



Kenneth J. Pokalsky
Vice President

November 21, 2016

Mr. Martin Levine
Director of Lobbying
JCOPE
540 Broadway
Albany, NY 12207

Dear Mr. Levine:

I am submitting these comments on behalf of The Business Council of New York State, Inc.

Our comments are based on input from member companies, as well as our direct experience in filing client statements and lobbyist registrations and periodic reports.

We commend JCOPE for reaching out to regulated entities and the interested public for input on this informal draft rule. This approach will help inform JCOPE's development of a formal rulemaking by generating comments on proposed language in a setting where concepts and language are more easily amended.

We also commend JCOPE for trying to clarify compliance requirements for clients and lobbyists subject to the Lobbying Act, and for attempting to streamline compliance obligations consistent with statutory requirements.

We welcome the opportunity to discuss these comments with Commission staff. Thank you again for this opportunity to review your informal draft rule and provide comments.

§938.2(d) and (e)(2) (page 3) – These provisions apply to the definition of “coalition” and the requirement that a client filer who is a member of a pass thru coalition consider contributions to such coalition when determine whether the client exceeded its expenditure threshold. Both reflect provisions of JCOPE's proposed Part 942 rule. Our previously submitted comments on Part 942 apply here as well.

§938.2(m) (page 5) – The draft rule defines “total expenditures” as including any “promise to pay, or a promise fo a payment or a transfer of anything of value...” In contrast, JCOPE's draft Part 942 rule simply states that expenses “be accounted for using accrual basis accounting.” (draft Part 942.9(d)(i)). That standard should be adopted here as well.

§Part 938.3(a) (page 5) – The draft rule says that its provision apply to client semi-annual reports due on January 15, 2013 and each such report due after that date. Actually, new compliance provisions set forth in this draft rule only apply to reports due on January 15, 2017

and later; different reporting rules apply to semi-annual reports filed prior to that date. Any final proposal rule needs to accurately depict compliance obligations applicable in each time period.

§938.3(c) (page 5) - The new provisions of the Lobbying Act requires disclosure of “each source of funding that has contributed over two thousand five hundred dollars from a single source that were used to fund the lobbying activities.” In contrast, the draft rule carries forward current JCOPE provisions that apply this threshold to such contributions over \$2,500, regardless of what share of that contribution is rightly attributed to lobby expenses. Generally speaking, trade associations receive little or no payments specifically for lobbying; their lobbying activities are funding from a portion of dues payments and other revenue sources. JCOPE’s current rules have the effect of requiring the reporting of lobby contributions well in excess of our lobby expenses. In addition, this approach imposes a significant administrative burden because of the recordkeeping and reporting requirements, which go well beyond our typical accounting and bookkeeping practices, necessary to determine aggregate contributions by source. The Business Council has on several occasions provided written recommendations to JCOPE on how to deal with the “source of fund” disclosure mandate with regard to associations. Specifically, we urged JCOPE to use existing lobby expense data as reported to JCOPE to define the “source of funds” required to be disclosure, i.e., the organization’s ratio of reportable lobby expenses to total expenses would be applied to total payments from a single source. As example, for an organization whose ratio of lobbying expenditures to total expenditures is about 25 percent, the organization would disclose the source, amount and date of payments exceeding \$10,000 in the aggregate. We urge that approach be adopted in any formal proposed rulemaking.

Sincerely,

A handwritten signature in black ink on a light background. The signature appears to read "Kit J. Poley" with a stylized, cursive flourish at the end.