

Political Law Alert

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Notable Lobbying and Contribution Limit Developments in New York State and Maine

The following summarizes the more notable changes in New York state and Maine.

New York's JCOPE Requests Public Comments on Proposed Amendments to State Lobbying Regulations

The New York Joint Commission on Public Ethics (JCOPE) recently released a proposed set of revisions to its comprehensive lobbying and source of funding regulations, and is seeking public comments before beginning formal rulemaking. JCOPE hopes to implement the updated regulations by January 1, 2021, with written comments on the proposed changes due to JCOPE by June 5, 2020.

The proposed changes outline clarifications, corrections and codifications of prior informal guidance. The proposed changes include:

- Currently, client filers must disclose on their source of funding reports certain reimbursements or payments they receive to help cover their lobbying expenses, otherwise referred to as “contributions” received for lobbying. The proposed changes amend the definition of such a reportable contribution to exclude a payment that is earmarked and conditioned for a specific purpose other than lobbying activity in New York, placed in a segregated bank account solely for that specific purpose and unavailable for general operations.
- Under the proposed changes, contractual clients and beneficial clients would both be responsible for disclosing reportable business relationships with state officials and employees. This includes relationships with certain entities owned or controlled in part by the official or employee and relationships at the direction of an official, employee or the controlled entity. Currently, only contractual clients are required to disclose such business relationships.
- The proposed changes clarify that participation in a legislative hearing is exempt from the definition of lobbying activity because such testimony qualifies under the exemption for responding to a request for information or comments.
- Currently, a lobbyist is required to file a copy of any written lobbying agreement or a lobbyist agreement form (provided by JCOPE) with the statement of registration. The proposed changes clarify that, in order to avoid making a delayed filing, a lobbyist who is prepared to register but is waiting for the return of an executed lobbying agreement from a client may file an unexecuted agreement with JCOPE, subject to certain

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conditions, including that an executed agreement is ultimately provided within 30 days of the original submission.

- Under the proposed changes, terminations may no longer be withdrawn. If a new lobbying agreement is executed with a prior client after a termination, a new statement of registration must be submitted with a filing fee.
- Other proposed changes clarify when an individual is required to be listed on a lobbying report for participating during a lobby day, when an individual must be listed for social media activity, what social media activity is reportable and when a contributor to a coalition must be listed as a beneficial client.

New York State Legislature Re-Implements Lower Contribution Limits, Effective November 2022

As previously discussed in our mailing from February 24, 2020¹, in late 2019 the New York Campaign Finance Reform Commission (the commission) adopted legally binding recommendations to implement a state public financing system that includes a reduction in state contribution limits following the 2022 election cycle. On March 12, 2020, a Niagara County Supreme Court judge struck down the recommendations of the commission, holding that the commission's recommendations were an improper delegation of the New York legislature's powers. In light of this ruling, the New York legislature then included and passed the recommendations of the commission in the New York state budget, signed by Gov. Andrew Cuomo on April 3, 2020.

Thus, the lowered limits are now implemented by statute and will take effect November 9, 2022, which is the date originally recommended by the commission. As a reminder, the new limits for candidates seeking statewide office will be \$18,000 per election cycle, divided equally between the primary and general election. This is reduced from a current maximum combined limit of \$69,700. Contributions to candidates for state senate will be limited to \$10,000 per election cycle, divided equally between the primary and general election (reduced from a current combined limit of \$19,300). Contributions to candidates for state assembly will be \$6,000 per election cycle, divided

equally between the primary and general election (reduced from a current combined limit of \$9,400). The new limits apply regardless of whether a candidate is participating in the public finance system. The \$5,000 aggregate limit on contributions by corporations and LLCs per calendar year is unchanged.

Maine Expands Grassroots Lobbying Reporting

Maine Senate Paper 640, effective December 1, 2020, lowers the threshold for reporting grassroots lobbying expenditures for lobbyists and creates reporting obligations for non-lobbyists making grassroots lobbying expenditures in the state. For registered and unregistered persons, reporting will be required when expenditures for grassroots lobbying exceed \$2,000 in a calendar month. Currently, only lobbyists making expenditures in excess of \$15,000 per month are required to report grassroots expenditures; unregistered persons who make grassroots expenditures are not required to register or report at all. Under the new law, salaries paid to a person's employees are not grassroots expenditures and are not reportable or included when calculating expenditures toward the threshold. In addition, communications to stockholders, employees, board members, officers or dues-paying members are exempt from the definition of grassroots lobbying. Non-lobbyists who trigger grassroots reporting will be required to list all of the person's original sources (*i.e.*, any person who pays \$1,000 or more in any lobbying year directly or indirectly for grassroots lobbying, subject to an exemption for membership payments to nonprofits) and a statement of the amount paid by each original source. Lobbyists are currently required to report original sources of payments for lobbying activities.

As was previously the case, only legislative activity is covered under Maine's lobbying law; attempts to influence nonlegislative government activity, including by grassroots lobbying, will not be covered under the lobbying law and will not trigger registration or reporting obligations.

¹ Skadden's February 24 mailing, "Notable Political Law Developments in New York, Texas and Los Angeles."

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