

October 16, 2017

Carol Quinn, Deputy Director of Lobbying Disclosure Sent via e-mail to carol.quinn@jcope.ny.gov

Joint Commission on Public Ethics

540 Broadway

Albany, New York 12207

Re: Comments regarding Proposed Part 943

Dear Ms. Quinn:

Shenker Russo & Clark LLP represents and advises several clients seeking to comply with the New York Lobbying Act. We have reviewed the proposed amendments to Part 943 and wish to make the following comments:

Proposed Part 943.6 a(1)(i)

This section outlines the scope of “Direct Lobbying”. We believe that the definition of “Direct Contact” is overly broad as it relates to members of a group, including but not limited to volunteers. It is not unusual for an organization to engage a lobbyist, but to also have members/volunteers of their group attend a meeting with a Public Official. Invariably, the only communication these members/volunteers might actually have with the Public Official is an introduction or other insignificant interaction and should not be required to report such interaction.

Additionally, with respect to Lobby Day, it is difficult to track meetings members attend given the high degree of activity on that day and as a result, this makes registering each individual to lobby and reporting such lobbying activity very challenging. It appears that such incidental contacts may qualify as “Direct Contact” pursuant to the proposed regulations, as it does not seem that the exception found in Part 943.6 (b) (2) would apply if the member/volunteer does not fall within the category of providing technical information or administrative assistance. We suggest that the exception be amended to make it clear that members/volunteers, irrespective of whether their role is technical or administrative in nature, that attend a meeting, but do not play a role in the strategy, planning, messaging or other substantive aspect of the overall lobbying effort, should not be included in the definition of “Direct Contact” and have not engaged in “Direct Lobbying”.

Proposed Part 943.6 b(4)(i)(a)

This provision sets forth the parameters of Direct Lobbying in connection with a “Lobby Day”. We believe that the scope of what constitutes “Direct Contact with a Public Official as part of the employee’s job duties” requires further clarification in order to address employees who are not otherwise engaged in lobbying activity, but who participate in a Lobby Day event. Many small organizations have staff that are required to participate in the planning and execution of a Lobby Day or that are required to participate in issue-based lobby days. However, these employees do not engage in lobbying activities on any other day of the year. We believe that it would be unfair and overly burdensome to require these types of employees to be registered and tracked. As a result, we ask that the Commission exclude these types of employees from having to be identified as “Individual Lobbyists”.

Proposed Part 943.9 (h)(3)(ii)

This section addresses filing requirements for multi-party lobbying relationships. We believe that the provisions related to coalition reporting should be consistent. Specifically, this provision gives a Coalition two options in terms of filing reports and it seems that these options should be modified to achieve consistency. For example, if a Coalition chooses to file a Lobbying Registration, Part 943.9 (h) (3) (ii) (a) requires that the members be listed, but does not mandate that the contributions made by each of the members be separately delineated unless the contributions meet the Source of Funding Threshold. By contrast, if an already registered lobbyist chooses to include coalition lobbying activity on their otherwise required lobbying report, Part 943.9 (h) (3) (ii) (b) provides that the amount of their contribution to the Commission be disclosed, even if such contribution does not meet the Source of Funding threshold.

Part 943.9 (h) (3) (ii) (a) should mirror Part 943.9 (h) (3) (ii) (b).

Proposed Part 943.14 (h)(3)(ii)

This section pertains to Reportable Business Relationships between Lobbyists or Clients of Lobbyists and State Persons. For purposes of this Section, the definition of “State Person” means, among other things, a State Officer or Employee as defined in subsection 943.3 (y). Subsection 943.3 (y) defines a State Officer or Employee as including officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other State agencies. We believe that this definition of “State Persons” is too broad as it captures adjunct professors employed by universities where such university qualifies as lobbyists or Clients of Lobbyist. As we read the proposed regulation, a “reportable business relationship” would exist where an adjunct professor that is hired by a university also works as an adjunct professor at one or more of the campuses of the State University of New York (“SUNY”) or is an officer or employee of New York State. As a result, the university would have to implement a tracking system in order to determine whether the adjuncts that they hire are also working at SUNY or New York State.

If a particular SUNY school, is the Client of a Lobbyist, such SUNY school would have to monitor whether the adjunct also works at another SUNY campus for reporting purposes. Adjunct professors are often transient employees and are difficult to monitor. Imposing such a reporting obligation on universities

that hire adjuncts that work at SUNY or other universities appears to be overly burdensome. As a result, we respectfully request that an exception be made to address this issue.

We sincerely appreciate your consideration of these comments and would be happy to discuss with you further at your convenience.