



# Wisconsin Ethics Commission

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**DATE:** January 11, 2018

**TO:** Lobbyists and Principals (Lobbying Organizations)

**FROM:** Wisconsin Ethics Commission

**SUBJECT:** Unauthorized Lobbying Audit Report

Wisconsin's lobbying laws – Subchapter III of Chapter 13 – exist to ensure the integrity of the decision-making process in the Wisconsin Legislature. The subchapter begins with a declaration of legislative intent, which states:

*The legislature declares that the operation of an open and responsible government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to any officials of the executive or legislative branch their opinions on legislation, on pending administrative rules and other policy decisions by administrative agencies, and on current issues. Essential to the continued functioning of an open government is the preservation of the integrity of the governmental decision-making process. In order to preserve and maintain the integrity of the process, the legislature determines that it is necessary to regulate and publicly disclose the identity, expenditures and activities of persons who hire others or are hired to engage in efforts to influence actions of the legislative and executive branches. WIS. STAT. § 13.61.*

Public disclosures of the time spent attempting to influence legislation, the identity of those individuals and organizations attempting to influence legislation, and the amount of money spent attempting to influence legislation are vital to maintaining the integrity of not only the decision-making process, but to maintaining public confidence in the decisions themselves. When lobbyists and the organizations employing lobbyists do not properly disclose their efforts, it damages the decision-making process by undermining public confidence in how those decisions were made.

*Unauthorized Lobbying* refers to any lobbying activity that occurs without complying with the licensing, registration and authorization requirements outlined within Wisconsin's lobbying laws. This report serves as an explanation of one type of unauthorized lobbying tied to the disclosure of which lobbyists are authorized to represent a principal.

Lobbyist authorizations specifically show that a lobbyist is authorized to represent an organization when attempting to influence legislation. Without written authorization, members of the Legislature as well as members of the public remain unaware of who is representing an organization. Additionally, without written authorization, the Ethics Commission cannot properly associate a lobbyist with the organization which they represent in its reports to the Legislature as required by Wisconsin's lobbying laws. WIS. STAT. § 13.685(7)

## **Legal Framework**

### *Statutory Definitions*

A lobbyist is an individual who is employed by a principal, or contracts for or receives economic consideration, other than reimbursement for actual expenses, from a principal and whose duties include lobbying on behalf of the principal. If an individual's duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if he or she makes lobbying communications on each of at least 5 days within a reporting period. WIS. STAT. § 13.62(11).

In short, a lobbyist is any individual who receives compensation for lobbying. The important distinction here is the difference between those whose duties are solely related to lobbying and those who have other duties as well as lobbying. Lobbyists whose duties are solely related to lobbying, are required to obtain an authorization to lobby on behalf of a principal before any lobbying communication takes place. WIS. STAT. § 13.65. There is no threshold for allowable communications before authorization is obtained. There is no grace period. In-house lobbyists, if their duties on behalf of the principal are not limited exclusively to lobbying, are required to obtain an authorization to lobby on behalf of a principal prior to their fifth instance of communication (i.e., they can make four communications before being considered a lobbyist). This designation exists within the definition of a lobbyist, as noted above, to account for those individuals that lobby the legislature very infrequently.

A principal is defined in Wisconsin's lobbying laws as any individual or organization who employs a lobbyist. If an organization (e.g., association, corporation, company, etc.) employs a lobbyist, it is the organization itself that is a principal, not any individual employee, officer, or member of the organization. WIS. STAT. § 13.62(12).

### *Lobbyist Authorization*

Before engaging in lobbying on behalf of a principal, a lobbyist or the organization who employs a lobbyist shall file with the commission a written authorization for the lobbyist to represent the principal, signed by or on behalf of the principal. A lobbyist or principal shall file a separate authorization for each principal represented by a lobbyist. WIS. STAT. § 13.65.

The written authorization requirement is satisfied through the Eye on Lobbying website (<https://lobbying.wi.gov>), as are all other registration and reporting requirements since the site's launch in 2010. When a principal initially registers or subsequently amends their registration to update information they can give a licensed lobbyist authorization to lobby on their behalf. The Eye on Lobbying website also asks the principal to designate if the lobbyist is an in-house or contract lobbyist so that the correct types of expenditures can be reported by the principal. That same designation also determines precisely when a lobbyist must have their authorization. As stated above, contract lobbyists whose only duties on behalf of the principal are lobbying must be authorized before any lobbying communication while in-house lobbyists who commonly have other duties are not required to register until their fifth instance of communication. Instances of communication are not defined in statute, however in practice and in all relevant documentation the Commission treats dates as instances of communication. For example, an in-house lobbyist

which is has not yet received their lobbyist license or principal authorization has eight hours of communication on November 15, one hour on November 16 and one phone call lasting 15 minutes on November 17. This would count as three instances of communication in terms of the four-instance threshold. Wisconsin law also requires the payment of a \$125 fee for each authorization. WIS. STAT. § 13.75(d).

### **Identification of Unauthorized Lobbying**

#### *New Commission, Commissioners, and Staff*

The Wisconsin Ethics Commission was created by 2015 Wisconsin Act 118 on June 30, 2016. The Commission is comprised of six members who serve five-year terms. One member is appointed by the senate majority leader; one appointed by the senate minority leader; one appointed by the speaker of the assembly; one appointed by the assembly minority leader; and two are individuals who formerly served as judges for a court of record in this state, who were elected to the positions in which they served, and who are nominated by the governor with the advice and consent of a majority of the members of the senate confirmed.

The Commission has pro-actively decided to reform the way audits relating to campaign finance, lobbying, and ethics are conducted. The Commission has implemented completely universal and systematic audits, meaning that every audit conducted by the Commission reviews all available data within its possession that is applicable to the audit. In terms of lobbying regulation, this means that each audit looks at every lobbyist and principal's current records for possible inaccuracies to be clarified or potential violations to be reviewed by the Commission.

The hiring of new staff members has also brought a new perspective to the Commission in its approach to the data it collects and how to utilize that data to increase compliance. Experienced staff members bring institutional knowledge of common issues, directives that have failed in the past, and a vast knowledge of the current and past iterations of applicable statutes. New staff has brought new skills and fresh perspective to the table and together staff aggressively pursued the Commission's directive to automate audit processes where ever possible, which allows the Commission to conduct audits more regularly, objectively, and universally. Data-driven audits also ensure greater impartiality and fair treatment. Increasing the frequency of audits allows the Commission to more rapidly address a possible violation and educate the lobbyist and principal on the proper procedure so as to avoid future violations. This frees up staff time to be used more efficiently. The Commission's goal is to assist lobbyists and principals to ensure they are aware of all applicable laws so that they can avoid violating them. In the approximate year and a half this Commission has existed, this approach has substantially decreased the number of lobbying related violations. For example, for the first time in recent memory, 100 percent of the semiannual lobbying reports were filed on-time.

#### *New Approach Leads to Identification of Unauthorized Lobbying*

The first lobbying reporting period of the 2017-18 legislative session covered activity from January 1 through June 30, 2017. Leading up to the deadline for reporting all hours and expenses a principal incurred during the reporting period, staff received numerous calls from lobbyists unable to submit

their lobbyist time reports, which is the only duty of the lobbyist throughout the reporting period. Staff recognized that a lobbyist would only be prohibited from entering their time reports if the lobbyist had not yet been authorized to lobby for the principal. At this same time, staff discovered that there were numerous lobbyist authorization fees that were not received.

Staff then developed a data query which identified the scope of the late lobbyist authorizations and authorization payments. The lobbying program lead, Ethics Specialist Caroline Russell, worked with Ethics Specialist David Divine, who has extensive data configuration experience, and Administrator Brian Bell, who is also experienced with data configuration in addition to being extremely well versed in Eye on Lobbying data from his previous position as Ethics Specialist.

The unauthorized lobbying query cross references the following information:

- (1) Dates from lobbyist time reports submitted as a part of the SLAE process
- (2) Date of written authorization in Eye on Lobbying
- (3) Lobbyist type: contract or in-house
- (4) Date the authorization payment was received by the Commission

#### *Scope of Unauthorized Lobbying Discovered*

After the query was completed, it was clear that this unauthorized lobbying issue was a much larger problem than just a few phone calls. Of the 539 lobbyists licensed during the January-June 2017 reporting period, 78 of them apparently engaged in unauthorized lobbying. Six of those lobbyists engaged in unauthorized lobbying for more than one principal. This constitutes over 14 percent of total lobbyists. Of the 691 registered principals during that same period, 74 apparently engaged in unauthorized lobbying with fourteen principals appearing multiple times. This constitutes over 10 percent of total principals. Again, these are lobbyists and lobbying principals that engaged in lobbying without receiving the required authorization and communicated in excess of the threshold permitted under statute without public disclosure of those activities.

#### **Actions Taken to Resolve Identified Unauthorized Lobbying**

Staff prepared a memo outlining the data query and the apparent violations discovered which was presented to the Commission on December 5, 2017 during closed session. The Commission directed staff to prepare notification letters to be sent on the date of publication of this report to principals and lobbyists identified in the unauthorized lobbying audit to make them aware of the apparent violations that were discovered, notify them that the Commission will be meeting shortly to establish a standard schedule for unauthorized lobbying, give them the opportunity to provide a written response for consideration and/or request an appearance at the next meeting, and also request them to identify actions they will take moving forward to ensure these apparent violations do not occur again.

The Commission also directed staff to prepare a variety of possible standard settlement schedules for unauthorized lobbying for the Commission to consider during open session. As this is the first systematic and universal audit of unauthorized lobbying not only for the Commission, but for any of its predecessor agencies, there is no precedent as to the standard settlements the Commission should seek from either the lobbyists or the principals involved. Staff has initially drafted one

proposed schedule to address violations of § 13.65 (lobbying without authorization), and another to address violations of § 13.75 (late payment of lobbying related fees). After the Commission determines the appropriate standard settlement schedules to seek for these apparent violations, the Commissioners will deliberate regarding the specific action appropriate for each apparent violation discovered in this audit covering activity from January through June of 2017.

## **Prevention of Unauthorized Lobbying in the Future**

### *Notifications and Enforcement*

After the appropriate standard settlement schedules for unauthorized lobbying are determined, they will be published on the Commission website (<https://ethics.wi.gov>), and a notice via email will be sent to all users of the Eye on Lobbying system. This audit will be conducted after every six-month lobbying filing deadline and the results of the audit will be referred to the Commission for action. The Commission and staff anticipate that incorporating this audit into our regular schedule of recurring audits will severely reduce the number of unauthorized lobbying violations in the future. Additionally, the Commission intends to also send Eye On Lobbying users periodic reminders about the requirements under the lobbying laws.

### *Continuing to Work with Lobbyists and Principals to Increase Compliance*

The Commission's primary goal is not to seek penalties from those it regulates, but instead to assist the regulated community in achieving full compliance so as to strengthen confidence in Wisconsin government. In addition to the Commission's systematic and universal audits, an equally significant part of the Commission's effort to promote compliance is educating the regulated community as well as the general public on the information the Commission provides. As part of this educational outreach the Commission plans to work with the Association of Wisconsin Lobbyists to ensure that their members are aware of the legal requirements for authorization and the Commission's new audit to ensure compliance in the future.

Other steps staff has already taken prior to this audit to promote compliance with the authorization requirement include: an Eye on Lobbying User Guide, along with various "Quick Tip" guides were posted on the Ethics Commission website and linked to from the Eye on Lobbying site's "Frequently Asked Questions" page; the authorization requirement is clearly stated on the Lobbyist/Principal portal home page, Registration and Licensing page, and is part of the Principal registration process; various guides and quick tip forms were integrated into reporting reminder emails near the close of each reporting period; and Commission staff provided consistent customer service advice about the lobbyist authorization requirement via phone-call, email, and in-person conversations. Commission staff also conducted several in-person training sessions for lobbyists and their support staff, including the latest trainings held on November 13 and 17, 2017, which had 51 attendees.

The efforts described in this report for enforcement of unauthorized lobbying are a positive step in the right direction and will greatly assist in the mission of the Ethics Commission to promote and strengthen the faith and confidence of the people of Wisconsin in their government, support the operation of open and responsible government, preserve the integrity of the governmental

decision-making process, and protect the rights of individuals through the administration of Wisconsin's campaign finance, lobbying, and ethics laws, and through readily available and understandable disclosure of information. The Commission plans to take the lessons learned from the development of this audit to promote compliance with campaign finance and ethics requirements as well.