

# LOBBY WATCH



★ TEXANS FOR PUBLIC JUSTICE 609 W. 18TH ST., SUITE E, AUSTIN, TX 78701 PH: (512)472-9770 FAX: (512)472-9830

Sibley's Cautionary Tale:

December 10, 2002

## Texas Needs Tough Lobby-Conflict Rules

As the Texas Ethics Commission (TEC) prepares to implement a lobby-conflict law enacted in 2001—when David Sibley was a senator—it should consider a cautionary tale recently writ in Sibley's spotty lobby disclosures.

The 2001 lobby-conflict law (HB 1168) requires lobbyists who have clients that pose potential conflicts to disclose these conflicts to the TEC and all affected clients. While the chief defect of this law is that it keeps these conflict disclosures secret from the public, the TEC is considering weakening the law further at the lobby's behest.

Like HB 1168 itself, the rules that the TEC initially proposed to implement this law did not distinguish between registered *lobby clients* and other *legal clients* that an attorney-lobbyist might have. Under pressure from the lobby, which wants to limit the potential conflicts that it must disclose to its clients, the TEC recently modified its proposed rules to just require conflict disclosures among *registered lobby clients* (thereby depriving other *legal clients* of the benefits of disclosure).

While this distinction sounds academic, David Sibley recently illustrated its real-world implications. Identifying himself only as the author of Texas' 1999 electric deregulation bill, Sibley wrote the Public Utility Commission (PUC) last month, arguing that the legislature intended to grant a Midland electric company special treatment under deregulation. Thanks in part to presumptive new House Speaker Tom Craddick

and his lobbyist daughter, Midland's Cap Rock is the only electric co-op in the state allowed to convert to an investor-owned utility without losing such co-op perks as:

- Being shielded from competition; and
- Setting its own electric rates.

Watchdogs recently criticized Sibley for failing to tell the PUC that he is a registered lobbyist of Cap Rock's main creditor, the National Rural Utilities Cooperative Finance Corp. (CFC). Because the financial success of Cap Rock, which is heavily indebted, could hinge on preserving the company's preferential regulatory treatment, Sibley's client CFC has a potential interest in this matter. On the other hand, if Cap Rock's financial situation further deteriorates, its interests could conflict with the CFC. In 2001, the CFC forced another hemorrhaging Texas electric co-op (CoServ) into bankruptcy (CFC hired Sibley to lobby on CoServ-bankruptcy matters). Another Sibley lobby client, the Association of Electric Companies, could pose more potential conflicts. Some members of this trade group for investor-owned utilities may oppose this special treatment for Cap Rock.

Responding to criticism of his disclosure lapses, Sibley belatedly disclosed to the TEC that Cap Rock itself is his client. Defending his failure to register this lobby client, Sibley told the *Austin American-Statesman*, "I felt I was doing it as a lawyer and checked with the Ethics Commission, and as a lawyer, you don't need to make disclosures."

In fact, the lawyer exception that Sibley invoked only would exempt him if he were “an attorney of record or pro se” in the matter before the PUC.<sup>1</sup> Since Sibley was neither of these, he was legally required to register his Cap Rock contract. Separately, Cap Rock was required to disclose this relationship to the PUC under that agency’s procedural rules.<sup>2</sup>

While both the lobbyist and the client failed to comply with these disclosure requirements, suppose that Sibley *had been* an attorney of record in the Cap Rock matter. Under these circumstances he would

have had no obligation to register his Cap Rock contract with the TEC. But under its forthcoming lobbyist-conflict rules, the TEC could require lobbyists to disclose any potential conflicts involving both their lobby and their legal clients. To put the public interest above that of the lobby, this is what the TEC Commissioners must do. •

---

<sup>1</sup> Government Code §305.003(b).

<sup>2</sup> Texas Administrative Code, Title 16, Part II, Chapter 22. §22.101(a).