

MEMORANDUM

TO: New York City Lobbying Commission
FROM: New York Advocacy Association
DATE: April 27, 2011
RE: Subcontractor Lobbyists

The New York Advocacy Association would like to submit to the New York City Lobbying Commission the following issue relating to the differences between the City scheme and the State scheme.

Occasionally, lobbyists engage other lobbyists who are not part of their firm to lobby on behalf of a particular client. At the State level, the lobbyist may list these subcontractor lobbyists as “additional lobbyists” and report their fees as an expense that they are accruing on behalf of the client. At first, the City Clerk’s Office considered requiring that a lobbying firm become the “client” of the subcontractor lobbyist in situations where the firm hires another lobbyist.

This approach would be misleading and may confuse the public. Although the lobbyist may be the “client” of the subcontractor lobbyist, the subcontractor lobbyist is lobbying only on behalf of the original client, not on behalf of the lobbyist. Further, instead of having all relevant lobbying information in the report for a particular client, this information would be dispersed throughout different client registrations on the City Clerk’s database. In an effort to increase both simplicity and transparency, the treatment of subcontractor lobbyists should be consistent at the City and State level. The City Clerk’s Office is exploring changing the formatting with DOITT to essentially match the State. The NYAA respectfully suggests that the City Clerk’s office adopt the State’s approach to this issue and that the statute be amended to accomplish this if necessary.

The NYAA is available to meet with the Lobbying Commission to address any concerns or answer any questions related to this issue.

MEMORANDUM

TO: New York City Lobbying Commission
FROM: New York Advocacy Association
DATE: April 27, 2011
RE: Lobbying Threshold and its Effect on Pro Bono Lobbying and Community Board Lobbying

The New York Advocacy Association (“NYAA”) would like to respectfully suggest to the New York City Lobbying Commission that the lobbying threshold amount should apply to each client on an individual basis. Further, the NYAA supports the recommendation that the lobbying threshold amount be increased to a level sufficient to exempt minimal lobbying activities.

The New York City Lobbying Law states that “every lobbyist shall annually file with the City Clerk . . . [except that] registration shall not be required of any lobbyist who in any year does not expend, incur or receive an amount in excess of two thousand dollars of reportable compensation and expenses.” The City Clerk’s website offers additional guidance, stating that “the \$2,000 threshold applies cumulatively to compensation a lobbyist receives from all its clients; it is not a threshold that must be reached for each individual client.” Therefore, once the \$2,000 threshold is exceeded, a lobbyist must file for each client.

Lobbyists who exceed the compensation threshold even have to register pro bono clients. Requiring a lobbyist to file for non-revenue generating clients provides a disincentive for providing pro bono services. Lobbyists should be encouraged to take on pro bono and low revenue generating clients without worrying about the additional expense and time commitment it takes to complete the City’s registration and filing process.

Also, applying the threshold on an individual basis rather than cumulatively would eliminate the confusion regarding the reporting requirements for Community Board lobbying. Under the proposed system, the decision to report Community Board lobbying would depend on whether an individual client exceeded the lobbying threshold. If a lobbyist’s work on behalf of a client were contained to the Community Board level on an uncontroversial matter (for example, leading up to a hearing at the quasi-judicial Board of Standards and Appeals), it is unlikely that the threshold amount would be reached and therefore no reporting would be necessary. In those cases where a lobbyist appears before several City agencies, including the Community Board, it is likely that compensation would exceed the threshold and the lobbyist would have to register and report all lobbying activities.

The NYAA is available to meet with the Lobbying Commission to address any concerns or to answer any questions related to this issue.

MEMORANDUM

TO: New York City Lobbying Commission
FROM: New York Advocacy Association
DATE: April 27, 2011
RE: Reporting Requirements

The New York Advocacy Association (“NYAA”) respectfully submits to the New York City Lobbying Commission the issue of reporting both the name of the person and the name of the agency lobbied.

Pursuant to section 3-213 of the New York City Lobbying Laws, every lobbyist that exceeds \$2,000 in lobbying compensation must file reports with the City Clerk’s Office. The Lobbying Law provides a list of information that must be included on these reports. One requirement is that these reports must contain “the name of the person or agency before which the lobbyist is lobbying or expects to lobby.” (emphasis added)

Advisory Opinion 1987-17 issued by the City Clerk’s Office provides an interpretation of this provision. It states that “on the lobbyist periodic and annual reports, the *name* of each City employee and/or official lobbied, and the *name* of the City agency the City official or employee is employed by, represents, or presides over, must be disclosed and reported.” The Advisory Opinion does not explain why, despite the plain language of the Lobbying Law, a lobbyist is required to report both the name of the person and the name of the agency lobbied.

The E-Lobbyist system is set up so that a lobbyist must enter both the name of the person and the name of the agency before which the lobbyist is lobbying or expects to lobby. In order to report the names of the person and agency lobbied, a lobbyist must choose a person and agency from a pre-populated list in the form of a drop-down box. A lobbyist is not allowed to manually enter an agency or person.

The process of complying with the requirement of reporting the names of all persons lobbied is unnecessarily complicated. Advisory Opinion 1987-17 states that a lobbyist must disclose “the decision-maker whom the lobbyist has attempted to influence.” Further, a lobbyist must also disclose “the designated representatives of the decision-maker whom the lobbyist has attempt to influence if such representatives have the authority to make decisions on behalf of the decision-maker, or if the decision maker relies upon their substantive input.” These unconstitutionally vague definitions place a great burden on lobbyists. If a lobbyist attends a meeting where numerous staff members are present, the onus is on the lobbyist to determine which staff members have the “authority to make decisions” or are relied upon by decision-makers for “substantive input.” Lobbyists should not be put in the position where they have to make judgments on the importance of staff members and other agency employees. The NYAA respectfully recommends to the Commission that lobbyists should only have to report the names of City-wide and Borough-wide elected officials.

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Because the E-Lobbyist system uses pre-populated drop down boxes, a lobbyist can only report lobbying activity done before persons and agencies who are already in the system. It is not uncommon for a lobbyist to not be able to correctly report all lobbying activities because a particular agency or person with whom the lobbyist has interacted is not in the E-Lobbyist database. For example, as of April 21, 2011, the New York City Lobbying Commission does not appear as an choice in the drop down box for "Target Agency." Therefore, the NYAA is not currently able to report that it has performed lobbying activities before the Commission.

The NYAA is available to meet with the Lobbying Commission to address any concerns or answer any questions related to this issue.

MEMORANDUM

TO: New York City Lobbying Commission
FROM: New York Advocacy Association
DATE: April 27, 2011
RE: Accrual vs. Cash Basis for Lobbying Reporting

The New York Advocacy Association (“NYAA”) would like to submit to the New York City Lobbying Commission our support for the current accrual method that is used to report lobbying compensation and expenses.

The accrual method of reporting is more efficient from an administrative standpoint than a cash based system and it meets the transparency goals of the Lobbying Law. Under the current system, lobbying firms report all expenses and compensation that have been billed to the client. Even though a lobbying firm may not ultimately be paid in full for all compensation earned, reporting the amount of lobbying expenses incurred by the client accurately informs the public of efforts to influence public officials. There is no harm in over reporting.

A cash basis system would require lobbyists to make amendments to these totals when compensation is realized. This would be a book keeping nightmare for lobbying firms. Moreover, amending compensation based on how much of a client’s bill is paid does not further the goals of the lobbying law. The public should be concerned with the value of the lobbying work that was performed on behalf of a client, not with the amount of money that a lobbying firm actually collected. The only exception would be if the lobbyist received more than was invoiced, in which case the higher number should be reported.

The NYAA is available to meet with the Lobbying Commission to address any concerns or answer any questions related to this issue.

MEMORANDUM

TO: New York City Lobbying Commission
FROM: New York Advocacy Association
DATE: April 27, 2011
RE: Reporting Duties of Technical Professionals that Advocate Before City Agencies

The New York Advocacy Association (“NYAA”) would like for the New York City Lobbying Commission to clarify the reporting responsibilities of technical professionals.

Technical professionals – such as architects and economists – do not typically register as lobbyists when they perform services on behalf of a client before a City agency. This practice may be incorrect under the plain language of the law. Under the New York City Lobbying Law, lobbying is defined as “any attempt to influence” a determination by City officials.¹ The Lobbying Law does not just apply to “retained lobbyists” or “in-house lobbyists,” but to “every person or organization retained, employed or designated by any client to engage in lobbying.”²

The Lobbying Law states that “advising clients, rendering opinions and drafting”³ documents are not lobbying activities. However, the Lobbying Law does not expressly exclude technical professionals from reporting if they engage in lobbying activities. If a technical professional attends a hearing on behalf of a client or meets with an elected official and attempts to influence the determination, that person should have to register as a lobbyist with the City Clerk’s office.

The situation above is best illustrated by a short example. “Client” hires “Architect” to create drawings and renderings in preparation for Client’s hearing before a City agency in connection with a land use matter or a disposition of City property. Architect creates several documents for Client and advises Client on how to proceed. At this point, Architect has not performed any lobbying activities and by law has no duty to register with the City. Next, Architect accompanies Client to Client’s hearing before the City. Architect explains his work and advocates on his Client’s behalf. Architect is now lobbying on behalf of his Client, as defined in the Lobbying Law, and Architect must register with the City Clerk’s office.

The NYAA requests that the City Clerk’s office clarify the reporting requirements for technical professionals. The NYAA is available to meet with the Lobbying Commission to address any concerns or answer any questions related to this issue.

¹ New York City Administrative Code, Section 3-211(c)(1)(i)-(viii)

² Id. at 3-211(a)

³ Id. at 3-211(c)(3)(i)

MEMORANDUM

TO: New York City Lobbying Commission
FROM: New York Advocacy Association
DATE: April 27, 2011
RE: Payroll Requests

The New York Advocacy Association (“NYAA”) would like to submit to the New York City Lobbying Commission the issue of payroll requests.

Prior to 2009, the New York City Clerk’s Office, pursuant to an audit, attempted to obtain salary and payroll information for lobbyists regardless of whether they were retained or “in-house” lobbyists. Lobbying firms argued that the salaries of lobbyists who work for lobbying firms should not be made public as this information does not further public policy nor the intent of the lobbying laws. This debate led to the issuance of Advisory Opinion 2009-1.

Advisory Opinion 2009-1 holds that the City Clerk “will not require that a lobbying organization report the salaries or other forms of compensation received by its employees-who-lobby.” The reason why retained lobbyists do not have to report their individual salary – as opposed to in-house lobbyists who lobby on behalf of their own organization - is because the intent of the lobbying law is to inform the public of all efforts made to influence public officials. This intent is satisfied when the lobbying firm reports their overall compensation.

Although Advisory Opinion 2009-1 stopped the City from requesting salary information of retained lobbyists, the City is now asking for salary information paid by retained lobbyists to their support staff. This is an inappropriate request in light of Advisory Opinion 2009-1. Lobbying firms already report the compensation that it is paid or owed and the names of those employees engaged in lobbying. Reporting how much a retained lobbying firm allocates the funds paid to the firm by the client does not further the intent or goals of the lobbying law.

Furthermore, the section of law in question is meant to cover the in-house lobbying operation where various employees in theory are supporting a lobbying effort at a cost to the lobbying entity. In those cases, providing a semblance of salary information informs the public about costs associated with or allocated to lobbying, meeting the intent of the law.

The NYAA is available to meet with the Lobbying Commission to address any concerns or answer any questions related to this issue.