



2008 Random Audit of Lobbyist Steve Bivens

March 12, 2009

Introduction

Registered lobbyist Steve Bivens was randomly selected for audit on June 24, 2008. He was notified of his selection by letter of that same date. By letter of July 11, 2008, Tennessee Ethics Commission ("Commission") staff requested that Mr. Bivens provide certain audit-related information in advance of scheduling an audit interview. Mr. Bivens provided the requested information and participated in an audit interview that was held by mutual agreement on August 20, 2008. The interview took place at the offices of the Commission. The Commission's Executive Director, Bruce Androphy, was present for the interview.

Audit authority and Scope

Under the Tennessee Comprehensive Governmental Ethics Reform Act of 2006 ("Act"), the Commission has a duty to audit each year "the registration statements, amendments to registration statements and reports of no more than four percent (4%) of all lobbyists" to determine compliance with the Act. The lobbyists are selected randomly. Tenn. Code Ann. § 3-6-308(a)(7). The documents subject to audit are those which have been on file with the Commission less than two (2) years as of the time of the audit. Tenn. Code Ann. § 3-6-301(4)(A).

Audit objectives

The overall objective of the audit was to determine whether the statements, amendments, and reports filed concerning the lobbyist in 2007 and 2008 were timely, accurate, complete, and otherwise in compliance with the Act. In order to achieve this objective, the following specific objectives were identified:

1. To determine whether the lobbyist and his or her employer(s) registered timely in 2007 and 2008;
2. To determine whether the lobbyist had entered into any prohibited contingency fee agreement(s);
3. To determine whether the compensation reported by the employer(s) for the period from October 1, 2007 through March 31 2008 correlated with the compensation received by the lobbyist;
4. To determine whether the lobbyist attended and paid for the required annual training in 2007 and 2008; and

5. To determine whether in-state events given by the lobbyist or the lobbyist's employer were in compliance with the requirements of the Act.

Summary of Audit Conclusions

1. Three (3) of Mr. Bivens' employers did not register timely, and Mr. Bivens failed to register timely as to two (2) of his employers.
2. Mr. Bivens' employment agreements did not include any prohibited provision for paying fees contingent on lobbying success.
3. The compensation range originally reported by one of Mr. Bivens' employers for the period from October 1, 2007 through March 31, 2008, did not correlate with the amounts he received, but has been corrected.
4. Mr. Bivens paid for and attended the 2008 annual training after the audit interview was conducted.
5. Mr. Bivens participated in one (1) all-legislature in-state event in 2008, which was given by the Tennessee Forestry Association and which complied with the requirements examined in the audit.

Details regarding some or all of these conclusions follow.

AUDIT CONCLUSIONS

1. **Three (3) of Mr. Bivens' employers did not register timely, and Mr. Bivens failed to register timely as to two (2) other employers.**

The Act requires that lobbyists and employers of lobbyists are both required to register within seven (7) days of entering into an agreement to provide lobbying services, regardless of when the lobbyist actually engages in lobbying.¹ Three (3) of Mr. Bivens' eighteen (18) employers did not register as required within seven (7) days of entering into lobbying agreements with Mr. Bivens.

Employer name	agreement date	employer registration date
Burley Stabilization Corp.	3/14/08	4/8/08
MHM Correctional Services, Inc.	1/1/08 ²	2/14/08
Sprint/Nextel	1/1/08	1/14/08

Two (2) of Mr. Bivens' employers, the City of Cleveland and Cleveland Utilities, are exempt from the employer registration requirement.³ Mr. Bivens was under the

¹ Tenn. Code Ann. § 3-6-302(a)(2). See Op. Tenn. Ethics Comm'n, No. 06-01 (Dec. 12, 2006).

² The original agreement was entered into on May 2, 2005, but remained in effect through the beginning of 2008. For purposes of the annual registration requirement, such a continuing agreement must be regarded as having been entered into on the first day of the registration period, January 1.

impression that this exemption also applied to the lobbyist registration requirement. Mr. Bivens' impression was incorrect. The exemption only applies to the employer, not to the lobbyist. Mr. Bivens therefore was required to register as a lobbyist within seven (7) days of entering into an agreement to lobby for the City of Cleveland and Cleveland Utilities.

Mr. Bivens entered into an agreement to lobby for these entities on April 13, 1995. The agreements apparently renewed annually by mutual agreement. Legally, for the 2008 registration year, the agreement was entered into on January 1. Therefore Mr. Bivens should have filed his lobbyist registration as to these entities no later than January 8, 2008. On August 22, 2008, two (2) days after the audit interview, Mr. Bivens registered as a lobbyist for the City of Cleveland and Cleveland Utilities.

- 2. Mr. Bivens' employment agreements did not include any prohibited provision for paying fees contingent on lobbying success.**
- 3. The compensation range originally reported by one of Mr. Bivens' employers for the period from October 1, 2007 through March 31, 2008, did not correlate with the amounts he received, but has been corrected.**

Each employer of a lobbyist is required to report, by range of expenditures, "the aggregate total amount of lobbyist compensation paid by the employer"⁴ for every six (6) month period.⁵ The Act contemplates that the ranges reported will be checked against the information obtained from lobbyists during random audits.⁶ Mr. Bivens' random audit interview dealt with the most recent period for which expenditure reports were then on file: October 1, 2007 through March 31, 2008.

The range of Mr. Bivens' compensation originally reported for this period by AGL Resources/Chattanooga Gas was slightly higher than the amount shown by the information provided by Mr. Bivens during the random audit. AGL contracted with Mr. Bivens' firm, Steve Bivens and Associates, for lobbying services for both 2007 and 2008

³ School boards, municipal utilities, utility districts, and departments, agencies, or entities of state, county or municipal government are exempt from the employer registration requirements. Tenn. Code Ann. § 3-6-301(15)(D).

⁴ Tenn. Code Ann. § 3-6-303(a)(1).

⁵ The registration year commences on January 1, whereas the expenditure reporting periods are October 1—March 31 and April 1—September 30.

⁶ Specifically, in defining "random audit information," the Act provides as follows:

"Random audit information" also means information obtained pursuant to a review of the total lobbying and lobbying-related compensation and expenses paid to the lobbyist by an employer that will be checked against the range of expenditures reported by the employer in a random audit.

Tenn. Code Ann. § 3-6-301(4)(A).

calendar years. For the period in question, AGL reported that it had paid total aggregate lobbyist compensation in the range of twenty five thousand dollars (\$25,000) to fifty thousand dollars (\$50,000) during the reporting period to Steve Bivens and Associates. Information supplied by Mr. Bivens showed that compensation received during this period was somewhat less than the bottom of the reported range.⁷ It appeared that a check issued on April 3, 2008 had been mistakenly included in calculating the range. Six (6) days after the audit interview, AGL filed an amended expenditure report showing the range of compensation as ten thousand dollars (\$10,000) to twenty five thousand dollars (\$25,000). This was in agreement with the information provided by Mr. Bivens.

Two of Mr. Bivens' employers, CHS Professional Services and Wyeth, paid compensation not only to Steve Bivens and Associates, but also to lobbyists who are not part of that firm. If the "total aggregate" amount of lobbying compensation reported by these employers is checked against only the compensation paid to Steve Bivens and Associates, then the amounts reported appear to be too high. Unless one knows the amount of compensation paid to the non-Bivens lobbyists, there is no way to "check" the reported compensation against the actual compensation.⁸

A representative of Wyeth Pharmaceuticals confirmed the aggregate amount of compensation paid to the lobbyists other than those at Bivens and Associates. When that amount is added to the amount reported by Mr. Bivens, it appears that the total compensation falls within the range reported by Wyeth.

A representative of CHS Professional Services Corporation confirmed the aggregate amount of compensation paid to lobbyists other than those at Bivens and Associates. When this amount is added to the amount reported by Mr. Bivens, the total compensation falls within the range reported by CHS.

- 4. Mr. Bivens timely paid for and attended the 2008 annual training.**

- 5. Mr. Bivens participated in one all-legislature in-state event in 2008, which was given by the Tennessee Forestry Association and which complied with the requirements examined in the audit.**

The Act provides that entertainment, food, refreshments, meals, beverages, or health screenings that are provided in connection to an in-state event to which invitations are extended to the entire membership of the general assembly are not subject to the Act's general ban against gifts from lobbyists and employers of lobbyists to state officials, provided that certain conditions are met. Tenn. Code Ann. § 3-6-305(b)(8). A

⁷ The specific amount of Mr. Bivens' compensation is confidential random audit information and therefore is not included in this public report. Tenn. Code Ann. § 3-6-308(c).

⁸ Both amounts are "random audit information" and are therefore confidential. Tenn. Code Ann. § 3-6-308(c).

copy of the invitation must be filed with the Commission at least seven (7) days in advance of the event by the employer or lobbyist paying for the event. The per person "total aggregate cost" and "contractual cost" for the event must be less than fifty-one dollars (\$51), excluding sales tax and gratuity, and the employer or lobbyist must file, within thirty (30) days of the event, a report on these costs.

Mr. Bivens participated in an event held by the Tennessee Forestry Association on March 5, 2008. A copy of the invitation was filed with the Commission on February 12, 2008, well in advance of the seven (7) day deadline. A cost report was filed on March 31, 2008. The cost report corresponded with receipts provided by Mr. Bivens during the audit. The value of the food and drink provided was under the limit.

Note:

This audit report is the result of staff work and was not reviewed or approved by the Commission before it was released.

The bulk of the work on this audit was complete by the end of 2008. Additional time was necessary to obtain the information needed under item 3 to perform the check required by statute.

Report completed by:



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Date