



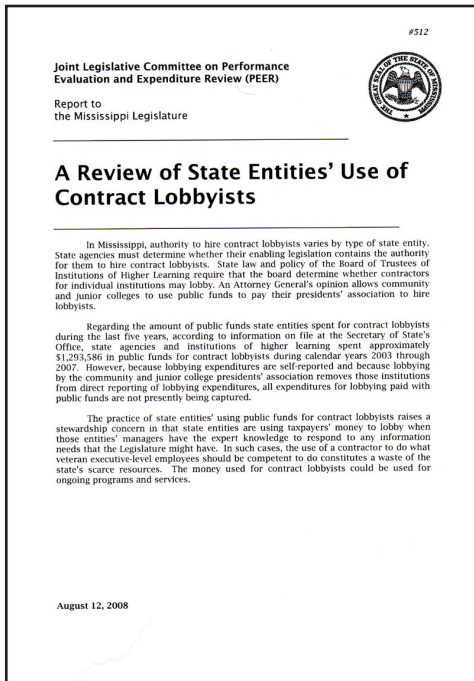
200-1234-06 January 2009

Technical Brief

LEGISLATORS & LOBBYISTS

“Be Careful what you ask for....”

by Lydia Quarles, JD, Senior Policy Analyst



Possibly no public service can be so virtuous as the service of the lobbyist; possibly no service can be so maligned. Unfortunately, possibly no service can be more abused, not only by the lobbied but as a result of misunderstandings of citizens and policy makers.

The Legislature’s interest in state agencies hiring lobbyists, and PEER Report #512 which resulted from the initial interest, has fueled speculation that the 2009 Regular Session will consider lobby reform. A consideration of aspects of lobbying and lobby control by legislators is truly a consideration which falls into the category of: “be careful what you ask for....”

A lobbyist is defined as a person who attempts to influence legislation on behalf of a special interest. Even the basic definition seems to taint the service — the denotation, or direct or explicit meaning of lobbyist — because of our appreciation of “influence” in this context is, unfortunately, commercial. While influence is defined as the capacity or power of persons or things

to be a compelling force on or produce effects on the actions, behavior and opinions of others, we think of that capacity as resulting from the “purchase” of the effects. But the capacity of a good lobbyist is that of a tutor, just as the hallmark of a good legislator is the capacity to evaluate a position from all sides before making a decision, and then making the decision which is in the best interest of his or her constituency rather than in his or her personal best interest.

★ **The capacity of a good lobbyist is that of a tutor, just as the hallmark of a good legislator is the capacity to evaluate a position from all sides before making a decision...**

We can’t resist thinking of lobbyists, though, in terms of the Jack Abramoffs. And we can’t resist thinking of legislative responses to lobbying as “what have you done for me lately?” While both models are probably more pervasive than we wish to believe, they are not the fundamental model of the lobbyist’s relationship with the legislator.

Lobbying is protected by the right to petition in the First Amendment of the United States Constitution. While there is an American fable that the term lobbying began attached when members of the public would pursue President Ulysses S. Grant in the lobby of the Willard Hotel. (Mrs. Grant would not let him smoke his cigars at home.) The use of the term actually originates from the English citizen’s use of lobbies of the House of Common to buttonhole their representatives to seek favors.

According to the Mississippi Secretary of State Directory of 2009 Registered Lobbyists and Lobbyist's Clients for the January 1 through December 31, 2009 registration period, there are 169 lobbying entities represented by 92 lobbyists registered with the State. The following list includes the name of each lobbyist, the firms represented, the certification number for each firm, and the lobbyists' current registration date:

Adams, Judith S.

America Council of Engineering Companies - Mississippi (112)
Registration Date: 12/22/2008

Alexander, Brent

Abbott Laboratories, Inc. (154)
American Medical Response, Inc./Mobile Medic Ambulance Services, Inc. (13)
American Modern Insurance Group (2)
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (6)
Baptist Memorial Health Care Corporation (155)
Chotard State Street Development, LLC (1)
EarthBalance corporation (7)
Forrest General Hospital (44)
Fresenius Medical Care dba Bio-Medical Applications of MS, Inc. (48)
Hattiesburg Clinic (89)
HPC International (46)
Integra Water (11)
Magnolia Management Corporation (88)
Memorial Hospital at Gulfport (3)
Metal Management Mississippi Inc (45)
Mississippi Kidney Foundation, Inc (8)
Mississippi Organ Recovery Agency, Inc. (47)
Mississippi RV Dealers Association (4)
National Association of Public Insurance Adjusters (12)
Singing River Hospital System (9)
Southwest Mississippi Regional Medical Center (5)
The Regional Medical Center at Memphis (The MED) (87)
Worldwide Interactive Network (10)
Registration Date: 12/5/2008

Alford, Donald Sutton

Mississippi Association of Public Accountants (99)
Mississippi Podiatric Medical Association (98)
Registration Date: 12/22/2008

Atwood, Bear

Southern Poverty Law Center, Inc. (156)
Registration Date: 12/29/2008

Baas, John A.

Mississippi Manufacturers Association (15)
Registration Date: 12/4/2008

Barlow, Katherine

Mississippi Manufacturers Association (14)
Registration Date: 12/4/2008

Bell, Roger Dale

Columbus and Greenville Railway (162)
Meridian and Bigbee Railroad, LLC (161)
Registration Date: 12/30/2008



Common Cause Mission

To strengthen public participation and faith in our institutions of self-government; to ensure that government and political processes serve the general interest, rather than special interests; to curb the excessive influence of money on government decisions and elections; to promote fair elections and high ethical standards for government officials; and to protect the civil rights and civil liberties of all Americans.

Common Cause is a nonpartisan, nonprofit advocacy organization founded in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest.

Now with nearly 400,000 members and supporters and 36 state organizations, Common Cause remains committed to honest, open and accountable government, as well as encouraging citizen participation in democracy.

<http://www.commoncause.org>

The right of citizens to petition in the U. S. specifically prohibits Congress from abridging "the right of the people ... to petition the Government for redress of grievances." It is firmly rooted in the English Common law, where the Magna Carta implicitly affirmed the right and the English Bill of Rights of 1689 explicitly declared the "right of subjects to petition the King."

In the United States, lobbying has become an accepted part of the political system. Both federal and state legislators spend much of their time with lobbyists and may respond to interest groups to a degree to which they may not respond to individual constituents. In addition to the corporate lobbyists who make the news (financial corporations, financial institutions, labor unions, professional associations, educational groups, farm alliances, medical interests, etc.), there are also public interest lobbyists (for example, Common Cause, Mothers Against Drunk Drivers, etc.)

Lobbyists, however, in dealing directly with governmental decision-makers, are in a position to provide technical information perhaps not otherwise available. They may also make political promises

BAKER DONELSON
BEARMAN, CALDWELL & BERKOWITZ, PC

Bennett, Russell

Mississippi Bankers Association (141)
 Registration Date: 12/22/2008

Blackmon, Barbara

GCORP, LLC (111)
 Registration Date: 12/22/2008

Bounds, Sam

Mississippi Association of School Superintendents (38)
 Registration Date: 12/12/2008

Bouse, Gary

Mississippi University for Women (109)
 Registration Date: 12/22/2008

Bozeman, Willie M.

Southern Poverty Law Center, Inc. (157)
 Registration Date: 12/29/2008

Breuner, David

RREEF America L.L.C. (103)
 Registration Date: 12/22/2008

Brown, Scott D.

MedImmune, Inc. (104)
 Registration Date: 12/22/2008

Bufkin, Tamme

Mississippi Loggers Association (143)
 Registration Date: 12/23/2008

Byler, Timothy S.

Novartis Pharmaceuticals Corp (164)
 Registration Date: 12/30/2008

Callaway, Robert Aaron

Premier Entertainment Biloxi LLC, d/b/a Hard Rock Hotel and Casino Biloxi (41)
 Registration Date: 12/15/2008

Southern Poverty Law Center

or threats, supply friendship, entertainment, and other favors. The potential for corruption, especially the bribery of officials, has given lobbying an unsavory connotation, thus resulting in efforts to regulate lobbying in its various forms and at its various levels. Unfortunately, lobbyists would not be successful in attempts to bribe public officials were the officials not susceptible to the offers. [See, V. O. Key, *Politics, Parties and Pressure Groups* (5th ed. 1954).

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I spoke to a Senate Sub-Committee evaluating Report #512 and other issues in late November 2008. The following are my comments in written form:

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 lie at the



Mission Statement

The mission of MADD is to stop drunk driving, support the victims of this violent crime and prevent underage drinking. MADD was incorporated on September 5, 1980, the mission or purposes of MADD as stated in its Articles of Incorporation were "To aid the victims of crimes performed by individuals driving under the influence of alcohol or drugs, to aid the families of such victims and to increase public awareness of the problem of drinking and drugged driving.

In 1984, MADD changed its name from Mothers Against Drunk Drivers to Mothers Against Drunk Driving. This carefully considered change was made because MADD is opposed to the criminal act of drunk driving, not individuals. In 1985, MADD's mission statement was again updated. The mission read, "Mothers Against Drunk Driving mobilizes victims and their allies to establish the public conviction that impaired driving is unacceptable and criminal, in order to promote corresponding public policies, programs and personal responsibility.

<http://www.madd.org>

Cannon, Patricia

Wyeth (43)
 Registration Date: 12/15/2008

Cawthorn, Samantha

Mississippi Farm Bureau Federation (165)
 Registration Date: 12/30/2008

Chamblee, Phillip

Mississippi Funeral Directors Association (69)
 Registration Date: 12/16/2008

Clay, Beth C.

Alliance Health Center (169)
 Baxter Healthcare Corporation (133)
 Central Mississippi Medical Center, Inc. (123)
 City of Meridian (130)
 Denmiss Corporation (125)
 Entertainment Software Association (116)
 GlaxoSmithKline (119)
 Jackson Zoological Park, Inc. (128)
 Learning Through Sports, Inc (118)
 Lexis Nexis (135)
 Martel Resorts, LLC (137)
 Mississippi Economic Council (146)
 Mississippi Eye, Ear, Nose &
 Throat Association (131)
 Mississippi Girl Scout Councils (124)
 Mississippi Health Care Association (115)
 Mississippi Industries for the Blind (134)
 Mississippi Museum of Art (126)
 Mississippi Power Company (81)
 Mississippi Society of Certified Public
 Accountants (129)
 National Association of Social Workers, MS
 Chapter (136)
 Sight Savers of Alabama, Inc (127)
 Swisher International, Inc. (132)
 The Ohr-O'Keefe Museum of Art, Inc (114)
 Thinking Media (117)
 Registration Date: 12/17/2008

Clay, Stephen

The Clay Firm (121)
 Registration Date: 12/22/2008

Collier, T. Harris

Trustmark National Bank (97)
 Registration Date: 12/19/2008

Corbitt, Steven A.

Mississippi Concrete Industries Association (92)
 Mississippi Physical Therapy Association (94)
 North Mississippi Health Services (93)
 Plum Creek Timber Company, Inc. (96)
 Waldale Manufacturing, Ltd. (95)
 Registration Date: 12/18/2008

Cox, Christopher

National Rifle Association of America (42)
 Registration Date: 12/15/2008

Cox, James T.

Cox Law Group, PLLC (153)
 Registration Date: 12/29/2008



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 six (6) areas of consideration:



Cox, Samuel Lofton
Mississippi Power Company (80)
Registration Date: 12/17/2008

Dalton, S. E.
Mississippi Pharmacists Association (25)
Registration Date: 12/4/2008

Dean, Jason
Mississippi Economic Council (148)
Registration Date: 12/23/2008

Deaver, McKinley W.
Mississippi Bankers Association (142)
Registration Date: 12/22/2008

Delatte, Jim
Takeda Pharmaceuticals America (140)
Registration Date: 12/22/2008

Di Fatta, Melissa
Mississippi Childrens Home Services &
CARES Center, Inc. (66)
Registration Date: 12/15/2008

Doyle, Terry
RREEF America L.L.C. (102)
Registration Date: 12/22/2008

Evans, Lee Ann
Mississippi Cable Telecommunications
Association (65)
Registration Date: 12/15/2008

Everett, Bob
Mississippi Funeral Directors
Association (70)
NAIFA-MS (68)
Registration Date: 12/16/2008

Fahrenthold, Brian Cole
Spectra Energy (139)
Registration Date: 12/22/2008

Fairbank, Jr., Robert E. (Bob)
Mississippi Power Company (79)
Registration Date: 12/17/2008

Fox, Grant M.
AT&T Services, Inc. (158)
Registration Date: 12/29/2008

Giamfortone, Joseph E.
Reckitt Benckiser Pharmaceuticals Inc (163)
Registration Date: 12/30/2008

Graham, Clinton A.
Independent Insurance Agents
of Mississippi, Inc. (152)
Registration Date: 12/24/2008



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

Green, Sylvia F.
The Clay Firm (120)
Registration Date: 12/22/2008

Hall, Jennifer
Mississippi Manufactured Housing
Association (86)
Registration Date: 12/18/2008

Harrell, Lee
Mississippi Insurance Department (40)
Registration Date: 12/15/2008

Henderson, Vanessa Phipps
Mississippi Health Care Association (83)
Registration Date: 12/19/2008

Kanosky, Charmain
Mississippi State Medical Association (30)
Registration Date: 11/19/2008

Katsaboulas, Nan T.
Thompson & Associates, LLC (64)
Registration Date: 12/15/2008

Lane, Connie
Mississippi Dental Association (67)
Registration Date: 12/15/2008

Lea, Charles E.
Americas Health Insurance Plans (20)
Eli Lilly & Company (18)
Health Systems of Mississippi, Inc. (19)
Multistate Associates Inc. on behalf of CFSA (21)
Registration Date: 12/3/2008

Lee, Francis C.
Mississippi Consumer Finance Association (22)
Registration Date: 11/13/2008

Leggett, Mark E.
Mississippi Poultry Association (23)
Registration Date: 9/23/2008

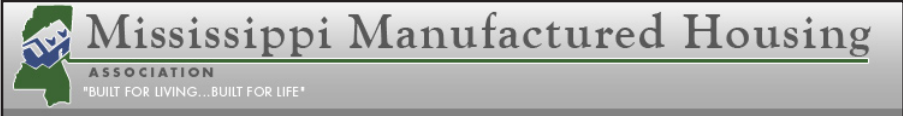
Limbert, Claudia A.
Mississippi University for Women (113)
Registration Date: 12/22/2008

Maxey, John Lewis
Mississippi Health Care Association (84)
Registration Date: 12/19/2008

McGowan, Deirdre
Mississippi Water Resources Association (35)
Registration Date: 12/12/2008

McKay, John
Mississippi Manufacturers Association (17)
Registration Date: 12/4/2008

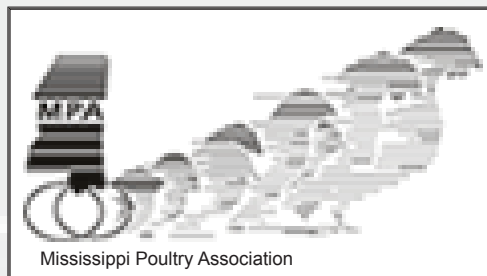
McMullen, Linda
Mississippi State Medical Association (29)
Registration Date: 11/19/2008



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 all 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 the reasons stated above.

Medlin, Spencer E. (Buddy)
Mississippi Power Company (78)
Registration Date: 12/17/2008

Mica, Tara Reilly
National Rifle Association of America (24)
Registration Date: 11/18/2008

Miller, Dennis W.
Express Scripts, Inc. (159)
North Mississippi Health Services (71)
Registration Date: 12/16/2008

Miller, John Henry
Mississippi Prison Industries Corp. (39)
Registration Date: 12/12/2008

Miller, Nora
Mississippi University for Women (107)
Registration Date: 12/22/2008

Moon, Jay C.
Mississippi Manufacturers Association (16)
Registration Date: 12/4/2008

Mullins, Andrew P.
The University of Mississippi (33)
Registration Date: 10/10/2008

Musselwhite, Marilyn
Mississippi Consumer Finance
Association (26)
Registration Date: 11/13/2008

Nations, Perry L.
Associated General Contractors
of Mississippi, Inc. (27)
Registration Date: 11/18/2008

Newman, Karen K.
The Clay Firm (122)
Registration Date: 12/22/2008

Pace, Charles D.
Blue Cross & Blue Shield
of Mississippi, Inc. (101)
Registration Date: 12/22/2008

Pilch, Susan
Healthcare Distribution Management
Association (HDMA) (138)
Registration Date: 12/22/2008

Potter, Stacie
Procter & Gamble (82)
Registration Date: 12/17/2008

Powell, Vickie
Public Education Forum
of Mississippi (151)
Registration Date: 12/23/2008



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 do 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; and (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 three-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.

Robinson, Jessie

National Guard Association of Mississippi (106)
 Registration Date: 12/22/2008

Sansing, Perry

Mississippi University for Women (108)
 Registration Date: 12/22/2008

Serfaty, Jean K.

Takeda Pharmaceuticals America (72)
 Registration Date: 12/17/2008

Shows, Marshall T.

Southern Farm Bureau Life Insurance
 Company (31)
 Registration Date: 12/5/2008

Simmons, Steve

Mississippi State Medical Association (28)
 Registration Date: 11/19/2008

Sims, Joseph K.

Chevron, U.S.A. Inc. (168)
 GDF SUEZ Energy North America (166)
 Mississippi Economic Council (144)
 SG Resources Mississippi, LLC (167)
 Registration Date: 12/23/2008

Spencer, Adriane

AstraZeneca Pharmaceuticals LP (105)
 Registration Date: 12/22/2008

Stiglets, Stephen J.

Mississippi Power Company (77)
 Registration Date: 12/17/2008

Sullivan, Dale

Mississippi Association of School
 Superintendents (37)
 Registration Date: 12/12/2008

Thomas, Worth H.

Mississippi Power Company (75)
 Registration Date: 12/17/2008

Thompson, Clifford

AFLAC (51)
 AIA/Mississippi Chapter (62)
 Bloomfield Equities, LLC (58)
 Cutting Edge Communications, Inc. (52)
 Harrahs Operating Company, Inc. (57)
 Life Insurance Association of Mississippi (53)
 Methodist LeBonheur Healthcare (56)
 Mississippi Cable Telecommunications
 Association (54)
 Mississippi Childrens Home Services &
 CARES Center, Inc. (55)
 Mississippi Dental Association (49)
 Mississippi Economic Council (147)
 Mississippi Power Company (76)
 Park Development (90)
 State Farm Mutual Automobile
 Insurance Company (60)
 Swedish Match North America, Inc. (61)
 Thompson & Associates, LLC (59)
 Yazoo Mississippi Delta Levee Board (50)
 Registration Date: 12/15/2008



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.



A SOUTHERN COMPANY

Always onSM

Thompson, Clifford C.
Blue Cross & Blue Shield
of Mississippi, Inc. (100)
Registration Date: 12/22/2008

Thompson, Gerald Scott
The University of Mississippi (34)
Registration Date: 10/10/2008

Thompson, Jim
Thompson & Associates, LLC (63)
Registration Date: 12/15/2008

Useforge, Brian
Mississippi Power Company (74)
Registration Date: 12/17/2008

Vance, Benjamin
Mississippi Power Company (73)
Registration Date: 12/17/2008

Waldrop, Michael
Mississippi School Boards Association (32)
Registration Date: 12/10/2008

Walker, Stella
Yazoo Mississippi Delta Levee Board (36)
Registration Date: 12/12/2008

Waller, Scott
Mississippi Economic Council (149)
Registration Date: 12/23/2008

West, Alan
Citigroup Management Corp. (85)
Registration Date: 12/18/2008

Williamson, Gloria
GCORP, LLC (110)
Registration Date: 12/22/2008

Wilson, Blake A.
Mississippi Economic Council (150)
Registration Date: 12/23/2008

Young, Camille Scales
Johnson & Johnson (160)
Mississippi Economic Council (145) (91)
Registration Date: 12/18/2008



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 1990s, 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. 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.

NORTHROP GRUMMAN

DEFINING THE FUTURE

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.

★ **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... 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 rule making 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.)

I continue to advocate consideration of the nine (9) items that I suggested in my testimony. I also continue to advocate against making it more difficult for the state agencies which choose to rely on other than institutional lobbyists to lobby for them. Perhaps the Vicksburg Post said it best: “Unlike members of Congress, members of the Mississippi Legislature do not have immense staffs to conduct research. Most of them actually answer their own phones. Information is essential to decision-making and though “lobbyist” is frequently believed to be a dirty word, what honest brokers do is provide facts most favorable to their clients while other lobbyists are presenting competing information for their clients.”

In fact, it seems that the focus should be on “public funds” versus tax dollars. Certainly this distinction should be easy to understand. Anything that runs through an agency’s account is “public funds.” Thus, totally private funding can become “public funds” merely by being deposited in an agency account. But all funds deposited in an agency account are not tax dollars. In the case of some regulatory agencies, no funds deposited in an agency account are tax dollars.

Perhaps it is a question of what Legislators’ want. Do they want information? There is a price for information, particularly in an information age such as ours. Lobbying is now explicitly recognized as legitimate and essential in most government venues given the complexity of government decision making and its impact on global government. In order to be informed, our Legislators need assistance. Shall we purchase that assistance using direct tax money by staffing the legislative branch adequate to the job? Or do we depend on lobbyists to provide information to the legislator at a cost that is borne by the particular agency, some of which may be expenditures of tax dollars and some of which may be expenditures of private funding, whether or not it can also be defined as “public funds” due to an accounting pass-through?

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I prefer to believe that our Legislators draw the line where they should – circumspection being the hallmark of their behavior. I prefer to believe that our Legislators accept knowledge rather than food and drink, data rather than football tickets, reason rather than junkets. Because I prefer to believe that our Legislators understand the model of the republic, where competing factions always exist and Legislators are elected and tasked to sort out the interests of the competing factions and define the great public need somewhere in the midst of these factions.

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Factions will not go away; nor will individual's or agencies' desire to influence public policy. But we depend on the circumspection of our Legislators to take the information being peddled, but not be influenced by any avarice that may be associated.

Citizens do not object to lobbyists. Citizens object to the misuse of lobbying. State agency directors are selected by the Governor or other appropriate official, vetted by the Senate, and approved for his or her abilities and appropriateness in the political realm. When, acting as regulatory bodies, they choose to act in the public interest by hiring contract lobbyists to ensure that their assigned regulatory powers remain intact, should they be the subject of suspicion? It seems to me that there is no better expenditure of public funds than those necessary to ensure that our regulatory bodies can continue to regulate on behalf of the public, rather than regulate in a captive situation on behalf of the regulated industries.

There are many sides to the lobby question. As the Legislature considers all aspects of this issue, it will go a long way to cure the conundrum: "be careful what you ask for..."



About the Author

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Lydia Quarles is a Senior Policy Analyst at the John C. Stennis Institute of Government, Mississippi State University. She received her Juris Doctorate in 1975 from Cumberland School of Law, Samford University, and her MA and BA from Mississippi University for Women, in 1972 and 1971 respectively, in political science and communication. After over a dozen years in the private practice of law in Alabama and Mississippi, she joined the Mississippi Workers' Compensation Commission as an Administrative Judge in 1993. Eight years later, in 2001, she was appointed Commissioner of the agency. In 2006, she resigned to join the Stennis Institute.

Quarles remains active in bar work, and currently chairs the Women in the Profession Committee, a standing committee of the Mississippi Bar. She also serves as co-chair of the Mississippi Supreme Court's "Gender Fairness Implementation Study Committee" and acts as the Chief Operating Officer of the Workers' Compensation Section of the Mississippi Bar. She is a fellow of the Mississippi Bar Foundation, a recipient of the Mississippi Bar's Distinguished Service Award, a member of the Mississippi School for Math and Science Foundation Board and a member of the MUW Alumni Board. Quarles was recently honored by the American Bar Association's Administrative Law and Regulatory Practice Section, receiving the Mary C. Lawton Award for lasting contributions to the Mississippi Workers' Compensation Commission in the areas of alternative dispute resolution and access for Hispanic workers. In 2004, Quarles was named one of Mississippi's 50 Leading Business Women by the Mississippi Business Journal; the Journal recognized her service to the State as a Commissioner as well as entrepreneurial skills developed in her property management business in Starkville, Spruill Property Management, LLC.

About the Institute



Elected to the United States Senate in 1947 with the promise to "plow a straight furrow to the end of the row," John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

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