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LOBBY TESTIMONY OUTLINE

Preparation for Testimony at the Request of Senator David Baria

My name is Lydia Quarles. I am the Senior Policy Analyst at the John C. Stennis Institute of Government at Mississippi State University. The mission of the Stennis Institute is to provide technical assistance for state and local government and to enhance public civic education systems in Mississippi.

I have a bachelor's degree from Mississippi University for Women, a master's degree from the same institution, a *juris doctorate* from Cumberland School of Law, Samford University, and various post graduate hours including 21 hours of PhD level courses in Public Policy and Administration from Mississippi State University. I am a certified by the University of Michigan Department of Labor and Industry as a Workers' Compensation Professional and I have completed a post graduate curriculum in workers' compensation history, theory and policy from the University of Brunswick, Canada.

I am generally familiar with the content of Report No. 512 published by the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER). I have been asked by Senator Baria to consider the findings and recommendations of Report No. 512 and to consider policy issues raised therefrom.

PEER's position was ably presented by Dr. Max Arinder prior to my testimony. I commend Dr. Arinder for explaining the weaknesses in the data obtained from the Secretary of State; I would submit that if original documents were carefully analyzed, the figures that PEER has submitted for Legislative review may or may not be accurate. A portion of the responsibility for a consideration of potentially inaccurate information may be a result of the Secretary of State's filing system; a portion of the responsibility may lay at the door of the difficulty to obtain original documents while completing a report that is to remain confidential until published. Either way, the report is as accurate as the data

offered and, as Dr. Arinder clearly stated, he cannot stand behind the data and its accuracy except to say that it is taken from the online filing access from the Secretary of State, which is developed from voluntary self-reporting with no effective audit or investigative authority.

I would like to offer some prismatic observations on policy issues that might be worthy of consideration when the Legislature makes a determination relative to whether it will follow the PEER recommendations, do otherwise, or do nothing.

PEER's conclusion is: The expenditure of public funds for contract lobbyists raises a concern regarding state entities' stewardship. The concern is that state entities are using taxpayers' money to lobby when that entity's managers have the expert knowledge to respond to any information needs that the Legislature might have. In such cases, the use of a contractor to do what veteran executive-level employees should be competent to do constitutes a waste of the state's scarce resources. The money used for contract lobbyists could be used for ongoing programs and services.

Based on this conclusion, PEER's recommendation is:

1. The Legislature should enact law prohibiting state agencies, institutions of higher learning, and community and junior colleges from using public funds to hire contract lobbyists.
2. In the event that the Legislature chooses not to enact such a ban, the Legislature should amend Miss. Code Ann. Section 5-8-9 (7) (1972) to require all state agencies, institutions of higher learning, and community and junior colleges to file annual reports of lobbying expenditures with the Secretary of State when they use contract lobbyists.

In considering PEER's conclusion and recommendation, I would submit 6 areas of consideration:

- I. THERE SHOULD BE A CLEAR UNDERSTANDING ON THE PART OF THE LEGISLATURE AND THE PUBLIC AS TO THE DIFFERENCE BETWEEN "PUBLIC FUNDS" AND "TAX DOLLARS".

PEER concludes that the expenditure of public funds for contract lobbyists raises a concern regarding state entities' stewardship. It may raise such a concern; however, a clear understanding of the distinction between public funds and tax dollars is inherent in this consideration. Tax dollars are dollars generated from taxes of various types that enter, in whole or in part, the general fund of the State of Mississippi. Public funds are quite different. Miss. Code Ann. Section 7-7-1 (1972) defines public funds as "all funds received, collected by, or available for support or expenditure by any state department, institution or agency, whether such funds be derived from taxes or from fees collected by the entity or some other source, although such funds may not be required by law to be deposited into the State Treasury. In a consideration of the distinction between public funds and tax dollars, it is clear that an institution or agency may capture self-generated funds and that these funds would not be tax dollars but would be public funds. (E.g.,

Funds generated from utilization of a university's trademark or logo are public funds under the statute. They are far from tax dollars.) Likewise, in consideration of the distinction between public funds and tax dollars, it is clear that an institution or agency may capture "user fees" from institution or agency constituents but which would be public funds but not tax dollars. (E.g., Funds generated from insurance providers which are paid to the Mississippi Workers' Compensation Commission per hundred dollars of premium sold in the state are public funds under the statute, but they are not tax dollars.)

Is the legislature concerned about funds which are expended from whatever source, or does the legislature recognize a difference in funding that is available for institutions or entities which are made available from non-tax dollars? A mere pass-through of funds from an individual, corporation, foundation, not-for profit or grant, for example, becomes – by virtue of the pass-through – public funds. These funds can be distinguished from tax dollars through accounting procedures. However, it is within the purview of the Legislature to prohibit public funds from being expended for any lobbyist or any genre of lobbyist. Currently, however, it is not illegal for agencies or institutions to expend public funds for contract lobbyists or institutional lobbyists, so long as the agency has determined that the state agency has that authority in its enabling legislation. Dr. Arinder testified that his staff had not located any state agency which specifically authorized the hiring of contract lobbyists in the agency's enabling legislation. However, agency law is, in large part, based on the construction of authority which is expressed in the enabling legislation or implied by it. Should an agency determine that lobbying is a necessary function of its operation, then it can fund institutional or contract lobbyists by use of public funds without being in violation of the current laws.

II. THE CONCLUSION OF PEER THAT AN ENTITY'S MANAGERS HAVE THE EXPERT KNOWLEDGE TO RESPOND TO ANY INFORMATION NEEDS THAT THE LEGISLATURE MIGHT HAVE IS ERRONEOUS.

While I have great respect for Dr. Arinder and his staff, I challenge PEER's conclusion that an entity's managers have the expert knowledge to respond to any information needs that the Legislature might have. The Legislature is well aware that directors, commissioners, and other agency or entity managers are political appointees. While some of these individuals rise through the ranks of public service to become "veteran executive-level employees", these individuals are rarer in the politicized atmosphere in which we operate. Thus, individuals who have no experience or expertise within a particular agency may find themselves in a position to manage a state agency or entity if the individual's politics are "right". Political appointments are what they are; many political appointments become stellar agency managers. However, early on in their tenure, or perhaps late in the tenure, depending on the individual, political appointees may not have the expert knowledge to respond to information needs that the Legislature might have.

Political appointees in managerial positions new to state government do not necessarily understand the legislative process. While PEER does not opine that an entity's managers understand the legislative process, it is embedded in the conclusion that the manager can

lobby effectively for the agency. Again, I challenge this conclusion for reasons stated above.

Moreover, when the entity's managers have the expert knowledge that PEER attributes to each manager, then the Legislature's demands require much of that manager. She/he may spend most days during the session at the Capitol. She/he may have other staff members who also spend days at the Capitol during the session. When reliable and knowledgeable people are providing good information pursuant to Legislative requests, who is minding the store?

III. IF IT IS SUITABLE TO EXPEND "PUBLIC FUNDS" AND/OR "TAX DOLLARS" FOR INSTITUTIONAL LOBBYISTS, THIS SHOULD RAISE THE SAME CONCERNS REGARDING STEWARDSHIP THAT THE EXPENDITURE OF "PUBLIC FUNDS" AND/OR "TAX DOLLARS" FOR CONTRACT LOBBYISTS RAISES TO PEER.

While I understand the parameters of the charge to PEER, and understand that it was focused on public fund expenditures for contract lobbyists, should not the same concerns be applicable to institutional lobbyists who are paid by public funds? The Legislature can be assured that if it is necessary for an agency manager to act as an institutional lobbyist for her/his agency, it is necessary for someone else to mind the agency. If a manager does not lobby for her/his agency, but assigns that task to another institutional employee (those employees serving in the capacity of "governmental affairs" or "legislative liaison") then this individual is also paid out of public funds. If the Legislature is concerned with public funds being expended for contract lobbyists, is not the same concern reasonable in consideration of institutional lobbyists?

IV. THE VALUE OF SERVICES PROVIDED BY LOBBYISTS FOR LEGISLATORS AND LEGISLATIVE STAFF SHOULD BE EVALUATED.

What, if any, services to lobbyists provide for their clients or for the Legislature? Lobbyists do not simply lobby the Legislature for funding for their clients. Lobbyists provide a number of other services, including, but not limited to (1) public relations services, (2) solicitation of private funding, (3) grant seeking, (4) solicitation of federal funding. Probably the most important function of the lobbyist is to provide information which is, in many cases, otherwise unavailable to Legislators who are considering upwards of 2,500 bills per 3 month session while significantly understaffed. The Legislature creates a demand for information; there must be a response to this demand in order to have well-informed Legislators – which translates to good government. This demand for information requires expenditures of public funds, either for lobbyists or for additional legislative staff.

This is particularly true in our current information age. There is so much information available – much of it of great value, while other material may be of questionable value. The lobbyist, whether a contract lobbyist or an institutional lobbyist, may, in some

situations, be able to more ably evaluate the large amounts of information specifically related to single issues while not being distracted by day-to-day agency operational issues.

Prior to making any determination relative to lobbyist limitations, the Legislature should evaluate the value of services that lobbyists provide for it. If the services are unnecessary or unappreciated, then lobbyists are not needed in our system. If they are not needed, then lobbying can be legislatively banned from our process. If lobbyists provide a service, then they can be regulated. While I tend to agree with the Chairman that, on the surface, it seems questionable that a state agency should need to lobby a state legislature (whether using contract lobbyists or institutional lobbyists) for its needs, the politicized environment in which our Legislators operate and the limited funds available for the greater demands made may define services of lobbyists that are of value, particularly considering the limitations of an already overworked Legislative staff.

V. THERE ARE INHERENT COMPETING INTERESTS IN A HIGHLY POLITICIZED ENVIRONMENT IN WHICH LOBBYISTS (INSTITUTIONAL OR CONTRACT) PLAY A ROLE THAT MUST BE EXAMINED WITH RESPECT TO A STATE ENTITY'S STEWARDSHIP.

Lobbying is an inherently American process. As early as 1787, James Madison recognized the implications of conflicting factions on the legislative process. In Federalist 10, he wrote [paraphrase] in favor of the adoption of the proposed constitution as establishing a government capable of controlling the violence and damage caused by factions. Madison defined factions as groups of people who gather together to protect and promote their special economic interests and political opinions. He recognized that although factions are at odds with each other, they frequently work against the public interests and infringe upon the rights of others.

An excellent example of Madison's concerns is portrayed by my personal experience as a state agency head in Mississippi. The Mississippi Workers' Compensation Commission (MWCC) is a regulatory agency. Among many other items, it regulates the fees for medical services and supplies provided by employees of this state who are injured while on the job. The fee schedule was mandated by the Legislature in the early '90s and it restricts fees that can be charged by medical service providers (hospitals, physicians, nurses, home health, prescription care, physical therapy, psychology, dentistry). The MWCC also regulates insurance companies who sell workers' compensation policies in the State of Mississippi. In so doing, the MWCC is authorized by the Legislature to self-fund by charging user fees of those carriers on a percentage of premium sold basis. While these two factions have inherent conflicts among themselves (insurance carriers pay the fees that medical service providers charge – they want the fees to be low while the medical service providers want them to be high), they may both frequently work against the public interests. I used the MWCC as an example because of my familiarity with it, rather than because the exemplar may be factual. In my experience with the MWCC, the constituents of the MWCC worked effectively with the Commission, while

positing their own positions effectively. But can the members of the Legislature imagine two more effective lobbying factions than the insurance community and the medical community. Can the Legislature afford to restrict lobbying by an agency in favor of its statutory charge while the regulated industry has lobbying authority limited only by reporting obligations and whatever ethical considerations are established by the industry and appreciated by those being lobbied?

In Madison's appreciation of the constitutional process, he believes that the men elected to the legislature will be wise and good men – the best of America – and men who are the least likely to sacrifice the public good to the temporary condition. But wise and good men are also human men. They hear from the regulated industries. If they are not allowed to hear from the regulatory agency in the manner in which the agency manager deems more effective, the result may be an agency captive to those whom it regulates.

VI. THERE IS A DISTINCTION BETWEEN REPORTED AND UNREPORTED LOBBYING EFFORTS, JUST AS THERE IS A DISTINCTION BETWEEN EFFECTIVE AND INEFFECTIVE LOBBYING EFFORTS.

As effectively demonstrated in the testimony of the Secretary of State's representative, lobbyist reporting is basically voluntary and also self-reporting. So it is possible – most likely probable – that unreported lobbying efforts are ongoing. As I testified, as the result of an unscientific survey which I conducted in the most unscientific manner in preparation for the testimony, I established my opinion that the reports filed are most likely within 90% accurate. The Legislature should be concerned with identifying those who do not file in addition to those who do.

There is a distinction between effective and ineffective lobbying efforts. Different individuals may have a different opinion about what lobbying efforts are effective. For example, I might opine that the lobbyist who effectively shepherded the bill with which I have an interest through the legislative process to adoption and gubernatorial signature is an effective lobbyist. Another might opine that the lobbyist who insured that the bill I was interested in was never passed out of committee is an effective lobbyist. I prefer to believe that the effectiveness of both individuals resulted because of the good information that these individuals provided to the relevant Legislators and their staff.

There is, of course, a perception that lobbyists do not provide these kinds of informational services. There is a perception that lobbyists provide goods and services (rather than information) to Legislators in return for leadership, actions and votes which benefit the lobbyists' client. While it is clear that some of this goes on, I believe that the majority of services which lobbyists (contract lobbyists or institutional lobbyists) provide the Legislatures are of an informational sort. But to deflect the perception previously mentioned, the Legislature, of course, can take more stringent action to self-regulate, just as it requires lobbyists and lobbyists' client do to.

Finally, I would submit the following recommendations for the sub-committee's consideration:

- (1) A recollection of the Legislative process on the passage of the 1992 amendments reminds us that the Senate version was passed out and hurriedly passed out of the House; perhaps in an effort to demonstrate that the Legislature was in favor of "good government", there were not as stringent review and revision of the amendments as might have occurred.
- (2) Thus, I might suggest that the amendments be revisited and clarified. For example, while all testimony given on the 20th of November indicated that the statutory definition of a lobbyist was very clear, apparently testimony given on the 19th demonstrated that while PEER and the Secretary of State's office and members of the sub-committee might conclude that the statutory definitions are clear, agency managers either find the definitions to be unclear or are not aware of the definitions (a possible result of political appointments of agency heads).
- (3) Provide a web-enabled on-line filing system with electronic signatures, an ability for public query on all aspects of filing.
- (4) Refine information requests.
- (5) Redefine the penalties for perjury and illegal or erroneous filing.
- (6) Utilize electronic signatures.
- (7) Require recipients of lobbying services (whether information or otherwise) to report on line as well. [This would include all elected or appointed officials.]
- (8) Fund a staff to audit, investigate, hold hearings, make resolutions, have rulemaking authority, issue advisory opinions, and all other abilities to insure compliance with lobbying regulations, statutes and common law.
- (9) Move all lobbying regulatory authority to the Mississippi Ethics Commission. (As a suggestion for fiscal engagement, the fee of \$25 per client could be substantially enhanced. This fee is probably a pass through to the client in most cases, and if substantial enough might deter state agencies from employing contract lobbyists if that is the result that the Legislature ultimately seeks. Likewise, penalties which currently exist for filing omissions or errors should be substantially increased, as should penalties for failure to file, when detected.)

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