



NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS

Frequently Asked Questions Lobbying Activities – Consultants Engaging in Direct 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 direct 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 are lobbying activities under the Lobbying Act?

Lobbying activities under the Lobbying Act include any attempt to influence a “government action.” 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.

DIRECT CONSULTING COMMUNICATIONS THAT CONSTITUTE LOBBYING

What activities by a consultant constitute reportable direct lobbying under this opinion?

A paid consultant engages in reportable direct lobbying under this opinion when (1) the consultant has *preliminary contact* with a public official to enable or facilitate lobbying by a client; or (2) the consultant has any *direct interaction* with a public official in connection with lobbying by a client. 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.

What is “preliminary contact” with a public official by a consultant?

Preliminary contact includes when a paid consultant schedules a meeting between the client and a public official, introduces the client to the public official or otherwise contacts the public official on the client’s behalf, and the consultant knows or has reason to know that the client will lobby the public official.

What is “direct interaction” with a public official by a consultant?

Direct interaction includes when a paid consultant (1) engages in verbal or written communications, including communications made to facilitate access to a public official; (2) is in attendance at a meeting with a public official; or (3) is present on a phone call with a public official. The consultant must also know or have reason to know that his client will lobby the public official.

THE CONSULTANT WHO OPENS THE DOOR TO A PUBLIC OFFICIAL

Can preliminary contact by a consultant with a public official constitute reportable lobbying activity?

Yes. *Preliminary contact*, as outlined previously, by a paid consultant on behalf of a client with a public official to enable or facilitate lobbying by the client is reportable lobbying activity. The initial contact does not have to involve substantive discussion of the advocacy.

Is it reportable lobbying activity if a paid consultant simply schedules a future meeting between the consultant’s client and a public official?

Yes, if the consultant knows or has reason to know that his client will lobby the public official.

Is it lobbying if a paid consultant merely introduces his client to the public official prior to a meeting?

Yes, if the consultant knows or has reason to know that his client will lobby the public official.

THE CONSULTANT WHO ATTENDS MEETINGS OR PARTICIPATES IN PHONE CALLS BETWEEN THE CLIENT AND A PUBLIC OFFICIAL

When a paid consultant attends a meeting or participates in a phone call between his client (with or without a lobbyist) and a public official, is the consultant lobbying?

Yes, any consultant who has *direct interaction*, as outlined previously, with a public official in relation to his client’s lobbying effort is lobbying.

Does everyone who attends a meeting or participates in a phone call with a public official relating to a lobbying effort have to report the meeting as a lobbying activity?

No, for example, architects, scientists, or engineers who are in attendance at a meeting or on a phone call to address technical questions, but have no role in the strategy, planning, messaging, or other substantive aspect of a meeting or phone call, are not engaged in lobbying.