

The Inspector

The newsletter of the Office of the Legislative Inspector General

Retirement System Lobbying

Substitute Senate Bill 133, the Pension Reform Bill, goes into effect on September 15, 2004. Substitute Senate Bill 133 requires those who lobby the five public-employee retirement systems to register and report expenditures made on behalf of board members and staff. These requirements may be found in newly enacted sections 101.90 to 101.98 of the Revised Code. Please note that although these sections are similar to Executive Agency Lobbying, there are substantive differences. For example, there is no "competitive bid process" registration or "national organization" reporting exceptions. Also of note, R.C. 102.03(H)(2) prohibits retirement system board members and staff from accepting travel reimbursements/expenses from any source other than from the retirement system for which the member or employee serves.

The five state retirement systems are the Public Employees Retirement System (PERS), the Police and Fire and Pension Fund (PFPF), the State Teachers Retirement System (STRS), the School Employees Retirement System (SERS), and the State Highway Patrol Retirement System (HPRS). Each retirement system is established by statute for the purpose of providing retirement and disability benefits to specified categories of public servants and their beneficiaries.

If you answer yes to all of the following questions, you are required to register as a Retirement System Lobbyist.

- Have you had, or do you anticipate having, *direct communication* with any of the following persons?
 - a member of a board of a state retirement system,
 - a state retirement system investment official, or
 - an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds.
- Has your *direct communication* been for the purpose of influencing *Retirement System decisions* or to conduct *Retirement System lobbying activity*?
- Have you been attempting to *influence Retirement System decisions* or conducting *Retirement System lobbying activity* as a representative for and on behalf of, another person or entity?
- Has the person or entity on whose behalf you have been attempting to influence *Retirement System decisions* or conduct *Retirement System lobbying activity* engaged you?

Definitions

"Retirement system decision" means a decision of a retirement system regarding the investment of retirement system funds.

"Retirement system decision" includes the decision by a board of a retirement system to award a contract to an agent or an investment manager.

"Retirement system lobbyist" means any person engaged to influence retirement system decisions or to conduct retirement system lobbying activity as one of the person's main purposes on a regular and substantial basis.

"Retirement system lobbying activity" means contacts made to promote, oppose, reward, or otherwise influence the outcome of a retirement system decision by direct communication with a member of a board of a state retirement system, a state retirement system investment official, or an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds.

"Employer" means any person who, directly or indirectly, engages a retirement system lobbyist.

"Engage" means to make any arrangement, and "engagement" means arrangement, whereby an individual is employed or retained for compensation to act for or on behalf of an employer to influence retirement system decisions or to conduct any retirement system lobbying activity.

If you answer yes to all of the above, you must now determine whether you are engaged to influence retirement system decisions or to conduct retirement system lobbying activity as one of your main purposes on a regular and substantial basis.

There is no safe harbor in the lobbying law, which provides that certain specified minimal activity will not be considered to be “regular and substantial”. Therefore, the determination of whether this threshold has been met is necessarily a very fact specific judgment call to be made by those directly communicating with, or employing others to directly communicate with, the retirement systems. Prudence is advised when making this determination.

Guidance is provided in the article titled “Registration Threshold” on page 3.

I qualify as a Retirement System Lobbyist, now what?

A Retirement System Lobbyist and Employer must:

- (1) register with the Office of the Legislative Inspector General;
- (2) file updated registration statements three times a year showing the continuance of the lobbyist engagement, expenditures made on behalf of or for the benefit of any retirement system, retirement system board member, or retirement system employee;
- (3) Retain receipts or maintain records for all expenditures that are required to be reported. These receipts or records must be maintained for a period ending on the thirty-first day of December of the second calendar year after the year in which the expenditure was made; and
- (4) at least ten days before the date on which the statement is filed, each employer or retirement system lobbyist must deliver a copy of the statement, or the portion showing the expenditure, to the member, official, or employee who is listed in the statement as having received the expenditure or on whose behalf it was made.

The **Initial Registration Statement** is a joint registration for each retirement system lobbyist engaged by an employer. Retirement system lobbyists engaged by more than one employer must file separate Initial Registration

Statements for each engagement, i.e., for each employer.

There is a \$25 registration fee for each Initial Registration Statement filed. The payment must be by check or money order only made payable to JLEC.

Following registration, the retirement system lobbyist will be issued a card by the Office of the Legislative Inspector General showing that the retirement system lobbyist is registered. The registration card and registration are valid from the date of its issuance until the next thirty-first day of December of an even-numbered year. Upon expiration, you are no longer registered as a retirement system lobbyist and employer, you **must** file a **new** Initial Registration Statement for the next two-year period.

Retirement System Lobbyist/Employer Initial Registration Statement forms may be printed or downloaded from our website www.jlec-olig.state.oh.us; obtained in person at our office or requested by calling 614-728-5100.

New Looks

Forms:

With necessity being the mother of invention, the need to create new Initial and Updated Registration Statements for Retirement System Lobbying presented an ideal opening to look at the design and layout of all the reporting forms. The results of this process will first be introduced with the Retirement System Lobbyist/Employer Initial Registration Statement, and the general format and appearance will then be expanded to all agent and employer forms for legislative, executive agency and retirement system lobbying, as well. While still collecting the same expenditure and activity information as the current forms, it is hoped that the new design and layout will provide a crisp, clean appearance that is more user friendly.

Instructions:

Additionally, the May – August 2004, reporting period is the last in which each Agent/Lobbyist and Employer of Agent/Lobbyist Updated Registration Statement will include an “Instructions” section. While the information contained in the Instructions section is very useful, including it on each form and sending it to all agents and employers three times annually is not cost-effective in an electronic age. As such, the Instructions section will be included on the OLIG web site, with a reminder of the location of the Instructions section included in the Expenditure Statement portion of each Updated Registration Statement.

Stationery:

Last, but certainly not least, in the discussion of changes to the forms is the issue of stationery. Hoping not to disappoint too many in the lobbying community, the May – August 2004, reporting period is the last in which forms will be prepared and mailed on colored stationery. Beginning with the September – December 2004, reporting period, all forms will be printed on white paper stock. Recognizing that many have come to rely on the color-coded stationery as an easy identifier for the types of forms, the colors will be replaced by form numbers in addition to the title on the face of each form.

A major benefit of this change will be a sharper, clearer image of each form filed when they are scanned and posted on the OLIG web site.

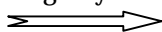
OLIG Web Site:

The layout of the OLIG home page has been modified in order to increase the accessibility of information at the OLIG web site, and to make navigation of the site easier. Visitors to the site will no longer have to click on the headings ("Lobbyist Center", "Committee", etc.) in order to view the menu of information available within that heading. All headings and sub-menus are now included on the home page, bringing users one click closer to the desired section of the site from the home page. Access to the images of forms filed with JLEC and OLIG is highlighted by the inclusion of a "Public Records" heading for the Financial Disclosure Statements, Agent/Lobbyist and Employer of Agent/Lobbyist Registration Statements, and the Agent and Employer of Agent Registration Lists.

REGISTRATION THRESHOLD

Most lobbyists provide knowledge, expertise and analysis of their cause to decision-makers. In this role, they serve an important purpose in government. In media though we have seen the caricatures of lobbyists as fat, cigar-smoking men shoving money into the pockets of lawmakers. This caricature, as well as the desire to avoid the reporting requirements of Ohio's lobbying laws for administrative reasons, are just two of the reasons some have sought to avoid registration. Additionally, some may believe in good faith that their lobbying activities are not sufficient to require registration.

The statutory definitions on this page reveal the source of confusion over at what point lobbying activity qualifies an individual as an executive agency lobbyist, retirement system lobbyist, or legislative agent. Executive agency



121.60(H) "Executive agency lobbyist" means any person engaged to influence executive agency decisions or to conduct executive agency lobbying activity **as one of his main purposes on a regular and substantial basis.**

101.90(H) "Retirement system lobbyist" means any person engaged to influence retirement system decisions or to conduct retirement system lobbying activity **as one of the person's main purposes on a regular and substantial basis.**

101.70(F) "Legislative agent" means any individual, . . . who is engaged **during at least a portion of his time to actively advocate as one of his main purposes.**

lobbyist and retirement system lobbyist definitions both use the phrase ". . . **main purposes on a regular and substantial basis.**" Compare this phrase to the definition of legislative agent, which uses ". . . **during at least a portion of his time to actively advocate as one of his main purposes.**"

A "regular and substantial basis" clearly suggests a greater level of activity than, "at least a portion of his time". Yet, over the last decade the distinction between these phrases has been lost and a bright line test has evolved from guidance provided by the OLIG. Ten years ago, guidance was given that "**three or less contacts**" in a year was insignificant and did not require registration. Today, there are those, who any reasonable person would consider to be a lobbyist, who are now avoiding registration by claiming that until they have three contacts, with

the same official, on the same issue, and/or on behalf of the same client, they do not need to register. **Such an approach is contrary to the explicit language of the statutes and public policy and should not be relied upon.**

As has been the case for twenty-seven years, we are left with the question of where the line may be drawn if the courts are called upon to determine the meaning of engaged ". . . **as one of his main purposes on a regular and substantial basis.**" Or ". . . **during at least a portion of his time to actively advocate as one of his main purposes.**"

The OLIG suggests that **executive or retirement system** lobbying activity is on a "**regular and substantial basis**" when:

- direct contacts with executive or retirements system officials or employees constitute at least twenty-five (25) percent of the total performance time for which the individual is compensated, or
- When three contacts have been made with executive branch or retirement system officials or employees on behalf of a client or employer.

The OLIG suggests that **legislative** lobbying activity constitutes "**at least a portion of his time**" when the individual's direct communications with any member of the general assembly, any member of the controlling board, the governor, the director of any department . . . or any member of the staff of any public officer or employee . . . :

- constitute more than five (5) percent of the total performance time for which the individual is compensated by the specific client or employer on whose behalf he is advocating.

There is no safe harbor in the lobbying law, which provides that certain specified minimal activity will not be considered to be "regular and substantial" or be "at least a portion of his time". Therefore, the determination of whether this threshold has been met is necessarily a very fact specific judgment call to be made by those engaged in advocacy for compensation. Prudence is advised when making this determination.

LOBBYIST CENTER

As of August 23, 2004, the following agents and employers of agents were delinquent in filing updated registration statements for the January – April 2004 reporting period.

AGENTS:

Apel, Alon
Benedict, James
Bootes, Wendi
Bosworth, William
Burford, Craig
Caldwell, Robert
Glover, George
Holifield, Johnathan
Johnson, C. Scott
McLear, Aaron
Melson, Gerald
Minto, Walter
Moore, Murphy
Moran, Michael
Moses, Michael
Paduchik, Robert
Reese, Michael
Scharer, Jr. John
Simon, Thomas
Tucker, Shaun

EMPLOYERS:

Affiliated Computer Services
Alanco Technologies, Inc.
Allianz Life Insurance, Inc.
American Assoc of Independent Claims Professionals
American Classical Music Hall of Fame
American Farmland Trust
Bear Creek Capital, LLC
BPU Investment Group, Inc.
Buckeye Assoc of Club Executives
Building Environment Council of Ohio
Catholic War Veterans of the USA
Cherry-Bancroft-Summit Corridors Coalition
City of Sharonville
Coalition to Abolish Mercury Dental Filings
Dayton Public Schools
Douglas & Associates Co., LPA
E-Knowledge Concepts, Inc.
Eastern Equipment, LLC
Employ On
Encore Funding, LLC
Equitas Limited
Euclid Board of Education
FillTek, Inc.
General Revenue Corporation

Glazer's Distributors of Ohio
GMAC Residential Funding
Hanna Perkins School
Hy-Gene Biomedical Corporation
Intellitarget Marketing
J & M Precision Machinery
KZF
Learnsoft Consulting, Inc.
Markstone Capital Group
MetroHealth System
Midland Title Security, Inc.
Montgomery County Commissioners
MTR Gaming Group, Inc.
Mutual Benefits Corporation
National Composite Center
National School Fitness Foundation
National Underground Railroad Freedom Center
Naturist Action Committee, Inc.
Northern Cincinnati Visitors & Convention Bureau
Oasis Properties Investment, LLC
Ohio Assoc of Auctioneers
Ohio Assoc of Naturopathic Medicine
Ohio Educational Service Center
Ohio Electric Utility Institute
Ohio High School Athletic Assoc
Ohio PIRG Citizen Lobby
Ohio Propane Gas Assoc
Ohio Supercomputer Center
Payphone Assoc of Ohio
Peoplelink, LLC
Port of Greater Cincinnati Development Authority

Prevent Child Abuse
Pro Football Hall of Fame
Regus Industries
Richard Consulting Corp.
Richland Social Services
Risk Management Alternatives
Rutherford B. Hayes Presidential Center
Shihab & Associates
Society of St Vincent De Paul of Cincinnati
Solid Waste Authority of Central Ohio
Spartan Warehouse & Distribution Co.
Tower City Title Agency
TriHealth, Inc.
Tunnel Hill Reclamation
U.S. Interactive
United Collection Bureau
USEC, Inc.
Veterans Service Commission
Veterans Service Organization
Visiting Nurse Association
Waterloo Coal Company
Worker's Compensation Management Solutions
YMCA's Ohio Public Policy Committee

MESSAGE FROM THE FORMER DIRECTOR

Since I retired as Executive Director on June 30, 2004, I want to take this last opportunity to express my thanks to all of you who made my ten years with the Office of the Legislative Inspector General (OLIG) such a positive experience. Working with the leadership, members and staff of the General Assembly and with members of the lobbying community during my tenure was enjoyable for me and I appreciate the many acts of friendship extended to me. The OLIG endeavored to administer the legislative ethics and lobbying laws in an even handed and professional manner and I believe we accomplished this and that this will continue under the future leadership.

The OLIG staff already know how much I appreciate their hard work and dedication, and to the Statehouse community I say again, thanks for a great ten years.

Jim Rogers

NEW FACE:

The OLIG welcomes one new employee to the office. Dee Amos has joined us as Receptionist and Data Entry Clerk replacing Tyrone Turner. Dee comes to us from the Department of Commerce.