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Policy Alert

The New York State Joint Commission on Public Ethics Released Guidelines Clarifying the Reporting Requirements for "Reportable Business Relationships"

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The New York State Joint Commission on Public Ethics (JCOPE) issued guidelines clarifying the information that must be publicly disclosed by lobbyists and clients of lobbyists regarding business relationships with state officials and employees. The new guidelines are a response to the Public Integrity Reform Act of 2011, which became effective on August 15, 2011.

As the guidelines illustrate, only certain business relationships with certain state employees and officials must be disclosed. Specifically, certain relationships with an individual who is a statewide elected official, state officer, state employee, member of the legislature or legislative employee (collectively, "State Person") must be disclosed when there is a formal or informal agreement or understanding in which a lobbyist pays, gives or promises compensation for goods, services or anything of value, either performed or provided by the State Person, aggregating more than $1,000 in a 12-month period to:

- an individual whom the lobbyist knows or has reason to know is a State Person
- a nongovernmental entity for which the lobbyist knows or has reason to know that a State Person is a proprietor, partner, director, officer or manager, or owns or controls 10 percent or more of the stock of such entity (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange)
- a third party as directed by the State Person or as directed by an entity in which the State Person is a proprietor, partner, director, officer or manager, or owns or controls 10 percent or more of the stock of such entity (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange).

Examples of business relationships that do not need to be disclosed include:

- medical, dental and mental health services and treatment
- legal services with respect to investigation or prosecution by law enforcement authorities, bankruptcy or domestic relations matters
- commercially available consumer and business loans or lines of credit made on substantially the same terms as those for other borrowers who are not State Persons
- goods and services, and associated discounts, offered to the general public or a segment of the general public based on status other than as a State Person

- dividends and payments related to stock repurchases, insurance payments, interest payments and other similar payments offered to the general public or a segment of the general public based on status other than as a State Person

- political contributions.

JCOPE uses a reasonable person standard in considering when a lobbyist or client should know or have reason to know that it has entered into a business relationship with a State Person. Some of the factors to be considered in determining whether such a relationship exists include origins of the relationship; length of the relationship; the type and value of the goods, services or items provided; and whether the fact that an individual is a State Person or the requisite involvement of the State Person with the entity at issue is generally known or public.

For each reportable relationship, a lobbyist or client must disclose "either the actual or anticipated amount of compensation, including expenses, to be paid by virtue of the business relationship." Failure to file in a timely manner can result in a civil penalty of up to $25,000 and/or late fees, and a false filing can result in a civil penalty of the greater of $50,000 or five times the unreported amount.

CONTACT INFORMATION

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