



# Political Law Alert

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## New York JCOPE Issues Lobbying and Political Contributions Opinions

On January 26, 2016, the New York Joint Commission on Public Ethics (JCOPE) approved two controversial advisory opinions. The first opinion clarified the scope of the state's lobby law. Although most of the media coverage on the opinion has focused on the scope of grassroots lobbying and its effect on public relations consultants, the opinion also addresses "door-opening" lobbying and the presence of a consultant at a lobbying meeting. The second opinion restricts state officials from soliciting or accepting contributions from persons they are investigating.

JCOPE also has announced an amnesty program, effective through June 30, 2016, for persons who were required to register and/or report under the lobby law but who have not done so since at least December 10, 2006. Please contact us for more information if you are interested in exploring this program.

The following is a brief summary of the new advisory opinions.

### Advisory Opinion 16-01

#### *Grassroots Lobbying*

The media has reported the opinion's discussion of grassroots lobbying as controversial. New York's lobby law has long covered "grassroots lobbying" but required a "call to action" (e.g., a request that people contact government officials) in addition to a reference to specific legislation and a clear position on the legislation. JCOPE's opinion expands the scope of grassroots lobbying to cover attempts to influence other government decisions (e.g., executive orders, regulations), but still requires a call to action. Finally, the opinion confirmed that a consultant's activity on grassroots lobbying is only covered to the extent the consultant controls the delivery of the message and has input on the content of the message. The opinion clarified that the delivery may be either to a targeted audience or to the public in general.

The New York media has focused on language from the opinion that says communications with the media in an attempt to influence an editorial would be delivery of a message and covered under the lobby law. Thus, PR professionals will need to consider whether they will be required to register. This is the most controversial part of the opinion since many PR professionals do not view discussions with editorial boards as grassroots lobbying. The opinion also raises the question of what exactly such a PR professional would be required to report. It appears that they would need to disclose expenditures in connection with carrying out the discussion with the editorial board, the

# Political Law Alert

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subjects lobbied, and the “Person, State Agency, Municipality or Legislative Body lobbied.” Thus, if a grassroots communication concerns pending legislation, the disclosure would identify the subject matter of the legislation and further identify the legislature as the intended target of the communication. In FAQs issued after the opinion, JCOPE noted that PR consultants would not need to disclose “the content or details of specific communications with reporters or others.” If JCOPE goes further and requires the disclosure of details such as the name of the periodical, this will likely add to any challenge to this already controversial opinion.

## *Door Opening*

Preliminary contact by a consultant with a covered official is lobbying if it is intended to enable or facilitate the ultimate advocacy. Thus, someone making introductions between a covered official and his or her client may need to register as a lobbyist even if he or she does not engage in any substantive discussion of an issue.

## *Consultant Attending Meetings*

Merely attending a meeting with a covered official may be sufficient to trigger registration. In particular, an individual who has direct interaction with a covered official in connection with

lobbying must register. This includes but is not limited to (i) verbal or written communications, including communications made for the purpose of facilitating access to a public official; (ii) attendance at a meeting with a public official; and (iii) presence on a phone call with a public official. The opinion does confirm the long-standing exemption that individuals who attend such meetings with public officials, *e.g.*, architects, scientists or engineers, to address technical questions are exempt.

## **Advisory Opinion 16-02**

Under this new advisory opinion, state officials, including elected officials, are prohibited from soliciting or accepting contributions from a person who is the active subject of the official’s enforcement powers (*i.e.*, investigating or prosecuting alleged violations of law). This ban also applies to the officers, directors and partners of the investigation’s subject and the 10 percent owners of such subject (1 percent if the subject is a publicly traded company). The ban applies while an enforcement action is active and for one year thereafter. An official would be required to recuse himself from an exercise of enforcement powers against a party from whom he accepted a contribution in the prior 12 months.

Please let us know if you have any questions.

# Political Law Alert

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