

CIVIL PENALTY REFERRAL

Lobbyist: Powers Crane & Company LLC

Client: Delaware North Companies, Inc. ("Delaware North")

Alleged Violations:

Filing of a false 2003 July/August Lobbyist Bimonthly Report pursuant to §1-i and §1-o of the Lobbying Act, Laws of 2005.

Maximum Penalty Pursuant to Statute: Up to \$50,000 for a false filing.

Basis for referral:

In 2003, Delaware North was a registered client of the lobbying firm Powers Crane & Company LLC. Delaware North invoice referenced as DN-992 and dated July 1, 2003 (Exhibit 1) includes expenses to "attend" the same Balboni and Gianaris events that the lobbying firm billed to a different client, NYS Laborer's PAC, in the separate referral that is attached hereto. These two \$500 expenses are not included in Delaware North's 2003 Client Semi Annual Reports (Exhibit 2) or in the contemporary Bimonthly Reports of the lobbyist (Exhibit 3).

Commission staff reviewed electronic filings maintained by the NYS Board of Elections relating to political donations to the public officials named in the invoices referenced above.

It is critical to note in this regard, that section 14-120(1) of the Election Law provides that "[n]o person shall in any name except his own, directly or indirectly, make a payment or promise of payment to a candidate or political committee or to any officer or member thereof, or to any person acting under its authority or in its behalf or on behalf of any candidate, nor shall any such committee or any such person or candidate knowingly receive a payment or promise of a payment, or enter or cause the same to be entered in the accounts or records of such committee, in any name other than that of the person or persons to whom it is made."

In addition, pursuant to subdivision (g) §1-c of the Lobbying Act, the term "expense" therein shall mean any expenditure incurred by or reimbursed to the lobbyist for lobbying, but does not include contributions reportable pursuant to article 14 of the Election Law.

None of the campaign committees for Balboni or Gianaris reported receiving a contribution from either Delaware North or Powers Crane & Company LLC, as is required under 14-120 of the Election Law, at the times involved and which would correspond to the invoiced amounts for each described above. It is patent that moneys were billed by the lobbying firm to its client without being reported on the bimonthly reports and, further, there does not appear to be any basis to exclude the same from the required reports.

However, Commission staff learned from the NYS Board of Elections financial disclosure database James B. Crane, II, personally contributed \$2,500 donation to Friends of Balboni on July 21, 2003, and \$10,000 to New Yorkers for Gianaris on July 8, 2002 (Exhibit 4).

If Mr. Crane, personally, merely made campaign contributions to Friends of Balboni and New Yorkers for Gianaris, then these would not be reportable expenses pursuant to the Lobbying Act. However, this invoice serves as evidence that the lobbying firm billed clients in relation to such contributions, and these billings were nowhere disclosed to the Commission.

If Mr. Crane's personal campaign contributions in whole or in part were directly billed to clients of the lobbyist, then such billing was nothing more than additional compensation to the lobbyist from the client, which is a reportable event under the Lobbying Act. As discussed, these billings were not reported. Therefore for all of the foregoing reasons, the Commission has a basis to refer James B. Crane, II for the false filing of the 2003 July/August Lobbyist Bimonthly Report on behalf of Delaware North.

Therefore for all of the foregoing reasons, the Commission has a basis to refer Powers Crane & Company LLC for the false filing of the 2003 July/August Lobbyist Bimonthly Report on behalf of Delaware North.

Recommendation:

Staff recommends the Commission approve this referral for notice of intent to assess a civil penalty in connection to the false filing of the 2003 July/August Lobbyist Bimonthly Report for client Delaware North to be heard at the Public Integrity Commission's next scheduled hearing date for lobbying violations.