



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
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DATE: For the December 11, 2018 Meeting

TO: Members, Wisconsin Ethics Commission

FROM: Caroline M. Russell, Ethics Specialist
Presented by Adam Harvell, Ethics Specialist

SUBJECT: Unauthorized Lobbying Audit Process Update

The Commission requested staff to report an update on the audit process for unauthorized lobbying at its September 14, 2018 meeting. Any further questions from the Commission regarding this audit process will be noted by staff and answered either in email or at the next Commission meeting.

Unauthorized lobbying occurs either; when a lobbyist whose duties *are exclusive* to attempting to influence legislative or administrative action on behalf of a principal has had any communications prior to obtaining principal authorization or; when a lobbyist whose duties *are not exclusive* to influencing legislative or administrative action on behalf of a principal has had five or more lobbying communications prior to obtaining principal authorization within a six-month reporting period. Statement of Lobbying Activities and Expenditures (SLAEs) reporting periods are from January-June and July to December. At the Commission's meeting on February 27, 2018, it approved the standard settlement schedule for unauthorized lobbying and directed staff to begin regular enforcement of this audit beginning with the January-June 2018 reporting period due July 31, 2018.

The standardized processes outlined here, specifically in steps (1) and (2) will ensure the validity of audit query results.

Below are standardized steps staff will take to enforce compliance regarding unauthorized lobbying:

- (1) Ensure that all lobbying principals have submitted their SLAEs for the period, which include the lobbyists time reports. As SLAEs are submitted, staff publishes them to <https://lobbying.wi.gov> for the public to view as soon as possible. The published data is then available to query.
- (2) Prior to the start of the audit, any previous communications with principals and lobbyists regarding potential violations will be noted within the corresponding audit folder. For instance, self-disclosure emails from a lobbyist received by staff before the audit is conducted will be saved and placed within the audit folder.
 - a. Staff conducting the audit will then check the audit folder prior to starting the audit and check the shared lobbying@wi.gov email archives for any updated correspondence.
- (3) Staff utilizes "Unauthorized Lobbying" query which cross-references self-reported data by the lobbyist, showing what dates they had communications, and the date of authorization by the principal on the principal's registration statement. The query results will show only lobbyists

that had lobbying communication prior to the date they were authorized to represent the principal.

- (4) Notices of potential violation are sent to both the principal and the lobbyist which had unauthorized communications, as shown in the query results.
 - a. The notice gives the principal and lobbyist 30 days to submit a written response for the Commission's consideration, as has become standard internal practice for all audits, but is not statutorily required. This notice is intended to allow the principal and lobbyist to present to the Commission any circumstance they believe mitigates the potential violation. Any responses received are saved to be included as attachments accompanying the audit memo at the next Commission meeting.
- (5) Reminders are sent to potential violators that have not responded to the notice in either the second or third week after the notice was sent.
- (6) After the 30-day window to respond has passed, staff begins to write the audit memo for the next Commission meeting.
 - a. The memo will show a summarized table of the unauthorized lobbying audit query data for any principals whose lobbyists had five or more lobbying communications prior to authorization, along with the standard settlement as outlined by the approved settlement schedule.
 - b. The memo will also note the date the notice of potential violation was sent, summarize the responses received as well as provide them as attachments, prior precedent regarding mitigating circumstance, and any staff recommendation regarding mitigating circumstance.
- (7) Staff will present the memo for action at the next Commission meeting and fulfill any action the Commission prescribes thereafter.
- (8) Settlement notification letters and agreements will be sent to those found to be in violation by the Commission. Violators are given the opportunity to submit a written appeal to the Commission for further consideration, as long as it is received prior to the deadline to compile meeting materials. Generally, the deadline to compile meeting materials is ten days before the scheduled meeting. Violators are also given the opportunity to appear before the Commission to further explain their appeal or answer any questions. Requests for appearance are forwarded to the Chair and Vice Chair for approval prior to the meeting.
- (9) Appeals are summarized and provided as attachments at the following Commission meeting as a part of the "Settlement Appeals" portion of the agenda.
- (10) The Commission will adjust or reaffirm the settlement. Staff will then notify the violator of whatever action the Commission took.
- (11) Staff will periodically follow-up with the violator until the settlement is fulfilled.