



JOINT GUIDANCE ON CASINO LOBBYING

June 16, 2014

The purpose of this document, which was developed by the Joint Commission on Public Ethics and the [Gaming Facility Location Board](#), is to ensure commercial casino gaming license Applicants are aware of the applicable lobbying laws and regulations.

- *The information contained in this document is not specific to any individual set of facts or circumstances, and represents a starting point for further research and analysis by Applicants and their counsel. Applicants are encouraged to contact the Joint Commission on Public Ethics (JCOPE) or the designated Gaming Facility Location Board (Board) contacts for specific guidance.*
- *Unless otherwise noted, all citations are to the N.Y.S. Legislative Law Article 1-A (the “Lobbying Act”).*
- *The Lobbying Act defines a “municipality” as “any jurisdictional subdivision of the state, including but not limited to counties, cities, towns, villages, improvement districts and special districts, with a population of more than fifty thousand, and industrial development agencies in jurisdictional subdivisions with a population of more than fifty thousand; and public authorities, and public corporations, but shall not include school districts.” See Lobbying Act § 1-c(k).*

Please see the JCOPE website (www.jcope.ny.gov) for a [list](#) of localities that meet the Lobbying Act definition of “municipality”.

1. Our law firm represents an Applicant as its regulatory counsel:
 - a. Does our work helping the Applicant prepare the Application make us a lobbyist?

No. The Lobbying Act definition of “lobbying activity” includes an exception for the submission of bids or proposals in response to a governmental procurement request for proposal. See Lobbying Act § 1-c(c)(K).

- b. Does appearing at the April 30, 2014 mandatory conference (or other mandatory events held by the Commission or the Board, e.g., Applicant presentations) on behalf of the Applicant constitute lobbying activity?

No. Lobbying Act §§ 1-c(c)(L), 1-c(c)(H), and 1-c(c)(K) provide exceptions to “lobbying activity” for the submission of questions (where answers are to be distributed to all Applicants), appearances at ‘all-Applicant’ conferences, and the submission of the Application (including the Applicant conference), respectively.

- c. Do communications with the Board’s designated contacts constitute lobbying activity? If the communications are merely clarifications about the process/requirements, does this constitute lobbying activity?

Once the restricted period has started, any communication that is not explicitly exempted by the Lobbying Act under §§ 1-n(2) (Restricted Period) or 1-c(c) (“lobbying activity” definition) and is intended to influence the governmental procurement would constitute lobbying activity.

- d. If our activity does constitute lobbying, do we need a separate lobbying retainer or contract with our client?

A single retainer may be used for all services. If you choose to use a single retainer, the retainer must separate lobbying activity compensation so the lobbying service is distinguishable from compensation for other services.

- e. If we provide experts to explain the project, is that lobbying activity?

No. Information provided by or other expert services is not lobbying activity as long as it falls within the confines of the Lobbying Act § 1-c(c)(M) exception for technical experts.

2. Are efforts to influence local county and municipal governments' passage of gaming resolutions, or changes to local laws to accommodate for our planned facilities, such as zoning laws, considered lobbying?

Yes. Lobbying Act §§ 1-c(c)(vii)-(x) and 1-c(k) provide that any attempts to influence a municipality or municipal agency, whether in support or opposition of an issue, are considered lobbying activities.

3. During the Application process, is there any restriction on simultaneously contacting other government agencies or elected officials for separate – but related – measures, such as additional funding for State road improvements near our proposed casino, or measures meant to regulate gambling on a state level? Can we lobby these agencies or officials specifically to garner their support for our bid?

An Applicant may contact another executive agency to gather information about that agency's process or activity in a related subject, such as, transportation studies or environmental rulemaking, but may not engage in attempts to influence that agency to garner support for the Applicant's bid.

4. If we spend more than \$5,000 lobbying at the State level for a casino, but less than \$5,000 at the local level, do we still need to disclose local lobbying efforts?

Yes. Once the lobbying registration threshold has been exceeded on an aggregate basis, any lobbying activity for any client must be disclosed, whether at the state or municipal level.

5. Does the \$1 million application fee need to be reported as a lobbying expense?

No. It is considered part of the response to the RFA (See Question 1.a., above).

6. If we hire a public official's law firm or consulting firm to work on our proposed project does that need to be disclosed anywhere?

Lobbying Act §§ 1-e(c)(8)(i)-(iii) and 1-j(b)(6)(i)-(iii) require the disclosure of any reportable business relationship (as defined in § 1-c(c)) valued at more than \$1,000 annually between a lobbyist (or client) and a public official.

Guidelines and instructions exist on the [JCOPE](#) website to help navigate the "Reportable Business Relationship" analysis. Additionally, please be aware that N.Y.S. Public Officers Law § 74 creates an obligation to avoid actual – or the appearance of – conflicts of interest on the part of the public official.

7. Are there Lobbying Act restrictions on gifts or meals from lobbyists and clients to local officials, similar to the restrictions on gifts to state officials?

Yes. Lobbying Act restrictions in § 1-m apply to all public officials, including employees and officials of municipalities with a population over 50,000. See Lobbying Act § 1-c(l).

State officials must be cognizant of their various ethics obligations under N.Y.S. Public Officers Law §§ 73 and 74.

8. I am an employee for a gaming company and may or may not need to discuss the matter with public officials.
- a. How do I determine whether I need to register, and how long do I have to do so?

Any attempts to influence a governmental procurement, whether by an employee or agent of a bidder, can be considered lobbying activity. Registration is required per Lobbying Act § 1-e within fifteen (15) days of anticipating exceeding the threshold, but no later than ten (10) days after actually exceeding the \$5,000 threshold.

- b. Does my employer need to identify me as a lobbyist even if I don't have to register myself?

Once an employer or entity has registered as a lobbyist, all employees whose role is to attempt to influence the

public official (other than as “technical experts”) in direct lobbying must be disclosed as additional lobbyists.

9. I would like to show the Commission and/or the Board my existing gaming facility or facilities outside New York State to demonstrate why my Application should be selected. Can I do that in a manner that will not violate the Lobbying Act?

The Commission and Board have imposed a restriction against this type of activity on its respective members and staff. Any such visits by other public officials should be thoroughly analyzed to ensure that the rules (including those against impermissible gifts) under Lobbying Act § 1-m, N.Y.S. Public Officers Law §§ 73 and 74, and JCOPE regulations (19 N.Y.C.R.R. Part 934) are followed.

10. I intend to run advertisements for (or against) casino development in my area but will not meet with any public officials. Do I need to register as a lobbyist?

Please contact JCOPE for individualized guidance about specific advertisements.

11. Are expenses associated with garnering public support for a casino (as opposed to expenses for the direct lobbying of public officials) reportable as lobbying expenses to JCOPE?

All expenses associated with a lobbying effort must be reported to JCOPE on the required periodic filings.

Further inquiries related to these issues may be directed to either:

N.Y.S. Joint Commission on Public Ethics
540 Broadway
Albany New York 12207

Telephone: (518) 408-3976
Facsimile: (518) 408-3975

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or

[N.Y.S. Gaming Commission](#)

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