

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

GOVERNMENT OVERSIGHT COMMITTEE
PUBLIC HEARING

STATE CAPITOL
HARRISBURG, PA

MAIN CAPITOL BUILDING
140 MAJORITY CAUCUS ROOM

MONDAY, OCTOBER 21, 2019
8:33 A.M.

PRESENTATION ON
INVESTIGATION 1-2019

LOBBYING DISCLOSURE LAW

BEFORE:

HONORABLE SETH M. GROVE, MAJORITY CHAIRMAN
HONORABLE JOHN A. LAWRENCE
HONORABLE ERIC R. NELSON
HONORABLE TARAH TOOHIL
HONORABLE MATTHEW D. BRADFORD, DEMOCRATIC CHAIRMAN
HONORABLE KEVIN J. BOYLE
HONORABLE JORDAN A. HARRIS

* * * * *

Debra B. Miller

dbmreporting@msn.com

ALSO IN ATTENDANCE:

SENATOR KRISTIN PHILLIPS-HILL

COMMITTEE STAFF PRESENT:

MIKE KANE

MAJORITY EXECUTIVE DIRECTOR

LEDA LACOMBA

MAJORITY RESEARCH ANALYST

SHERRY EBERLY

MAJORITY LEGISLATIVE ADMINISTRATIVE ASSISTANT

BRIDGET LAFFERTY

DEMOCRATIC EXECUTIVE DIRECTOR

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SUBMITTED WRITTEN TESTIMONY

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See submitted written testimony and handouts online under "Show:" at:

https://www.legis.State.pa.us/cfdocs/Legis/TR/Public/tr_finder_public_action.cfm?tr doc typ=T&billBody=&billTyp=&billNbr=&hearing month=&hearing day=&hearing year=&NewCommittee=Government+Oversight&subcommittee=&subject=&bill=&new title=&new salutation=&new first name=&new middle name=&new last name=&new suffix=&hearing loc=

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P R O C E E D I N G S

* * *

MAJORITY CHAIRMAN GROVE: Good morning, everyone.
A bright and early day today, this Monday morning.

Welcome to the first public hearing of the
House Government Oversight Committee.

Ms. Eberly, would you take roll?

(Roll call was taken.)

MAJORITY CHAIRMAN GROVE: Thank you.

The Oversight Committee is governed by
Rule 45(A), the enabling language of this Committee, and
Rule 51, Investigations, which provides a process for
investigations by House Committees.

The Committee consists of nine Members, five from
the Majority Party and four from the Minority Party. The
goal of this small Committee is to perform oversight
investigations assigned to it and develop consensus among
its Members on solutions to address the findings of the
investigation.

The Committee operates by a referral process.
Per Rule 45(A), only the Speaker of the House or the Floor
Leaders can refer an issue to the Government Oversight
Committee. We do not have unilateral ability to launch an

1 investigation.

2 In May of this year, the Committee adopted its
3 rules. The rules provide a process for open communication
4 and collaboration. Further, Committee Members and assigned
5 staff went through two intensive days of fact-based,
6 nonpartisan oversight training by the Levin Center at
7 Wayne State School of Law. This provided the Committee a
8 background and established the process by which the
9 Committee would operate moving forward.

10 To provide an example, all interviews or
11 depositions will be done with Republican and Democrat staff
12 present. We are interested in the facts first and
13 foremost; thus, if we have common facts, we can better
14 develop common recommendations.

15 On May 6, 2019, the Committee received
16 Referral 1-2019 from the Majority Leader, Bryan Cutler,
17 and the Minority Leader, Frank Dermody. The referral asked
18 this Committee to review Act 2 of 2008, which was enacted
19 to address registration reporting compliance issues with
20 the Lobbying Disclosure Law found in Chapter 13A of
21 Title 65.

22 Committee staff has done extensive interviews
23 with stakeholders, the Department of State, and the State
24 Ethics Commission. The Committee has held internal
25 meetings to stay updated on the investigation.

1 Today's hearing is to publicly vet with
2 stakeholders and the agencies issues related to
3 Investigation 1-2019 and provide agencies the ability to
4 offer their thoughts on improving the Lobbying Disclosure
5 Law and process in preparation of the Committee's final
6 report, which is slated for a vote on October 30th.

7 I would like to thank you, my cohort in
8 Oversight, Chairman Matt Bradford, for his help in this
9 experiment. As I am sure you are all aware, there is not
10 much faith in a Legislator's ability to actually do
11 fact-based, nonpartisan oversight. I can tell you that
12 Chairman Bradford and I are committed to this.

13 I would also like to thank the Wolf
14 Administration. They have been open to this process and
15 helpful working through issues.

16 I am hopeful the work of this Committee this
17 initial session will build a foundation for cooperative
18 oversight between political parties and between branches.
19 To this point, we created our seal with a Latin phrase,
20 which means integrity and truth, two principles this
21 Committee must be held to and principles we must ingrain in
22 our process to ensure this experiment is a success.

23 I would also like to thank Chairman Garth Everett
24 from the State House Government Committee and Senator
25 Kristin Phillips-Hill, Chairwoman of the State Government

1 Committee. And yes, Chairwoman, I am aware they made you
2 the Acting Chairwoman instead of the formal, but we're
3 going to make it official today.

4 The Minority Chairman of the State Government
5 Committee is already a Member of this Committee,
6 Representative Kevin Boyle, and Senator Anthony Williams,
7 Minority Chair of the Senate Government Committee, was also
8 invited.

9 With those opening remarks, I'll throw it over to
10 Chairman Bradford.

11 MINORITY CHAIRMAN BRADFORD: Thank you, Chairman
12 Grove.

13 I want to take this opportunity, again, to
14 reiterate, this has obviously been a learning experience
15 for all involved, and I know Seth has shown his sincere
16 commitment to making sure that this is a bipartisan effort
17 and one that is thoughtful and based on a real desire to
18 look at issues in a thoughtful and thorough manner without
19 going for the easy headline or the desire to move into
20 areas where, frankly, politics would overtake thoughtful
21 oversight.

22 I also want to thank Seth for working with our
23 friends at -- now I'm going to forget -- Wayne State---

24 MAJORITY CHAIRMAN GROVE: Mm-hmm.

25 MINORITY CHAIRMAN BRADFORD: ---in that process.

1 I think moving into real oversight is something that I
2 think, frankly, would do well for all of our Standing
3 Committees, not just this Committee, and I think that
4 offers us a real opportunity today, with this referral, to
5 begin that process in a public way. To see kind of the way
6 this will hopefully play out in the future I think offers a
7 real opportunity, and I want to thank Seth again, as well
8 as the staff, for working together so well with the
9 Administration in a collegial and professional manner.

10 MAJORITY CHAIRMAN GROVE: Thank you, Chairman.

11
12 PANEL 1:

13 GREENLEE PARTNERS

14
15 MAJORITY CHAIRMAN GROVE: With that, we'll
16 bring up our first panelists, Greenlee Associates:
17 Clint Cullison, Senior Associate; Ken Rapp, Senior Partner;
18 and Benjamin Dannels, Associate.

19 Before you guys sit down, I'm going to swear you
20 in. Just raise your right hands:

21 Do you solemnly affirm that the testimony that
22 you shall give shall be the truth, the whole truth, and
23 nothing but the truth?

24
25 (Testifiers affirmed "I do.")

1 MAJORITY CHAIRMAN GROVE: Thank you, gentlemen.

2 With that, did you bring formal testimony?

3 MR. CULLISON: We did, but as a horrible
4 lobbyist, we forgot to bring extra copies of it.

5 MAJORITY CHAIRMAN GROVE: It's all good. If you
6 just can send that over to Mike and he'll get it out to the
7 Committee.

8 And then with that, gentlemen, introduce
9 yourselves, and go ahead. Thank you so much for taking the
10 time this morning, also.

11 MR. CULLISON: Thank you.

12 Greetings, Chairman and Members of the House
13 Government Oversight Committee. Thank you for the unique
14 opportunity to offer comments on the Pennsylvania Lobbying
15 Disclosure Law as they pertain to Investigation 1-2019, a
16 look into the implementation of transparency provisions in
17 the lobby law to determine if the goals are being met.

18 My name, as you mentioned, is Clint Cullison, a
19 lobbyist with the firm Greenlee Partners, where I've been
20 employed since 2005. On my right is Ken Rapp, Senior
21 Associate here at the firm, as well as Ben Dannels, an
22 Associate, to my left.

23 It's our understanding that the Committee has met
24 previously to review the interviews conducted by Mr. Kane
25 and Ms. Lafferty, so I will be brief in my opening remarks

1 to allow optimal time for questions from the Committee.

2 By way of background, Greenlee Partners has
3 always filed our lobbyist disclosure reports
4 electronically, as has the vast majority of our clients,
5 even prior to the recent changes whereby all registrants
6 are required to do so. We had developed early on our own
7 application for the purposes of filing expenses internally
8 and for tracking expenditures as they relate to the law.

9 It has been our experience that the staff with
10 the Department of State has always been very responsive to
11 any issues that have materialized, and the system utilized
12 by the Department of State has come a long way in terms of
13 reliability and operation from inception to date.
14 Similarly, the attorneys and staff at the Ethics Commission
15 have always been very responsive to the questions that we
16 have asked them over the years.

17 Keeping in mind that transparency and straight
18 government is the ultimate objective of the lobby law,
19 there are certainly areas for improvement within the law.
20 Currently, there are issues with the way the
21 Commonwealth collects and reports the information from
22 the lobbying community, uncertainty surrounding the
23 conflicts-of-interest provisions of the law, and by
24 extension, a loophole created in transparency by allowing
25 political consultants to operate as lobbyists without

1 proper disclosure.

2 The current lobby law requires firms and
3 principals to clients to report aggregate amounts spent on
4 direct and indirect communication as well as aggregate
5 totals for meals, entertainment, gifts, and the like. The
6 numbers provide little accountability or context. For the
7 public to find out what they really want to know, i.e., who
8 the lobbyist is spending money on, an elected official must
9 reach an aggregate threshold of \$250 in gifts or \$650 in
10 meals and entertainment annually. Firms of many clients
11 oftentimes spread the expenses incurred with officials
12 among all of their clients.

13 By way of example, a lobbying firm buys
14 Senator MacArthur a \$200 meal, which is then spread out
15 among the firm's 50 clients so that each client only
16 accrues \$4 of aggregate spending on Senator MacArthur.
17 Using this method, a lobbying firm would have to take
18 Senator MacArthur out for a meal in the same amount
19 163 times before an expense report would specifically name
20 Senator MacArthur as a recipient of said entertainment.

21 Dollar-one reporting could be implemented whereby
22 lobbyists report every expense incurred with every elected
23 official from the very first dollar. While some conjecture
24 would estimate that this would be overly burdensome on
25 lobbyists, the reality is, shouldn't they already have this

1 in place? If they don't, how do they know if they're
2 hitting those aggregate thresholds currently?

3 Furthermore, it's very clear in the law that
4 conflicts of interest are prohibited. The law states that
5 a registrant may not lobby on behalf of a principal or any
6 subject matter in which the principal's interests are
7 directly averse to the interests of another principal
8 currently represented by the lobbyist or previously
9 represented by the lobbyist during the current session of
10 the General Assembly.

11 What is not very clear is, when a conflict
12 arises, how to adequately disclose that information.
13 Assuming that the law is followed and the firm notifies the
14 clients, gets a sign-off from those clients and documents
15 it, and continues to advocate for both, how is the public
16 assured transparency in this process? Currently, there is
17 no pro forma mechanism in place to adequately review this
18 occurrence and its propriety.

19 Agreeing for a moment that conflicts are bad and
20 should be disclosed, if a lobbyist cannot fairly and
21 justifiably represent both the people for taxing stuff and
22 the people against taxing stuff, why does the law not
23 prohibit a lobbyist from having other conflicts?

24 For example, currently, the law does not prohibit
25 a lobbyist from running the political campaigns of elected

1 officials. Lobbyists can represent both the people for
2 taxing stuff and undertake political consulting work for
3 Representative Alistair, who opposes any taxes
4 simultaneously, being paid by two opposing interests, and
5 the law allows it.

6 Furthermore, if Consultant/Lobbyist Breckon takes
7 out Representative Alistair to dinner as his political
8 client, there is no disclosure or reporting requirements.
9 The next day, Breckon can visit Representative Alistair on
10 an issue pertaining to one of his clients. Is it
11 reasonable to the public to think that the previous night's
12 dinner did not inure to the benefit of Breckon? If not,
13 then why would it not be disclosed?

14 This could be solved by either an outright
15 prohibition on serving as both a political consultant and
16 lobbyist, which many have raised constitutional questions
17 of it, or simply requiring the registration and disclosure
18 of consultants in conjunction with the lobby law.

19 At this point, I stand ready to answer any
20 questions the Committee may have to the best of my ability.
21 Thank you.

22 MAJORITY CHAIRMAN GROVE: Any questions? Thank
23 you, gentlemen.

24 First, I'm going to vet the dollar-one reporting
25 with you quickly.

1 So you are advocating that each lobbying firm
2 reports every single dollar from the first dollar spent.
3 Does that still maintain, in your vision, does that still
4 maintain the thresholds or are you reporting like
5 everything now, or would the threshold stay the same so you
6 wouldn't report anything over the aggregate 3,000?

7 MR. CULLISON: If you are no longer -- if you are
8 reporting from dollar one, the thresholds really are
9 seemingly meaningless at that point. I think you're
10 talking about the aggregate \$3,000 per quarter---

11 MAJORITY CHAIRMAN GROVE: Mm-hmm.

12 MR. CULLISON: ---which is kind of viewed
13 separately as the aggregates for the individual lawmaker as
14 opposed to the aggregate of lobbying activity for an
15 entity.

16 MAJORITY CHAIRMAN GROVE: Gotcha.

17 Is it more important under this law to focus on
18 the relationship between the principals and the lobbyists
19 or the lobbyists and the public officials?

20 MR. CULLISON: I would suggest between the
21 principals and the elected officials---

22 MAJORITY CHAIRMAN GROVE: Okay.

23 MR. CULLISON: ---and not necessarily the
24 lobbyists. And if you're following dollar-one reporting,
25 you can see those dollars as they flow through from the

1 moment that a principal would spend or make an expenditure
2 on behalf of or a lobbyist would make an expenditure on
3 behalf of a principal.

4 MAJORITY CHAIRMAN GROVE: Gotcha. Because I
5 believe the original law had lobbyists as the primary
6 reporter versus current law, which makes the principal the
7 current reporter, correct?

8 MR. CULLISON: Since the 2007 law, it was always
9 the principal or the lobbyist could both be---

10 MAJORITY CHAIRMAN GROVE: Mm-hmm.

11 MR. CULLISON: Whoever made the expense would be
12 the one that would report it.

13 MAJORITY CHAIRMAN GROVE: Okay.

14 MR. CULLISON: I think the interest -- I think it
15 was, in full disclosure, to understand where the dollars
16 are coming from or where the money is coming from, the
17 interest that it is following, and I think it's
18 appropriately from the principal and not the lobbyist
19 individually.

20 MAJORITY CHAIRMAN GROVE: Gotcha.

21 How do you coordinate the expenditure reports
22 with the principals? Because right now, it's just an
23 affirmation that you would sign. How do you verify that
24 the principal dollars that they report are accurate?

25 MR. CULLISON: So the gentlemen on either side of

1 me spend a lot of time compiling all the expenses that
2 Greenlee Partners incurs on behalf of our clients. We
3 report those numbers quarterly to all the principals, who
4 are ultimately responsible for updating the Department of
5 State's website with their information each quarter.

6 Once those principals have filed that
7 information, Ben and then Ken and others in the firm go
8 through and verify that those dollars that are reported by
9 the principal are at least the numbers that we reported to
10 the principal. So it would be at least the expenses that
11 we had incurred and whatever retainer amount was paid to us
12 on behalf of that principal.

13 Certainly principals could have more than one
14 lobbying firm. There's no way for us to know if they are
15 reporting adequately on theirs. As long as that dollar is
16 at least equal to or greater than what we told them, we
17 affirm that that's a correct statement.

18 MAJORITY CHAIRMAN GROVE: And I assume some
19 principals would have their own internal maybe government
20 relations that also register as a lobbyist as well, so they
21 would have to coordinate those efforts.

22 MR. CULLISON: Correct. Some of the
23 corporations, the larger corporations who typically have
24 their own internal folks, association lobbyists similarly
25 would have their own internal folks, and their dollars

1 would have to be aggregated to the dollars that we spent on
2 their behalf as well.

3 MAJORITY CHAIRMAN GROVE: How is your interaction
4 with the public computer system with the Department of
5 State? Have you had any issues with outages? Do they
6 fairly keep you updated if they are doing maintenance
7 updates to it?

8 MR. DANNELS: Sure. So about 3 years ago, there
9 used to be more outages or error messages, things like
10 that. But, I mean, really over the last 2 years, that has
11 almost become nonexistent. So the website has gotten a lot
12 better.

13 MAJORITY CHAIRMAN GROVE: Good.

14 Easy to utilize from your end as far as updating
15 information?

16 MR. DANNELS: Yes.

17 MAJORITY CHAIRMAN GROVE: Okay.

18 If the Department were to move towards a new
19 system, would you be interested in being part of a
20 stakeholder group to actually ensure that it's effective
21 for end users?

22 MR. DANNELS: Absolutely.

23 MAJORITY CHAIRMAN GROVE: Good.

24 Any follow-up questions from the Committee?

25 Representative Nelson.

1 REPRESENTATIVE NELSON: Just following up a
2 little bit. Thank you for your testimony.

3 You had mentioned that you feel the principals
4 should be the primary reporter. As we look for
5 improvements in the system, would you feel that the
6 individual lobby firms would also have a role in reporting
7 as well or just the principal?

8 MR. CULLISON: So even currently, the individual
9 lobbying firms have a role in reporting.

10 By way of example, if we represent Client A, we
11 take a member out for dinner and we expense that to
12 Client A, obviously those dollars that were expended would
13 show up under the principal or Client A's report. On
14 occasion, Greenlee Partners would entertain somebody on
15 their own dollar, on the firm's dollar, and at that point,
16 those dollars would start aggregating, and we would have,
17 what we do is have our own expense report that we file
18 quarterly as well.

19 So you can tell both, you know, the moneys that
20 we're spending of the Greenlee dollars as well as the
21 principal dollars. So there's a function for both of those
22 to report.

23 REPRESENTATIVE NELSON: So under your vision of
24 dollar-one reporting, dollar one would happen from both
25 sides, so the lobbyists would need to be registered at

1 dollar one. It seemed to be in other areas of, you know,
2 of this process at times, maybe lobbyists may not fully
3 be registered or identify themselves. Can you touch on
4 that?

5 MR. CULLISON: Yeah.

6 Once you realize that you have hit the reporting
7 requirements for the quarter, you know, you should
8 certainly file and register appropriately. And then
9 whatever dollars you expended up to that threshold, you
10 would report, I would assume, retroactively once you are
11 required to register as a lobbyist.

12 REPRESENTATIVE NELSON: Okay. My last question.

13 MR. CULLISON: As a former principal.

14 REPRESENTATIVE NELSON: Mr. Chairman, thank you
15 for the leeway there.

16 Enforcement. Can you touch on, you know, your
17 perception of enforcement if gaps are identified in
18 reporting?

19 MR. CULLISON: Mm-hmm.

20 The perception, again, and I think the folks that
21 are testifying later from the Department of State and the
22 Department of Ethics would be much better to answer this
23 question. But I think the perception is that absent giving
24 them or bringing something forward, there's not a lot of
25 ways for them to identify problems.

1 For example, the Department of State is required
2 to do 3-percent random audits on all the different
3 principals or lobbyists and lobbying firms that are
4 registered. I think, you know, there are several thousand
5 of all those currently registered, and 3 percent is not a
6 whole lot. If your number comes up randomly time and time
7 again, that's just the way it goes.

8 Similarly, if you -- I mean, conversely, rather,
9 if you have an entity who fails to report timely each time,
10 they get the notification from the appropriate folks that
11 you have got 30 days to file or we're coming after you.
12 They file. You could, you know, delay those time and time
13 again, and there's no mechanism in place to trigger an
14 automatic audit for those folks.

15 REPRESENTATIVE NELSON: So if I'm understanding
16 your description, if I'm in the 3 percent that is audited
17 and there are discrepancies identified, I'm given 30 days
18 to correct those discrepancies, without penalty.

19 MR. RAPP: I don't know that it's always 30 days.
20 I will say this: The Ethics Commission has always been
21 very understanding, and their goal has not been to create
22 havoc for everybody who is registered. Their goal has been
23 to make sure you correct the errors you make, and I think
24 that has always been a fair way to approach it. And I
25 don't think there's necessarily a 30-day, a 30-day number.

1 REPRESENTATIVE NELSON: So do you find that
2 potentially some firms may foster a system of
3 underreporting or non-reporting? I mean, I think I would
4 be tempted personally if 97 percent aren't checked and you
5 got a month to turn in everything you didn't turn in
6 before.

7 It may be a difficult question to ask. It's just
8 a thought. Thank you, Mr. Chairman.

9 MR. RAPP: I can only speak for what Greenlee
10 Partners does, and Greenlee Partners, we know it's so
11 difficult to go back in time to recapture that information.
12 I can't imagine trying to do that. I guess I suppose if
13 somebody really wanted to try to play the system, they
14 could.

15 I know it would be very difficult to go back, if
16 you don't file for let's say 2 years and suddenly you're
17 one of those 3 percent? Good luck trying to figure out
18 what you spent in the last 2 years.

19 MAJORITY CHAIRMAN GROVE: Chairman Bradford.

20 MINORITY CHAIRMAN BRADFORD: Thank you, sir.

21 Real quick, and I'm trying to stay within the
22 scope of the referral, but I think you mentioned the idea
23 of prohibiting political consultants from mingling their
24 business with that of lobbyists and how that would play
25 out.

1 I recognize House Bill 1421, and I think that's
2 Tina Davis that currently has this bill pending in the
3 House. Realizing, and I appreciate that the Chairman has
4 given some leeway away from what Act 2 specifically says,
5 but realizing it's a lobbyist disclosure provision, how do
6 you think, in light of what is the charge of this
7 Committee, your recommendation for legislation along with
8 House Bill 1421 would play out?

9 MR. CULLISON: I'm embarrassed to say I'm
10 unfamiliar with the provisions in Representative Davis's
11 bill, but what I would suggest is that, you know, this is
12 not a new concept.

13 We authored an article about this back in 2015,
14 and folks have talked about it for a while. It has been
15 debated on the House Floor. The subject of constitutional
16 appropriateness of this has come up time and again that you
17 can't stop someone from lobbying, you can't stop someone
18 from doing political consulting, so you certainly can't
19 stop them from doing them together. If that's the case and
20 if that's, you know, what folks have come to conclude,
21 perhaps not banning it outright but requiring appropriate
22 disclosure would be appropriate.

23 It's difficult, I would think, to make an
24 argument with a straight face that if I'm going out as --
25 and we don't do political consulting at the firm. So by

1 way of example, if I were to take---

2 MINORITY CHAIRMAN BRADFORD: You don't have any
3 entity that does any political consulting of any kind?

4 MR. CULLISON: We do not.

5 MINORITY CHAIRMAN BRADFORD: Okay.

6 MR. CULLISON: No.

7 If we were to take someone out as a political
8 consultant, hypothetically, and pay for them and take a
9 trip for them somewhere and put it under the business that
10 does political consulting and then go in the next day as a
11 lobbyist and speak with them, it's difficult to make the
12 statement with a straight face that there was no benefit
13 inured to my lobbyist business by taking them out on my
14 political consulting side.

15 So I think that it would, you know, if
16 prohibition outright is deemed inappropriate, then at
17 least a disclosure of those activities for folks who were
18 tied for both the political consulting side and the lobby
19 side.

20 MINORITY CHAIRMAN BRADFORD: Just playing devil's
21 advocate, because I'm not as aware of it, wouldn't that
22 disclosure show up in a campaign finance report anyone who
23 is making a -- if you are retaining such a campaign
24 consultant that is wearing two hats, for lack of a better
25 word -- not to be flippant about it. I realize it's a

1 pretty serious concern -- but won't that individual have a
2 campaign finance expenditure paying said consultant?

3 MR. CULLISON: There would be a campaign finance
4 expenditure for the elected official to pay the consultant,
5 but there would be no then, conversely, there would be no
6 expenditure reported by the campaigning consultant if they
7 then spend some money on elected official.

8 So if consulting, I had you as a client and you
9 would pay me---

10 MINORITY CHAIRMAN BRADFORD: I would be lucky to
11 have you.

12 MR. CULLISON: (Laughing.) You probably wouldn't
13 be elected very long.

14 MINORITY CHAIRMAN BRADFORD: (Laughing.)

15 MR. CULLISON: My fault, not yours.

16 MINORITY CHAIRMAN BRADFORD: (Laughing.)

17 MR. CULLISON: ---and you would pay me, there
18 would be a report with the Department of State on the PAC
19 side of things that you had made payment to me.

20 If I took you out to dinner with my political
21 consulting firm, there's no mechanism in place then for me
22 to report that I took you out to dinner or I took you, you
23 know, to the Bahamas or et cetera, et cetera.

24 MINORITY CHAIRMAN BRADFORD: Right.

25 Realizing that dollars are fungible, and

1 hopefully you wouldn't have this situation---

2 MR. CULLISON: Mm-hmm.

3 MINORITY CHAIRMAN BRADFORD: ---but I could
4 literally give you a thousand dollars of my campaign cash
5 -- I say mine, but in my political committee -- and then
6 you could then use that money to use hospitality or,
7 frankly, to lobby me.

8 MR. CULLISON: Correct.

9 MINORITY CHAIRMAN BRADFORD: Okay.

10 Thank you.

11 MR. CULLISON: Yeah. You could give me a
12 thousand dollars and I could take you on a \$5,000 vacation
13 from, you know, funds that I got from other entities, and
14 there's, again, no way for that expenditure to be recorded.

15 MINORITY CHAIRMAN BRADFORD: Gotcha. Thank you,
16 sir.

17 MAJORITY CHAIRMAN GROVE: John, do you have a
18 question? Representative Lawrence.

19 REPRESENTATIVE LAWRENCE: Thank you,
20 Mr. Chairman.

21 And Clint, thank you for being here today.
22 Gentlemen, I appreciate you being here today.

23 Very briefly, it seems to me that there are a
24 number of folks engaged professionally in lobbying that
25 aren't registered with the Department of State at all,

1 and that's an issue that needs to be addressed by the
2 Legislature as far as how we can proceed with that, whether
3 there needs to be additional penalties for that. But I'm
4 interested in your perspective as, do you see this as a
5 common issue or do you see, maybe your opinion is there
6 aren't a lot of people lobbying without being registered.
7 Because certainly any enforcement that is taking place with
8 folks who have gone to all the trouble of registering and
9 then properly reporting, if you're not registered at all,
10 then who knows what you're doing, right?

11 So I'm curious as to your perspective if this is
12 common, widespread, rare, nonexistent. I'm curious from
13 your perspective.

14 MR. CULLISON: Looking at my colleagues, I'm not,
15 well, made aware of many instances where that occurs. You
16 know, I would say perhaps more likely there's a failure to
17 register principals timely and the expenditures related to
18 that.

19 REPRESENTATIVE LAWRENCE: Mm-hmm.

20 MR. CULLISON: But as far as direct lobbyists not
21 registering, I think that would be pretty hard to
22 accomplish. You know, visiting folks like yourselves, I
23 would imagine when they're coming in the door, several of
24 you guys probably look up who their clients are on the
25 State's website and would be able to quickly tell or not if

1 they were registered and if they're not. I would say
2 there's an appropriate, you know, complaint that could be
3 made with the Department of Ethics and, if appropriate, you
4 know, the Attorney General's Office.

5 REPRESENTATIVE LAWRENCE: So from your
6 perspective, it sounds like you don't see this as a major
7 concern.

8 MR. CULLISON: I do not.

9 REPRESENTATIVE LAWRENCE: Okay. Thank you.

10 Thank you, Mr. Chairman.

11 MAJORITY CHAIRMAN GROVE: Executive Director
12 Mike Kane.

13 One unique part about this Committee is, staff
14 can ask questions since they do all the interviews. So I
15 just want to give everybody a heads-up that Bridget and
16 Mike do have full authority to ask questions.

17 MAJORITY EXECUTIVE DIRECTOR KANE: Thank you,
18 Mr. Chairman.

19 Thank you, Mr. Cullison.

20 I wanted to follow up, since the whole purpose
21 of lobbying registration reporting is to have transparency
22 to track dollars that are spent on it, there are some
23 things that are written into the statute that kind of run
24 counter to that, and one of them being the \$3,000
25 threshold.

1 Now, you talked about having first-dollar
2 reporting whereby every dollar that is spent would be
3 reported somewhere, but when, and I think somebody asked
4 the question about how that would tie in with the \$3,000
5 limit. How would you, how would you do that and still
6 recognize that there are small mom-and-pop, single-issue
7 people that may well come below the \$3,000, may not even
8 employ a professional lobbyist in there. How would you
9 deal with that as long as you had a requirement that
10 principals are the ones that are the primary reporters?

11 MR. CULLISON: And again, I think the \$3,000
12 threshold, if that's what the Legislature deems appropriate
13 as the threshold for lobbying, certainly if you are under
14 that, you wouldn't have the reporting requirements or the
15 registration requirements for the small, you know, for lack
16 of a better term, the mom-and-pop lobbying effort that
17 comes up here to meet with their Member. But as you hit
18 that threshold, you know, the \$3,000 in a quarter, you
19 would then go back and report from dollar one whatever it
20 took to get you to that \$3,000.

21 MAJORITY EXECUTIVE DIRECTOR KANE: Okay.

22 And if I'm correct, the way that the system
23 currently works, if you spend money on behalf of a client,
24 they pay you a retainer, and you report back to them and
25 tell them, this is what we spent on your behalf during the

1 month. Is that correct?

2 MR. CULLISON: Correct.

3 MAJORITY EXECUTIVE DIRECTOR KANE: So you give
4 them a dollar figure. Now, is anywhere in the system that
5 dollar figure that you spent, versus maybe another lobbyist
6 that they employ, identified by the principal or does the
7 principal just tell the total of what they spent?

8 MR. CULLISON: The principal would identify the
9 total of what they spent.

10 MAJORITY EXECUTIVE DIRECTOR KANE: Okay. So then
11 the law requires the lobbyist to verify the accuracy of a
12 principal's report. So if I can give an example.

13 If you spent 5,000 as a lobbyist for a client,
14 principal, and they also employed another lobbyist who
15 spent, you know, \$10,000, they would report \$15,000
16 expended in the quarter, we're assuming.

17 MR. CULLISON: Mm-hmm.

18 MAJORITY EXECUTIVE DIRECTOR KANE: But they
19 wouldn't say that we spent 5,000 through Greenlee and
20 10,000 through the other, would they?

21 MR. CULLISON: No, they would not. They would
22 identify -- it's all identified in the aggregate. There's
23 three numbers that you put in when you make your filings:
24 direct communication, indirect communication, and the
25 aggregate for gifts, hospitality, and entertainment.

1 MAJORITY EXECUTIVE DIRECTOR KANE: So then, when
2 you go in to verify the accuracy of it and you see that
3 they have reported \$15,000, you know that \$5,000 was what
4 you told them they spent on your behalf. Do you know,
5 though, whether that 5,000 is included in the 15?

6 For example, if they really spent 20,000 and they
7 only reported 15, you would have no way of knowing whether
8 their report was accurate, would you?

9 MR. CULLISON: That's correct. And that's, you
10 know, when you sign off and you affirm that at least your
11 dollar amount is in there, it's a statement of limited
12 knowledge, your limited understanding of what actually is
13 baked into those numbers, if you will.

14 MAJORITY EXECUTIVE DIRECTOR KANE: So if they
15 reported 4,000 and you know that you told them 5,000, you
16 would know that.

17 MR. CULLISON: Correct.

18 MAJORITY EXECUTIVE DIRECTOR KANE: But you
19 wouldn't know the other way around.

20 MR. CULLISON: Correct.

21 MAJORITY EXECUTIVE DIRECTOR KANE: So does the
22 verification process, and an understanding that the law
23 allows for a qualified verification based on information,
24 does that really, does that really contribute towards
25 transparency given the fact that if they can spend money on

1 their own and they can spend money through another
2 lobbyist, that there's nothing in there that's reported
3 that is broken down by each expenditure?

4 MR. CULLISON: That's correct. And you would
5 know that they were correct and it was accurate if they
6 were one of the lucky 3 percent to get audited by the
7 Department of State, who would go in and look at those
8 numbers, and they would make sure that they were accurate
9 at that point.

10 MAJORITY EXECUTIVE DIRECTOR KANE: And on that
11 3 percent, since that's a cap and a floor, I guess your
12 random chance of being selected in any given year would be
13 1 in 33. So you would have, once out of 33 years, you
14 might be selected.

15 MR. CULLISON: Correct.

16 I would suggest to you, though, that the larger
17 your lobbying firm is and the more principals and lobbyists
18 you have underneath there, yeah, your 3 percent keeps going
19 up and up. Because you have 3 percent for each of the
20 lobbyists, a 3-percent chance for the principal, for each
21 principal that you are working on behalf of, and 3 percent
22 for the firm itself. So your odds get much better the
23 bigger you get.

24 MAJORITY EXECUTIVE DIRECTOR KANE: And just a
25 couple of other questions.

1 So instead of having the principal be -- the way
2 the system works now, the principal gets the information
3 from the lobbyist. The principal is the primary reporter.
4 If the lobbyists spend money that is not reported by a
5 principal, then you file your own report.

6 MR. CULLISON: That's correct.

7 MAJORITY EXECUTIVE DIRECTOR KANE: If it reaches
8 the \$3,000 mark, you're still within that. You still have
9 that threshold, too, right?

10 MR. CULLISON: Yes.

11 MAJORITY EXECUTIVE DIRECTOR KANE: Okay. So if
12 we had a system, though, where the lobbyist was the primary
13 reporter, so that you would report, I spent 5,000 on behalf
14 of Client X, I spent 10,000 on behalf of Client Y, and
15 maybe another lobbyist who was out there working for X
16 spent \$10,000 or whatever, but the principal over the
17 primary reporting was through the lobbyist, that would be a
18 more transparent system, wouldn't it?

19 MR. CULLISON: Assuming for the moment that you
20 would also still have the principal reporting as well.

21 MAJORITY EXECUTIVE DIRECTOR KANE: Well, if the
22 principal, if they spent money on their own, not through
23 one of these lobbyists, then just like you now have that
24 obligation for, if they don't report something, if they
25 spend something that you didn't report, then they would

1 report that on their own.

2 But what I'm suggesting is that as the system was
3 prior to, I believe, the 1996 act, it was the lobbyist in
4 the Federal systems this way. The lobbyist actually says,
5 this is what I spent, this is who I spent it on behalf, and
6 this is the issue that I spent it on. And so right there
7 you are disclosing exactly what was spent, because you're
8 not verifying something you don't know, you are the one
9 that is reporting it. Wouldn't that be more transparent?

10 MR. RAPP: That's a good question. I mean, I
11 think it's -- I don't know that I would be more transparent
12 or not. I think you raised a good point that we don't know
13 what a principal is necessarily spending above and beyond
14 what we tell them, and I think that's important to keep.
15 There are a lot of times what principals will do is have
16 expenses that are outside of what we do as a lobbying firm.
17 So I think that's important, to capture both of that, all
18 of that information, to be as transparent as you possibly
19 can.

20 MAJORITY EXECUTIVE DIRECTOR KANE: And the next
21 step from that would be, you talked about the ability to
22 allocate. If you, you know, spend \$5,000 on a trip to the
23 Super Bowl or whatever, just hypothetically or whatever,
24 and you have 50 clients, each one of those clients then
25 would report \$100. It's below the threshold, so they don't

1 have to name who they spent it on. The individual who was
2 the recipient doesn't have to report it on their ethics
3 because they didn't get more than 650 from one client. So
4 there's a lot of ways, right now, that the system doesn't
5 really disclose exactly what is spent.

6 But if the lobbyist were the one reporting, and
7 since most of the money is funneled through lobbyists, and
8 when I say "funneled," I don't mean that nefariously. But
9 since most of the money is spent by principals through a
10 lobbyist, if the lobbyist were doing the reporting and the
11 lobbyist had the same thresholds, then that allocation
12 couldn't occur. If you spent \$10,000, you know, on a
13 lavish trip, even if you had 500 clients, you would still
14 be within the threshold and you would have to report that.
15 So wouldn't that be more transparent?

16 MR. CULLISON: I'd have to get back to you on
17 that one. I'd have to think that through and through.

18 MAJORITY EXECUTIVE DIRECTOR KANE: Okay. All
19 right. Thank you.

20 I don't have anything further.

21 MAJORITY CHAIRMAN GROVE: Thank you.

22 One of the things I do want to hit on, and the
23 big reason for dollar-one reporting is allocation, how it
24 currently works in Harrisburg, correct? So if I
25 necessarily didn't want to get, do reporting on dinners in

1 Harrisburg, if I have 10 clients, I can spread that cost
2 around 10 clients, correct?

3 So if I do a thousand-dollar dinner and I have
4 10 clients, I can appropriate \$100 per client, which gets
5 around any kind of threshold limits, correct? And that's
6 the reason for the dollar-one reporting.

7 MR. CULLISON: It is. I would caution "gets
8 around" is maybe a word that intimates that there is some
9 sort of nefarious reason for doing that.

10 MAJORITY CHAIRMAN GROVE: Mm-hmm.

11 MR. CULLISON: There might be a very valid reason
12 for doing it. If I brought 10 clients with me to that
13 dinner, certainly I would want to spread that around with
14 10 different folks. I wouldn't put it all on the folks for
15 ABC Company, you know, and make XYZ Company pay for it.

16 But yes, it's a way that, you know, I think
17 currently you don't see a lot of individual members being
18 named in lobbyist disclosure reports because it's very,
19 very difficult to get to that \$650 threshold.

20 MAJORITY CHAIRMAN GROVE: Okay. So dollar-one
21 reporting would actually close that and make it more
22 transparent moving forward.

23 MR. CULLISON: Correct.

24 MAJORITY CHAIRMAN GROVE: Okay.

25 Anyone?

1 SENATOR PHILLIPS-HILL: Just one.

2 MAJORITY CHAIRMAN GROVE: Go ahead. Senator.

3 SENATOR PHILLIPS-HILL: Thank you, Chairman.

4 Chairman Grove, Chairman Bradford, thank you very
5 much.

6 I commend the House for creating the House
7 Government Oversight Committee. I think it will greatly
8 assist the General Assembly in executing one of its most
9 vital roles, and that is oversight, and I really appreciate
10 you breaking barriers down in this building

11 MAJORITY CHAIRMAN GROVE: Don't tell anyone.

12 SENATOR PHILLIPS-HILL: Shhh, don't tell anyone.
13 I think it's now on the record.

14 But I appreciate being here today in my capacity
15 as Acting Interim Chair of the Senate State Government
16 Committee, and I just wanted to follow up on Representative
17 Bradford's line of questioning with regard to that unusual
18 circumstance where, or maybe the usual circumstance where
19 lobbyists are acting on the political side of campaigns as
20 well as on the lobbying side here in the General Assembly.

21 And have you contemplated or have thoughts on how
22 we can increase the transparency? If we cannot prohibit
23 the practice, then how do you envision a reporting
24 mechanism that would make that situation more transparent
25 and more easily understood by people in the general

1 public?

2 These reporting requirements are wonderful, but
3 for the average person, it's really difficult to look and
4 see what is actually happening, because they have to go so
5 many different places. So what do you envision for
6 reporting?

7 MR. CULLISON: I'm sure all these ideas would be
8 very cumbersome, and apologies to the Department of State
9 for coming up with some of them.

10 But, you know, if you are registered as a
11 lobbyist and you are also a political consultant, simply
12 registering that you're both a lobbyist and political
13 consultant; providing for a place within the Department of
14 State as it relates to the Lobbying Disclosure Law and on
15 that system to identify those clients, elected officials,
16 that you have a relationship with. Again, we would just
17 put that information first and foremost.

18 You can find that information out there now if
19 you go out and look up every single Member's political
20 expenditures and look through to find the political
21 consultant that's on that list and write that down. We
22 have done that so we know, you know, who is using which
23 entity, but it's cumbersome. And again, I think the
24 purpose of this hearing and the purpose of the lobby law is
25 transparency, and by putting that front and foremost with

1 their lobbyist disclosure report certainly would help show
2 folks where those relationships exist.

3 Similarly, and I think I had mentioned it
4 earlier, providing for some sort of mechanism for
5 disclosure of expenditures as a political consultant, even
6 if they're not directly, if you will, linked at the time to
7 your lobbying endeavors. Again, certainly I think that
8 it's difficult for any one person to believe that an
9 individual that would take someone, you know, on a vacation
10 under my political side, that that doesn't have a benefit
11 to my lobby world as well, you know.

12 So just, you know, if you're not outright
13 prohibiting them, just disclose it, provide some sort of
14 expense reporting similar to what you have on the lobby
15 side that wouldn't be covered underneath the PAC
16 statements.

17 SENATOR PHILLIPS-HILL: Thank you very much.

18 MR. CULLISON: Sure.

19 MAJORITY CHAIRMAN GROVE: Chairman Boyle.

20 REPRESENTATIVE BOYLE: Thank you.

21 Thanks for being here early on a Monday morning.

22 I think when you talk about lobbying and
23 particularly lobbying dinners, there is certainly an
24 element of stigmatization in the public and in the media as
25 it pertains to that practice. So I think for people who

1 are unfamiliar with the legislative process or the lobbying
2 process, could you explain to us just, like, what it's
3 like? You know, do you think it's productive? Do good
4 laws come from engaging with Legislators and staff and
5 trying to get them together over dinner to discuss
6 legislation?

7 You know, I think for people who are unfamiliar
8 with how laws are made, I think it would be productive to
9 hear your take on why it is beneficial -- or not.

10 MR. CULLISON: Absolutely. Thank you.

11 You know, there's 253 Legislators here in the
12 building. They come from all four corners of the
13 Commonwealth, from Erie down to Philly, from Pittsburgh up
14 to whatever is up in the northeast and whoever is up there.
15 It's difficult for us as lobbyists to get around to visit
16 all those Members all over the State when they're not in
17 session, when you guys are back home in your districts.
18 And when they're here in Harrisburg, there's a lot of
19 competing interests trying to get attention and time to
20 make their case on the myriad of issues that come before
21 the Legislature at any given time.

22 Certainly the entertainment, the lunches, the
23 dinners, in our experience, has been a productive way to
24 get folks to spend some time and thinking about your
25 issues. We have used it in the past for educational

1 campaigns, bringing in a new client who has got a new
2 technology and wants to talk about it with a group of folks
3 rather than trying to set up, you know, 10 different
4 meetings during the folks' very busy session schedule. A
5 dinner is a good way to get them all together and have that
6 conversation at one time.

7 I don't think that there's anything nefarious
8 about it. I think it's a good way to build a rapport with
9 folks, to get to know them a little bit on the professional
10 level as well as on the personal level, and again, a way to
11 vet issues and have kind of a free dialogue where you're
12 not necessarily on the clock as much as you would be in an
13 office setting where you may have your meetings stacked up
14 every 15 meetings or more so, depending on how awful your
15 staff is to you.

16 REPRESENTATIVE BOYLE: Thank you.

17 MR. CULLISON: Mm-hmm.

18 MAJORITY CHAIRMAN GROVE: Thank you.

19 I do want to follow up. Now, obviously you have
20 been audited. How many times can you recall that you have
21 been audited in the past, let's say decade. Do you recall?

22 MR. RAPP: I think it has been twice.

23 MAJORITY CHAIRMAN GROVE: Twice?

24 MR. RAPP: That our firm has been audited.

25 MAJORITY CHAIRMAN GROVE: Yes.

1 MR. RAPP: Yeah, I believe that's what it is.
2 Don't hold me to that.

3 MAJORITY CHAIRMAN GROVE: And how was -- can you
4 just review that audit process from your perspective? How
5 did it work? What did they ask for? And if you actually
6 got an end report of any kind of findings, what they do to
7 conclude your report.

8 MR. RAPP: Actually, our office manager is the
9 one who is always contacted on that.

10 MAJORITY CHAIRMAN GROVE: Okay.

11 MR. RAPP: We are usually asked for a series of
12 information, and we provide that, as it usually first
13 starts with a cover letter basically telling us, this is
14 what we need from you, and we respond to that. If they
15 need anything else, we respond to that.

16 There will be a few recommendations usually made
17 in the course of it, maybe we should have done this, but
18 it's usually very easy to clear up and that's it.

19 MAJORITY CHAIRMAN GROVE: Okay. And so if they
20 do find anything, they do send it to you as a notification
21 and---

22 MR. RAPP: Yes.

23 MAJORITY CHAIRMAN GROVE: ---you clean it up.
24 Okay.

25 Representative Toohil.

1 REPRESENTATIVE TOOHL: Thank you, Mr. Chairman.

2 Good morning, gentlemen. Thank you. This is
3 very helpful, the descriptions and examples on lobbying to
4 help us parse through this.

5 One of my questions is, you were talking about
6 political consulting and that some firms have that separate
7 from lobbying, but you could have that together. The
8 lobbying firm can have a division of political consulting
9 within it; it's not prohibited. Correct?

10 MR. CULLISON: Correct. Or they could be, I
11 think the most prominent examples would be separate
12 companies with the same owners.

13 REPRESENTATIVE TOOHL: That would be the
14 lobbying firm?

15 MR. CULLISON: One would be a lobbying firm, one
16 would be a political consulting firm, both with the same
17 personnel.

18 REPRESENTATIVE TOOHL: So is it mandated that
19 that be separate?

20 MR. CULLISON: It is not.

21 REPRESENTATIVE TOOHL: It could all be under one
22 roof?

23 MR. CULLISON: You could, and there are examples
24 of entities that are both political consultants and
25 lobbyists within the same shop.

1 REPRESENTATIVE TOOHL: Okay. And then the
2 political consultant, that includes political fundraising,
3 correct?

4 MR. CULLISON: It could.

5 REPRESENTATIVE TOOHL: Okay. There is not a
6 separate third arm or third entity?

7 MR. CULLISON: I think sometimes there are, but
8 it's not required under the law.

9 REPRESENTATIVE TOOHL: Okay.

10 And then, when there is conflicts, the conflicts
11 only arise if a lobbying firm would have a conflict and
12 say, no, we cannot have you be our client or we can't
13 represent you; it would be that the principal is the
14 conflict, or are there firewalls? Is it like a law firm
15 where there could be firewalls within the lobbying firm?

16 MR. CULLISON: I think the law intends that there
17 are not firewalls. I think it's an outright prohibition on
18 conflicts.

19 I will tell you that sometimes you don't know
20 when you're representing two principals that you may have a
21 conflict right away. Sometimes as the issue shifts and a
22 compromise is worked out, sometimes a conflict could
23 emerge, and the law requires at that point you notify those
24 affected principals that there is a conflict. You as a
25 lobbyist have to make a determination if you can adequately

1 represent both sides of that issue, and if you think that
2 the answer is yes, you can, both of those principals have
3 to sign off on that conflict knowing that, you know, here's
4 the issue, here's what they're both looking for, and they
5 understand that you're going to still represent them on
6 both sides. If they can't, or if you can't or if they
7 won't sign off, the law requires, I believe, that you have
8 to immediately terminate one of those principals to
9 eliminate the conflict.

10 REPRESENTATIVE TOOHL: Okay. Thank you.

11 And one last question, just to clarify.

12 You were talking about the burden of reporting an
13 unregistered lobbyist, because sometimes as election
14 officials, I think people, we have meeting after meeting
15 that is booked in our office and we won't really know
16 sometimes or the staff maybe doesn't research who they
17 represent exactly. They might just say, oh, this person is
18 here on such and such an issue. So I think it's very
19 unclear for some elected officials on, you know, who does
20 this person represent; are they just an activist or are
21 they actually paid to come here and talk to us.

22 So I just thought that was interesting, you know,
23 in your testimony that you were saying that that, you
24 think, would fall on elected officials maybe to figure out
25 and then say, oh, this person actually doesn't have the

1 badge and wasn't supposed to be in the building.

2 MR. CULLISON: Right. I think it would be both
3 ways, that the elected officials themselves as they are
4 meeting with folks, if they find out that there's someone
5 that's being paid to lobby and, you know, you certainly
6 have reason to believe that they are meeting the
7 \$3,000-a-quarter threshold and they are unregistered, I
8 think that, you know, it would be on the Legislator to make
9 a referral.

10 Similarly, I don't think that there's anything
11 prohibiting folks in the lobbying community, as we're out
12 here working issues, certainly we're running into other
13 lobbyists and getting to know other folks and what they're
14 working on. If we have run into someone, I don't think
15 that it would be inappropriate for someone that is
16 registered or just a regular citizen that is aware of this
17 to report this to the Department of Ethics and potentially
18 to the Attorney General's Office.

19 REPRESENTATIVE TOOHL: And so in your, you
20 know, in your experience, have people been reported in the
21 past 10 years, or you have never heard of anything like
22 that?

23 MR. CULLISON: I'm not familiar. I would defer
24 to the Department of Ethics or the Department of State on
25 that one.

1 REPRESENTATIVE TOOHL: All right.

2 MR. RAPP: And, Representative Toohil, just to be
3 clear, and I'll leave it to the Department of State, but
4 there are several exceptions to the registration
5 requirements as well. So there may be folks coming in
6 front of you who are perfectly fine in doing one issue, for
7 instance, and that's fine. I'll leave it to the Department
8 to explain what those various, I think there's probably
9 10 or 12 exceptions to the registration requirements.

10 REPRESENTATIVE TOOHL: Thank you.

11 MR. RAPP: Mm-hmm.

12 MAJORITY CHAIRMAN GROVE: Representative Nelson.

13 REPRESENTATIVE NELSON: Thank you, Mr. Chairman,
14 and thank you for your testimony. It is extremely helpful.

15 On our agenda, I think you may be one of the, you
16 know, as the first lobby firm, it puts a lot of questions
17 in your plate.

18 Personally, if here in the Capitol a lobbyist
19 would have to disclose on the outside, because as I
20 understand it, they do have identification; it's just, we
21 may not realize. And personally, I have experienced after
22 the fact where a group comes in and you're feeling that it
23 may be just a bunch of, you know, hey, it might be people
24 from a community or it's an emotional issue, and then
25 amongst them there is, you know, a seasoned lobbyist that

1 you don't realize until after the fact. Having the
2 lobbyist disclose something on the outside to recognize
3 them, would that be a challenge or a hurdle for you, or at
4 the beginning of the meeting a lobbyist say, you know, I am
5 the lobbyist representing this firm, some type of a more
6 clear disclosure?

7 MR. CULLISON: Yeah. I mean, personally, I don't
8 think that there would be much of a problem to overcome
9 that, to wear our lobbyist badges that are issued to us by
10 the Department of, I guess DGS perhaps, that prints out the
11 lobbyist badges for us. But, you know, wearing those or
12 requiring that we wear those as lobbyists I don't think is
13 a huge thing to ask.

14 The law currently requires that if you are there
15 lobbying and someone asks, they can't hide that; they have
16 to disclose who their client is. So if there is a group
17 before you and you think there might be a lobbyist in the
18 mix of it, you know, you can ask the question. I know
19 under the current law, they are required to disclose that
20 if asked by a government official.

21 REPRESENTATIVE NELSON: Thank you.

22 MR. CULLISON: Mm-hmm.

23 MAJORITY CHAIRMAN GROVE: Anything else?

24 Seeing none, gentlemen, thank you so much. I
25 know it's very rare that you get to be on kind of that side

1 of the table, so I'm sure it's quite an experience.

2 We really appreciate your input into this and
3 your willingness to actually come and testify. I know it's
4 not an easy thing to do, so we do recognize that and
5 appreciate your willingness to do so.

6 Thank you very much.

7 MR. CULLISON: Thank you.

8

9

PANEL 2:

10

PA DEPARTMENT OF STATE

11

AND

12

STATE ETHICS COMMISSION

13

14

MAJORITY CHAIRMAN GROVE: All right. We'll start
15 with Panel 2, the Department of State and State Ethics
16 Commission. If you can make your way up to the table.
17 Thank you.

18

I want to first start off by thanking each of
19 your agencies for your assistance in this process. It is
20 new to State Government. We greatly appreciate the input
21 you have had to date. I'll follow up with you on the
22 interview process and see how it went for you as well.
23 Part of performance is kind of checking on how we do as
24 well to make sure we are accurate in the facts and the
25 merits. So I just wanted to thank each of you for your

1 participation and willingness to talk to our Members.

2 And to the Department of State, we have heard
3 great things about how you have been operating the lobbying
4 disclosure. So please give your employees credit to their
5 willingness and their due diligence and their assistance to
6 date.

7 With that, I don't know if you have any opening
8 remarks. I'll maybe throw it to the Department of State
9 and then come over here to Ethics, if you have any opening
10 comments. And obviously one of the things we are always
11 looking for is how to improve the system, so any
12 recommendations we find people have, we greatly appreciate
13 it.

14 DEPUTY SECRETARY MARKS: Good morning, Chairman
15 Grove. Good morning, Chairman Bradford. Good morning,
16 Members of the House Oversight Committee.

17 We don't have any formal testimony or remarks. I
18 just want to thank the Committee for including us in this
19 important work and for giving us an opportunity to provide
20 testimony today.

21 I also want to thank the Committee staff for the
22 work they have already done on this issue. In the meetings
23 we have had, that information has already been very
24 valuable to the Department, and we appreciate the
25 opportunity.

1 EXECUTIVE DIRECTOR CARUSO: Good morning.
2 Chairperson Grove, Chairperson Bradford, and
3 Members of the House of Representatives Government
4 Oversight Committee, and Senator Phillips, my name is
5 Rob Caruso, and I am the Executive Director of the
6 Pennsylvania State Ethics Commission.

7 Accompanying me today are members of the
8 Commission: Vice Chairman Mark Corrigan and Commissioner
9 Roger Nick. Also present are the Commission's Chief
10 Counsel, Robin Hittie; Deputy Executive Director and
11 Director of Investigations, Brian Jacisin; and
12 Investigative Counsel, Jeffery Frankenburger, who has
13 primary responsibility for lobbying and compliance.

14 We are here today pursuant to the invitation of
15 the Committee to provide testimony, offer comments, and
16 answer any questions that Members of the Committee may
17 have. The Commission is appreciative of the invitation to
18 participate in today's proceedings and is here to offer
19 whatever assistance the Committee deems appropriate.

20 In addition to its many duties and
21 responsibilities under other laws, the Commission in 2006
22 was tasked with the enforcement of the registration and
23 reporting requirements of the Lobbying Disclosure Act as
24 well as issuing advisory opinions under the law.

25 Presently, the Commission's enforcement of the

1 registration and reporting requirements of Sections 13A04
2 and 13A05 begin with the Commission's Investigative
3 Division receiving a listing from the Department of State
4 of registrants which have not filed quarterly expense
5 reports. The Commission Investigative Division counsel
6 will compare this list with the Department of State
7 database and will also check the Commission's database to
8 determine if there were prior instances of noncompliance.

9 Warning Notice Letters are then sent to those
10 registrants that have been identified and confirmed as
11 having not filed quarterly expense reports as required by
12 law. Those not filing expense reports within 30 days of
13 the issuance of the Warning Notice Letter are then sent a
14 Notice of Alleged Noncompliance via certified mail. The
15 registrants who are the subject of a Notice of Alleged
16 Noncompliance must file an answer with the Commission
17 within 30 days.

18 In most instances, upon receipt of the Notice
19 of Alleged Noncompliance, contact is made with
20 Commission Investigative Division staff, following which
21 registrants and Commission staff negotiate a Consent
22 Agreement/settlement. In the event no answer is filed or
23 no contact has been made with the Commission, staff of the
24 Investigative Division will notify the Commission's Legal
25 Division to begin formal proceedings. Once a default has

1 occurred, the matter is forwarded to the Commission for a
2 ruling. Penalties are administered in accordance with the
3 law.

4 Since 2014, the Commission has issued 881 Warning
5 Notice Letters, resulting in the issuance/filing of
6 84 Notices of Alleged Noncompliance, culminating in
7 Commission Orders directing payment in excess of \$350,000.
8 The total number of Warning Notice Letters have, however,
9 decreased from 273 in 2014 to 60 during the first and
10 second quarters of 2019. Statistics for the past 5 years
11 are highlighted in an attached addendum that we provided to
12 the Committee.

13 Prior to the passage of Act 2 of 2018, the filing
14 of quarterly expense reports with the Department of State
15 would be completed either electronically or in paper
16 format. The existence of both the paper and electronic
17 reports at times made confirmation of compliance tedious
18 and uncertain.

19 There were instances of registrants having filed
20 paper forms, but for some reason, the quarterly reports
21 were not identified within the database, creating the
22 appearance that the registrants had not filed. However,
23 with the passage of Act 2 of 2018 requiring electronic
24 registration, these instances have been remedied to a great
25 extent.

1 There is insufficient data to make any
2 conclusions whether the increased penalties provided for in
3 Act 2 of 2018 have resulted in greater compliance.
4 However, the number of Warning Notices issued thus far in
5 2019 suggest a trend towards increased compliance.

6 The electronic registration system implemented by
7 the Department of State has resulted in greater efficiency
8 and less uncertainty when initiating compliance
9 proceedings. It is anticipated that this will also
10 eventually result in greater compliance. With any new
11 system, issues arise, but the Commission has continued to
12 work with the Department of State to identify issues and
13 reach solutions.

14 As requested, the Commission staff who are most
15 familiar with the Lobbying Disclosure Law have identified
16 some areas where improvement can be made to increase
17 transparency and achieve greater compliance. Those
18 suggestions are appended to this document.

19 The members and staff of the State Ethics
20 Commission welcome the opportunity to make this
21 presentation and assist the Committee as they address
22 increasing the effectiveness of the Lobbying Disclosure
23 Law.

24 On behalf of the Commission, I would like to
25 thank the Committee for the opportunity to make this

1 presentation, and we would be pleased to answer any
2 questions that the Members may have.

3 Thank you.

4 MAJORITY CHAIRMAN GROVE: Thank you very much.

5 I do have some follow-up questions. We'll start
6 there with the Department of State from the list of
7 questions that we had sent you, and I appreciate your
8 timeliness in working with us to get those addressed.

9 One, you use a staff augmentation contract to
10 maintain the current IT system for lobbying disclosure,
11 which isn't normal. A lot of agencies do use that IT. A
12 question I have, and I don't know if you have it or if this
13 is a DGS question since they maintain it, but how long have
14 those individual staffs been on that contract, do you know?

15 DEPUTY SECRETARY MARKS: I can't speak for
16 individual staff members, but I know for the past several
17 years, at least, a large portion of the same team members
18 have been on the team. So we basically use a statewide,
19 enterprise-wide staff augmentation contract to get
20 resources to assist us with making changes or tweaks to the
21 database as necessary.

22 MAJORITY CHAIRMAN GROVE: Gotcha.

23 And do they use the same people in there so they
24 get that institutional knowledge, or is it a large pool and
25 they just send someone in?

1 DEPUTY SECRETARY MARKS: We do share -- it's the
2 same contractor, in some cases, that also worked on voter
3 registration database issues. But there are specific staff
4 members that we work with who have institutional knowledge
5 regarding the lobbying disclosure database.

6 MAJORITY CHAIRMAN GROVE: Okay.

7 And then, do you know how they verify credentials
8 when they bring in those augmented staff?

9 DEPUTY SECRETARY MARKS: That's Office of
10 Administration IT. I know there are background checks done
11 on all contractors. I'm not intimately familiar with the
12 process---

13 MAJORITY CHAIRMAN GROVE: Okay.

14 DEPUTY SECRETARY MARKS: ---but I know there is a
15 background check that is done on all contractors who do
16 work for the Commonwealth.

17 MAJORITY CHAIRMAN GROVE: Gotcha.

18 The Lobbying Disclosure Law requires registration
19 revenue be placed into a special fund and only be used for
20 lobbying disclosure. In your response to written
21 questions, you responded that you have four complement
22 positions for lobbying disclosure, but all seven employees
23 in the lobbying disclosure and campaign finance are
24 cross-trained in both those positions. I assume you had a
25 cost allocation plan for that?

1 DEPUTY SECRETARY MARKS: We actually -- yes. And
2 actually, our staff enters time into a timesheet system to
3 track the time they are working on different things if they
4 are working in different areas of the Bureau.

5 MAJORITY CHAIRMAN GROVE: Gotcha.

6 How much revenue does the Department receive from
7 the registration fees, and how much does that cover for
8 your lobbying disclosure operation?

9 DIRECTOR LAWSON: Good morning, Chairman Grove.

10 MAJORITY CHAIRMAN GROVE: Good morning.

11 DIRECTOR LAWSON: So our projected fiscal year
12 costs for '19-20 total, for personnel and operating, is
13 737,353. So that's drawing from the Restricted Fund.

14 MAJORITY CHAIRMAN GROVE: Okay. So is your total
15 operation for lobbying disclosure covered under the
16 registration fees or is there a gap?

17 DIRECTOR LAWSON: There is a gap.

18 MAJORITY CHAIRMAN GROVE: There's a gap.

19 DIRECTOR LAWSON: We also draw from our campaign
20 finance, which is from the General Fund as well.

21 MAJORITY CHAIRMAN GROVE: Gotcha.

22 What is that gap? What total percentage of your
23 lobbying disclosure budget comes from that restricted
24 account? And you can give me an estimate, if you want --
25 50 percent, 75, 10.

1 DEPUTY SECRETARY MARKS: I think it is around
2 50 percent, but we'll confirm---

3 MAJORITY CHAIRMAN GROVE: Okay.

4 DEPUTY SECRETARY MARKS: ---and provide the
5 Committee with an exact number of what percentage it comes
6 from.

7 MAJORITY CHAIRMAN GROVE: I appreciate that.

8 If I'm not mistaken, there was a sales tax placed
9 on lobbying as well, and that money goes into the General
10 Fund, correct? That doesn't go back to fund lobbying
11 disclosure whatsoever.

12 DEPUTY SECRETARY MARKS: Yes, I believe that's
13 correct.

14 MAJORITY CHAIRMAN GROVE: Okay.

15 So, you know, we all do campaigns, so we have
16 been out through the campaign process at heavy times when
17 petitions are done. How do you, how do you staff that to
18 make sure that, you know, a heavy time for lobbying
19 disclosure and end of the quarter reports come in at the
20 same time. I don't know if that ever overlaps with kind of
21 the functions of the campaign finance side. How do you
22 work through those issues internally?

23 DEPUTY SECRETARY MARKS: The deadlines don't
24 often overlap. Sometimes, they are very close together.
25 But typically, the quarterly reporting deadlines and the

1 campaign finance deadlines don't directly overlap.

2 And that's really the reason that we have
3 cross-trained staff in those two divisions, so that, you
4 know, as we get near a deadline for lobbying, for example,
5 then we can bring more people in to help with that
6 workload, which has been somewhat reduced by the passage of
7 Act 2.

8 MAJORITY CHAIRMAN GROVE: Mm-hmm.

9 DEPUTY SECRETARY MARKS: Obviously, there's no
10 more data, direct data entry involved.

11 And the converse is true. If we are coming into
12 a campaign finance deadline and we need to put additional
13 resources to help out, we can move staff around. The idea
14 was to try to be as flexible as possible and meet the
15 needs. Because it's not a, it's not a consistent static
16 flow of work. Because of those deadlines, you see peaks
17 and valleys, so we wanted to make sure that we could move
18 staff where we needed them most at specific times during
19 the year.

20 MAJORITY CHAIRMAN GROVE: So in your opinion, it
21 is effective to use the cross-training in the way you have
22 it now; otherwise, you would have to have dedicated staff
23 and higher costs and then may not need them or that
24 full-time staff at that time, depending on the time of
25 year.

1 DEPUTY SECRETARY MARKS: That's correct.

2 MAJORITY CHAIRMAN GROVE: Okay.

3 The Lobbying Disclosure Regulations Committee
4 hasn't met since 2009, correct?

5 DEPUTY SECRETARY MARKS: I believe that's
6 correct, yes.

7 MAJORITY CHAIRMAN GROVE: Okay.

8 The Chair of that is currently the Attorney
9 General with appointees, I believe from the General
10 Assembly. I don't recall who provides the staffing of that
11 committee. Is that the Department of State that staffs
12 that or Ethics?

13 DEPUTY SECRETARY MARKS: I believe, I believe the
14 Department of State provides some administrative support to
15 the Regulations Committee.

16 MAJORITY CHAIRMAN GROVE: Okay.

17 I guess the big question is, in your opinion, is
18 that committee needed moving forward, and if so, who is
19 kind of in charge of bringing the gang back together to
20 have discussions?

21 DEPUTY SECRETARY MARKS: I don't know that
22 it's necessarily clear in the statute. I would have to
23 double-check.

24 MAJORITY CHAIRMAN GROVE: Mm-hmm.

25 DEPUTY SECRETARY MARKS: But I don't know that

1 it's clear who brings the crew back together. I don't know
2 that it's necessarily within the discretion of the
3 Department of State.

4 And certainly from time to time -- you know,
5 we're talking about a period of 10 years since they last
6 met -- certainly from time to time, I think it would be
7 necessary periodically anyway to bring them together if
8 changes needed to be made to the regulations to conform
9 with recent changes to the statute, for example.

10 MAJORITY CHAIRMAN GROVE: Gotcha. Thank you.

11 In the data you provided, and going back to
12 looking at new registrants' renewals and terminations, you
13 provided us some data from 2015 to 2019. Going through
14 there, I found some just interesting trends and I don't
15 really have a background for it, so I just wanted to try
16 to get your take on kind of what's happening behind the
17 data.

18 So for principals in 2016, there are 208 new
19 registrants, 358 renewals, in 149 terminations. So that
20 roughly adds up and subtracts out to 417. But then in
21 2017, there were 1,032 renewals, which means there were
22 615 principals who didn't register in 2016 that now renewed
23 their registration in 2017. And then in 2018, only
24 574 principals renewed their registration. Do you know why
25 there was a spike in 2017 for principals, and just looking

1 through there, there is just spikes and dips. Any
2 background on why that is happening?

3 DEPUTY SECRETARY MARKS: I think part of it is,
4 so there's a 2-year registration period, and I think part
5 of that is related to when a particular principal will
6 reach the threshold for reporting and necessitate
7 registration.

8 The Department also raised the threshold for
9 quarterly reporting, and I believe that took effect in
10 January of 2017. It raised from \$2500 to \$3,000, and that
11 was due to a requirement in the statute itself that
12 requires the Department to periodically look at the
13 threshold and adjust it for inflation, and we went through
14 that process.

15 I don't know that you can make a direct
16 correlation with that, but those are the two, probably the
17 two most logical explanations for it.

18 MAJORITY CHAIRMAN GROVE: Okay.

19 So really when we look at the data, we have to
20 look at it in 2-year implements to really gauge who is
21 coming and going within that system, correct?

22 DEPUTY SECRETARY MARKS: I believe that's
23 correct, yes.

24 MAJORITY CHAIRMAN GROVE: Okay; okay. That's
25 very helpful. Thank you.

1 Questions? Representative Lawrence.

2 REPRESENTATIVE LAWRENCE: Thank you,

3 Mr. Chairman.

4 And thank you for being here today. I appreciate
5 you taking time to be before the Committee.

6 This question, I think, is probably more geared
7 towards the Department of State.

8 So first, how do you deal with folks who are
9 lobbying but they are not registered at all?

10 DEPUTY SECRETARY MARKS: I don't know that
11 there's really a mechanism for the Department to deal with
12 that. If somebody is engaging in lobbying activity and is
13 not registered at all, I would think that would be a
14 complaint that would be filed with the State Ethics
15 Commission for their investigation.

16 REPRESENTATIVE LAWRENCE: And not to put you on
17 the spot, but who would file such a complaint?

18 DEPUTY SECRETARY MARKS: Anyone, I would imagine,
19 who has knowledge -- I'll defer to the Ethics Commission on
20 the details, but I think anyone who has knowledge that that
21 activity is occurring and registration has not been made.

22 REPRESENTATIVE LAWRENCE: Yeah. So not to put
23 you on the spot, but, I mean, is that a common occurrence?
24 Do you commonly get complaints that folks are lobbying and
25 have not been registered?

1 EXECUTIVE DIRECTOR CARUSO: The Commission, I
2 think in the last 10 years, has received six complaints.

3 REPRESENTATIVE LAWRENCE: Okay. So that was my
4 suspicion -- right? -- that it never happens.

5 EXECUTIVE DIRECTOR CARUSO: There aren't that
6 many. Right.

7 REPRESENTATIVE LAWRENCE: So here we have an
8 entire system set up to register lobbyists, and the intent
9 behind it, I think, is positive, but there is very little
10 policing of folks who are engaging in the practice without
11 having undergone the registration requirements. Is that a
12 fair statement?

13 EXECUTIVE DIRECTOR CARUSO: Yes. It's pretty
14 much the honor system that you register and lobby. There
15 could be people in the Capitol lobbying daily that no one
16 would know about.

17 REPRESENTATIVE LAWRENCE: Mm-hmm.

18 EXECUTIVE DIRECTOR CARUSO: And I think it would
19 be such a huge task to try to regulate that, at least with
20 the staff we have. We couldn't do that.

21 REPRESENTATIVE LAWRENCE: So let me go down a
22 little bit different path here.

23 So in the Commonwealth, we have a system of
24 professional licensure for doctors, dentists, optometrists.
25 These are, you know, important medical professions. We

1 license a broad swath of individuals -- auctioneers,
2 barbers, hair braiders. Most of these licensed professions
3 have basic requirements that one has to meet prior to
4 licensure. Many, not all, have continuing education
5 components or ethics components. We do not license
6 lobbyists; we register them. And I recognize that all
7 professions have important value. I think one could argue
8 that the gravity of the profession of lobbying rises at
9 least to that of braiding hair, and, you know, I probably
10 need a good haircut right now, but cutting hair.

11 So the Department of State oversees the licensure
12 of professions in the Commonwealth and this process of
13 registering lobbyists. So in your opinion, should the
14 General Assembly pursue licensure for lobbyists,
15 recognizing that if one were to practice medicine, if one
16 were to practice dentistry in the Commonwealth, even being
17 educated in those fields, but without the proper licensure,
18 there would be significant penalties. Should the General
19 Assembly pursue licensure for lobbyists?

20 DEPUTY SECRETARY MARKS: I---

21 REPRESENTATIVE LAWRENCE: In your opinion. I
22 recognize it's ultimately a question for us to decide.

23 DEPUTY SECRETARY MARKS: Exactly.

24 REPRESENTATIVE LAWRENCE: But I'm interested in
25 your opinion since you oversee this aspect of licensure

1 and registration of lobbyists on behalf of the
2 Commonwealth.

3 DEPUTY SECRETARY MARKS: You know, I'm loath to
4 provide my personal opinion about whether I think that's a
5 good idea or not.

6 I will say this: Because the Department oversees
7 licensure, certainly it is potentially a natural fit. If
8 the General Assembly were to decide to treat lobbyists as
9 licensed individuals or a licensed profession, we obviously
10 have already in place, you know, some of the infrastructure
11 to deal with that. But, you know, I don't know, it would
12 really be a personal opinion, and I'm not sure that that's
13 really appropriate for me to provide today.

14 But, you know, I think it is something, because
15 we have, as I said, the Bureau of Professional and
16 Occupational Affairs. We do licensure. We also have a
17 Bureau of Enforcement and Investigation within the Bureau
18 of Professional and Occupational Affairs. A lot of the
19 pieces are in place to handle that.

20 Is that a fair answer?

21 REPRESENTATIVE LAWRENCE: It is. And not to
22 belabor the point, but if someone were practicing, for
23 example, dentistry in the Commonwealth without having
24 obtained the proper license, and they may be licensed in
25 another State. They may have gone to the best dental

1 school in the nation, but they have not been licensed by
2 the Commonwealth. If one were practicing for an extended
3 period of time, perhaps, even in the Commonwealth, what
4 would the Department of State do?

5 DEPUTY SECRETARY MARKS: I'm not intimately
6 familiar. That's not my side of the house, necessarily.

7 REPRESENTATIVE LAWRENCE: Okay. That's fair.

8 DEPUTY SECRETARY MARKS: But as I said, we do
9 have a Bureau of Enforcement and Investigation. I know
10 some of that is driven by complaints filed by the general
11 public, but not necessarily all of it.

12 You know, there are professionals that work
13 within the Bureau of Enforcement and Investigation that can
14 kind of do that, you know, down in the weeds investigative
15 work, which is not the case on the lobbying disclosure
16 side.

17 REPRESENTATIVE LAWRENCE: I appreciate your
18 comments very much.

19 And, Mr. Chairman, I appreciate your indulgence.
20 Thank you.

21 MAJORITY CHAIRMAN GROVE: Representative Nelson.

22 REPRESENTATIVE NELSON: Thank you, Mr. Chairman.

23 And thank you for, you know, such a strong
24 showing today for the hearing.

25 Just a couple of questions of clarification.

1 As I understand it, it's outside of the lobby
2 scope here in Harrisburg, but are there equal or offsetting
3 guidelines for let's say municipal government or the
4 judiciary or other lobbying elements within the State of
5 Pennsylvania?

6 DEPUTY SECRETARY MARKS: I'll attempt to answer
7 that, and then I'll let the Ethics Commission provide an
8 answer.

9 I'm not aware of it. If you're asking, is there
10 a similar statute that is applicable to local offices,
11 municipal-level offices, then the answer is, I'm not aware
12 that there is. I know there's the Public Official Ethics
13 Act that requires reporting, not only at the State level
14 but also at the local level, but I'm not aware of a
15 lobbying disclosure law that is applicable specifically to
16 local offices.

17 REPRESENTATIVE NELSON: Okay.

18 CHIEF COUNSEL HITTIE: Actually, Philadelphia has
19 a city Board of Ethics that deals with lobbying. And
20 Pittsburgh has a Board of Ethics. I think they may deal
21 with lobbying registration, but I'm not sure.

22 REPRESENTATIVE NELSON: And given the
23 Philadelphia and Pittsburgh reporting, are there some
24 guidelines or some lessons learned that either other
25 regions of the State or even here in Harrisburg that,

1 you know, may be some best practices that you feel we're
2 not applying here?

3 CHIEF COUNSEL HITTIE: Actually, they typically
4 call us for assistance, to be honest with you. But, of
5 course, it never hurts to look at what someone else is
6 doing, and they do have, you know, their own ordinances and
7 regulations, I believe.

8 REPRESENTATIVE NELSON: Okay.

9 And would you be able to touch on, in reviewing
10 some of the background, there seemed to be a difference
11 between an attorney who is a lobbyist and a non-attorney.
12 I'm not an attorney, so I was a little bit -- can you kind
13 of walk me through the differences?

14 CHIEF COUNSEL HITTIE: Well, in the *Gmerek* case,
15 which Commonwealth Court said that lobbying by a lawyer is
16 the practice of law, and that case was what resulted in
17 what I will call the first most recent lobbying stricken as
18 void.

19 So certainly there are many lobbyists who are
20 lawyers and there are many lobbyists who are not lawyers,
21 but if a lawyer is doing lobbying, it is considered the
22 practice of law. So anytime you are looking at making a
23 change, for example, having licensure requirements for
24 lobbyists, you do have to take into account the fact that
25 the Supreme Court has the exclusive jurisdiction to

1 regulate lawyers. So you always have to be sensitive to
2 how the court might view whatever it is you are trying to
3 do. So I guess I would just keep that in mind as you are
4 looking at making changes.

5 I think the Rules of Professional Conduct can
6 come into play for lawyers when you're trying to maybe
7 require greater disclosure transparency.

8 REPRESENTATIVE NELSON: That's a really nice
9 transition. If each of your entities would be able to
10 touch on the concept of not just dollar-one reporting, but
11 it seems right now with the principal-only reporting, it's
12 difficult to establish checks and balances between a
13 lobbyist and a principal or a principal that has multiple
14 lobbyists. You know, would the system become too
15 cumbersome if we were having reporting on both sides that
16 would enable your department to query one against the
17 other, or do you feel that evaluating solely the
18 principals, we're achieving the goal?

19 CHIEF COUNSEL HITTIE: Go ahead.

20 DEPUTY SECRETARY MARKS: I'll answer in terms of
21 as a technical matter. I don't know that the amount being
22 reported would necessarily create an undue burden on the
23 Department, and certainly we would have to look at what
24 technical changes would be necessary to the database to
25 capture that. But there is already reporting coming from

1 both principals and lobbyists and lobbying firms.

2 And I think you mentioned, you know, one of the
3 challenges, of course, is tying that all together, you
4 know, tying together a firm and a group of principals or
5 tying together a specific lobbyist and a group of
6 principals.

7 The kind of aggregate reporting in various
8 categories of lobbying activity, I think, you know, maybe
9 makes it more difficult for somebody to parse out what is
10 being spent on what. But I don't know that the amount---

11 So if the General Assembly were to decide that
12 there's not going to be a threshold, at least not, you
13 know, with maybe some exceptions to deal with those folks
14 who are lobbying, you know, the "mom-and-pop" shops I think
15 was the term used earlier, I don't know that that would
16 necessarily, the amount, would cause a challenge for the
17 Department. It's really kind of the interconnectivity of,
18 you know, the firms and the principals that, you know, if
19 you changed that significantly may require some deeper
20 technical changes.

21 Tiffany.

22 DIRECTOR LAWSON: Representative Nelson, I think
23 that's a great question, but I just would like to add that
24 currently, lobbyists and lobbying firms who maybe their
25 expenses aren't being reported by a principal will file an

1 expense report. So it's a bit of a -- so not just
2 principals are currently filing expense reports.

3 REPRESENTATIVE NELSON: Is that a voluntary
4 filing, or is that a---

5 DIRECTOR LAWSON: It's a voluntary filing. So if
6 they feel that their information is not currently being
7 captured by a principal, or maybe they are not working
8 directly with a principal, then they are required to file
9 an expense report.

10 And the other thing that I just wanted to share
11 is once the principal files the quarterly expense report
12 30 days after the reporting period has closed, then the
13 lobbyist and the lobbying firm, they have to affirm that
14 the information stated in the report is correct.

15 CHIEF COUNSEL HITTIE: The Commission, of course,
16 is all for greater disclosure, greater transparency, more
17 detailed disclosure.

18 I think probably your best resource for finding
19 out the practical aspects of this would be to talk to more
20 lobbyists and principals, perhaps have a task force,
21 because they are the ones dealing with the day to day. So
22 they know times where perhaps there would be overlapping,
23 which you probably don't want to have; times where there
24 would be problems with that proposed approach. I think
25 they would be your best resource.

1 REPRESENTATIVE NELSON: Well, it was heartening
2 to hear the decrease in findings from, you know, from those
3 audits and how compliance is, you know, starting to fall
4 into place.

5 My last question, Mr. Chairman, is financially
6 related with, there is, you know, an amount or a bucket of
7 money that comes from the lobby side, and then as was
8 discussed earlier, that 6 percent goes into the General
9 Fund, but the Department also receives moneys from the
10 General Fund. Is it essentially a wash, or does the
11 Department feel, if it had more clarified resources in that
12 area, that there is a need for greater investigation?

13 Just for the low number of findings off of that
14 3 percent, if we were in a manufacturing environment, you
15 would be feeling pretty good and maybe looking at some
16 either different areas. Can you touch on, is there
17 additional need here? Is there not additional need for
18 financial resources or inquiry?

19 DEPUTY SECRETARY MARKS: I -- huh. Well, that's
20 another tough question. You know, as a State agency, you
21 always want to see---

22 REPRESENTATIVE NELSON: That's kind of our goal.

23 DEPUTY SECRETARY MARKS: ---yes, we could use
24 additional resources, so. But I won't, I won't just agree
25 and move on. You know, I think there are certainly areas

1 where the Department can improve, you know, its own
2 internal processes. Some of that may involve the database.
3 Some of it is just procedural stuff.

4 And, you know, getting the extra resources
5 without some mechanism in the law to do -- you know, if the
6 intent is to go further and to do more investigative type
7 of work to try to identify lobbying activity that is
8 occurring and not being reported, I think maybe the
9 resources should be, or maybe, you know, maybe the General
10 Assembly needs to look at statutory changes that would
11 provide a specific mechanism or rules around doing that.

12 You know, I don't know that the Department or
13 even the State Ethics Commission -- I'll let them answer
14 for themselves -- has broad discretion to go out and try to
15 hunt down and find activity that is not being reported.

16 EXECUTIVE DIRECTOR CARUSO: Right now the way
17 the Commission operates with just looking at the
18 non-disclosures, a budget increase, I don't think, would be
19 necessary. But if we were tasked with going out and trying
20 to determine if there were individuals lobbying without
21 being registered or trying to ferret out expenses that are
22 not being reported, that opens up a whole nother can of
23 worms where I think it would require probably significant
24 funding, because then you're looking at people with
25 specialized backgrounds in accounting, perhaps

1 investigators, to look at these types of things.

2 REPRESENTATIVE NELSON: Great. Thank you. Thank
3 you very much for your conscientious answers as well.

4 MAJORITY CHAIRMAN GROVE: Thanks.

5 I want to get into a discussion around annual
6 reports. So the Department of State, you haven't listed
7 your annual reports on your website for a number of years.
8 Did anybody actually call and care whether your annual
9 reports were actually on your website?

10 DEPUTY SECRETARY MARKS: I'll let Tiffany
11 confirm, but the answer is no.

12 MAJORITY CHAIRMAN GROVE: No.

13 DEPUTY SECRETARY MARKS: Now, we did prepare them
14 but did not post them, and we'll make sure that never
15 happens again.

16 MAJORITY CHAIRMAN GROVE: Well---

17 DEPUTY SECRETARY MARKS: But nobody seemed to
18 care.

19 MAJORITY CHAIRMAN GROVE: Let's have a
20 conversation around this.

21 Nobody cares---

22 DEPUTY SECRETARY MARKS: Or noticed, for that
23 matter.

24 MAJORITY CHAIRMAN GROVE: Nobody cared, so it is
25 what it is. Within the statute, it just says you "shall"

1 have an annual report. There is literally -- we don't
2 direct what we're looking for in that annual report. So
3 literally, my 19-month-old daughter could scratch on a
4 piece of paper, hand it to you, and you can say, here's
5 your report, correct?

6 DEPUTY SECRETARY MARKS: We take a little more
7 pride there, but.

8 MAJORITY CHAIRMAN GROVE: I get it, but---

9 DEPUTY SECRETARY MARKS: Yes. There is no
10 specific ask for what's in the annual report.

11 MAJORITY CHAIRMAN GROVE: Mm-hmm.

12 DEPUTY SECRETARY MARKS: So it's usually
13 high-level data; the amount of money that is being spent on
14 lobbying activity. We'd probably show a chart or two or
15 three that kind of breaks down the general categories that
16 that spending falls into. But yes, there's no specific
17 requirement.

18 MAJORITY CHAIRMAN GROVE: Ethics, you also file
19 annual reports. Yours is comprehensive, correct? See you
20 add kind of all your activities on one aggregate annual
21 report, correct?

22 EXECUTIVE DIRECTOR CARUSO: That's correct, yes.

23 MAJORITY CHAIRMAN GROVE: I haven't reviewed your
24 statute on that, but is it similar, just very vanilla
25 language that says you shall submit us an annual report,

1 and we don't provide any guidance whatsoever?

2 EXECUTIVE DIRECTOR CARUSO: That's correct, yes.

3 MAJORITY CHAIRMAN GROVE: Okay.

4 Between your two entities with lobbying
5 disclosure, you are interconnected, is why you are kind of
6 here. It's a bifurcated system. You do the data; you do
7 the investigation and enforcement side. Is there a better
8 process that kind of the lobbying disclosure annual report
9 would be more handled by the Ethics and you supply the
10 data? Two, would it be more efficient if the General
11 Assembly actually requires an annual report? We would
12 actually follow up with hearings on said report and provide
13 greater guidance as to what we're looking in within those
14 reports. Or, scrapping them altogether, because I'm sure
15 that's valuable staff time that could be used doing other
16 duties rather than doing documents that we obviously don't
17 care about.

18 DEPUTY SECRETARY MARKS: To the extent that the
19 report can further the bottom line, the bottom line being
20 transparency, certainly having a specific deadline and some
21 guidance from the General Assembly on exactly what needs to
22 be in that report. I think it would be a valuable exercise
23 holding hearings.

24 You know, I wouldn't say that scrapping it
25 altogether is necessary, but certainly the report would

1 have to, you know, I'm kind of a bottom-line guy, and the
2 bottom line of this law is transparency. So that report
3 would need to further the cause of transparency, and I
4 think it's possible to do that, but there would need to be
5 some very explicit guidance on what needs to be in that and
6 discussions with the Department and the Committee and the
7 State Ethics Commission about what we should be showing
8 people, showing the public, so that they feel confident
9 that there is transparency in reporting.

10 EXECUTIVE DIRECTOR CARUSO: We would agree. And
11 right now, we track everything that we do as far as the
12 number of notices we sent, the money we collect. So it
13 would be, our part of it would be fairly easy. But I think
14 when you're doing these annual reports, you want maybe a
15 little bit more than just what the numbers are: We sent a
16 hundred letters and 80 people complied. I think you want
17 to give a little substance to that.

18 So I think I would agree with Jonathan to give us
19 some guidance of the type of information that the
20 Legislature would want from us as far as investigations and
21 what compliance efforts are taking place.

22 MAJORITY CHAIRMAN GROVE: Well, I appreciate that
23 feedback.

24 You hit on something very important, though.
25 Kind of the goal of lobbying disclosure is transparency.

1 Do you feel the current Lobbying Disclosure Law clearly
2 delineates who is spending money on lobbying and where the
3 money is going?

4 DEPUTY SECRETARY MARKS: Again, it's probably
5 more of a personal opinion maybe. But I do think it's fair
6 to say that you are not getting details about exactly where
7 the money is being spent just the way the statute is laid
8 out and what the reporting requirements are. You may have
9 a total number and you may know and have some reasonable
10 level of confidence that all of the dollars are being
11 reported, but you don't necessarily -- you can't
12 necessarily tie that to specific interactions as the law is
13 written right now.

14 MAJORITY CHAIRMAN GROVE: Okay.

15 One of the examples, and staff pulled up total
16 gifts, hospitality, transportation, and lobbying to named
17 individuals, 2017. They showed in 2017 it was 32,318.
18 That's from the website, so that's reportable from the
19 website, and it has, you know, Penn State University on
20 here, Pennsylvania Parks Conservancy, all kinds of stuff.

21 Then we got your data which we asked, and for
22 2017, it lists gifts for 2017 as \$1.7 million, and that's
23 what we had to pull from you. So the public is out there
24 thinking 32,000; the actual number is 1.7. So kind of
25 building on that transparency, did the law clearly

1 delineate to the public what that amount was?

2 DEPUTY SECRETARY MARKS: Yeah. I think, and that
3 goes back, I think, to the thresholds for, you know, gifts
4 to specific individuals versus kind of the overall amount
5 of gifts, hospitality, you know, lodging.

6 MAJORITY CHAIRMAN GROVE: Mm-hmm.

7 DEPUTY SECRETARY MARKS: Clearly there's a
8 disconnect between those two numbers, and you make a very
9 good point. If you are somebody from the public taking a
10 look at this, it doesn't add up for you and it doesn't make
11 sense.

12 MAJORITY CHAIRMAN GROVE: Mm-hmm.

13 DEPUTY SECRETARY MARKS: And, you know, calling
14 us to get a tortured explanation as to why that does make
15 sense isn't necessarily going to make you feel more
16 confident. So I think that's a very salient point.

17 MAJORITY CHAIRMAN GROVE: Yeah.

18 So what was brought up as a solution earlier is
19 dollar-one reporting. Obviously, you know, within your
20 testimony you are looking at potentially building a new
21 system moving forward. Do you think that type of level of
22 detail will solve kind of those public transparency
23 issues?

24 DEPUTY SECRETARY MARKS: I think it will. I
25 think it certainly will close that gap and eliminate the

1 disconnect. So, you know, people will be able to, you
2 know, make sense of those two different numbers and see,
3 you know, exactly where that money is being spent if you go
4 with dollar-one reporting.

5 And again, you know, the amount of dollars isn't
6 necessarily the challenge for the Department of State; it's
7 some of the other things, you know, the various thresholds,
8 et cetera.

9 MAJORITY CHAIRMAN GROVE: Gotcha.

10 So in general, with the scope of law being named
11 the "Lobbying Disclosure Law," what relationship do you
12 think the public cares more about, principal to lobbyist,
13 lobbyist to public official, or principal to public
14 official? In kind of those relationships, what do you
15 think is the focal point that the general public really
16 wants to know?

17 DEPUTY SECRETARY MARKS: I think anecdotally,
18 it's probably principal to public official.

19 MAJORITY CHAIRMAN GROVE: Okay.

20 DEPUTY SECRETARY MARKS: You know, corporate
21 money, you know, to specific public officials, not
22 necessarily an individual lobbyist to a public official.

23 I'm not sure, again anecdotally, just, you know,
24 what I hear, the word on the street, most people are trying
25 to figure out, where is the money coming from; what

1 industry is putting money, you know, towards lobbying, as
2 opposed to which specific lobbyist is doing it.

3 MAJORITY CHAIRMAN GROVE: Gotcha.

4 Senator.

5 SENATOR PHILLIPS-HILL: Thank you, Chairman.

6 Ladies and gentlemen, thank you for being here
7 today. Just two questions.

8 One, the discussion in the previous panel with
9 regard to lobbyists being political consultants and
10 political consultants being lobbyists, there is currently
11 legislation introduced here in the House with regard to
12 ending the practice. There was some conversation that
13 there is a belief that we can't outright ban the practice
14 but we could in fact improve the way that those types of
15 relationships are disclosed.

16 Department of State, you run those systems. What
17 do you think can be done to improve the transparency and
18 the disclosure of this practice? And then also from an
19 Ethics Commission perspective, how do you think that that
20 would work?

21 DEPUTY SECRETARY MARKS: Well, I think, you know,
22 from our perspective -- and I'll let Tiffany jump in since
23 she directs this. But, you know, I think from our
24 perspective, getting clear guidance as to if we're trying
25 to tie those two activities together, we have a campaign

1 finance reporting database. We have a lobbying disclosure
2 database. The two are not necessarily tied together.

3 We also have a number of, and I think the folks
4 from Greenlee mentioned it, there are a number of
5 exceptions to registration as well, you know, someone
6 serving on an advisory board or, you know, preparing
7 testimony for the General Assembly, et cetera, so you would
8 have to take those into account.

9 But certainly we could -- it is possible to tie
10 the two pieces together to provide greater transparency.
11 But in order to do that, obviously, we would need some
12 clear guidance on what the reporting thresholds are and
13 where those two things should be tied together directly.

14 SENATOR PHILLIPS-HILL: Thank you.

15 The Ethics Commission?

16 CHIEF COUNSEL HITTIE: I'm just mulling this over
17 and kind of shooting from the hip. But if you were to do
18 this, I think it would be helpful to have that piece of it
19 separate.

20 Part of lobbying, part of the requirement to
21 register, it's separately defined so that the public would
22 know and we would know clearly this is a political
23 consulting person. The more you mix things up, the harder
24 it is to tell who is doing what and for what purpose. So I
25 think it's a great idea to have registration, to have that

1 in there, but maybe in a clearly defined category.

2 SENATOR PHILLIPS-HILL: Thank you.

3 And then -- if I can find that point in your
4 testimony.

5 So Director Caruso, in your written testimony,
6 you indicated that with the passage of Act 2 of 2018 that
7 required electronic registration, that the filing of
8 quarterly expense reports, that you have seen much more
9 compliance in the lobbying community, and there is
10 currently legislation pending that would require electronic
11 filing for Legislators. Could we expect to have similar
12 results from the electronic filing of campaign finance
13 reports for Legislators that we have seen with the
14 electronic filing from lobbyists?

15 EXECUTIVE DIRECTOR CARUSO: Well, we don't deal
16 with the campaign finance reports, but just I would think
17 it stands to reason, I think you would see increased
18 transparency, or increased compliance.

19 The issues that we ran into prior to the act in
20 2018, the issues were that you could file both
21 electronically and in paper form, and I think that was
22 causing the issues. You would have one quarter someone
23 would file paper, another quarter they would maybe try to
24 file electronically, and that created a lot of the issues
25 with us getting full compliance.

1 And the same thing that we do with our statements
2 of financial interest, that we have now gone to a voluntary
3 electronic filing, and I think that's the way to go. I
4 mean, we get greater compliance electronically than we do
5 any time with paper.

6 DEPUTY SECRETARY MARKS: May I add just one point
7 to that?

8 SENATOR PHILLIPS-HILL: Please do.

9 DEPUTY SECRETARY MARKS: There are a couple of
10 other, you know, things in Act 2 as well, and one of them
11 was having a clear point of contact electronically, an
12 authorized representative, and I think that helped as well,
13 you know. So we would have an email address, an email
14 address for the authorized representative that was up to
15 date, which enabled the Department and also enables the
16 State Ethics Commission to get in touch with that person,
17 that kind of single point of contact who is responsible for
18 the registrant.

19 DIRECTOR LAWSON: May I, Senator? Sorry; a quick
20 point of clarification.

21 So Act 2 required an authorized representative.
22 As part of the online report, they have to submit a name.
23 The email address space is optional, so they don't have to
24 provide us with an email address, but having an email
25 address would be very helpful to be able to then contact

1 the authorized representative.

2 SENATOR PHILLIPS-HILL: More preferable than
3 having a phone number?

4 DEPUTY SECRETARY MARKS: Yes.

5 DIRECTOR LAWSON: Yes. That is correct.

6 SENATOR PHILLIPS-HILL: Okay; okay. Thank you
7 very much.

8 Thank you, Mr. Chairman.

9 MAJORITY CHAIRMAN GROVE: There's one thing I
10 think the Department of State can maybe help for. When
11 lobbyists register, I don't know if there's a way on the
12 form where the actual person who is registering has to sign
13 and be notified. There was a case of a gentleman who was
14 made a lobbyist unbeknownst to him, and believe it or not,
15 I can register every single person in this room as a
16 lobbyist. You don't know, and because you didn't submit
17 your driver's license or photo identification, the
18 Department of Ethics at some point is going to come
19 a-knocking, and with those increased penalties, and if it
20 takes a year or so to catch up, you're going to be liable
21 for some big dollars. So something in the lines of making
22 sure that those individuals know---

23 DEPUTY SECRETARY MARKS: Sure.

24 MAJORITY CHAIRMAN GROVE: ---that they are a
25 lobbyist, because it's a huge liability if you are unaware

1 and stuff.

2 DEPUTY SECRETARY MARKS: Yeah. And as Tiffany
3 said, having email addresses gives us, you know, the
4 ability to drive out notifications more efficiently.

5 And as noted in the previous testimony, you know,
6 when the Department does engage with the new database,
7 certainly having stakeholders involved, having the
8 regulating community, the State Ethics Commission, the
9 General Assembly involved in, you know, crafting how that
10 database looks and kind of addressing some.

11 We have made a lot of positive changes, as you
12 have heard this morning---

13 MAJORITY CHAIRMAN GROVE: Mm-hmm.

14 DEPUTY SECRETARY MARKS: ---over the last few
15 years, but there's still work to do. And certainly a new
16 database, that's the right time to be having those
17 discussions. So we certainly welcome input from
18 stakeholders, and we'll be seeking it out proactively.

19 MAJORITY CHAIRMAN GROVE: And that will be great.

20 And I think from an internal compliance being
21 able to verify between your two records, I think for
22 enforcement purposes and validating, making sure that you
23 can kind of collaborate between the lobbying side, the
24 principal side, lobbying firms, and so forth, I think that
25 would be effective in a new system.

1 DIRECTOR LAWSON: May I?

2 DEPUTY SECRETARY MARKS: Yes, please.

3 DIRECTOR LAWSON: Chairman Grove, if I may, I
4 just will say, I just started in my position in February,
5 and I will say we have had a phenomenal relationship with
6 the State Ethics Commission and a lot of great conversation
7 back and forth. So I do think that this relationship is
8 very fruitful, and we do look forward to continuing to work
9 strongly together.

10 MAJORITY CHAIRMAN GROVE: Excellent.

11 Executive Director Mike Kane.

12 MAJORITY EXECUTIVE DIRECTOR KANE: Thank you,
13 Mr. Chairman.

14 I want to talk a couple of things.

15 During the course of our interviewing you, we had
16 some discussions about the audits that are being conducted.
17 And you provided us, and we appreciated it, a report for
18 kind of just a summary of the findings in the broadest
19 terms of audits between 2014 and 2017, and it showed that
20 the audits discovered 60, and these are totals for that
21 period, 60 instances of late registration, 37 instances of
22 late filing of expense reports. And I understand that when
23 we talked to you about it, we learned from the Ethics
24 Commission that there had never been a referral of an audit
25 finding to the Ethics Commission, but that there is

1 something now that you are having discussions that is going
2 to remedy that. Could you explain it, maybe?

3 DEPUTY SECRETARY MARKS: Yes.

4 So the late registrations, late filing or failed
5 to file, was something that we were doing, not necessarily
6 in the context of the audit but doing it as, you know, a
7 regular course of business, but there was some delay.

8 Act 2, when Act 2 of 2018 was enacted, we
9 immediately sent over kind of a list of failed to file, and
10 notification goes out immediately because there are
11 penalties that add up. I think it's 10 days, a certain
12 amount of money, you know, every 10 days. So that process
13 was in place. So, you know, a lot of that was caught with
14 kind of our normal day-to-day business.

15 But there were a number of things that were not
16 referred over to the State Ethics Commission. That is
17 something that we are discussing with them already or
18 revisiting. And we want to make sure, because we have the
19 discretion to do that, we want to make sure that we're
20 using it appropriately.

21 So I think that's a collaboration that we have to
22 have with the State Ethics Commission, ask them, you know,
23 here's what we have in terms of findings; what do you want;
24 what is--- Because there are some things that are errors,
25 where somebody, for example, reported the correct amount of

1 lobbying expenses but put it in the wrong category and that
2 was found during the audit. So we want to collaborate with
3 the State Ethics Commission and make sure we're sending
4 them things that are actually actionable for them.

5 MAJORITY EXECUTIVE DIRECTOR KANE: The---

6 DEPUTY SECRETARY MARKS: Oh, I'm sorry. Tiffany
7 has something.

8 MAJORITY EXECUTIVE DIRECTOR KANE: I'm sorry.

9 DIRECTOR LAWSON: Executive Director Kane, I
10 think you also might be asking us what meaningful changes
11 might we be making internally, and I think, you know, we
12 truly appreciate the opportunity to meet with the Committee
13 in all the meetings that we've had with you and Members of
14 the Democratic House. And so we are looking at creating a
15 position internally that would review the audits, and we're
16 working internally to find a timeline for that.

17 MAJORITY EXECUTIVE DIRECTOR KANE: All right.

18 We've had a little bit of discussion about,
19 there's a regulation -- and I'm focusing on the Ethics
20 Commission now. There's a regulation that says if you
21 proceed through a non-investigative process, and it appears
22 that most of your cases proceed that way, that you are
23 required to give a 30-day, or to send a letter. If someone
24 hasn't registered or if they haven't filed a report on
25 time, you're required to send them a letter and give them

1 30 days to cure it, and if they do, there is no action you
2 can take against them. Is that correct?

3 EXECUTIVE DIRECTOR CARUSO: That's correct, yes.

4 MAJORITY EXECUTIVE DIRECTOR KANE: Now, this
5 regulation, and I guess we heard the Chairman's question
6 that the last time that the regulatory body met was
7 10 years ago. I guess one of the questions that I have is
8 that this regulation seems to be black and white. It says
9 "shall," you know, and that's the end of it. If you file
10 after you get the letter within the 30 days, you can't be
11 penalized.

12 And so I guess I can understand why someone who
13 was late filing negligently or whatever, you know, you're
14 not going to want to bring a hammer down on them. But
15 suppose you have somebody who is habitually late, every
16 single reporting period, but when they get that letter,
17 they know they have 30 days and they comply. It seems to
18 me that that regulation just handcuffs you from doing
19 anything about that. Is that correct?

20 EXECUTIVE DIRECTOR CARUSO: Robin served on the
21 committee, so she can answer that.

22 CHIEF COUNSEL HITTIE: Yeah.

23 And again, it was 10 years ago, and you have to
24 keep in mind the times and the kind of concerns that were
25 in place at that time.

1 And, you know, people were worried about how this
2 law was going to be implemented, and so this Warning Notice
3 was seen as a way, I think, to achieve compliance, not to
4 be in a situation where we are in a, you know, gotcha. You
5 know, we are trying to achieve compliance.

6 And in fact the Commission was completely behind
7 putting that into the regulations. I believe we suggested
8 it. It's something we do with our Statement of Financial
9 Interests under the Ethics Act. We give a warning. We are
10 trying to achieve compliance, not put people through
11 investigations unnecessarily.

12 Now, if the General Assembly feels, okay, it
13 served its purpose but it's time now to be more aggressive,
14 that's certainly for you in your greater wisdom to let us
15 know that. But that was the intent behind it, and I feel
16 overall it has worked pretty well.

17 EXECUTIVE DIRECTOR CARUSO: It has.

18 And on those occasions where we get someone who
19 might be a repeat offender or they don't file, you know,
20 and there has been testimony, we tend to go lenient on the
21 first time through as far as penalties, but if someone is
22 the second time around, the penalty goes up. There isn't
23 much -- we don't really negotiate much. It's, you know,
24 you have to pay the full fine.

25 MAJORITY EXECUTIVE DIRECTOR KANE: I guess that's

1 the point I'm trying to make, is when they get a letter, if
2 they comply, there is no penalty. If they ignore the
3 letter, then you are in a penalty situation. And in
4 reviewing the orders of the Commission, I found instances
5 where either a principal, in most cases it was a principal
6 had actually been fined pretty heavily because they had had
7 eight prior occasions when they were late and they were
8 never fined, because you couldn't fine them.

9 And I guess what I'm saying is that these
10 regulations seem to me, I'm sure in the beginning, you
11 know, everybody was hoping that everybody was going to play
12 by the rules, but apparently, and this may be a small
13 percentage, but if you're one of those who says, I don't
14 have to worry about filing until I get a letter, you are
15 protected by this regulation. And it would seem to me that
16 within 10 years, you know, the first time you have somebody
17 where you see a repeat offender, that you might want to
18 take a look at that regulation again.

19 CHIEF COUNSEL HITTIE: I think you're right. I
20 think it could be cured with the regulations, simply just
21 say that this is something for repeat offenders, it's not
22 going to be an ongoing process, and it could be done in the
23 regs.

24 MAJORITY EXECUTIVE DIRECTOR KANE: At least just
25 to give the Commission the discretion---

1 CHIEF COUNSEL HITTIE: Right.

2 MAJORITY EXECUTIVE DIRECTOR KANE: ---to say,
3 well, we're not going to send you a warning letter this
4 time because you have done it five times.

5 CHIEF COUNSEL HITTIE: Sure.

6 MAJORITY EXECUTIVE DIRECTOR KANE: Okay.

7 Oh; the whole point about the threshold, now, you
8 mentioned that there has only been six occasions, I think
9 you said in a decade, where you have identified and
10 actually taken action against somebody for failing to
11 register. And it would seem under the law as it is written
12 now, it would be pretty difficult, absent somebody filing a
13 complaint, for you to internally identify somebody who is
14 lobbying and who hasn't registered. And it would seem that
15 part of that, and I don't want to say the problem because
16 it's in the law, is the \$3,000 threshold. So if you don't
17 reach that in a quarter, or the first quarter at least, but
18 you don't intend to reach it, you don't have to ever
19 register. Is that correct?

20 CHIEF COUNSEL HITTIE: Mm-hmm.

21 EXECUTIVE DIRECTOR CARUSO: Yes.

22 MAJORITY EXECUTIVE DIRECTOR KANE: And you also
23 don't have to register until 10 days after you begin
24 lobbying.

25 CHIEF COUNSEL HITTIE: Mm-hmm.

1 MAJORITY EXECUTIVE DIRECTOR KANE: So the
2 combination of those two, it seems that if I start lobbying
3 and I go through the first quarter and I don't reach
4 \$3,000, and then in the second quarter I reached \$20,000, I
5 still, if I register sometime in the second quarter, it's
6 not going to show up, or rather in the third quarter it's
7 not going to show up that I was out of registration. Maybe
8 I'm not making that clear.

9 If somebody spends over the limit, they are
10 required to file within 30 days of the end of the quarter.
11 Is that correct?

12 EXECUTIVE DIRECTOR CARUSO: Yes.

13 MAJORITY EXECUTIVE DIRECTOR KANE: So if they
14 spent 5,000 in the first quarter but they haven't
15 registered, that first-quarter report isn't due until
16 April 30th. Is that correct?

17 CHIEF COUNSEL HITTIE: Mm-hmm.

18 EXECUTIVE DIRECTOR CARUSO: Yes.

19 MAJORITY EXECUTIVE DIRECTOR KANE: Okay. So if
20 they haven't registered up to April 30th, even though they
21 have been lobbying for 4 months now, the Commission would
22 have no way of knowing that, would you?

23 EXECUTIVE DIRECTOR CARUSO: No.

24 MAJORITY EXECUTIVE DIRECTOR KANE: Okay.

25 If there was a system that required everybody to

1 register, if you have been registered in the past, instead
2 of having an expired registration and you wait until they
3 come in with the 10-day, if you have been a registered
4 lobbyist or a registered principal in the past, at the end
5 of the 2-year session, if there was a deadline like I have
6 as a lawyer -- I have to, you know, if I'm not practicing
7 law, I got to tell the court. If they're not lobbying,
8 they can tell you, but they don't have to tell you that.
9 If there was a system that said you have to register even
10 though you haven't begun lobbying, can you comment on some
11 of the issues that may present, besides the fact that the
12 fee, obviously, gets assessed when you register.

13 CHIEF COUNSEL HITTIE: I think you would run into
14 instances where people legitimately maybe don't intend to
15 engage in lobbying and then later on they realize they're
16 going to be doing that, and I'm not sure how you deal with
17 those types of situations. You know, you have to apply the
18 same standard to everyone, and there's any number of
19 different fact patterns that can arise.

20 MAJORITY EXECUTIVE DIRECTOR KANE: Well, what I'm
21 suggesting is that once you have registered---

22 CHIEF COUNSEL HITTIE: Right.

23 MAJORITY EXECUTIVE DIRECTOR KANE: ---and you
24 register for that 2-year period, those people then would
25 have to register, even if they don't intend to, because

1 they might, but the fact that they had been a registrant
2 before. I'm not talking about somebody that just starts
3 lobbying for the first time.

4 CHIEF COUNSEL HITTIE: Right. Right.

5 MAJORITY EXECUTIVE DIRECTOR KANE: I'm talking
6 about somebody who has been a registrant. And if you had a
7 system where there was another way to fund this instead of
8 charging them a hundred bucks to register---

9 CHIEF COUNSEL HITTIE: Mm-hmm.

10 MAJORITY EXECUTIVE DIRECTOR KANE: ---would there
11 be a problem with just simply saying, look, if you have
12 been registered in the past and you have any, if there's
13 any possibility of you registering in the future, you have
14 to register or you have to terminate?

15 CHIEF COUNSEL HITTIE: I think, again, since I'm
16 here on behalf of the Commission, we're all for what you
17 are suggesting, but playing devil's advocate, where could
18 you run into problems?

19 Like I said, if somebody legitimately did not
20 intend to engage in lobbying and then later they realized
21 that they want to do that, maybe as a principal, maybe they
22 are a concerned citizen and they plan to spend their money
23 and get over the threshold, you could run into maybe
24 constitutional issues that you are now preventing somebody
25 from redressing grievances with the General Assembly just

1 because they didn't know in January that they would be
2 doing this.

3 MAJORITY EXECUTIVE DIRECTOR KANE: Well, they
4 could terminate, though. If in January they think, I'm not
5 going to be in this business in the next year, I terminate,
6 and then if I start up again, then I have terminated, and
7 now I can go with that 10-day rule.

8 CHIEF COUNSEL HITTIE: Yeah.

9 MAJORITY EXECUTIVE DIRECTOR KANE: I'm just
10 talking about the ones that are continuously, because as I
11 looked at the reports from the Department of State, there
12 are registrants that go all the way up into September, and
13 they may well be legitimate, they may well not be, but
14 there's no way of knowing, and so I'm just kind of
15 exploring.

16 CHIEF COUNSEL HITTIE: Mm-hmm.

17 MAJORITY EXECUTIVE DIRECTOR KANE: If everybody
18 was required who didn't register, you either terminate or
19 you reregister.

20 CHIEF COUNSEL HITTIE: Mm-hmm.

21 MAJORITY EXECUTIVE DIRECTOR KANE: And then if
22 you terminate and then you decide you need to, you know,
23 make a contact, you can register again. Outside of the
24 \$100 fee, which is kind of a separate issue---

25 CHIEF COUNSEL HITTIE: Mm-hmm.

1 MAJORITY EXECUTIVE DIRECTOR KANE: ---would that
2 be problematic?

3 CHIEF COUNSEL HITTIE: Well, as an attorney for
4 the Commission, again I want to say I love your idea. It's
5 something that is a good government idea, but we're here to
6 try to help you.

7 And I do get phone calls frequently from
8 lobbyists and principals with unusual fact situations,
9 things that can't really be foreseen maybe when you are
10 writing a law or working on regs. So I like the idea, but
11 I think there could be instances where there might be
12 problems.

13 MAJORITY EXECUTIVE DIRECTOR KANE: If you don't
14 register, I mean, if you are a real scofflaw and you just
15 never registered and you are out there, as we heard, it's
16 very difficult to know, other than if a complaint is filed.
17 And I would assume that even if a complaint is filed, it's
18 not a slam-dunk case. You would still have to show that
19 they were out advocating the passage of legislation or
20 whatever. So I can appreciate the difficulty you have.

21 Is there any effort to kind of like
22 cross-reference between the Department of State's databases
23 to perhaps identify somebody who in fact was registering?
24 And it seems to me that if you don't register, then you're
25 not in the pool for audit selection, because you only

1 select from registrants. So if you fly below the radar,
2 unless you do something like put a mailing out where you
3 can document the amount you spent on the mailing and you
4 have done that, it seems to me that you really could get
5 away with just never registering and never getting caught
6 and never being audited.

7 EXECUTIVE DIRECTOR CARUSO: Absolutely. I think
8 that could happen.

9 CHIEF COUNSEL HITTIE: I like the idea of the
10 badge, you know, having to wear your badge and indicate
11 when you meet with a Legislator, hey, here is who I'm
12 representing, because you folks are at the front line of,
13 you know, who's doing what, who's coming before you. And
14 so if someone is trying to fly under the radar with you,
15 you can, you know, contact us, and you are our source of
16 information.

17 MAJORITY EXECUTIVE DIRECTOR KANE: One other
18 thing about the thresholds, the \$3,000 reporting threshold,
19 if you report, if you spend less than 3,000 in a quarter,
20 if you're registered, you have to file a report that just
21 simply says, I didn't spend the threshold, or I spent zero
22 or whatever.

23 CHIEF COUNSEL HITTIE: Mm-hmm.

24 MAJORITY EXECUTIVE DIRECTOR KANE: It doesn't
25 matter what category that \$3,000 or the under 3,000 was

1 spent, does it?

2 So, for example, if I were to take a public
3 official, you know, out of State for a Penn State game and
4 the total cost was 2,999, I wouldn't have to file a report
5 identifying that expense, I would just say I didn't spend
6 enough, nor would I have to file a report saying I spent
7 over \$650 on that public official, would I?

8 EXECUTIVE DIRECTOR CARUSO: That's right.

9 CHIEF COUNSEL HITTIE: Right.

10 MAJORITY EXECUTIVE DIRECTOR KANE: So is that
11 kind of -- and then we can carry it one step further,
12 because the statute says if you report somebody as having
13 been the recipient of a gift or hospitality, you have to
14 give them 7 days' notice that you are reporting them, and
15 if you don't give them that notice, it's an affirmative
16 defense if they don't report it.

17 CHIEF COUNSEL HITTIE: But under the Ethics Act,
18 I would argue that they are still required, the official is
19 still required to report it. They might say they didn't
20 realize, you know, that they had crossed the threshold
21 because they didn't get a notice, but the legal duty is
22 there.

23 MAJORITY EXECUTIVE DIRECTOR KANE: Sure. And I'm
24 sure the vast majority of them do.

25 CHIEF COUNSEL HITTIE: Mm-hmm.

1 MAJORITY EXECUTIVE DIRECTOR KANE: I'm just
2 simply saying the ones that don't, they didn't get a notice
3 from the donor, so now they know they have an affirmative
4 defense if they get caught, if they don't put it on their
5 ethics form. And suddenly, if for some reason you find out
6 about it, the law now says they can say, you know what,
7 they didn't tell me about this, even though I went, you
8 know, to the Penn State game and I knew it would cost more
9 than 650, they didn't give me notice of that, so I have a
10 defense. Is that correct?

11 CHIEF COUNSEL HITTIE: I don't think it would be
12 an absolute defense. I think they have an obligation of
13 the Ethics Act to report it. I think it would be maybe a
14 mitigating circumstance where they could say, hey, I would
15 have reported it; didn't realize it; please don't come down
16 hard on me, Ethics Commission. But I think their duty to
17 report it under the Ethics Act would remain intact.

18 MAJORITY EXECUTIVE DIRECTOR KANE: I'm just
19 saying that the statute, the lobbying statute says it's an
20 affirmative defense to both the Ethics Act and to the
21 Lobbying Act for not reporting it. So if there is any kind
22 of, if there's any kind of problem with that language, then
23 maybe that's something that we ought to address.

24 We talked to the folks from Greenlee earlier
25 about having principals versus the -- I mean, having

1 lobbyists as opposed to the principals report, kind of
2 flipping it over, so now the principals would be the
3 secondary reporter. Lobbyists would be primary. They
4 would file, like the Federal Government requires they file.
5 They identify what they spent, through whom, and what the
6 issue was. And then if there is anything that a principal
7 spends that wasn't through a lobbyist, where they spent it
8 on their own, they would then file their own report about
9 that. Do you see any issues that flipping this system to
10 have that would create?

11 EXECUTIVE DIRECTOR CARUSO: As far as we're
12 concerned, the reporting wouldn't be with us---

13 MAJORITY EXECUTIVE DIRECTOR KANE: Yeah.

14 EXECUTIVE DIRECTOR CARUSO: ---it would be with
15 the Department of State. It probably would be more of an
16 issue for them if they had different reporting. I don't
17 want to answer for them, though.

18 MAJORITY EXECUTIVE DIRECTOR KANE: Because it
19 seems to me that there are fewer lobbyists than there are
20 principals. So you would be getting fewer reports, but
21 the reports would be more transparent because they would
22 be identifying, this is what we spent on behalf of
23 XYZ Corporation.

24 DEPUTY SECRETARY MARKS: Right. And I think
25 technically it wouldn't necessarily be an issue and may

1 make things easier for the Department in the long run.

2 You know, you would have to be careful. You
3 know, obviously, principals may have in-house lobbyists.
4 You would want to account for them. You would want to
5 account for officers of the principal who were lobbying
6 directly. You would just have to make sure that you
7 accounted for all of those potential ways for somebody to
8 get around it.

9 But, you know, it doesn't necessarily matter to
10 us who the registrant is and who is reporting. And it may
11 lead to more transparency, because it's easier to kind of
12 connect the lobbying activity to the principal through that
13 single contact.

14 MAJORITY EXECUTIVE DIRECTOR KANE: And I think
15 that the Federal law, in the example you gave where you
16 have an in-house lobbyist who works for them, that lobbyist
17 is still a lobbyist and that lobbyist would have to report,
18 so.

19 DEPUTY SECRETARY MARKS: Right. Yeah. You would
20 have to make sure that that's clearly defined. Yeah.

21 MAJORITY EXECUTIVE DIRECTOR KANE: So everybody
22 would be -- it would only be if, you know, somebody who
23 didn't meet the definition of a lobbyist was actually
24 spending the money.

25 DEPUTY SECRETARY MARKS: Right.

1 MAJORITY EXECUTIVE DIRECTOR KANE: Okay.

2 DEPUTY SECRETARY MARKS: Right.

3 MAJORITY EXECUTIVE DIRECTOR KANE: I don't think
4 I have anything further.

5 MAJORITY CHAIRMAN GROVE: All right. That's all
6 we have.

7 We again appreciate your input into the
8 investigation. We will have a voting meeting of the final
9 report in this room October 30th. That is at 9 -- 9 or
10 9:30. 9 a.m. So we do appreciate it.

11 And the Department of State, if you do have any
12 recommendations you would like to make prior to that,
13 please feel free to send them over. We're always looking
14 for your input.

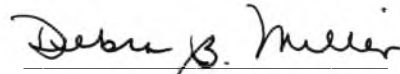
15 Thank you all again for your participation this
16 morning, and anything final? Nope. Thank you.

17 Adjourned.

18

19 (At 10:42 a.m., the public hearing adjourned.)

1 I hereby certify that the foregoing proceedings
2 are a true and accurate transcription produced from audio
3 on the said proceedings and that this is a correct
4 transcript of the same.

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6
7 

8 *Debra B. Miller*

9 *Transcriptionist*

10 dbmreporting@msn.com