

DRAFT PROPOSED

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF  
NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. JOINT COMMISSION ON PUBLIC ETHICS

PART 940 PUBLIC SERVICE ANNOUNCEMENTS: PERMISSIBLE AND PROPER USAGE

940.1 Purpose.

Pursuant to Executive Law §94(9)(d-1), the Joint Commission on Public Ethics is authorized to adopt, amend, and rescind rules and regulations “defining the permissible use of and promoting the proper use of public service announcements.” The purpose of these regulations is to: (a) provide guidance as to what constitutes, for the purposes of the Public Officers Law, a public service announcement; (b) place limitations on when certain State Officers or Employees – referred to as “Covered Officials” – who are also Candidates may appear in public service announcements; and (c) clarify that an appearance by certain State Officers or Employees in public service announcements does not constitute a “gift” under Title 19 NYCRR Parts 933 and 934.

Public service announcements in which no State Officer or Employee appears, is named, or is otherwise identified or referenced are not covered by these regulations.

940.2 Definitions.

(a) *Appear* shall mean to appear (by likeness, picture, or voice), be named, or otherwise identified or referenced.

(b) *Candidate* shall have the same meaning as that term is defined in New York Election Law §14-100.

(c) *Covered Official* shall mean an individual who holds any one of the following positions or offices: Governor, Lieutenant Governor, Comptroller, or Attorney General of the State of New York; any elected member of the New York State Legislature; or any head and/or executive director of a State Agency.

(d) *Party* shall have the same meaning as that term is defined in New York Election Law §1-104(3).

(e) *Party Committee* shall have the same meaning as that term is defined in New York Election Law §14-100.

(f) *Publish* shall mean publication, dissemination, or broadcast through any print or electronic media, including television, radio, and the Internet.

(g) *State Agency* shall mean any civil department; State department; any public benefit corporation, public authority, or commission at least one of whose members is appointed by the

Governor. State Agency shall also include the State University of New York or the City University of New York, including all their constituent units except (1) community colleges of the State University of New York and (2) the independent institutions operating statutory or contract colleges on behalf of the State.

(h) *State Officer(s) or Employee(s)* shall mean:

(1) Statewide elected officials (Governor, Lieutenant Governor, Comptroller, and Attorney General of the State of New York);

(2) Heads of civil departments and State departments and their respective deputies and assistants other than members of the Board of Regents of the University of the State of New York who receive no compensation or are compensated on a per diem basis;

(3) Officers and employees of statewide elected officials;

(4) Officers and employees of state departments, boards, bureaus, divisions, commissions, councils, or other State Agencies other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis;

(5) Employees of public authorities (other than multi-state authorities), public benefit corporations, and commissions at least one of whose members of such public authorities, public benefit corporations, and commissions is appointed by the Governor;

(6) Members or directors of public authorities (other than multi-state authorities), public benefit corporations, and commissions identified in section 940.2(h)(5) who receive compensation other than on a per diem basis; and

(7) Members, officers, and employees of the New York State Legislature.

940.3 Public Service Announcements.

(a) A *Public Service Announcement* is a communication that meets all of the following criteria:

(1) The communication (i) is designed to promote programs, activities, or services of nonprofit organizations or federal, state or local governments; or (ii) imparts information generally regarded as serving the public interest;

(2) The communication is sponsored or paid for by a person or an organization with a mission or history that includes providing outreach and public service announcements to the community;

(3) The communication is subject to the public service announcement policies, if any, of the entity Publishing the communication;

(4) The communication does not advertise a commercial product or service;

(5) The communication is not paid for, controlled by, or coordinated with a Covered Official who is a Candidate and who Appears in the communication, or his or her Party or Party

Committee, or any organization affiliated with the Covered Official or his or her Party or Party Committee;

(6) The communication does not constitute “lobbying” or “lobbying activities,” as those terms are defined in Legislative Law Article 1-A;

(7) The communication (i) does not promote or support a Covered Official who is a Candidate or attack or oppose an individual running against such Covered Official and (ii) could not reasonably be interpreted to be an appeal to vote for such Covered Official or to vote against an individual running opposed to such Covered Official.

(8) The communication is of primary interest to the general public or a segment of the general public.

(b) Examples of Public Service Announcements include, but are not limited to, communications regarding nonprofit or governmental outreach or awareness activities such as: breast cancer screening; heart disease prevention; domestic violence awareness and prevention; energy conservation; organ donation; emergency or other disaster relief; programs designed to encourage reading; job training and job fairs; and fund drives for charitable programs.

(c) The following is a non-exhaustive list of communications that are not regulated or otherwise restricted by this Part:

(1) News or editorials in which a Covered Official Appears that are Published in a news medium that is not controlled by the Covered Official or his or her Party or Party Committee;

(i) “News medium” means an entity that regularly Publishes news to either the public-at-large or to subscribers.

(i) “News” means information that is about current events or that would be of current interest to the public and that, through the use of editorial skills, is turned into a distinct work that is Published to an audience.

(iii) “Editorial” means a communication that provides an opinion of the news medium which is Publishing the communication.

(2) State Agency websites and official websites of elected members of the New York State Legislature;

(3) A Covered Official’s personal communications, including but not limited to, letters, emails, postings on Twitter, and Facebook pages.

#### 940.4 Covered Officials Prohibited from Appearing in a Public Service Announcement in the Ninety Days Prior to an Election.

(a) No Covered Official shall Appear in a Public Service Announcement that is Published in the ninety days prior to any election in which the Covered Official is a Candidate, except during a declared state of emergency where the Public Service Announcement relates to such emergency.

(b) A knowing and intentional violation by a Covered Official of Part 940.3(a) may constitute a violation of Public Officers Law §74(3)(d) and subject the Covered Official to the penalties prescribed in Public Officers Law §74(4).

940.5 Certain Public Service Announcements Excluded as Gifts Under Parts 933 and 934.

(a) Notwithstanding any provision of Part 933 or Part 934, a Public Service Announcement (i) in which a Covered Official who is a Candidate Appears and (ii) that is Published more than ninety days prior to any election in which such Covered Official is a Candidate shall not constitute a “gift” as that term is defined in Part 933 and Part 934.

(b) Notwithstanding any provision of Part 933 or Part 934, a Public Service Announcement in which a Covered Official who is not a Candidate or any other State Officer or Employee Appears shall not constitute a “gift” as that term is defined in Part 933 and Part 934.

DRAFT