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Technical *Brief*

Stennis Institute of Government *at Mississippi State University* Technical *Brief*

STATE AGENCIES & LOBBYISTS

"Be Careful what you ask for…."

by Lydia Quarles, JD, Senior Policy Analyst

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. Particularly, PEER's conclusion that "the expenditure of public funds for contract lobbyists raises a concern regarding state entities' stewardship" is a conclusion that should be closely evaluated. The PEER report opines, in pertinent part:

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.

As a result of this opinion, PEER argues that the Legislature should "enact laws prohibiting state agencies, institutions of higher learning and community and junior colleges from using public funds to hire contract lobbyists." While on its face this suggestion is well-reasoned, a closer evaluation causes one to question what portion of the public interest is being regulated.

As a former agency head, I speak to the concern regarding state entities' stewardship. The opinion reached by PEER is based on several premises the veracity of which are subject to question. These are as follows:

1. ***State agencies use taxpayers' money to lobby when they hire a contract lobbyist.*** (This is not necessarily true. State agencies use "public funds" when they hire a contract lobby ist, but not necessarily taxpayers' money in the general sense of the word. For example, agencies which receive no general fund monies are not funded by taxpayer money within the meaning of the PEER report.)
2. ***State agencies' managers have the expert knowledge to respond to any information needs that the Legislature might have.*** (This is not necessarily true. Many managers come to an agency without any history with either the agency or with the public concern that the agency regulates. These managers are purely political appointees. This is not to say that they are not competent men and women, simply that until they understand the agency, they will be unable to respond to informational needs that the Legislature may have. Moreover, until they understand the agency, they will not know that they are unable to respond to informational needs that the Legislature may have, thus, unwittingly providing the Legislature with faulty, inappropriate or incomplete information.)

3. ***Executive-level employees should be competent to do anything a contract lobbyist might do.*** (This is not necessarily true Executive-level employees should be competent in their fields. To say that all executive-level employees in the State are competent in their fields is a place that I believe not even PEER dares to go. However, it is simply unthinking to assume that any executive-level employee of the State of Mississippi is as competent as a contract lobbyist who is skilled in legislative process, power, connections, scheduling and the like.)

The PEER opinion also seems to stop short of considering why agencies lobby. This, in itself, is most significant, because it suggests that an agency only lobbies for funding, which is not necessarily the case.

An effective lobbyist has a set of skills which are not shared by every executive-level public servant. The effective lobbyist has a sophisticated understanding of the legislative process, the legislative schedule and individuals in the legislature or among legislative staff that can make things happen.

Each state agency has some inherent regulatory function. Some of these functions are moderate and of little value or controversy in the economic or public policy realms. Other agencies, however, regulate vast economic networks and oversee functions that are material to life, health, property (both real and personal), professions, etc. Take, for example, the Mississippi Department of Insurance, or the Mississippi Workers' Compensation Commission, two agencies with which I am familiar. Both of these agencies regulate a large commercial market. Why? Their designated jobs, as set forth in their respective enabling acts, are distinct but – boiled down – they are assigned the job as protector of the public trust in their areas. The Mississippi Department of Insurance regulates the writing, underwriting, and protection of life, health, property, casualty and all manner of insurance contracts, as well as adjusters who adjust in the State of Mississippi. The Department of Insurance is the protector of the interests of the public vies-a-vie the economic powerhouses of international insurance.

Likewise, the Mississippi Workers' Compensation Commission, a small agency by state standards, has the duty to ensure that those Mississippi workers who are injured in the course of their employment have the medical treatment, services and supplies, as well as temporary payments of indemnity during the period of recovery, to return them to vocational opportunity. This pits an agency of 60+ people against a collection of large interests: the employers themselves (each entity which employs 5 or more on a regular basis must be covered by workers' compensation); the medical community, including the Mississippi Medical Association and the Mississippi Hospital Association; the insurance community of workers' compensation carriers in Mississippi (generally very large carriers, such a Liberty National and Travelers); individual self-insured employers and self-insured pools (lobbied by trade organizations to which they serve as an adjunct, such as Mississippi Manufacturing Association or Mississippi Association of General Contractors or Mississippi Homebuilders, and large non-specific trade association such as Mississippi Association of Self-Insureds. Each of these large communities of interest have interests that conflict with each other, because the bottom line for them is not whether the injured worker gets adequate treatment, but the bottom line is the amount of service for the amount of money.

While most agency enabling legislation suggests that to protect the integrity of the agency, re-appointments are encouraged, there are several factors which have converged to discourage re-appointment in practice. The first of these is the "era of partianship" where every aspect of life has, unfortunately, become politicized. The second of these is that gubernatorial succession has created an environment for more politicization at the top of every agency. Finally, promises for prior services and/or the essential plum "retirement" job occasionally places individuals in positions of authority in agencies, the framework for which they have no background. Thus, a close evaluation of agency heads of various agencies in the state may reveal appointees, who are generally honest and upstanding but not particularly well-versed in the many varied duties and obligations of their

agencies. Moreover, some of these individuals do not even appreciate the position of the regulatee as adverse to his or her own.

Continuing with the analogies of the Mississippi Department of Insurance and the Mississippi Workers' Compensation Commission, these agencies certainly expend "public funds" but not tax dollars. These agencies are self-funding agencies which are paid by those who choose to write insurance in the state. Thus, while it is possible that such agencies could use "public funds" to pay for independent lobbyists, these contract lobbyists would not be lobbying for more "tax dollars" to be appropriated to the agencies; moreover, these agencies are unable to use "tax dollars" to lobby at all. They have only "public funds" but no "tax dollars".

But even so – imagine that we are discussing a state agency which is exclusively funded by the general fund, as many are. Under the PEER theory, this state agency would be unable to hire a contract lobbyist because, per PEER, "executive-level employees should be competent to do anything a contract lobbyist might do." I beg to differ. Knowing the pay scale of executive-level state employees, and having looked at lobbyist earnings on the Secretary of State's website, I submit that if an executive-level employee in an agency could do anything a contract lobbyist might do, he or she would no longer be an executive-level employee, but would have found the greener pasture of lobbying.

An effective lobbyist has a set of skills which are not shared by every executive-level public servant. The effective lobbyist has a sophisticated understanding of the legislative process, the legislative schedule and individuals in the legislature or among legislative staff that can make things happen. That knowledge will not be shared, and it is not intuitive. It is something that cannot be learned by an executive-level public servant overnight or even in several years. It can, however, be purchased. And the purchase of these services will usually result in more effective lobbying of interests with less expenditure of time, value, and funding than could have occurred with an institutional lobbyist.

It is imperative that agencies which have an obligation to execute the public trust, and particularly those which regulate commercial enterprises, be armed in order for the public good. They must have the opportunity to press for the public good in a way which is at least as forceful as the opposition, regulated community.

Research reveals that the legislative body is wont to interfere in an agency or to provide agency oversight on any regular basis. Indeed, the same research reveals that a legislative body almost never interferes with an agency unless lobbied to do so. (Bibby 1968; McCubbins and Schwartz 1984) [McCubbins and Schwartz distinguished "police patrol" from the "fire alarm" oversight. Police patrol oversight refers to a systematic review of agency decisions; fire alarm oversight refers to reporting requirements which, made available to the public, can support lobbyists who "sound the alarm" to generate legislative interest in agency activity.] Research also suggests that when a constituency member sounds the alarm, the signal is not heard nearly so well by the legislator (Auerbach 1981) as when an interest group sounds the alarm.(Hall 2000).

Under this theory, well established in the journals, it is the contract lobbyist who gets the legislator's attention, not the institutional lobbyist nor the individual constituent. Of course, this is the normative model – the rule, and exceptions occur. But within this theory, it is imperative that agencies which have an obligation to execute the public trust, and particularly those which regulate commercial enterprises, be armed in order for the public good. They must have the opportunity to press for the public good in a way which is at least as forceful as the opposition, regulated community. To allow otherwise would – in the language of PEER – raise concerns about "agency stewardship" and the agency's ability to compete on a level playing field with the regulatees. It is incumbent on Legislators to understand why regulatory agencies need to lobby the legislature, and it is not

merely to use "taxpayer money" to get more "taxpayer money". This is a most simplistic review of agency operation. State agencies are authorized by the Legislature to protect citizens from negative ramifications in certain areas of their lives. This they can do, but they cannot be effective unless they are able to function within the legislative womb as efficiently and effortlessly as the subjects of their regulation – who are often armed with the best lobbyists that money can buy because, after all, for the regulatee it is a business, a commercial enterprise. It is only to the regulator that it is a public trust.

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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.

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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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