



New York State
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February 8, 2013

VIA E-MAIL AND FIRST CLASS MAIL

Shari Calnero
Associate Counsel
Joint Commission on Public Ethics
540 Broadway
Albany, New York 12207

Re: Proposed Regulation for Source of Funding Reporting
NYS Register I.D. No. JPE-37-12-00006-ERP

Dear Ms. Calnero:

This comment is submitted on behalf of the New York State Public Employees Federation, AFL-CIO with respect to the New York State Joint Commission on Public Ethics' ("JCOPE") proposed regulations regarding "source of funding reporting." These proposed regulations were published in the State Register on January 9, 2013. That publication advised that comments regarding the proposed regulations can be submitted up to 30 days after such notice. Thus, this comment is timely submitted.

It is our position that JCOPE's proposed definition of "Contribution" found at 938.2(b) exceeds JCOPE's authority under the enabling legislation. In order to cure this problem, the current definition of "Contribution" should be limited to those payments made to organizations, and spent by organizations, specifically for lobbying purposes. For the following reasons, the definition should not require far-reaching and irrelevant disclosures, as the proposed regulation currently provides, of "payments intended to fund, in whole or in part, the Client Filer's activities or operations."¹

First, the plain meaning of the applicable provisions of the *Public Integrity Reform Act of 2011* ("PIRA"), so directs in identical language with respect to a registered lobbyist acting on its own behalf (*Legislative Law* §§1-h(c)(4)) and a client of a registered lobbyist (*Legislative Law* 1-j(c)(4)),² that each must report to JCOPE:

¹ The proposed regulation does carve out an exception to reporting of a contribution if it is in exchange for goods or services delivered directly to an organization.

² JCOPE in its proposed definition 938.2 defines "Client Filer" to mean either a client pursuant to *Legislative Law* §1-j or a registered lobbyist pursuant to *Legislative Law* §1-e. A lobbyist acting on its own behalf is treated as its own client for reporting purposes.

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...the names of each source of funding over five thousand dollars from a single source that *were used to fund the lobbying activities* reported and the amounts received from each identified source of funding." [Emphasis supplied.]

Second, the Senate explanation that accompanied *PIRA*, S5679-2011 Memo, likewise focuses on funds used for lobbying itself. The Senate explained *PIRA*'s "[p]urpose" as including in relevant part "to require lobbyists that lobby on their own behalf and clients of lobbyists that devote substantial funds to lobbying in New York State to disclose the sources of *such funding* (Emphasis supplied)." And, the respective source-of-funding provisions for lobbyists on their own behalf and clients were summarized as requiring "disclos[ure of] each source of funding over \$5,000 *used for such lobbying*" and "disclos[ure of] the sources of their funding *for their lobbying activity*," respectively (Emphasis supplied).

Third, the *Legislative Law* itself, which now incorporates *PIRA*, makes the following policy declaration:

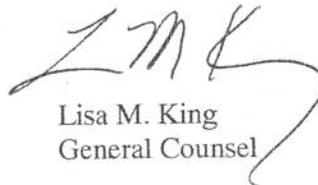
[To preserve and maintain the integrity of the governmental decision-making process in this state, it is necessary *that the identity, expenditures and activities of persons and organizations retained, employed or designated to influence passage of any legislation...be publicly and regularly disclosed.* [Emphasis supplied].

Clearly, through its declarations of purpose and policy and specific choice of statutory language, the Legislature intended only to track contributions to an organization which were for the dedicated purpose of lobbying, and which were, in fact, expended or used for that purpose.

To define a "Contribution," as JCOPE has proposed, as any payment to a Client Filer which is intended to fund any of the Client Filer's activities or operations far exceeds what the Legislature specifically intended. Thus, by requiring reporting of information well beyond that set forth by the Legislation, JCOPE has exceeded its statutory authority and must revise these proposed regulations accordingly.

Thank you for your consideration of these comments.

Sincerely,



Lisa M. King
General Counsel

LMK/mab