the statute is that the individual lobbyist be held responsible for all reporting (see sub§ 6.3 of the proposed regulations), sanctions and conduct, even sub-section 3.8 of this section defines a lobbyist as an individual.

3.6 – "Lobbying or "lobbying activity" – This definition is silent upon the activities of encouraging the appointment or naming of individual to offices, commissions, boards or other public bodies. The present definition is limited to only the influence of legislations, rules, rates, and fees. Confusion will result with no guidance on this type of activity to attempt to influence appointments.

3.7 "Lobbying firm" – Since the enabling statute is silent on a definition for this term, its inclusion in the regulations only adds to the confusion. All reporting and sanctions are focused on the individual lobbyist who works to influence through communications with government officials. . Further, most business entities are founded for more purposes than just lobbying activities, ie – law firms are employed to represent clients in multiple ways; public relations firms provide varied services. Depending upon the business structure and plan of the private business, all employees of the firm could be considered lobbyists but have no direct communication with government officials. The inclusion of this definition does not add anything but confusion.

There is no definition of what a "contribution" means embraced in these rules but present Ethics Commission Lobbyists forms require a report of contributions. Is it the intent of the form that all political contributions be reported? Does the form want all non-profit contributions? Does that include reporting dues contributions to associations and organizations? Does that include contributions to an employer's political action committee? It is our suggestion that if there is no definition in the law or the regulations, then there will be an inconsistency in interpretation of various lobbyists as to what should be reported. This needs to be defined or deleted from the reporting form.

3.8 c.4. - What does the phrase "total expenditures in connection with lobbying activities" mean? Is that phone bills and secretarial time or does it mean buying lunch for a legislator? It is clear that travel expenses are not considered compensation, but are they "expenditures"?

§158-12-4. Registration.

4.5.b – Each lobbyist is required to submit a “recent” photograph of the lobbyist. A quick review of the Lobbyists Booklet shows that many lobbyists are using photographs that are over a decade old. Since the purpose of the photograph is to make lobbyists readily identifiable to government officials, other lobbyists and the public at large, it is our suggestion that the Ethics Commission require photos taken within the last three years as a better definition than “recent” photographs.

4.5.e – Fees – Although § 6B-3-3 of the statute requires “each lobbyist to pay the Commission a base registration fee of one hundred dollars, plus one hundred dollars for each employer represented,” this appears to be burdensome to the employer community. An employer may hire a law firm to represent it in the governmental process, the law firm may have four registered lobbyists in its government relations division, and does that mean that each of the lobbyists must pay \$100 for that client? This would mean that the employer business would have to pay \$400 in registration fees to ensure that proper registration is done. It is arguable that the intent of the statute is that any business that retains a lobbyist should be sure that \$100 is paid to register. As presently interpreted by this draft regulation, businesses are penalized financially for the type of business entity that one chooses to represent it in the government arena. Is the purpose of the regulation to discourage the use of law firms, public relation firms or those businesses with multiple purposes from performing lobbying services?

§158-12-6. Reporting.

Several subsections of this part of the regulations speak of fines being imposed as sanctions; it would be helpful if there was a clarification of the level of fines for different infractions or acts of non-compliance. Standardization of fines will ensure that all lobbyists are treated the same way for the same violation.

It is also interesting that in subsection 6.12 that reports of the composite report is made available to the legislative bodies and the press, but not the executive branch or the general public. It is our suggestion that the composite reports be made publicly available.

§ 158-12-8. Employer Duties

In subsection 8.3, an employer is charged with the responsibility to insure that all expenditures on behalf of the lobbyist's activities are included on the activity report of the lobbyist. Yet, all the reporting requirements are the individual lobbyist's responsibility. If the lobbyist does not submit the Activities Report to the Employer, how will the employer know that all expenses have been included? The language needs to be clarified that the employer must review prior to submission or has the right to request amendment once the activities report is made public. To impose a duty upon the employer for a report that is an individual responsibility seems unfair to the employer.

§158-12-9. Lobbyist training.

It is unstated in the regulations whether professional training in ethics obtain from professional licensure training is an acceptable alternative to the continuing education requirement of the statute, although 9.6 says that other organizations training may be accredited by the commission upon request of the lobbyist. Can another organization solicit the accreditation from the Commission? There are many professional continuing education classes offered which require “ethics” training. It seems a little burdensome that the Ethics Commission will only offer two classes a year and each year each lobbyist is required to complete training. Lobbyists with regional or multiple states responsibilities will have a most difficult time complying with the training and will have to totally rely upon the taped training for their compliance.

Ethics training in lobbying activities only may become a little limited in content and therefore become quite boring to the participants of the training. Annual ethics training will be expensive and unnecessary. Most states require an initial training session, then only require additional training if there are significant changes in the laws.

Finally, how does a non-profit handle reporting of activities of its board of directors when legislators/governmental officials serve as members of its board of directors? The legislator/governmental official is representing his/her employer while in service on the board and meals are served at board meetings, but there is no intent to influence the legislator/governmental official, although there will be discussions at board meetings the might include issues that will be considered by the legislative process. Guidance on balancing the ability of public officials serving in varied capacities to accept meals or things of value that is provided to other board members would be helpful.



COPY

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WEST VIRGINIA ETHICS COMMISSION
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Lewis G. Brewer
Executive Director

July 22, 2005

Brenda Nichols Harper
Vice President and General Counsel
West Virginia Chamber of Commerce
PO Box 2789
Charleston, WV 25330-2789

**RE: Response to Public Comment on Title 158, Series 12,
Lobbying.**

Dear Ms. Harper:

Thank you for your comments relating to the proposed rule governing lobbying (Title 158, Series 12). We have incorporated the comments into this document and our response.

COMMENT 1: 3.2 "Employer" or "lobbyist's employer" – Although this definition is a restatement of § 6B-3-1(2), the definition needs to be clarified. §6B-1-3 is a more succinct definition. Most lobbyists are employees of companies, businesses, associations, public relations firms, law firms, or other types of business organization. Most contracts to acquire lobbying services are with the business, not with the individual lobbyists; yet the express intent of the statute is that the individual lobbyist be held responsible for all reporting (see sub§ 6.3 of the proposed regulations), sanctions and conduct, even sub-section 3.8 of this section defines a lobbyist as an individual.

Response: When the cited definition of employee is read in its entirety, it is evident that the language was drafted with the intent of defining who is an employee in the public sector. The definition, as found in the Ethics Act, reads:

"Employee" means any person in the service of another under any contract of hire, whether express or implied, oral or written, where the employer or an agent of the employer or a public official has the right or power to control and direct such person in the material details of how work is to be performed and who is not responsible for the making of policy nor for recommending official action. (W. Va. Code, § 6B-1-3)

Based upon the present language, in our opinion applying the same definition to lobbyists would not be a workable solution.

Amendment: None.

COMMENT 2: 3.6 – “Lobbying or “lobbying activity” – This definition is silent upon the activities of encouraging the appointment or naming of individual to offices, commissions, boards or other public bodies. The present definition is limited to only the influence of legislations, rules, rates, and fees. Confusion will result with no guidance on this type of activity to attempt to influence appointments.

Response: The West Virginia Code defines lobbying as follows:

(6) "Lobbying" or "lobbying activity" means the act of communicating with a government officer or employee to promote, advocate or oppose or otherwise attempt to influence:

(i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

(ii) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative or quasi legislative action to be taken or withheld by any executive department. (W.Va. Code 6B-3-1(6)).

There is no language in the Act which defines lobbying as the act of attempting to influence appointments.¹ The Commission cannot expand the statutory language through the rule making process. At some point the Legislature may elect to consider whether the stated activity should be included in the definition of lobbying.

Amendment: None.

COMMENT 3: 3.7 “Lobbying firm” – Since the enabling statute is silent on a definition for this term, its inclusion in the regulations only adds to the confusion. All reporting and sanctions are focused on the individual lobbyist who works to influence through communications with government officials. . Further, most business entities are founded for more purposes than just lobbying activities, *i.e.* – law firms are employed to represent clients in multiple ways; public relations firms provide varied services. Depending upon the business structure and plan of the private business, all employees of

¹ The appointment of officers is an executive function. It does not involve a delegated legislative function. Hence under the Ethics Act it is not lobbying. *See State ex rel. West Virginia Citizens Action Group v. West Virginia Economic Development Grant Committee*, 213 W.Va. 255, 580 S.E.2d 869 (W.Va.,2003)

the firm could be considered lobbyists but have no direct communication with government officials. The inclusion of this definition does not add anything but confusion.

Response: The term lobbying firm is defined at W.Va. Code § 6B-3-1(7). We agree that this term may create some confusion. However, as the definition is included in the Ethics Act, we will have to address on a case by case basis, through advisory opinions, if the inclusion of the term in the Ethics Act affects any of the rights or duties of individual lobbyists. As this issue must be addressed on a case by case basis, the rule is not being amended. Further, the definition of lobbying and lobbying activity are included in the Act and Rule. The definitions reflect that a lobbyist is an individual who communicates with an elected official to influence legislation or other designated activities. Historically the Commission has never interpreted this provision as imposing registration and reporting requirements upon clerical staff.

Amendment: None

COMMENT 4: There is no definition of what a "contribution" means embraced in these rules but present Ethics Commission Lobbyists forms require a report of contributions. Is it the intent of the form that all political contributions be reported? Does the form want all non-profit contributions? Does that include reporting dues contributions to associations and organizations? Does that include contributions to an employer's political action committee? It is our suggestion that if there is no definition in the law or the regulations, then there will be an inconsistency in interpretation of various lobbyists as to what should be reported. This needs to be defined or deleted from the reporting form.

Response: It has always been the Commission's interpretation that all campaign contributions to individuals must be reported. The Ethics Act requires disclosures of expenditures and/or campaign contributions made on behalf of individual elected officials. (W.Va. Code § 6B-3-4). Hence under the Act the lobbyist is not required to report contributions to political action committees or non-profit organizations. (See also A.O. 90-147 wherein the Commission addressed this issue in regards to contributions to a PAC. The opinion is attached hereto). As the Act only requires reports of expenditures on individuals, and as the law has been interpreted in that manner by the Commission since 1989, it is the opinion of the Commission that the rule does not require amendment.

Amendment: None

COMMENT 5: 3.8 c.4. - What does the phrase "total expenditures in connection with lobbying activities" mean? Is that phone bills and secretarial time or does it mean buying lunch for a legislator? It is clear that travel expenses are not considered compensation, but are they "expenditures"?

Response: The term "total expenditure" means money actually expended upon the elected official. For instance, an actual expenditure is the value of a lunch. It does not include the cost of office resources or personnel to arrange the lunch. Travel

expenses incurred by a lobbyists for their own travel are not expenditures. The Ethics Act specifically states that lobbyists are not required to report any travel expenses or expenses incurred for telephone and office expenses, including salary and wages paid to staff. W.Va. Code § 6B-3-4(c). Due to the specific language in the Act, the Commission declines to amend the rule.

Amendment: None

COMMENT 6:

158-12-4. Registration.

4.5.b – Each lobbyist is required to submit a “recent” photograph of the lobbyist. A quick review of the Lobbyists Booklet shows that many lobbyists are using photographs that are over a decade old. Since the purpose of the photograph is to make lobbyists readily identifiable to government officials, other lobbyists and the public at large, it is our suggestion that the Ethics Commission require photos taken within the last three years as a better definition than “recent” photographs.

Response: The Commission reserves the right to reject any photograph which in its opinion does not accurately depict a lobbyist. It does not believe that an actual time frame needs to be inserted into the rule.

Amendment: None

COMMENT 7: 4.5.e – Fees – Although § 6B-3-3 of the statute requires “each lobbyist to pay the Commission a base registration fee of one hundred dollars, plus one hundred dollars for each employer represented,” this appears to be burdensome to the employer community. An employer may hire a law firm to represent it in the governmental process, the law firm may have four registered lobbyists in its government relations division, and does that mean that each of the lobbyists must pay \$100 for that client? This would mean that the employer business would have to pay \$400 in registration fees to ensure that proper registration is done. It is arguable that the intent of the statute is that any business that retains a lobbyist should be sure that \$100 is paid to register. As presently interpreted by this draft regulation, businesses are penalized financially for the type of business entity that one chooses to represent it in the government arena. Is the purpose of the regulation to discourage the use of law firms, public relation firms or those businesses with multiple purposes from performing lobbying services?

Response: The language in the rule parallels the language in the Act. The Commission recently issued A.O. 2005-08 wherein it held that pursuant to the plain language of the statute, that each lobbyist who lobbies on behalf of a client must submit the fee regardless of their business association with someone who has registered to represent the individual, and has submitted a separate fee. Any changes to this code provision must be addressed through the Legislative process.

Amendment: None

COMMENT 8: §158-12-6. Reporting.

Several subsections of this part of the regulations speak of fines being imposed as

sanctions; it would be helpful if there was a clarification of the level of fines for different infractions or acts of non-compliance. Standardization of fines will ensure that all lobbyists are treated the same way for the same violation.

It is also interesting that in subsection 6.12 that reports of the composite report is made available to the legislative bodies and the press, but not the executive branch or the general public. It is our suggestion that the composite reports be made publicly available.

Response: There is a fine of \$ 10.00 for each day that a lobbyist report is overdue. The fine is not to exceed \$ 250.00. The language in § 158-12-6.7 parallels the language found in W.Va. Code 6B-3-4(b).

If a complaint is filed against a lobbyist, and if it is found that they have violated the Ethics Act, then they are subject to the sanctions set forth in W.Va. Code 6B-2-49(r). (See W.Va. Code § 6B-3-9). The severity of the sanction is dependent upon the conduct in question and lies within the discretion of the Commissioners exercising their quasi-judicial powers. The Commission is of the opinion that the Legislature specifically granted them this discretionary power and declines to modify the same.

In regards to the composite report, the Commission considers these reports public documents which are available upon request.

COMMENT 9: § 158-12-8. Employer Duties

In subsection 8.3, an employer is charged with the responsibility to insure that all expenditures on behalf of the lobbyist's activities are included on the activity report of the lobbyist. Yet, all the reporting requirements are the individual lobbyist's responsibility. If the lobbyist does not submit the Activities Report to the Employer, how will the employer know that all expenses have been included? The language needs to be clarified that the employer must review prior to submission or has the right to request amendment once the activities report is made public. To impose a duty upon the employer for a report that is an individual responsibility seems unfair to the employer.

Response: This section imposes a duty on an employer to ensure that any expenditures made by the employer for lobbying activities, are reported by the lobbyist. For instance, if the employer (a private company) sends twenty (20) gift baskets to twenty members of the legislature, and each basket costs \$ 25.00, then the employer has a duty to inform his or her lobbyist of this expenditure in order that the lobbyist can report the same. If the employer fails in his or her duty, then the employer may be in violation of the Ethics Act because the employer has expended money on these public officials but has failed to: (1) register as a lobbyist; or, (2) report the expenditures. Of course had they required their lobbyist to report the expenditure, then they would comply with the act. If the employer is concerned that his or her lobbyist is failing to accurately report the information, the employer can request that their lobbyist provide them with a copy of any documents filed with the Commission.

Your comment may also be construed as a concern that lobbyists may be held responsible for failure to report expenditures of which they lack knowledge. However,

the language of the rule is directed at imposing upon the employer of the lobbyist a duty to keep their lobbyist informed of expenditures made. If a lobbyist has no actual knowledge of an expenditure made, then he or she cannot be held liable for any unintentional omission on the reports.

COMMENT 10: §158-12-9. Lobbyist training.

It is unstated in the regulations whether professional training in ethics obtained from professional licensure training is an acceptable alternative to the continuing education requirement of the statute, although 9.6 says that other organizations training may be accredited by the commission upon request of the lobbyist. Can another organization solicit the accreditation from the Commission?

There are many professional continuing education classes offered which require "ethics" training. It seems a little burdensome that the Ethics Commission will only offer two classes a year and each year each lobbyist is required to complete training. Lobbyists with regional or multiple states responsibilities will have a most difficult time complying with the training and will have to totally rely upon the taped training for their compliance.

Ethics training in lobbying activities only may become a little limited in content and therefore become quite boring to the participants of the training. Annual ethics training will be expensive and unnecessary. Most states require an initial training session, then only require additional training if there are significant changes in the laws.

Response: Pursuant to the plain language in the rule, a lobbyist is only required to undergo his or her first training session through the Ethics Commission. Otherwise, professional trade associations and even individuals may seek to have the Commission accredit any course which in the opinion of the Commission satisfies the requirements of this section.

Amendment: None

COMMENT 11: Finally, how does a non-profit handle reporting of activities of its board of directors when legislators/governmental officials serve as members of its board of directors? The legislator/governmental official is representing his/her employer while in service on the board and meals are served at board meetings, but there is no intent to influence the legislator/governmental official, although there will be discussions at board meetings the might include issues that will be considered by the legislative process. Guidance on balancing the ability of public officials serving in varied capacities to accept meals or things of value that is provided to other board members would be helpful.

Response: If a member of the Legislature or other public official serves on the Board of Directors of a nonprofit, and if the nonprofit pays for meals of the board members, including the elected official, there is no requirement that this expenditure be reported. In this case the elected official is receiving the meal due to the nature of his or her position on the board. All board members are provided meals. Likewise, if an elected official is also an attorney at a law firm, then the attorney/elected official can

attend law firm luncheons, but the law firm has no duty to register as a lobbyist or report this expenditure.

While the Ethics Commission would welcome the opportunity to address this issue through a formal advisory opinion, in its opinion it is too fact specific to incorporate into a rule. Hence it declines to amend the rule.

Amendment: None.

Thank you for taking time to respond. If you have any questions, please feel free to give us a call.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lewis G. Brewer".

Lewis G. Brewer

ADVISORY OPINION NO. 90-147
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Lobbyist

OPINION SOUGHT

Whether a lobbyist should report on the Lobbyist Activity Report form, **contributions** to political candidates, political parties or political action committees?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor is a registered lobbyist for a West Virginia based Association and requests clarification on the issue of whether a lobbyist should report contributions to candidates, political parties or political action committees (hereafter referred to as PACs).

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code subsection 6B-3-4(b)(1) states in pertinent part that...each report filed by a lobbyist shall show the total amount of all expenditures for lobbying made or incurred by such lobbyist or...lobbyist's employer...The report shall also show subtotals segregated according to category...including...**contributions**...to public officials or employees or to immediate family members of such persons; and other expenses or services.

West Virginia Code subsection 6B-4-1-(6) states in pertinent part that..."Lobbying" or "lobbying activity" means the act of communicating with a **government officer or employee** to promote, advocate or oppose or otherwise attempt to influence:

- (i) The passage of defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this State; or
- (ii) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee, or other delegated legislation or quasi-legislative action to be taken or withheld by any executive department.

West Virginia Code subsection 6B-3-1(4) states in pertinent part that...the term "government officer or employee" shall include candidates who have been elected but who have not yet assumed office.

ADVISORY OPINION

Candidates Subsequently Elected

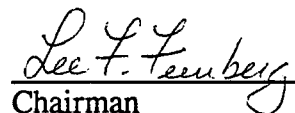
The Act requires a lobbyist to include on the reporting form any contributions made during the reporting period which he incurred as a result of lobbying activity, including: communicating with a government officer or employee to promote, advocate or oppose or otherwise attempt to influence the passage or defeat of any legislation or quasi-legislative action to be taken or withheld by any executive department.

As defined by the Act a government official or employee would include candidates who have been elected, but who have not yet assumed office.

Therefore, it is the Commission's opinion that pursuant to subsection 6B-3-4(b)(1) the lobbyist is required to report political contributions made directly to public employees, officials, candidates for public office (or members of their immediate family) as well as their campaign or finance committees as a result of lobbying activity. For the purpose of this section "immediate family" means a spouse residing in the individual's household, any dependent children and dependent parents.

Political Parties/PACs

It is the Commission's opinion that contributions to political parties or political action groups should not be included in the Lobbyist Activity Report since it would not be possible for the lobbyist to specifically determine whether his contribution was given to a recipient who is a public official or a candidate that was subsequently elected. It is possible that the contribution might be distributed to a congressional or non-elected candidate. Therefore, the lobbyist is not required to report contributions made to political parties or PACs on the Lobbyist Activity Report.


Chairman



COPY

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Lewis G. Brewer
Executive Director

July 22, 2005

Business and Industry Council
2001 Quarrier Street
Charleston, WV 25302

RE: Response to Public Comments, Title 158, Series 12, *Lobbying*

Dear Sir or Madam:

Thank you for your comments. In this correspondence we have repeated your comment and set forth our response as follows:

COMMENT 1: Clarification of the definition of lobbyist.

Many of the proposed changes to 158 C.S.R. 12 were intended to reflect the changes made by Senate Bill 1003 to West Virginia Code Chapter 6B, Article 3. One of these was the definition of "lobbyist" in subsection 3.8 of the Rule. As the definition is written, it might be misunderstood as applying to "any individual employed by a lobbying firm," which is clearly not what the Legislature intended. A "lobbyist" should be any person employed by lobbying firm who also "communicate directly or through his or her agents with any elected state official, agency official, or legislative official for the purpose of promoting, advocating, opposing or otherwise attempting to influence" decisions of the Legislature or certain activities of the executive branch. It would be helpful if the Commission would confirm that the mere fact that an individual is employed by a lobbying firm does not make him or her a lobbyist; there must also be an effort by that person to attempt to influence legislation or executive action.

Response: We agree with your concern and comment. However the language in the rule parallels the language in the Ethics Act. (W.Va. Code § 6B-3-1(8)). In our opinion when the language in the Act and rule are read in their entirety, it is clear that a clerical worker or office assistant employed at a "lobbying firm" is not required to register as a lobbyist; Provided, that the individual does not communicate with public officials for the purpose of influencing legislative or administrative proceedings. If in the future a lobbying firm questions whether the lobbying provisions apply to a particular employee, the firm may direct an inquiry to the Commission.

Amendment: None.

COMMENT 2: The purpose of the Act is to identify who is lobbying, what they are lobbying on, how much they spend, and on whom. In the case of lobbying firms, there will often be two or more persons in the firm working on a single matter who will need to provide that information. In some of those situations, providing the information needed for establishing compliance with the Act could be accomplished more easily with a single registration or reporting form on which all lobbying information could be reported. We suggest that the Commission offer lobbying firms the option of submitting joint reports and registrations for all lobbyists in the firm. This would relieve lobbying firms with multiple lobbyists working on a single issue from filing multiple reports and would simplify reporting of expenditures made in support of the lobbying effort.

Registrations and reports could be signed by all lobbyists for whom the report is submitted, in order to comply with the requirement of the Act that mandates a signed report by all lobbyists.

Response: In the near future, the Commission will begin revising its reporting forms in order to ensure that they are consistent with the new reporting requirements. The Commission plans to involve interested lobbyists in that process to get input and comments. During that process the Commission may conclude that members of a lobbying firm may submit a joint report. However, until the feasibility of this proposal is further explored, the Commission declines to amend the rule.

Amendment: None.

COMMENT 3: 3. Registration fees. We believe that the registration fees required for each statement of representation mandated by subsection 4.d of the Rule are excessive. The \$100.00 assessment per client should apply only once to every lobbying firm, not to each lobbyist in the lobbying firm who works for that client. We believe the Act can be fairly interpreted to allow payment of the \$100.00 fee once by a lobbying firm, rather than payment by every lobbyist at the firm who works for the same client.

Response: The language in the rule regarding fees parallels the language in the Act. W.Va. Code § 6B-3-3a. The Commission has no authority to alter the fees.

In regards to the payment of \$ 100.00 per client per lobbyist, the Commission recently issued A.O. 2005-08 wherein it held that pursuant to the plain language of the statute, that each lobbyist who lobbies on behalf of a client must submit the fee regardless of their business association with someone who has registered to represent the individual, and has submitted a separate fee. Any changes to this code provision must be addressed through the Legislative process.

Amendment: None

COMMENT 4: Reporting forms. While BIC has an interest in the process for submitting reports and registrations that is described in the Rule, our members are also interested in the content of the reports that must be filed with the Commission. If these will be changed in any significant way from the current registration and reporting forms, we believe they should be

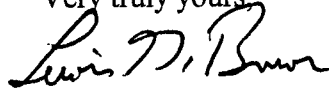
made available to the public for review and comment.

Response: As set forth in response to Comment 2, it is our intention to involve lobbyists in this process and circulate various drafts of the form in order to obtain additional input from registered lobbyists. Our goal is to make the form consistent with the Act while at the same time making it user friendly.

Amendment: None.

Please call if you have any questions or comments.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lewis G. Brewer".

Lewis G. Brewer



COPY

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Lewis G. Brewer
Executive Director

July 22, 2005

Nancy S. Tonkin
President and CEO
Tonkin Management Company
Suite 220
2110 Kanawha Blvd. East
Charleston, WV 25311

**RE: Comments on Title 158 Legislative Rule
Lobbying**

Dear Ms. Tonkin:

Thank you for your comments. In response we provide as follows:

Comment: 3.8.c.5. Lobbying for non-profit organizations: I am pleased that representatives will not have to register for representing these organizations.

Response: The Ethics Act and rule states that persons who lobby on behalf of a non-profit organization, without compensation, for less than twenty days of the regular session, do not have to register. However, if they lobby for more than the allotted time, then they are required to register. It is the opinion of the Commission that the plain language of the statute and rule adequately state when registration is required. Hence the Commission declines to amend the rule.

Amendment: None.

Comment: 4.5.c. Registration fee for lobbyists: I am more than willing to pay a registration fee but am concerned about your requirement for an additional \$100 per client. Currently, I have six legislative clients and this would require me to pay \$700 annually to lobby to represent my clients. I believe that is excessive expense as many of my clients are small but they have a right to be represented at the state house. Additionally, my practice has been to register and pay for another person to lobby with

me on behalf of these clients. This would in turn, cost Tonkin Management Group \$1400 to represent these six clients.

Some firms have a second or third person registered to represent the company or individual. In the "Lobbyist Book", they are listed as representing the company or the individual, not the specific clients that the "lead" individual is actually working for. If the purpose of the registration is to identify for whom you are lobbying, then all individuals should have to list each specific client. However, with your \$100/client proposed rule, this will get to be quite expensive. I respectfully suggest that you allow multiple people from the same firm to register on behalf of clients for some reduced rate.

Response: The language in the rule regarding the fee parallels the language in the Act, W.Va. Code § 6B-3-3a. The Commission has no authority to alter the fee.

In regards to the payment of \$ 100.00 per client per lobbyist, the Commission recently issued A.O. 2005-08 wherein it held that pursuant to the plain language of the statute, that each lobbyist who lobbies on behalf of a client must submit the fee regardless of their business association with someone who has registered to represent the individual, and has submitted a separate fee. Any changes to this code provision must be addressed through the Legislative process.

Amendment: None.

Comment: 4.5.f. **Credit Cards:** Thank you for this advancement.

Response: None required.

Amendment: None

Comment: 6.1.1. **Lobbying Activities:** Nowhere do you really define lobbying activities and does this statement mean we have to list all of our contacts, letters written, phone calls made or does it just refer to any financial expenditures? This is not clear.

Response: The term "lobbying activity" is defined in the code at W.Va. Code 6B-3-1(6) and in the rule at 158-12-3.6. The Ethics Act also specifically states that lobbyists are not required to report any travel expenses or expenses incurred for telephone and office expenses, including salary and wages paid to staff. W.Va. Code § 6B-3-4 (c). Due to the specific language in the Act, the Commission declines to amend the rule.

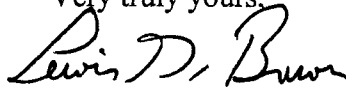
Comment: 6.6. **Late Fees:** I believe this fee structure is very onerous and is not justified.

Response: The language regarding the late fees parallels that found in the Ethics Act at W.Va. Code § 6B-3-4(b). The late fees are statutory. Hence they cannot be modified via legislative rule.

Amendment: None.

Please call if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lewis G. Brewer". The signature is fluid and cursive, with the first name "Lewis" and last name "Brewer" clearly distinguishable.

Lewis G. Brewer
Executive Director



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Lewis G. Brewer
Executive Director

July 22, 2005

Stephen E. Haid
Stephen E. Haid and Associates
1600 Loudon Heights Road
Charleston, WV 25314

RE: Response to Public Comments, Title 158, Series 12, *Lobbying*

Dear Mr. Haid:

Thank you for your comments. In response we provide as follows:

COMMENT 1: §157-12-2. Legislative intent. For this section you recommend adding the following underscored language.

2.2. These rules apply only to professional lobbyists. Persons who lobby without compensation and make no expenditure for or on behalf of any government officer or employee in connection with such lobbying are not required to register or report as Lobbyists

Response: There is no definition of professional lobbyist in the West Virginia Ethics Act. We decline to add the term professional due to concern that a person may argue that as they do not meet the requirements of being a "professional lobbyist," hence they are not subject to the rules or more importantly the reporting requirements. .

Amendment: None.

COMMENT 2: §158-12-5. Lobbyist Booklet. You recommend adding the following underscored language.

5.1. At least annually, the Commission shall publish a booklet containing each registered lobbyists' name and business address, photo and employer and lobbying information.

Response: We agree that the addition of the term “business” address is appropriate and is consistent with what the Commission has historically required.

Amendment: Term “business” added before address in §158-12-5.

COMMENT 3: §158-12-7. Lobbyist Duties. For this section you recommend adding the following underscored language.

7.3. Lobbyists shall maintain the professional and ethical standards established by state law, these rules and any professional lobbying association to which they belong.

Response: The Commission declines to adopt the proposed language. The Ethics Act sets forth the legal duties of lobbyists. If this provision is adopted, then lobbyists may be subject to complaints based upon standards which have not been specifically addressed in legislation. Such a situation could create confusion and due process challenges.

Amendment: None.

COMMENT 4: You propose amending a section title to read: “§158-12-9. Lobbyist Educational Standards and Training.”

Response: We agree that it is appropriate to amend the title of this section to read “Education of Lobbyist Through Required Training Courses.”

Amendment: See response.

COMMENT 5: You propose adding the underscored language. 9.1. In order to maintain the professional integrity of a lobbyist, enhance the body of knowledge required for the profession, to maintain registration and engage in lobbying activities, a lobbyist must satisfy the educational standards and training requirements of this rule and complete one training course per year.

Response: The Commission adopts the proposed language, in part, for 9.1. However the Commission declines to adopt the proposed language which reads, “satisfy the educational standards.”

Amendment: The Commission will amend the section to read: . 9.1. In order to maintain the professional integrity of a lobbyist, enhance the body of knowledge required for the profession, to maintain registration and engage in lobbying activities, a lobbyist must satisfy the training requirements of this rule and complete one training course per year

COMMENT 6: You recommend a new section be added to read: 9.1.a. Beginning on July 1 2005. any person who registers as a professional lobbyist with the Commission must hold at least a four-year college degree or possesses recognized expertise or knowledge in a specialized field.

In addition to the training requirements of this rule a newly registered lobbyist must complete a one-session internship working with another professional lobbyist registered with the Commission who supervises or mentors the intern. The Commission may waive the internship requirements upon a showing of good cause. The requirements of this subsection shall not apply to any lobbyist registered with the Commission prior to July 1, 2005.

Response: In regards to the proposed section, 9.1.a., the Commission declines to adopt the proposed language. In the opinion of the Commission, the requirement that the lobbyist hold a four (4) year degree exceeds the rule making authority of the Commission. Further there are concerns that this stringent requirement would adversely impact the ability of citizens to represent common interests. Last, there are generally no education requirements for elected officials. In our opinion it would appear contradictory to require citizens who petition their government, even if compensated as a lobbyist, to be required to hold a college degree.

Amendment: None.

COMMENT 7: You propose the following change to subsection 9.1.b. 9.1.b Lobbyists who are registered on or after July 1, 2005 shall complete an initial training program provided by the Commission not later than December 31, 2006. Thereafter, a lobbyist shall complete at least one continuing education training course provided by the Commission, or a public or private provider or a professional lobbying association.

Response: The Commission agrees that this language accurately summarizes its intent in regards to training courses. Hence the Commission agrees to adopt the language.

Amendment: The proposed amendment set forth in the comment is adopted verbatim.

COMMENT 8: You propose modifying subsection 9.4b to read:

The maximum fee charged to any lobbyist or prospective lobbyist for a continuing education training program offered by the Commission shall not exceed one hundred dollars (\$100.00).

Response: The Commission agrees with this change. If another public or private organization uses its time and resources to conduct a program and have it approved, then they should be entitled to determine the fair market value of the course.

Amendment: The proposed amendment set forth in the comment is adopted verbatim

COMMENT 9: You propose to add the underscored language in the following two subsections:

9.5. Once a registered lobbyist has completed an initial lobbyist training course provided by the Commission, the lobbyist may fulfill the annual continuing education requirement by completing an approved lobbyist training course provided by another public or private provider

or by a professional lobbying association.

9.7.a. To be accredited, a course shall deal primarily with the specialized body of knowledge required of a professional lobbyist or other matters directly related to lobbying (which includes ethics, professional standards and the administration of lobbyist reporting); it shall be taught by persons who are qualified by practical or academic experience in the subjects covered and preferably should include the distribution of good quality written materials pertaining to the subjects covered.

Response: The Commission agrees that the proposed language enhances the rule. It hereby agrees to adopt.

Amendment: The proposed amendment set forth in the comment is adopted verbatim.

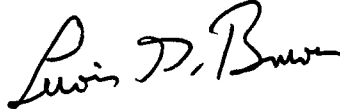
COMMENT 10: Your proposed change is: 9.9. A lobbyist who completes an accredited training course provided by an entity other than the Commission is responsible for certifying ~~their~~ his or her attendance, within the time limits specified in this rule, on a form to be provided by the Commission.

Response: Technical amendment.

Amendment: Adopted.

Once again, thank you for taking time to respond. Please call if you have any questions.

Very truly yours,

A handwritten signature in cursive script, reading "Lewis G. Brewer".

Lewis G. Brewer



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Lewis G. Brewer
Executive Director

July 22, 2005

Kathy Stoltz
President
League of Women Voters of West Virginia
25 Lynnwood Drive
Vienna, WV 26105

RE: Response to Public Comments, Title 158, Series 12, *Lobbying*

Dear Ms. Stoltz:

Thank you for your comment to the above-referenced rule. You relate in your correspondence that the League of Women Voters supports adoption of the proposed rule. As such your comment does not require a formal response.

We appreciate you taking time to review the rule. If you have any questions, please feel free to give us a call.

Very truly yours,

A handwritten signature in cursive script that reads "Lewis G. Brewer".

Lewis G. Brewer