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THE LEGISLATURE: LOBBYING

by

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Problem of Regulation

The regulation of lobbying involves, essentially, a reconciliation of the realities of the legislative process with the guaranteed right of the people "to make known their opinions to their representatives, and to petition for redress of grievances."¹ Lobbying has generally been subject to some form of regulation. The Georgia Constitution of 1877 declared lobbying a crime. Massachusetts and Wisconsin adopted the first lobby registration laws in 1890 and 1899 respectively.

It is common to refer to "the old" and "the new" in lobbying. The bribery and corrupt practices sections of the New Jersey Revised Statutes (R.S. 2:114-1 et seq.; R.S. 19:34-25 et seq.) are directed at the older and fast disappearing practices in lobbying. The newer techniques rarely descend to bribery. The modern lobbyist seeks on the one hand to persuade legislators that their support at home, both voting and financial, is at stake, and on the other, to cultivate opportunities to ingratiate himself with legislators in any legitimate manner.

Lobbying in New Jersey

A list of over one hundred organizations in New Jersey appears in Fitzgerald's New Jersey Legislative Manual. Lobbyists represent these and other interests. Exactly how their influence is exerted has not been officially investigated since the frank but somewhat superficial work of the Lobby Committee of 1905.² That committee report made recommendations substantially as follows:

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1. N. J. Const. Art I, Par. 18. See also Chancellor Green in Story v. Jersey City and Bergen Point Plank Road Co. 16 N. J. Eq. 13, at 20 (1863)
 2. Report of Committee Appointed to Investigate Rules and Regulations Affecting the Privileges of Lobbyists (1905), in Minutes of Assembly, 1906, pp. 56-169

"I. Persons accorded the privileges of the floor of either house should, by rule, be deprived of such privilege and publicly reprimanded if they are found guilty of attempting to influence members of the legislature during a session.

"II. An accredited newspaper representative guilty of similar conduct should thereafter be deprived of desk room or admission to the floor for the remainder of the session.

"III. A registration law modeled upon the Wisconsin, Massachusetts and Maryland statutes should be enacted.

"IV. The judiciary committees of each house should sit as a special court to hold at least two public hearings on all bills pertaining to taxation, the capitalization and privileges of corporations, the investment of the assets of banks and insurance companies, franchise rights or privileges.

"V. Any attempt to influence members of the committees with respect to any such measures at other times should debar the party guilty from further appearance before the committee and subject him to public reprimand.

"VI. Public notice of each hearing of the Judiciary Committee should be published in the leading daily newspapers of the cities of the state three days prior to the hearing.

"VII. Arguments in behalf of corporations and public bodies at such hearings should be by designated agents, but any citizen may appear in his own interest.

"VIII. Each person seeking the privilege of arguing upon a measure should disclose his interest therein.

"IX. The judiciary committees should report to the legislature with the reasons for their decisions.

"X. The introducer of each bill should be required to state by whom it was drawn and in whose interest it is presented.

"XI. The Attorney-General should settle any dispute as to whether a bill falls within one of the classes set forth.

"XII. Anyone frequenting the State House who is 'under strong suspicion of improper lobbying' should be compelled to account properly for his presence to the Governor, and if unable to do so should thereafter be excluded from the State House.

"XIII. Certain amendments to the Corrupt Practice Act and the bribery laws should be passed.

"XIV. Legislation should be enacted to complement the legislative power of investigating charges of improper lobbying."

Group representation through the lobby has obviously become as much a part of the democratic process as the political party. The lobby committee of 1905 plainly foresaw this development. It is emphasized by all the investigators, and most recently by Dayton D. McKean in his *Pressures on the Legislature of New Jersey (1938)*.

Trends in Regulation

The need to curb secretive and unprincipled agents has long been recognized. Mr. Justice Black, then Senator, made this plain in support of the registration bill he sponsored in 1935.³ Professor Herring⁴ adds that:

"The evils to which the present lobby gives rise are deception and coercion. The forces of a group opinion can be vastly exaggerated by skillful manipulation and used to threaten a public official. Cowardice is a common political weakness and one that permits lobbyists often to be taken at their own evaluation. Most of the legislation for the regulation of lobbying simply demands of the lobbyist that he appear in his true colors."

3. Hearings before Subcommittee of Committee on Judiciary on S. 2512, 74th Cong., 1st Sess., 1935

4. Herring, E. P., "Lobby", in *Encyclopedia of the Social Sciences*, 1933, Vol. IX, pp. 565-68

It has been variously reported that "32 states have enacted some form of regulatory legislation"⁵ and that "... Sixteen states have passed laws requiring lobbyists to register and furnish financial statements. Six others require registration but no financial statements, and the rest have no lobby registration laws at all."⁶

In recent years, new regulations or amendments of existing statutes were enacted as follows:

- Ga., 1927, p. 76; L. 1935, p. 39 (license tax)
- Ky., 1930, ch. 547 (Temporary provisions for furnishing members a weekly list of lobbyists)
- N. C., 1933, p. 9-11, c. 11 (registration of legislative counsel or agents)
- Wis., 1933, p. 635, c. 309 (disclosure of interest of newspapers required)
- Wis., 1933, p. 1149, c. 487, s. 242 (by insurance companies)
- Ariz., 1935, p. 141, c. 35 (personal representative of the governor at national capitol)
- Cal., 1935, p. 92-93, c. 26 (rep. of counties and municipalities before legislature and its committees)
- N. D., 1935, p. 9-10, c. 4, s. 7 (agricultural lobby)
- S. C., 1935, p. 3-5, No. 3 (registration, etc., of lobbyists)
- Conn., 1937, c. 43 (Supp. s.4 d) (docket of legislative appearances)
- Va., 1938, pp. 148-149, c. 85 (registration of legislative agents)
- Wis., L. 1941, ch. 304 (3 copies (instead of 25) of any statement, argument or brief to be delivered by a lobbyist to a member of the legislature shall be deposited with the secretary of state (instead of before delivery) within five days after delivery)

The principal difficulty in the regulation of lobbying has been the

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- 5. Herring, ibid, and Logan, E. B., "Lobbying", Supp. to Vol. 144, The Annals of the American Academy of Political and Social Science, July, 1929
 - 6. Blaisdell, D. C., Economic Power and Political Pressures, T.W.E.C. Monograph No. 26, 1941

definition of lobbying. In Congress, the "Federal Regulation of Lobbying Act," constituting Title III of the Legislative Reorganization Act of 1946⁷ resorts to the devices of registration, disclosure of financial consideration, and publicity, as in the better developed state laws. The new federal law meets the problem of definition as follows:

"Sec. 307. The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

"(a) The passage or defeat of any legislation by the Congress of the United States.

"(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

"Sec. 308. (a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each

7. 60 Stat. 753, 2 U.S.C.A. 261 et seq.

such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

"(b) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record."

The problem goes far beyond a matter of definition. The failure of state regulation is, of course, as much a matter of the unwillingness of legislative bodies to enforce the regulation of pressure groups as it is

to define the proper scope of their activities.⁸

The following state constitutions deal with lobbying in the manner indicated:

TABLE: Summary of Constitutional Provisions

| <u>State</u> | <u>Sections</u> | <u>Effect</u> |
|--------------|-----------------------------------|--|
| Alabama | Art. IV, sec. 101 | Lobbying by state or county officials for any valuable consideration is prohibited |
| Arizona | Art. XXII, sec. 19 | Legislature directed to regulate practice of lobbying |
| California | Art. IV, sec. 35 | Any persons who seek to influence a legislature by dishonest means shall be guilty of a felony; compulsion of testimony with protection against subsequent prosecution. |
| Colorado | Art. V, sec. 40, sec. 41, sec. 42 | (40) log-rolling to constitute "solicitation of bribery" or "bribery"; guilt of offense shall result in expulsion from legislature plus such further penalty as prescribed by law; (41) bribery of executive or judicial officer punishable by law; (42) legislature to define and punish offense of "corrupt solicitation." |
| Georgia | Art. I, sec. II, par. V. | "Lobbying" is declared to be a crime; legislature to provide suitable penalties. |

8. In general, see Note 56 Yale Law Jour. 304-332 (1947), "Improving the Legislative Process: Federal Regulation of Lobbying."

It is notable that in the only states which have had any reported success with lobby regulation -- Wisconsin, Maryland and Massachusetts -- publicity is the main device that has been used. As one competent observer has said:⁹

"The purposes have been to disclose the identity of the lobbyists and their employers, to reveal the legislative measures which the lobbyists and employers are promoting or opposing, to restrict the activities of the lobbyists, to prohibit some from acting as lobbyists, to cut down the incentive to illegitimate activities by prohibiting contingent compensation, to reveal the amount of money which has been used to influence legislation and to inflict penalties for violation."

Since enforcement is obviously difficult, if not impossible, it would appear that successful regulation of lobbyists depends more upon the tradition of law enforcement amongst legislators than upon any specific form of license.

The practice of the British Parliament in dealing with parliamentary agents -- that is, those employed in the preparation and promoting or opposing private bills -- is instructive in this connection. The notion of a special parliamentary bar subject to rules of the legislative body, in a similar manner to attorneys in the courts, is the basis of the practice of these agents. Holdsworth summarizes the system as follows:¹⁰

"... And these independent parliamentary agents, when they made their appearance, resembled the

9. Logan, op. cit., p. 68

10. A History of English Law, 1938, Vol. XI, pp. 334-335

attornies or solicitors, who appeared for litigants in the courts, in one important respect. Just as these attornies and solicitors were regarded as officers of the court to which they were attached, and so subject to its control, so these parliamentary agents are subject to the control of the House of Commons exercised through the Speaker. They must subscribe a declaration to the effect that they will be personally responsible to the Speaker and the House for the observance of its orders and of the rules made by the Speaker, and for the payment of fees; and they are liable to be suspended by the Speaker for misconduct or breach of rules."

Basis for Adequate Control

In summary, regulation may take the form of constitutional provision, statute or rule. It must be so designed as to permit the admittedly useful functions of lobbying to continue. These are commonly recognized as:

1. The furnishing of technical information to legislators.
2. Guidance of legislators as to the situations that given proposals will have to meet.
3. Sifting of proposals through the mesh of conflicting views and interests.
4. Post-election follow-up of legislators to achieve legitimate representation of constituents' views.

If a legislative council is adequately set up, it would discharge the first function fully and the second and third in large part, in an unbiased manner -- a legislative reference service can sometimes do as well. Any evils associated with the remaining functions of lobbyists might well be regulated on the model of the Wisconsin legislation, as amended by chapter 304 of the Laws of 1941, or by rule of each house. The subject appears to require too much flexibility of treatment to permit more than a mandate to the Legislature and statement of principles in the Constitution.

APPENDIX

State Constitutional Provisions

ALABAMA, Article IV

Sec. 101 (Lobbying by public officers): No State or county official shall, at any time during his term of office, accept either directly or indirectly any fee, money, office, appointment, employment, reward or thing of value, or of personal advantage, or the promise thereof, to lobby for or against any measure pending before the Legislature, or to give or withhold his influence to secure the passage or defeat of any such measure.

ARIZONA, Article XXII

Sec. 19 (Lobbying): The Legislature shall enact laws and adopt rules prohibiting the practice of lobbying on the floor of either house of the Legislature, and further regulating the practice of lobbying.

CALIFORNIA, Article IV

Sec. 35 (Bribery): Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying which is hereby declared a felony; and it shall be the duty of the Legislature to provide by law, for the punishment of this crime. Any member of the Legislature, who shall be influenced in his vote or action upon any matter pending before the Legislature by any reward, or promise of future reward shall be deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office or public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a member of the Legislature, by reward or promise of future reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

COLORADO, Article V

Sec. 40 (Acceptance of bribes): If any person elected to either house of the General Assembly shall offer or promise to give his vote or influence in favor of or against any measure or proposition pending or proposed to be introduced in the General Assembly in consideration or upon condition that any other person elected to the same General Assembly will give or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such General Assembly, the person making such offer or promise, shall be deemed guilty of solicitation of bribery. If any member of the General Assembly shall give his vote or influence for or against any measure or proposition pending in such General Assembly, or offer, promise or assent so to do, upon condition than any other member will give or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such General Assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such General Assembly, he shall be deemed guilty of bribery; and any member of the General Assembly or person elected thereto, who shall be guilty of either of such offenses shall be expelled, and shall not be thereafter eligible to the same General Assembly; and on conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

Sec. 41 (Offer of bribes): Any person who shall directly or indirectly offer, give, or promise any money or thing of value, testimonial, privilege or personal advantage to any executive or judicial officer or member of the General Assembly, to influence him in the performance of any of his public or official duties -- shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law.

Sec. 41 (Corrupt solicitation) The offense of corrupt solicitation of members of the General Assembly or of public officers of the State or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment.

GEORGIA, Article I, Section 2

Par. 5. (Lobbying): Lobbying is declared to be a crime, and the General Assembly shall enforce this provision by suitable penalties.

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