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From: Fisher, Kenneth [mailto:KFisher@cozen.com]

Sent: Monday, January 11, 2016 7:33 PM

To: Levine, Martin (JCOPE)

Cc: Fisher, Kenneth; Mandell, Jill L.

Subject: NYAA Comments on Social Media

Dear Mr. Levine,

As you know, our firm represents the New York Advocacy Association, the members of which are government relations professionals and firms. We are writing in connection with the request for comments regarding the use of social media as it relates to lobbying.

Generally speaking, NYAA believes that if a client engages a consultant to disseminate information through social media, the associated expenses may be subject to disclosure as lobbying expenses, but the consultant is not a lobbyist unless there is communication by the consultant specifically and directly to a lobbying target. To go beyond this would be unwarranted, beyond the authority granted under the statute and an impermissible burden on protected speech.

In this regard, we reference comments we previously submitted regarding the draft advisory opinion on grassroots and indirect lobbying, where we asserted, among other things, that traditional media relations did not constitute lobbying because it is intended to directly affect the non-lobbying determinations and actions of independent non-government actors.

More specifically, a functional analysis of how social media is used helps inform our concerns.

If one uses social media for a direct communication with an official, such as instant messaging, a post to that official's Facebook page or Twitter feed, it should be treated the same as a direct contact in any other form, such as a letter, email or verbal statement, going from the one person or organization to the other.

However, the announcement of a position through a posting on one's own account, which may be read by others known and unknown, is not a lobbying contact unless the user has actual knowledge that a lobbying target will receive it, and intended that this occurred (since someone with a large number of social media connections might have constructive knowledge of who was following the feed but might not at any given time know, remember or appreciate that this could include lobbying targets).

If one distributes such a sentiment through a more generalized post, it may be in furtherance of a lobbying effort, but it is not lobbying and does not make one a lobbyist, even if ultimately relayed by the recipient, such as by retweeting, and it ultimately arrives on a lobbying target's screen. We would apply this principle even if the original post included a call to action, because the call to action is to a non-lobbying target making an independent decision whether and how to respond, no different from an editorial writer for exempted media organizations.

Any other conclusion could result in a violation by an otherwise innocent party relaying information of public importance without specific intent to lobby if, for example, that person's job for compensation

was to disseminate information regarding matters under government consideration whether or not their organization itself had a position on the merits, such as a trade association staff member or third party lobbyist who merely blogs on new developments on a particular subject every day, to which feed a lobbying target might subscribe. In this regard, that person is a "publisher" entitled to exemption from burden, as any other "media" operation would be.

Finally, as with the grassroots and indirect draft advisory opinion, we would respectfully request a longer comment period and a more widely distributed solicitation of comment, for example to constitutional law professors at the state's various law schools and the general counsels at major social media companies such as Facebook and Twitter who may have particularly informed perspectives to share. Further, whatever positions the Commission decides to adopt, it should be done through a formal rule-making procedure to ensure robust public scrutiny and precision in definitions and provisions.

Social media has become the town square, the water cooler, and the major news source for much of the world, particularly on political and policy matters. It's technology changes every day. It is simply so important to the discourse of government that the presumption should be that regulation will not deter or burden it's use.

We would welcome the opportunity to discuss or any other matter affecting the lobbying community or where our experience or expertise may be of assistance. Thank you for your consideration.

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