



23 September 1994

To: Mr McCartney
Solicitors Branch

From Sheila Rodgers
Equality Branch 11

CONTRACT FOR PROFESSIONAL LOBBYIST

As discussed with your secretary, I attach a copy of an agreement drawn up by the British Consulate General for a locally engaged professional lobbyist to act for HMG against MacBride legislation.

Since a MacBride bill was signed into law on 20 April 1994, we have had no further need for the services of this lobbyist. There is some doubt in the branch as to whether the terms of the agreement (I am thinking of para 8 in particular) allow us to terminate it with effect from 31 July paying only \$2500. This is what we would like to do but feel we may be committed to paying the full amount from the wording of para 3.

I would be grateful for your advice.

Yours sincerely

Sheila Rodgers

JIM PAPPAS CONTRACT

1. From a reading of the contract I would agree with Peter's view that the contract does not provide for payment on a proportionate monthly/quarterly basis. Given that we may therefore have to pay the full amount.
2. However, before we finally decide would you check:
 - (i) (from our solicitors) - does clause 3 which states the period for which \$5000 is to be paid implicitly assume that if less than this period is worked that the fee can be proportionately reduced (I admit to being doubtful)?
 - (ii) Do we have other contracts which are similarly worded - if so we would need to seek to have these amended later?
 - (iii) Does the contract comply with any guidance that we may have provided to FCO?
3. If we have to pay the money then we might try to leave the existing contractual arrangement in place until its termination date - this might be a possibility in light of Mr Pappas's letter of 20/9.

Baron
23/9/12

NOTE FOR GUIDANCE ON THE EMPLOYMENT OF PROFESSIONAL LOBBYISTS TO ACT ON BEHALF OF HMG IN OPPOSITION TO THE MACBRIDE CAMPAIGN

Introduction

1. From time to time, the Embassy and Consulates feel that it is expedient to consider appointing professional lobbyists to assist and support them in their efforts to oppose MacBride legislation - either already lodged or likely to emerge - in states and cities in the United States of America.
2. The purpose of this note is to offer guidance on how the issue should be approached, to explore some of the angles which need to be considered before action is taken and to set out the practical steps necessary to make such an appointment.
3. It is important, at the outset, for a post to recognise that advice and assistance is available at all stages from the Embassy in Washington and from the Department of Economic Development (DED) in Belfast, both of whom have built up a great deal of experience over the years in dealing with lobbyists and in determining how great the need may be to employ a lobbyist. Both also have an overview of the position and the general momentum of the MacBride campaign at any given moment. It is important to remember that, in most cases where a lobbyist is employed for MacBride purposes, DED will be the source of the necessary funding and therefore on no account should a lobbyist be offered a contract without the prior approval of DED.
4. In general, the purpose of a lobbyist is to support HMG in its efforts to stop MacBride legislation and to keep an eye on things where there are no consular staff to do so. A lobbyist can do this by opening doors, making introductions, exercising influence, (even calling in old debts!) and occasionally, in extremis (in the absence of any other witnesses, perhaps because of short notice of a hearing) presenting testimony before a committee.

When is it appropriate to consider appointing a professional lobbyist?

5. The services of a professional lobbyist will not be necessary or appropriate every time a MacBride bill emerges in a city or state. On the other hand, there will be occasions when it may be expedient to employ a lobbyist before a bill emerges in order to attempt to pre-empt such a bill emerging at all.
6. The spectrum of most frequently encountered possibilities may be summarised as follows:-
 - (a) A Lobbyist is Not Necessary at All: In many states and cities, posts already have a wide range of well-established and helpful contacts in legislatures and councils. These can be (and are) used to good effect in, for example, locking a bill in committee. The Embassy also has an arrangement with ALEC (American Legislative Exchange Council) through which information is received about bills lodged and by which their good offices can be used to approach chairpersons and members of relevant

legislative committees. Such contacts should always be the first line of defence where a MacBride bill threatens (each post has a list of ALEC members in their areas). They may also assist in the process of reaching a well-considered view on whether or not a lobbyist may be needed. On the other hand, in a completely different set of circumstances, where a battle is clearly lost, it may not be worth hiring a paid lobbyist at all. This can also be the case where a bill is bounced into a legislature quickly, without prior warning. In such instances it may be too late to deploy a professional lobbyist effectively.

- (b) A Lobbyist May Be Used to Attempt to Stop a Bill Emerging: Where, based on information from the MacBride lobby or from other sources, it is known that there is a real possibility of a serious bill emerging, there may be a good case for engaging a lobbyist at an early stage. Such a decision must be based on the best information available and must be cleared through Washington and Belfast.
- (c) A Lobbyist May Be Needed because Consular Resources are not Available: In some cases it may be that the post responsible simply does not have the resources to cover every state under its jurisdiction without assistance. On the other hand it is not possible from a financial viewpoint to have a paid lobbyist in every state. A balance needs to be struck here and a lobbyist appointed in such circumstances only after detailed discussions with Washington and Belfast.
- (d) A Lobbyist May Be Needed for Largely Political Reasons: In some cases, the loss of a state to MacBride may carry particular political significance (for example) or a contract compliance or divestment bill which could have especially damaging repercussions). Again, each individual case should be discussed with Washington and Belfast at an early stage.

Procedure for choosing a lobbyist

- 7. Any proposal for the employment of a lobbyist must be given full and careful consideration. Before any action is taken, a view in principle should be obtained from both Washington and Belfast.
- 8. The following general rules should be applied:-
 - (a) a number of potential lobbyists (preferably at least three) should be identified and considered;
 - (b) each should be asked to tender for the business and should be in no doubt that they are in competition with others and that the best value for money is being sought. While it is recognised

that it will not always be practicable, perhaps due to time constraints, to obtain 3 tenders, from a Government accounting point of view it is a basic requirement that there should be some element of competition in such appointments; and

- (c) no contract should be entered into without the prior approval of DED.

Form of contract

9. There is no single appropriate form of contract for use in hiring a lobbyist. In addition, fee rates will vary from state to state and will depend on what element of competition can be brought to bear. Rates will also vary tremendously between large firms of lawyers and smaller locally-based firms and well-placed and influential individuals who may be willing to act as lobbyists as a sideline to their main business. As with any contract, consideration must be given to the type of contract that best suits the particular circumstances of the case.
10. There are a number of fee options on which contracts can be based:-
- (a) Hourly rates: a lobbyist may be contracted for an unspecified period to be paid at an hourly rate. These rates can vary from \$80 to \$200 per hour. If this is left open-ended it could prove very expensive for DED so a ceiling figure on fees should be agreed with the lobbyist at the start of the contract. This need not be immutable but should serve to act as a constraint upon an over-zealous lobbyist and also as an opportunity for the Consulate, Embassy and DED to review the position if and when the fee ceiling is reached. If no bill were to emerge under such a contract this would of course prove good value for money for HMG. On the other hand, payment on an hourly basis could prove particularly expensive if activity became frenetic and prolonged.
- (b) Monthly rates: a lobbyist may be contracted on a monthly rate, either for the whole year or, probably more appropriately, for the duration of the legislative session. Rates can vary widely and in some cases be as much as several thousand dollars per month. A clause could also be included providing a bonus for the lobbyist should no legislation emerge or should no legislation pass. Likewise a clause might be included for the immediate cessation of payments should a bill pass.
- (c) Flat rate (single fee/retainer): a lobbyist may be contracted for a single fee or a retainer to work on HMG's behalf for whatever time is necessary. Rates for such contracts could vary from \$5,000 to \$60,000.

11. Caution

Experience has shown that once a lobbyist is employed in a state it is common for that (or some other) lobbyist to be retained on an ongoing basis. While this may be necessary, lobbyists should never be led to believe that their contracts will be renewed. Only a

limited amount of money is available to employ lobbyists and clearly this must be used in the most effective manner and in those states or cities where lobbyists are most likely to contribute to a positive outcome from HMG's point of view. There can be no guarantee that funds will always be available to employ lobbyists in every situation where their use is deemed to be desirable.

12. Conclusion

In considering whether it is appropriate to employ a lobbyist, posts should consult at all stages with Washington and Belfast. If it is agreed that the employment of a lobbyist is necessary and appropriate, officials in the Embassy and DED will be happy to offer advice on what form of contract might best suit the particular circumstances and to provide examples of previous contracts.

Department of Economic Development
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