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Workplace Harassment Commission

On behalf of the State Ethics Commission, I want to thank you for the invitation to address the Commission today. I look forward to speaking with you and to addressing your questions concerning the process that currently exists for handling complaints against lobbyists.

At the outset I wish to point out that the Ethics Commission is an independent agency. Our Commission is not staffed (11.5 staff members) or trained to deal with the human resource issues that are handled internally by large State agencies. For purposes of budgeting, human resources, and related matters, we are included among the group of boards, commissions and offices that fall under the auspices of the Governor's Office of Financial Administration. We look to that office for direction in everything from our budget, to hiring and training employees – basically everything involving human resources matters, which would include complaints by our staff members if they were victims of sexual harassment. With regard to lobbyists, it is notable that the Ethics Law does not address the issue of sexual harassment by regulated lobbyists.

Rules of Conduct for Lobbyists

The Ethics Law obliges a person to register with the Ethics Commission as a lobbyist if the person satisfies certain conditions. The Law defines six circumstances that require registration. They include: 1) communication with an official or employee of the legislative or executive branches coupled with meeting certain compensation or expense thresholds; 2) providing gifts to officials or employees of the executive branch in excess of \$100 for the purpose of influencing executive action; 3) attempting to influence a procurement contract that exceeds \$100,000; 4) attempting to secure a business grant or loan from the State with a value of more than \$100,000; 5) grassroots lobbying with expenditures that reach at least \$2,000; and 6) providing compensation of at least \$2,500 to lobby on one's behalf. Individuals or entities that register with the Ethics Commission have an obligation to submit, at six-month intervals (no later than May 31 and November 30) activity reports that describe the expenses incurred in the lobbying efforts undertaken during the previous six-month period.

Lobbyists can violate the Ethics Law in one of several ways. First, an individual who fails to register within 5 days of engaging in any of the six activities described above is in

violation of the Law. Second, an individual who fails to file (or timely file) the semi-annual activity reports as noted above is in violation of the Law. These two situations are what I would consider to be “procedural” violations of the Law, as distinguished from substantive violations. I would add to the foregoing a few other reporting requirements where, if not satisfied in a timely manner, can subject the lobbyist to late fees as prescribed in the Law.

A lobbyist can also violate the Law in a number of “substantive” ways. The rules of conduct governing lobbyists can be found in §5-714 of the Law. Those prohibitions are described in enclosure (1). There is also a section in the Law that prohibits a regulated lobbyist from soliciting or transmitting campaign contributions on behalf of certain officials and candidates. As you will see in reviewing the prohibitions in §5-714, sexual harassment is not included within the prohibited conduct. One final point - the Ethics Commission is obliged to refer any complaints under review to the appropriate prosecuting authority in the event the Ethics Commission finds reasonable grounds that the respondent may have committed a criminal offense (which could capture more serious sexual harassment violations).

Processing a Complaint Against a Lobbyist

A complaint may be filed by anyone as long as it alleges a violation of the Ethics Law. The complaint must be signed and made under oath. The Ethics Commission may also, on its own motion, issue a complaint alleging a violation of the Ethics Law. The Law requires the Ethics Commission to transmit a copy of the complaint to the respondent.

The Law provides that the proceedings, meetings, and activities of the Ethics Commission are confidential. Information relating to the complaint, including the identity of the complainant and respondent, may not be disclosed by the Ethics Commission, its staff, or the parties. The confidentiality continues unless the matter is referred for prosecution or the Ethics Commission finds a violation.

The Commission’s staff counsel is charged with investigating all complaints and submitting evidence to the Ethics Commission. Complaints can be addressed in one of four ways:

- **Dismissal.** This occurs where the Ethics Commission reviews the complaint and determines the evidence does not merit further proceedings.
- **Cure.** The Ethics Law permits the Ethics Commission to accept a “cure” (e.g. the respondent submits a missing report) and dismiss the complaint. A cure is most commonly used in cases involving single instances of failures to file financial disclosure statements – it is generally not used to resolve a complaint involving lobbyists.
- **Settlement.** While the Ethics Law does not specifically provide for this option, a settlement occurs where a respondent admits to a violation but a cure/dismissal is not appropriate. In such a case the respondent will propose the terms (i.e. sanctions) of the settlement to the Staff Counsel who will present it to the Ethics Commission. If accepted

by the Commission, the terms of the agreement are executed and the agreement is published as a public document. Typically, this is the manner in which the vast majority of complaints against lobbyists are resolved.

- Hearing. In those circumstances where none of the foregoing alternatives are exercised, the respondent will be afforded a hearing before the Ethics Commission in accordance with the Administrative Procedures Act.

The Ethics Law allows a respondent who is “aggrieved by” a final order of the Ethics Commission to seek judicial review.

Sanctions

In instances where a lobbyist is found to have violated the Ethics Law, the Ethics Commission can award the following sanctions:

- In the case of those “procedural” violations (late registration or report filings), assessment of a fee in the amount of \$10 for each late day, not to exceed \$1,000 (note that the other penalties described below can also be assessed in instances involving procedural violations, as well as “substantive” violations);
- Issue an order of compliance directing the respondent to cease and desist from the violation;
- Issue a reprimand;
- Require the respondent to file any additional reports that reasonably relate to mandatory reports under the Ethics Law;
- Impose a fine not exceeding \$5,000 for each violation;
- Suspend the registration of the regulated lobbyist for a period not to exceed three years if the Ethics Commission finds a knowing and willful violation of the Law or that the lobbyist has been convicted of a criminal offense arising from the lobbying activities;
- Revoke the registration of the regulated lobbyist if the Ethics Commission determines, based on acts arising from lobbying activities, the lobbyist has been convicted of bribery, theft, or other crimes related to moral turpitude.

Concerns/Issues

As the discussion proceeds about how to handle complaints of sexual harassment by regulated lobbyists, the Ethics Commission wishes to emphasize it is in full agreement that a process needs to be established to address such complaints. But as the conversation advances, the Ethics Commission feels it is important not only to put a process in place, but to ensure it is

the right process that will provide a meaningful avenue for victims to make their complaints known and achieve an appropriate outcome, as well as ensure that respondents are given a chance to state their case. As far as the “right” way to accomplish these objectives, the Ethics Commission acknowledges that it has much more to learn about this issue. The Ethics Commission is by no means an authority on the processing of sexual harassment complaints but is pleased that this Commission is addressing the issue.

Enclosure (2) is written testimony the Ethics Commission submitted to the House Rules Committee in conjunction with the hearing on House Bill 1342 on March 5, 2018. It describes, in part, the Ethics Commission’s views and concerns with the prospect of assigning to the Ethics Commission responsibility for handling complaints of sexual harassment against regulated lobbyists. Those concerns and others are summarized below, and the Ethics Commission asks this Commission to consider these issues during its analysis and deliberations.

- The Ethics Commission’s expertise, developed over the course of nearly forty years, covers conflicts of interest, and the remedies for dealing with ethics violations are tailored to address those issues. The specified conflicts of interest include: 1) participation (in matters where the employee or certain relatives have a personal interest); 2) outside employment; 3) post-employment; 4) acceptance of gifts; 5) intentional use of the prestige of one’s office; and 5) improper use of confidential information;
- The Ethics Commission has no experience or expertise in handling sensitive, and highly specialized, complaints of sexual harassment;
- Training is essential, for lobbyists, potential victims, and to the extent the Ethics Commission is involved in the process – Ethics Commission staff, and should be conducted by individuals who themselves are thoroughly trained and experienced and should be consistent in content for all recipients;
- Although the Ethics Commission has limited knowledge of this topic, it does understand that in many cases victims are seeking an outcome not currently available in the Ethics Law, such as intervention to stop the harassing conduct, which may include a skill set not possessed by Ethics Commission staff;
- The existing process for dealing with ethics violations can take several months, particularly where the respondent does not acknowledge the violation but elects instead to contest the matter and participate in a hearing before the Commission (and the process is lengthened further if the respondent seeks judicial review);
- There may be alternatives to the Ethics Commission for handling sexual harassment complaints against, and providing training to, lobbyists (e.g. participation by the Maryland Commission on Civil Rights as is currently the case with complaints against a person licensed or regulated by DLLR) which separately or in partnership with the Ethics Commission can bring the expertise to bear in addressing complaints and/or providing training;

- Depending on the ultimate role the Ethics Commission will play in this area, additional resources (primarily staffing) will likely be required.

Conclusion

The Ethics Commission concludes by again thanking the members of this Commission for the invitation to address you today. We look forward to responding to your questions and to continued engagement with you as you conduct the important work of developing appropriate processes for addressing the serious issue of sexual harassment in the workplace.

5-714. Prohibitions.

A regulated lobbyist may not:

(1) be engaged for lobbying purposes for compensation that is dependent in any manner on:

(i) the enactment or defeat of legislation;

(ii) the outcome of any executive action relating to the solicitation or securing of a procurement contract; or

(iii) any other contingency related to executive action or legislative action;

(2) initiate or encourage the introduction of legislation for the purpose of opposing the legislation;

(3) knowingly counsel any person to violate any provision of this title or any other State or federal law;

(4) engage in or counsel any person to engage in fraudulent conduct;

(5) while engaging in lobbying activities, knowingly make to an official or employee a statement of material fact relating to lobbying activity that the regulated lobbyist knows to be false;

(6) engage in lobbying without being registered as a regulated lobbyist in accordance with § 5-702 of this subtitle;

(7) request an official or employee to recommend to a potential client the lobbying services of the regulated lobbyist or any other regulated lobbyist;

(8) make a gift, directly or indirectly, to an official or employee if the regulated lobbyist knows or has reason to know the gift is in violation of § 5-505 of this title;

(9) make a gift, directly or indirectly, as a result of a solicitation or facilitation that the regulated lobbyist knows or has reason to know is prohibited under § 5-505(a)(2) of this title;

(10) if the regulated lobbyist is an individual, engage in any charitable fund-raising activity at the request of an official or employee, including soliciting,

Enclosure (1)

transmitting the solicitation of, or transmitting a charitable contribution;

(11) make or facilitate the making of any loan of money, goods, or services to an official or employee unless in the ordinary course of business of the regulated lobbyist;

(12) while engaging in lobbying activities on behalf of an entity, knowingly conceal from an official or employee the identity of the entity;

(13) commit a criminal offense arising from lobbying activity; or

(14) if serving on the State or a local central committee of a political party, participate:

(i) as an officer of the central committee;

(ii) in fund-raising activity on behalf of the political party; or

(iii) in actions relating to filling a vacancy in a public office.



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March 5, 2018

House Bill 1342 – Legislative Branch of State Government – Sexual Harassment

Testimony Before the House Rules and Executive Nominations Committee

The State Ethics Commission (“Commission”) currently takes no position on House Bill 1342 – Legislative Branch of State Government – Sexual Harassment. The Commission is in full agreement that steps are required to address the important subject of sexual harassment, but needs to further study the issue before taking a position on this bill or any other legislation intended to develop policies and procedures to prevent and address instances of sexual harassment. As the Commission reviews this bill, and more broadly all of the issues involving sexual harassment in the workplace, it also awaits a report from the Workplace Harassment Commission to further inform its understanding of the problem and to better assess where the Commission may have a role in addressing it.

In light of today’s hearing, however, the Commission wishes to advise the Committee of its still evolving thoughts on this important subject, as well as some concerns. But the Commission wishes to emphasize that its current observations do not represent a “position”, as taking a position now would be, in the Commission’s view, premature. The Commission does wish to commend the Women’s Caucus for the excellent work that culminated in its most informative February 2018 policy recommendations. The Commission acknowledges it has much more to learn about this topic and believes the following issues merit further discussion, both by the Commission itself and lawmakers working diligently to address the matter.

Because of the sensitivity and potential complexity of sexual harassment complaints, the Commission questions whether it is the appropriate body to act on such complaints against lobbyists, as is currently envisioned by the bill. The highly specialized area of sexual harassment is far afield from the focus of the Ethics Law (where the Commission’s expertise lies). With proper training (which the Commission stresses must be adequate and properly funded) for its staff, the Commission could serve in a limited role as a collection point for complaints and as the initial point of contact for victims of sexual harassment where lobbyists are involved. However, the Commission believes the Ethics Law as administered by the Commission for the past thirty-nine years is not the proper vehicle for enforcement of complaints, nor is the Commission funded

Enclosure (2)

or staffed to do so. The Commission suggests giving serious consideration to encouraging victims of sexual harassment to seek assistance from entities such as the Maryland Commission on Civil Rights and/or the EEOC, which may be better positioned and staffed to address the issue and support the victims.

Like the Women's Caucus, the Commission is strongly of the view that training must be a component of any proposal aimed at dealing with sexual harassment issues. The training must be provided to all personnel and to those engaged in administering the sexual harassment program. If legislation is to cover lobbyists (as HB 1342 currently does), it must require training for them and ensure sufficient funding to permit the training to be conducted by experts who understand the serious nature of such misconduct and the potentially devastating impact on victims.

In closing, and as noted above, the Commission believes it requires more time to gather information, including information developed by the Workplace Harassment Commission, in order to fully understand the problem. The Commission does desire, among other things, to contribute to the discussion on how the issue of sexual harassment can be best addressed and help identify the type of training that will be required to heighten everyone's awareness. The Commission looks forward to a robust review process that ensures the issue is addressed thoroughly and properly and ultimately develops solutions so that all persons associated with State government can truly feel safe and secure in the workplace.