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U.S. CONGRESS

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March 21, 2009

Thomasenia P. Duncan, Esquire
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

AOR 2009-10

RECEIVED
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OFFICE OF GENERAL
COUNSEL
2009 MAR 31 P 3:41

Re: Advisory Opinion Request on behalf of Visclosky for Congress

Dear Ms. Duncan:

I am the treasurer of Visclosky for Congress, Representative Peter J. Visclosky's principal campaign committee Visclosky for Congress. I respectfully request an advisory opinion from the Federal Election Commission, pursuant to 2 U.S.C. § 437f of the Federal Election Campaign Act of 1971, as amended, regarding whether it is permissible for the Committee to pay legal fees and expenses incurred by Congressman Visclosky in connection with a federal investigation relating to his conduct as a candidate for and a member of the United States House of Representatives and any related proceedings.

FACTUAL BACKGROUND

Congressman Visclosky is the United States Representative from the First District of Indiana. He was elected in 1985 and has served in Congress for 24 years. Congressman Visclosky is a member of the House Committee on Appropriations, Chairman of the Appropriations Subcommittee on Energy and Water Development, and a member of the Appropriations Subcommittee on Defense.

According to media reports, federal agencies are investigating whether a lobbying firm, the PMA Group, made improper political contributions to Members of Congress, including Congressman Visclosky. A summary of these media reports is as follows:

- On February 9, 2009, ABC News reported that the FBI executed a search warrant at the headquarters of the PMA Group in November 2008. The article alleged that the PMA Group "specializes in winning earmarked taxpayer funds to its clients." Emma Schwartz & Justin Rood, "Exclusive: FBI Raided Lobbying Firm Connected to Murtha," ABC News, Feb. 9, 2009 (Exhibit 1);



- On February 11, 2009, the New York Times reported that “[f]ederal prosecutors are looking into the possibility that a prominent lobbyist may have funneled bogus campaign contributions to his mentor, Representative John P. Murtha, as well as other lawmakers.” The article further reports that the PMA Group and its clients allegedly contributed more than \$500,000 to three congressman, including Congressman Visclosky, and that a former “top aide” to Mr. Visclosky worked at PMA. The article also reports that Congressman Visclosky and other Members allegedly “earmarked more than \$100 million in defense spending for PMA clients in the appropriations bills for 2008.” David D. Kirkpatrick, “Lobbyist Inquiry Appears to Be Widening,” The New York Times, Feb. 11, 2009 (Exhibit 2);
- On February 11, 2009, the Wall Street Journal reported that the FBI is investigating whether PMA lobbyists or clients might have been improperly reimbursed for campaign contributions to congressional campaigns. Susan Schmidt, “FBI Raids Defense-Related Lobbying Firm Linked to Murtha,” Wall Street Journal, Feb. 11, 2009 (Exhibit 3);
- On February 13, 2009, the Chesterton Tribune reported that the PMA Group was under federal investigation. The article further alleged that the firm had “close connections” to Congressman Visclosky and described campaign contributions that PMA and its clients had allegedly made to Congressman Visclosky and earmarks that Congressman Visclosky allegedly requested that benefited PMA clients. Kevin Nevers, “Lobbying firm facing FBI probe has history of donations to Visclosky,” Chesterton Tribune, Feb. 13, 2009 (Exhibit 4); and
- On March 2, 2009, the Chicago Tribune reported on the investigation of the PMA Group, claiming that “few lawmakers have stronger ties to” the PMA Group than Congressman Visclosky. The article further described certain campaign contributions that Congressman Visclosky allegedly received from “donors tied to PMA Group” and certain earmarks that Congressman Visclosky allegedly secured for clients of the PMA Group. Henry C. Jackson, “Visclosky’s ties to troubled PMA Group run deep,” Chicago Tribune, Mar. 2, 2009 (Exhibit 5);

Although the details of the federal investigation are unknown, media reports insinuate that certain aspects of the investigation appear to relate to Congressman Visclosky’s duties as a candidate for federal office and as a federal officeholder and would not exist irrespective of those duties. As a result, Representative Visclosky seeks guidance regarding whether it is permissible for the Committee to pay legal fees and expenses incurred in connection with the federal investigation, and any other inquiries or proceedings that may arise out of the same operative facts.

LEGAL DISCUSSION

A federal officeholder may use campaign funds to pay any expense that would not constitute a personal use. 2 U.S.C. § 439a. A "personal use" is "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 C.F.R. § 113.1(g); *see also* Advisory Opinion 2003-17. Under the personal use rules, legal expenses are among the uses that will be examined on a case-by-case basis. 11 C.F.R. § 113.1(g)(1)(ii)(A).

The Commission has long permitted legal expenses incurred in defense of government investigations relating to the activities of a federal officeholder to be paid for with campaign funds, even prior to any regulatory or enforcement action. *See* Advisory Opinions 2006-35; 2005-11; 2003-17; 2000-40; 1998-1; 1997-12; 1996-24; 1995-23. In such cases, the Commission has relied on the description of the investigation supplied by the requesting party and contained in media reports regarding the investigation to determine whether the subject matter of the investigation related to the official conduct of a Member of Congress. *See* Advisory Opinions 2005-11; 1998-1; 1997-12. The Commission has similarly permitted federal officeholders to use campaign funds to respond to media allegations of improper campaign or official activities. *See* Advisory Opinions 2006-35; 2005-11; 1998-1; 1997-12.

Pursuant to federal regulations, the Committee will maintain appropriate documentation of any disbursements made to pay legal fees and expenses in connection with the investigation and other proceedings, if any, that may arise out of the same operative facts. Likewise, the Committee will disclose such expenditures as required under the pertinent regulations.

Based on the foregoing, I ask the Commission to confirm that the Committee may pay legal fees and expenses incurred by Congressman Visclosky in connection with the federal investigation relating to the PMA Group and his conduct as a candidate for and a member of the United States House of Representatives and any related proceedings.

Please contact me if you have any questions about this request.

Sincerely,



Michael C. Malczewski
Treasurer
Visclosky for Congress Committee

MCM/cw



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EXCLUSIVE: FBI Raided Lobbying Firm Connected to Murtha

Feds Narrowing In On Companies With Ties To Congressman

By EMMA SCHWARTZ and JUSTIN ROOD

February 9, 2009—

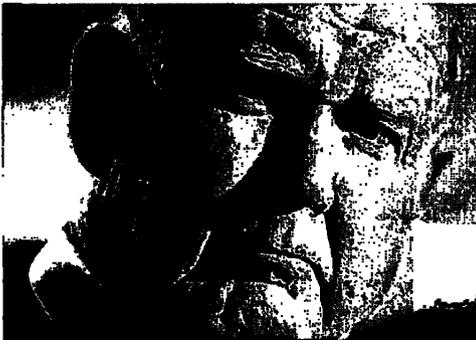
The FBI raided the offices of a defense lobbying firm with close ties to Democratic Rep. John Murtha (Penn.), sources tell ABC News.

The FBI searched the Virginia headquarters of the PMA Group in November, according to the sources, who spoke on the condition of anonymity. PMA was founded by former Murtha aide Paul Magliochetti and specializes in winning earmarked taxpayer funds for its clients.

Good government groups have long criticized Murtha's cozy relationship with a handful of lobbyists and defense firms, ties that see millions of dollars in government spending go out from Murtha's office, and hundreds of thousands in campaign donations come in. Murtha has said his earmarking has helped revive his economically depressed district.

PMA is the second company with close ties to Murtha to be raided by federal agents recently. In January, agents from the FBI, the IRS and the Defense Criminal Investigative Service searched the office of Kuchera Industries and Kuchera Defense Systems, as well as the homes of the firms' founders. The companies reportedly have received over \$100 million in earmarks, thanks to Murtha's efforts.

Investigators have not commented on their interest in the companies, and no official has suggested Murtha was involved in any suspected wrongdoing by the companies.



While it is unclear whether Murtha is a target of the investigations, the heightened scrutiny of some of his closest donors and allies signals that the Feds may be inching closer to the 35-year-member of Congress, who chairs the powerful Defense Appropriations subcommittee.

"The FBI is showing a lot of interest in" a lot of people around Murtha, said Keith Ashdown of Taxpayers for Common Sense. "If I was in Murtha's camp, I would not be sleeping at night."

A spokesperson for PMA Group, Patrick Dorton, confirmed the raid in a statement Monday afternoon. "Government representatives did come to the PMA offices. They requested a number of different kinds of information," Dorton said.

"The firm is cooperating with their requests."

Asked if Murtha had been contacted by the FBI or if he believed he was the target of an investigation, spokesman Matthew Mazonkey said "no and no," adding, "I'm not going to waste my time with sensationalized journalism."

The PMA Group and Murtha

The PMA Group has benefited mightily from its ties to Murtha. In 2008, it brought in \$13.8 million in revenue representing dozens of defense companies and contractors, many of which have donated heavily to Murtha. The veteran Pennsylvania Democrat has helped the firm secure millions in federal earmark dollars. Indeed, in 2008, PMA clients won \$299 million in earmarks, according to figures compiled by Taxpayers for Common Sense.

While the firm represents some defense giants like Lockheed Martin and General Dynamics, a large portion of their business comes from small defense firms headquartered in and around Murtha's district. In addition to Magliochetti, at least one other former Murtha aide, Julie Giardina, also works at PMA.

The watchdog group Citizens for Responsibility and Ethics in Washington has called Murtha one of the most corrupt members of Congress, for taking hundreds of thousands of dollars in contributions from companies and writing them millions of dollars in earmarks. Murtha has declined to comment on the designation.

Soon after the raid on PMA's offices, the firm's other senior members began talking to founder Magliochetti about an arrangement that would include him leaving the firm, according to the National Journal. Asked whether these discussions were related to the raid, Dorton declined to comment.

Murtha is no stranger to controversy. In the late 1970s, he was targeted in the "Abscam" scandal, a three-year FBI sting in which agents posed as representatives of an Arab sheik and offered suitcases of cash to lawmakers for favors. According to reports at the time, Murtha declined the undercover agents' cash offer, but suggested the "sheik" find a way to invest the money in his home district.

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February 11, 2009

Lobbyist Inquiry Appears to Be Widening

By **DAVID D. KIRKPATRICK**

WASHINGTON — Federal prosecutors are looking into the possibility that a prominent lobbyist may have funneled bogus campaign contributions to his mentor, Representative John P. Murtha, as well as other lawmakers, two people familiar with the investigator's questions said Tuesday.

Employees of the PMA Group, the firm founded by the lobbyist, Paul Magliocchetti, have given a total of more than \$1 million to political campaigns over the last three election cycles, according to the nonpartisan Center for Responsive Politics.

In the first half of 2007, the PMA Group and its clients contributed more than \$500,000 to three congressmen, Mr. Murtha, the Pennsylvania Democrat who is chairman of the House defense appropriations subcommittee, and his close allies on the panel, Representative James P. Moran of Virginia and Representative Peter J. Visclosky of Indiana.

The lawmakers, meanwhile, earmarked more than \$100 million in defense spending for PMA clients in the appropriations bills for 2008, according to a study by Taxpayers for Common Sense, which tracks earmarks.

In the last two weeks before the 2008 election, Mr. Murtha went on a last-minute fund-raising blitz, and PMA executives and clients gave him more than \$100,000, according to a tally by the Capitol Hill newspaper Roll Call.

Representatives of the three lawmakers could not be reached for comment.

Mr. Magliocchetti, the firm's founder, was previously a top aide to Mr. Murtha. Former top aides to Mr. Moran and Mr. Visclosky also worked at the company.

Experts in political law said the lawmakers could be required to return the improper contributions or, if they had turned a blind eye to fraud, they could be in legal trouble.

Campaign treasurers have a duty to scrutinize contributions and return any illegal ones, said Robert Walker, a Washington lawyer who previously directed the staff of the Senate Ethics Committee.

The PMA Group had grown into one of the biggest lobbying firms in Washington. But after a disclosure Monday night that federal investigators had raided the firm, it appeared to be on the brink of collapse.

Former PMA lobbyists were scurrying to try to move with their clients to new firms and several announced the opening of a new shop, Flagship Government Relations.

Some symbols of Mr. Magliocchetti's former influence remain, however. On Tuesday night at the Capitol Grille, a clubby Pennsylvania Avenue steakhouse where lobbyists sometimes entertain lawmakers or clients, there were still about eight bottles in a private wine locker labeled with his nickname, Mags.

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THE WALL STREET JOURNAL

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FEBRUARY 11, 2009, 8:22 A.M. ET

FBI Raids Defense-Related Lobbying Firm Linked to Murtha

By SUSAN SCHMIDT

The Federal Bureau of Investigation has raided a prominent defense-related lobbying firm with ties to Rep. John P. Murtha, one of three firms linked to the powerful Pennsylvania Democrat raided in the past three months.

PMA Group of Arlington, Va. turned over materials to agents who showed up at its offices in November, company spokesman Patrick Dorton said Tuesday. Mr. Dorton declined to comment about whether the firm is a target of the investigation. He said PMA is cooperating with the FBI's request for information.

PMA was founded by Paul Magliocchetti, formerly the top aide on a defense appropriations subcommittee chaired by Mr. Murtha.

Asked whether the congressman is under investigation, Murtha spokesman Matthew Mazonkey said: "No he is not. We have not been contacted by any federal agency, and no one is suggesting that Jack Murtha has anything to do with this, period."

The Justice Department had no comment on the PMA raid, which was first reported by ABC News.

FBI agents sought information about campaign contributions generated by those at the firm to members of Congress, according to a person with knowledge of the investigation. Agents were looking into whether lobbyists or clients listed as donors to congressional campaigns may have improperly been reimbursed, this person said.

Over the past two years, Mr. Murtha directed earmarks worth \$93 million to PMA clients, according to the National Journal's Hotline publication. In the last two election cycles, he took in \$1.3 million in contributions from the firm and its clients, which include big defense contractors as well as small firms located in his district.

News of the PMA investigation comes after Jan. 22 raids on two small defense contractors in Murtha's district. Kuchera Industries and Kuchera Defense Systems have gotten millions of dollars in federal earmarks that went through Mr. Murtha's subcommittee, according to Wall Street Journal research. The FBI, Defense Criminal Investigative Service and the Internal Revenue Service participated in the Kuchera raids, which included gathering material from the homes of its founders and a private hunting reserve that local press reports said was the venue for a Murtha campaign fundraiser.

The U.S. attorney's office in Pittsburg has said only that the Kuchera raids are part of an ongoing investigation.

News of the PMA raids came as the firm has been hit with a series of defections. Several PMA senior lobbyists left the firm in recent days and created their own business.

Their new firm, Flagship Government Relations, issued a statement Tuesday saying: "Paul Magliocchetti recently indicated that he would be retiring from PMA and invited members of senior management to negotiate an agreement to take over much of the client work. We were unable to reach agreement and resigned from PMA last Friday."

Write to Susan Schmidt at susan.schmidt@wsj.com

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Lobbying firm facing FBI probe has history of donations to Visclosky

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By KEVIN NEVERS

A Washington, D.C., lobbying firm with close connections to U.S. Rep. Pete Visclosky, D-1st, is apparently under federal investigation.

Earlier this week ABC News reported that in November 2008 the FBI raided the Arlington, Va., offices of The PMA Group.

PMA specializes in representing tech-oriented businesses—including those in the fields of defense, domestic security, information technology, and energy; environment, and natural resources—and on its website calls itself “a respected leader in non-partisan government relations, legislative counsel, and federal sector business development.” Since 1989, the website states, PMA “has given clients an inside track to business opportunities with the federal government.”

In Fiscal Year 2008, according to data compiled by Taxpayers for Common Sense, PMA clients obtained a total of 154 earmarks—or federal contracts—totaling \$299,498,000. Of those 154 earmarks, Visclosky requested 16 of them—one of them in conjunction with U.S. Sens. Evan Bayh, D-Ind., and Richard Lugar, R-Ind., among others—totaling \$23,800,000 or nearly 8 percent of the total. Only U.S. Rep. John Murtha, D-Pa., secured more federal funding for PMA clients: 16 earmarks totaling \$38,105,000.

PMA has also been a major contributor to Visclosky’s re-election campaigns, donating \$59,200 in the 2007-08 cycle and \$55,000 in the 2005-06 cycle, according to data compiled by the Center for Responsive Politics. In the 2003-04 cycle Visclosky’s re-election campaign received \$49,000 from Paul Magliocchetti Associates. Magliocchetti is the founder of PMA.

In addition to PMA’s contributions, Visclosky’s re-election campaigns have received donations from several PMA clients, including at least two in the 2007-08 cycle—21st Century Systems and ProLogic Inc.—for which he secured earmarks in Fiscal Year 2008.

Visclosky told the *Chesterton Tribune* on Thursday that he had been unaware of any investigation of PMA. “I did not know about the FBI raid in November until I read about it in the national periodicals this week,” he said. Whatever the nature of the investigation might be, Visclosky added, no one connected to it has sought to speak with him about PMA. “In no way, shape, or form has any federal, state, or local agency

contacted me or any of my staffers in any office," he said.

"We have no sense that there is" a problem with any of the campaign contributions made by PMA or its clients, Visclosky said. But if there is a problem which "we have no knowledge of, we would return the moneys."

There is this link as well between Visclosky and PMA: several PMA clients are or have been tenants at the Purdue Technology Center of Northwest Indiana in Merrillville, a business incubation facility developed partially with \$6.4 million in federal funding secured by Visclosky. On Thursday the Purdue Technology Center's website listed three current PMA clients as tenants: ProLogic Inc., an information technology firm, for which Visclosky secured two earmarks in Fiscal Year 2008 and from which his re-election campaign in the 2007-08 cycle received a contribution; Nesch, a life sciences firm; and NuVant Systems Inc., an industrial technology firm.

Details

According to Taxpayers for Common Sense, in Fiscal Year 2008 Visclosky in his own right secured earmarks totaling \$69,946,200 (he also secured earmarks in conjunction with other members). Of that amount, 34 percent or \$23,800,000 consisted of earmarks for PMA clients. Of the 16 earmarks secured for PMA clients, at least three were for firms which have made contributions to his re-election campaigns: an earmark of \$2 million to 21st Century Systems for "Intelligent Distributed Command and Control"; and two earmarks to ProLogic Inc., one for \$1.2 million for "Medical Resources Conservation Technology Pilot Energy Cost Control Evaluation," the other for \$200,000 for "Optimal Placement of Unattended Seniors."

According to the Center for Responsive Politics, 21st Century Systems donated \$31,650 to his re-election campaign in the 2007-08 cycle and \$22,000 in the 2005-06 cycle. ProLogic Inc. donated \$20,500 in the 2007-08 cycle and \$37,500 in the 2005-06 cycle. At least one other PMA client has contributed money to Visclosky's re-election campaigns: Parametric Technology Corporation, which donated \$26,500 in the 2005-06 cycle.

Visclosky told the *Tribune* that he trusts his constituents to trust him. "There is a whole level of activity of mine in Northwest Indiana, whether as a practicing attorney or a member of Congress," he said. "People are going to reference that long-term relationship that I and my constituency have had."

"As far as the contributions that have been received," Visclosky said, "they are in the public domain because of disclosure. I have continued to support disclosure so that the media can know who is supporting campaigns and who has received contributions."

Visclosky also noted that lobbyists provide an important service to government. "We are looking in my office for programs and firms that can add value to the country," he said. "You have large institutions, like the Pentagon and the Department of Energy. I'm not suggesting that people aren't doing their jobs there. But they tend to have inertia. They have

ways of doing things. Sometimes there are good ideas out there, new ways of approaching a problem, but it's difficult to get those voices heard. PMA is a group that can help. When we do find a firm that can add value to the taxpayers, we are happy to be of assistance to them, so they can share their value and their worth."

Data compiled by the Center for Responsive Politics reveal this trend in contributions to Visclosky's re-election campaigns over the years. The top five contributors in the 1997-98 cycle were all unions: the International Brotherhood of Electrical Workers, the Ironworkers Union, the Sheet Metal Workers Union, the Teamsters Union, and the United Auto Workers, each of which made a donation of \$10,000.

In the 1999-2000 cycle, four of the top contributors were unions, each making a donation of \$10,000, but the biggest contributor was Condor Systems Inc., a maker of electronic intelligence equipment, which made a donation of \$12,500.

In the 2001-02 cycle, only one of the top five contributors was a union, with Condor Systems Inc. making the largest donation of \$16,500 and Paul Magliochetti Associates making one of \$16,500.

The 2001-02 cycle was the last one in which a union was listed among the top five contributors. Since then the top five contributors have all been businesses.

Visclosky attributed that shift in the kind of top-five contributor to his emerging prominence as a ranking member—now the chair—of the Energy and Water Appropriations Subcommittee of the House Appropriations Committee. That subcommittee has an annualized budget larger than the entire State of Indiana's and funds "energy programs, weapons, nuclear programs," he said. "When I became a ranking member, a broad swath of national responsibilities kicked in."

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Visclosky's ties to troubled PMA Group run deep

By Henry C Jackson
March 02, 2009

WASHINGTON - He represents an area known for its rampant corruption, but Rep. Pete Visclosky has always had a reputation for staying above the fray.

That consensus is being challenged by revelations about the northwest Indiana Democrat's ties to a troubled defense lobbying firm.

PMA Group was once one of the biggest lobbying firms in Washington, specializing in securing defense earmarks for its clients. Now, the firm is disintegrating amid a federal investigation into allegations that its founder, Paul Magliochetti, a former top aide to Rep. John Murtha, D-Pa., steered donations to lawmakers through sham donors.

PMA Group's top beneficiaries include Murtha, chairman of the House Appropriations subcommittee that funds defense programs, and Rep. Jim Moran, D-Va., who also sits on the defense appropriations subcommittee.

But few lawmakers have stronger ties to the firm than Visclosky. His former congressional chief of staff worked as a lobbyist for the firm, and he received at least \$100,000 in contributions from donors tied to PMA Group between 2006 and 2008, according to Federal Election Commission reports. PMA Group was the top donor to Visclosky's 2008 re-election campaign.

From his seat on the House Appropriations Committee and its defense funding subcommittee, Visclosky has also reciprocated - helping to secure more than \$23 million in earmarks in 2008 for clients of PMA Group.

"It's pretty clear that Visclosky has deep ties to PMA Group," said Sheila Krumholz, executive president of the Center for Responsive Politics.

"It's also clear that (campaign funds) are being delivered to him on a targeted basis, based on his committee assignments. He's been in a position to help them from his perch," she said.

PMA Group spokesman Patrick Dorton declined to comment on Visclosky's ties to the firm.

The congressman said in mid-February he would return at least \$18,000 from donors who were listed as having ties to PMA Group, including \$16,000 in donations from men who live in the Florida community of Amelia Island and are listed in FEC filings as members of PMA's board of directors, and \$2,000 from Marvin Hoffman, of Marina del Rey, Calif., who is listed as a PMA Group lobbyist but has said he has no ties to PMA Group.

Campaign spokesman David St. John said then that if more allegations of straw donors were unearthed, Visclosky would "look at giving those back," too. He declined further.

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Until now, Visclosky has largely managed to avoid such concerns, even while representing a district that includes Indiana's Lake County – which former Attorney General Robert Kennedy once called one of the nation's most corrupt.

Since unseating an incumbent Democrat in 1984, Visclosky has quietly carved out a 25-year career in the House. He has rarely faced significant opposition in one of the country's most Democratic congressional districts.

That's resulted in a comfort level for many constituents, said Maurice Eisenstein, an associate professor of political science at Purdue University Calumet who has written about Visclosky and his ties to PMA Group.

"He's comfortable, he's like somebody you are used to, but nobody really speaks well of his accomplishments," he said. "Nobody can really say he's developed something here. On the other hand, he's like an old granddad who's been around a long time. It's what people are used to."

Eisenstein said Visclosky operates in something of a media vacuum, with the district he covers swallowed by Chicago news to the north and west, and news from Indianapolis to the south.

"There's a real disconnect between his reputation and whatever he does because there's just not that much coverage," he said.

Dan Dumezich, a former GOP state lawmaker from Schererville, said Visclosky doesn't get caught in the problems of local politics but isn't a particularly good advocate for northwest Indiana, either.

"I've noticed over the years he was getting contributions from people in Washington, California, Oregon," Dumezich said. "I think that's kind of the life story of Pete Visclosky. He's done what he needs to do to help himself politically, but he's never had a major impact on our area.

"What can I say? The appropriations haven't come our way."

It is unclear what, if any, penalties Visclosky will pay politically for his ties to PMA Group. Krumholz said Visclosky would need to be vigilant in dealing with his ties to PMA Group or his safe seat could be at risk.

"I think it depends on what more comes out and also on his response," Krumholz said. "It depends on whether it is viewed as authentic or whether it's kind of 'Who me?' type of thing. He clearly had a close relationship."

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