



NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS

Frequently Asked Questions Lobbying Activities – Consultants Engaging in Grassroots Lobbying

The Commission issued [Advisory Opinion No. 16-01](#) to clarify that Article 1-A of the Legislative Law (the “Lobbying Act”) applies to consultants engaging in grassroots lobbying.

What does the Lobbying Act currently cover?

Presently, the [Lobbying Act](#) applies to lobbyists, clients of lobbyists, and public corporations, who in a year expend, incur, receive, or reasonably anticipate expending, incurring, or receiving more than \$5,000 in compensation and expenses for state and/or local lobbying activity. Entities that do not exceed, or anticipate exceeding, the \$5,000 threshold do not need to register.

What is “grassroots lobbying” under this advisory opinion?

The advisory opinion clarifies that a communication is “grassroots lobbying” when it takes a clear position on a specific “government action” and asks the public or a segment of the public to contact a public official in support of that position. “Grassroots lobbying” essentially is an attempt to influence public opinion in favor of or in opposition to a particular “government action” with the expectation that the public will then influence a public official to act in the same manner. A complete list of government actions is set forth in the Lobbying Act, and examples include the passage or defeat of legislation, the adoption of an executive order or a state agency regulation, or a decision related to a governmental procurement. *For more information about grassroots lobbying, please see FAQ document [here](#).*

What activities by consultants constitute reportable grassroots lobbying under this opinion?

A consultant engages in reportable grassroots lobbying under this opinion when: (1) the consultant helps develop the client’s position on a specific government action; and (2) then “controls the delivery” of the client’s position. An individual or entity who receives or expends more than \$5,000 for this and/or any other lobbying activity must register with the Commission.

When does a consultant “control the delivery” of a client’s position?

The consultant “controls the delivery” of the client’s position on a specific government action when he or she participates in actively communicating the position to an individual, organization, or the general public. For example, a consultant “controls the delivery” when he or she:

- Speaks to a trade group to encourage them to contact a public official about a specific government action;

- Appears on television to support the client's position with respect to a government action; or
- Contacts a newspaper to encourage the editorial board to support the client's position.

Does a consultant who communicates with the media have to register as a lobbyist?

Generally, no. However, if a paid consultant "controls the delivery" of a message by encouraging an editorial board to support a position on a specific government action favorable to a client, then the consultant may need to register with the Commission and disclose information about the underlying client relationship. Factual communications with reporters are not covered by this opinion.

Does a consultant have to register as a lobbyist if he or she responds on behalf of a client to a reporter's inquiry?

No. Responding to a reporter's request for information or comment does not constitute lobbying. Advisory Opinion No. 16-01 is not intended to cover or restrict a reporter's ability to gather information as part of reporting the news. Rather, it is intended to generate transparency in the activities of paid media consultants who are hired to proactively advance their client's lobbying agenda through the media.

Is a reporter who seeks or receives information from a consultant required to register as a lobbyist?

No. The Lobbying Act excludes the activities of the media from the definition of lobbying when the media is engaged in broadcasting or reporting the news or issuing editorials. Journalists are not lobbyists. Journalists do not have any reporting requirements as lobbyists.

If a consultant is required to register as a lobbyist, does the consultant have to disclose every communication it has with a media outlet?

No. Consultants are not required to report individual interactions with members of the media, or identify media outlets with whom they have spoken.

Does a consultant need to disclose the content of communications with media outlets under the Lobbying Act or this Advisory Opinion?

No. The content of communications does not need to be disclosed. Although the consultant must file a bi-monthly report with the commission, the consultant must only disclose the client, how much the client paid, and the specific government action (e.g., the bill number) that he or she attempted to influence. The consultant does not need to disclose the content or details of specific communications with reporters or others.