



Lawyers Alliance for New York

Connecting lawyers, nonprofits, and communities

MEMORANDUM

TO: Lawyers Alliance Friends and Clients
FROM: Lawyers Alliance for New York
RE: Important Changes to New York State Lobbying Laws
DATE: May 18, 2007

The New York State Lobbying Act (the “Lobbying Act”), which has regulated lobbying activity in New York State for decades, requires individuals and organizations, and those employed or retained by them, who have expended funds or incurred expenses attempting to influence actions by agencies or officials of New York State or New York City to register with the New York Temporary State Commission on Lobbying (the “Lobbying Commission”) and file periodic reports disclosing those expenditures. The law requires registration of individuals and corporations receiving more than \$5,000 in annual compensation as lobbyists, and of individuals and organizations paying more than \$5,000, collectively, to those lobbying on their behalves. Nonprofit organizations are required to register the organization as a lobbyist for lobbying activities of their paid employees, if the organization spends more than the statutory threshold on lobbying in a calendar year.

Changes in Lobbying Regulation.

The Lobbying Act was scheduled to expire on December 31, 2007, pursuant to a statutory “sunset clause.” The sunset provision has been repealed and other aspects of the Lobbying Act have been amended by a new statute called the Public Employees Ethics Reform Act of 2007 (the “Ethics Act”), which responds in part to statewide efforts to increase accountability and transparency. The Ethics Act was signed into law by Governor Eliot Spitzer on March 26, 2007 (most provisions were effective as of April 25, 2007) and effects some significant changes to lobbying regulation in New York State.

The Ethics Act Amendments to the Lobbying Act.

(1) A New Periodic Report for Lobbying on Public Monies Communications & Member Items & Discretionary Funds as Lobbying

Whether requests for member items and discretionary funds from State and City legislators constituted lobbying communications in all instances was formerly unclear. Since 2006, however, “member item” funding from state legislators has appeared in New York State budget bills as separate line items. As a result, expenditures incurred in the course of seeking such funding should (i) count towards calculating whether the organization has lobbying expenditures in excess of the \$5,000 threshold and (ii) should be reported as lobbying expenditures under the Lobbying Act, if the aggregate of all of an organization’s lobbying expenditures exceed the \$5,000 registration and filing threshold. In addition, effective January 1, 2008, organizations

that are registered as lobbyists and receive public monies must complete a separate bi-monthly periodic report to disclose expenditures incurred in connection with such requests (the "Public Monies Report"). Public monies include member items from state legislators and discretionary grants from New York City legislators, if the funds received are in excess of \$15,000. Therefore, for registered lobbyists, the Public Monies Report will include expenditures incurred in the pursuit of funding from state and local politicians.

The Ethics Act provides that the Public Monies Report will be due at the same time as the regular bi-monthly lobbyist report and a lobbyist that is late on filing the Public Monies Report is subject to automatic penalties and other penalties under the Lobbying Act. It remains to be seen how the Commission on Public Integrity incorporate this report into the existing reporting scheme.

The Lobbying Act does not address whether requests for discretionary grants from New York City politicians, absent any legislative lobbying activity, constitute lobbying communications. It is clear, as noted above, that those registered as lobbyists based on other expenditures must treat such communications as lobbying communications and are obligated to file Public Monies Reports.

However, for organizations that are not registered as lobbyists with the Commission because (i) their total local lobbying expenditures do not exceed the \$5,000 threshold or (ii) they do not make any other reportable lobbying expenditures, the answer is not straightforward. Unlike at the state level, discretionary grants in New York City continue to be disbursed as a matter of post-legislative discretion by individual members of the New York City Council, without those disbursements having been listed as line items in New York City's annual budget. This suggests that seeking those discretionary local funds, without other activity, does not constitute lobbying within the meaning of the Lobbying Act. However, the Public Monies Reports required of registered lobbyists under the new rules explicitly regards efforts to obtain discretionary grants as lobbying, and local lobbying activity ("municipal lobbying") is reportable under the state law. Until clarified, nonprofits seeking discretionary grants in excess of \$15,000 from New York City should treat all requests for such discretionary grants as lobbying communications and report those expenditures to New York State.¹

(2) Clarification that Bi-Monthly Reports are Required Prior to Exceeding Threshold

The Ethics Act, effective April 25, 2007, clarifies that a lobbyist's or lobbying organization's obligation to file reports arises even if the lobbyist or lobbying organization anticipates spending in excess of the statutory threshold during the year but has not yet reached the threshold, and even if the lobbyist or lobbying organization has not made any reportable lobbying expenditures during a single reporting period. This is consistent with and merely codifies actual practice.

¹ Nonprofits should note that the New York City Lobbying Act, which regulates lobbying in a manner similar to the Lobbying Act, requires registration and reporting of nonprofits that incur lobbying expenditures in excess of \$2,000. The New York City Clerk, through its general counsel, asserts that, for purposes of the New York City Lobbying Act, expenditures incurred in obtaining discretionary grants from New York City Council members are lobbying expenditures, reportable under the city's statute.

(3) Expanded Disclosure on Lobbyist Registration Statements

Effective April 1, 2007, the Ethics Act requires nonprofits that register and report as lobbyists to list on their registration statements the names, addresses and telephone numbers of any officers or employees who engage in any lobbying activities on behalf of the organization or who are employed in an organization's "division" that engages in lobbying. The State legislature evidently borrowed this concept from the recently amended New York City Lobbying Act and, like its cousin, the Ethics Act fails to define the term "division."

(4) No Gifts of More Than Nominal Value to Public Officials

Effective April 25, 2007, the Lobbying Act's prohibition on giving gifts valued greater than \$75 to public officials was amended to prohibit the giving or offering of any gift, which is now defined as anything having more than nominal value. The prohibition applies to any individual or entity required to be listed on a lobbyist registration statement and their spouses and unemancipated children. Exceptions to the prohibition include (1) if the circumstances are such that it is not reasonable to infer that the gift was intended to influence the public official and (2) the following items, which are excluded from the definition of gift:

- complimentary attendance, including food and beverage, at a bona fide charitable or political event, and food and beverage of a nominal value if offered other than as part of a meal;
- complimentary attendance, including food and beverage, offered by the sponsor of an event that is widely attended, when attendance is related to duties or responsibilities as a public official or allows the public official to perform ceremonial function appropriate to his or her function;
- awards, plaques, and other ceremonial items that are or are intended to be publicly presented, so long as the items bestowed are customary and reasonable under the circumstances;
- honorary degrees bestowed by a university or college;
- promotional items having no substantial resale value, such as pens, mugs, hats, and t-shirts that bear the organization's name, logo or message in manner that promotes its cause;
- goods and services and discounts on the same if they are made available to the general public, or a segment thereof that does not include solely or largely public officials, on same terms and conditions;
- gifts from family members, members of same household or individuals with a personal relationship with the public official when the circumstances establish that the personal, familial or household relationship is the primary motivating factor for the gift.

The Ethics Act contains a few other exceptions to the definition of gift and nonprofits are encouraged to consult the statute for more guidance.

The Ethics Act makes some significant changes to the Lobbying Act and, in particular, the new bi-monthly report on public monies spending will impose additional burdens and additional potential liabilities on lobbyists. The Ethics Commission will likely enforce the Lobbying Act with the same fervor as its predecessor enforcement agency, making compliance with the statute paramount.

This alert is meant to provide general information only, not legal advice. The Public Employees Ethics Reform Act contains specific requirements and details not included here, and the full text of the Act can be found at: <http://assembly.state.ny.us/leg/?bn=A03736&sh=t>. Lawyers Alliance advises nonprofits on compliance with the Lobbying Act and lobbying laws on the New York City and federal levels as well. Nonprofits seeking guidance on these and other business and transactional legal matters can contact Sunita Subramanian at (212) 219-1800, ext. 232, or Viva Obioha at ext. 276, for further information.

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