



Political Law Alert

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JCOPE Promulgates New Lobbying Regulations; Kansas Expands Scope of Lobbying Law

Below, we have summarized recent developments regarding New York and Kansas lobbying requirements.

New York Lobbying Regulations

On April 24, 2018, the New York Joint Commission on Public Ethics (JCOPE) voted to promulgate new comprehensive lobbying regulations (regulations). The regulations codify and expand upon long-standing JCOPE guidance and also introduce new requirements. Several significant provisions of the regulations, which will go into effect January 1, 2019, are summarized below.

Identification of officials lobbied: Historically, lobbyists and clients have not been required to disclose the identity of particular officials they have lobbied on their reports, and instead have disclosed only the office or department. However, the new regulations will require disclosure of “the name of the public official or public official’s office or legislative committee, as applicable.” The regulations then provide examples that appear to propose that a filer must name an individual legislator or senior agency official who was the object of lobbying, but the filer may list the office or department in cases where the person being lobbied was a lower-level staffer.

Disclosure of beneficial clients and their source of funding: The regulations require a registrant to identify on its registration statement its “beneficial client,” defined as the person or organization on whose behalf and at whose request, or behest, lobbying is conducted. The beneficial client may be the same as, or in addition to, the “contractual client,” defined as the person or organization that retains the lobbyist for the benefit of itself or another. All persons or entities listed on a registration statement, including beneficial clients, must comply with the state’s strict lobbyist and lobbyist employer gift law, as well as the contingency fee restriction. The regulations also require the beneficial client to complete the “source of funding” section of the client semiannual report.

Salesperson exemption clarified: New York’s lobbying law exempts the activities of persons who are commission-based salespersons with respect to governmental procurements. Under the law, a person must satisfy several factors in order to qualify, including a requirement that the person is compensated, in whole or in part, by the payment of a percentage amount of all, or a substantial part, of the sales which such person has caused,

promoted, influenced or induced. The regulations specify that this factor is only satisfied where a person is compensated, or intended to be compensated, on a commission basis for at least 50 percent of the sales the person caused, promoted, influenced or induced.

Equity compensation impermissible: The regulations state that stock or equity payments for lobbying activity are *per se* impermissible and are *per se* a violation of the restriction on the payment of contingent compensation. A JCOPE attorney advised that this prohibition does not apply where a lobbyist is paid a salary for lobbying and also receives stock or other equity compensation unconnected with lobbying. JCOPE previously had issued similar guidance, but the regulations further state that the presumption of impermissibility can be overcome by showing that the value of stock or equity is not directly dependent on the outcome of the government action that is the subject of the lobbying. Any stock or equity payments for lobbying are only permissible if approved by JCOPE upon application. The regulations lay out the following factors for JCOPE to consider in making such a determination: whether the stock is publicly traded or closely held; whether the lobbying activity addresses a lobbying firm's entry or continued access to a geographic or product market; whether the government action has broad impact across an industry or population, not simply impacting a small number of organizations; any trading activity and changes in price, appraisal or valuation over the preceding 12 months; and other factors as determined by JCOPE.

Other topics: In addition to the above provisions, the regulations also address the treatment of multi-party lobby arrangements and coalitions, the classification and reporting of social media communications as direct or grassroots lobbying, the treatment of organized lobby days, coverage of door-opening as lobbying, and other topics. Lastly, the regulations carve out a narrow exemption for employers of only in-house lobbyists from the semiannual client reporting obligation, though the source of funding report is still due.

Kansas Lobby Law

On April 16, 2018, Kansas Gov. Jeff Colyer signed SB 394, expanding the scope of the state's lobby law with respect to procurement lobbying. Until June 30, 2018, procurement activity only triggers lobbyist registration in Kansas if one provides certain gifts or entertainment to state officers or employees worth \$1,000 or more in the aggregate in a calendar year. Effective July 1, 2018, registrable lobbying activity will include attempts to influence executive or judicial branch procurement. Thus, beginning July 1, a person may trigger registration for Kansas procurement lobbying if he or she is employed in considerable degree for lobbying, formally appointed as the primary representative of an organization to lobby in person on state property, or makes certain expenditures of \$1,000 or more in a calendar year for lobbying.

Effective July 1, 2018, certain written communications by employees of a private business seeking a contract, communications regarding contracts worth \$5,000 or less and certain other communications regarding Kansas economic development programs will be exempt. However, SB 394 does not include a general exemption for a sales person's activities. SB 394 also includes minor changes to the state's lobbyist reporting requirements and its gift restrictions.

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