

**STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY**

Advisory Opinion No. 09-05 Legislative Law §1-c(c)(F) does not exempt either a lobbyist retained by a church for the purposes of local lobbying or a church who retains a lobbyist for such lobbying from registration and reporting requirements.

INTRODUCTION

This advisory opinion is issued in response to a written request from a lobbyist retained by a church to engage in local lobbying regarding the application of §1-c(c)(F) of the Legislative Law Article I-A (“Lobbying Act”).

Pursuant to authority vested in the Commission on Public Integrity (“Commission”) by Legislative Law §1-d(f), the Commission hereby renders its opinion that that Legislative Law §1-c(c)(F) exempts only a church, its integrated auxiliary, or a convention or association of churches from the Lobbying Act’s registration and reporting requirements with respect to local lobbying activities. This statutory exemption does not extend to a lobbyist retained by a church, its integrated auxiliary, or a convention or association of churches to engage in local lobbying activities on the entity’s behalf. Thus, such a lobbyist is required to register with the Commission and file required annual and bi-monthly reports with the Commission to the extent such registration and reporting is otherwise required by the Lobbying Act (e.g., the anticipated lobbying fees and costs exceed \$5,000). Similarly, and to the same extent, a church, its integrated auxiliary, or a convention or association of churches that retains a lobbyist for such a purpose is required to file client semi-annual reports with the Commission.

BACKGROUND

A registered lobbyist has been retained to represent a church in connection with a proposal to the City of New York Planning Commission to rezone property owned by the church. The project will require local legislation.

The lobbyist registered in 2009 and filed the appropriate bi-monthly reports for this client. However, based on its interpretation of Section 1-c(c)(F) of the Lobbying Act, the lobbyist terminated its registration. Thereafter, the lobbyist submitted a request to the Commission for an advisory opinion concerning the application of Section 1-c(c)(F) in these circumstances.

The lobbyist contends that the exemption from registration and reporting extends to a lobbyist who represent a church, its integrated auxiliary, or a convention or association of churches and, consequently, that it should not be required to file a registration and bi-monthly and annual reports, stating, “. . . the work that [the church] engaged us to do is exempt . . .”

APPLICABLE STATUTES

The following provisions of the Lobbying Act are directly applicable in responding to this inquiry.

Legislative Law §1-c(a) defines a “lobbyist,” in pertinent part, as follows:

(a) The term “lobbyist” shall mean every person or organization retained, employed or designated by any client to engage in lobbying. ...

Legislative Law §1-c(b) defines a “client” as follows:

(b) The term "client" shall mean every person or organization who retains, employs or designates any person or organization to carry on lobbying activities on behalf of such client.

Legislative Law §1-c(c) defines “lobbying” and “lobbying activities.” This subdivision further provides, in pertinent part, the term “lobbying” shall not include:

(F) Any attempt by a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a federal income tax return under paragraph 2(A)(i) of section 6033(a) of Title 26 of the United States Code or a religious order that is exempt from filing a federal income tax return under paragraph (2)(A)(iii) of such section 6033(a) to influence passage or defeat of a local law, ordinance, resolution or regulation or any rule or regulation having the force and effect of a local law, ordinance or regulation; ...

Legislative Law §1-e, which pertains to the statement of registration, provides, in pertinent part, as follows:

(a)(1) Every lobbyist shall annually file with the commission, on forms provided by the commission, a statement of registration for each calendar year; provided, however, that the filing of such statement of registration shall not be required of any lobbyist who (i) in any year does not expend, incur or receive an amount in excess of two thousand dollars for years prior to two thousand six and in excess of five thousand dollars in the year two thousand six and the years thereafter of reportable compensation and expenses, as provided in paragraph five of subdivision (b) of section one-h of this article, for the purposes of lobbying or (ii) is an officer, director, trustee or employee of any public corporation, when acting in such official capacity; provided however, that nothing in this section shall be construed to relieve any public corporation of the obligation to file such statements and reports as required by this article. The amounts expended, incurred, or received of reportable compensation and expenses for lobbying activities shall be computed cumulatively for all lobbying activities when determining whether the thresholds set forth in this section have been met.

Legislative Law §1-h, which pertains to bi-monthly reports of certain lobbyists, provides, in pertinent part, as follows:

(a) Any lobbyist required to file a statement of registration pursuant to section one-e of this article who in any lobbying year reasonably anticipates that during the year such lobbyist will expend, incur or receive combined reportable compensation and expenses in an amount in excess

of five thousand dollars, as provided in paragraph five of subdivision (b) of this section, for the purpose of lobbying, shall file with the commission a bi-monthly written report, on forms supplied by the commission, by the fifteenth day next succeeding the end of the reporting period in which the lobbyist was first required to file a statement of registration. Such reporting periods shall be the period of January first to the last day of February, March first to April thirtieth, May first to June thirtieth, July first to August thirty-first, September first to October thirty-first and November first to December thirty-first.

Legislative Law § 1-j, which pertains to semi-annual reports, provides, in part, as follows:

(a) Semi-annual reports shall be filed by any client retaining, employing or designating a lobbyist or lobbyists, whether or not any the such lobbyist was required to file a bi-monthly report, if such client reasonably anticipates that during year such client will expend or incur an amount in excess of five thousand dollars of combined reportable compensation and expenses, as provided in paragraph five of subdivision (c) of this section, for the purposes of lobbying.

DISCUSSION

This is an issue of first impression. Lobbying Act § 1-c(c)(F) has not been the subject of an advisory opinion or enforcement action by this Commission or either of its predecessor agencies. The Commission has not found any published judicial or administrative decision construing this provision or any pertinent legislative history.

In construing Section 1-c(c)(F), the Commission starts with the language and structure of the Lobbying Act itself. See McKinney's Laws of N.Y., Book 1, Statutes §94; *Rosner v. Metropolitan Property and Liability Ins. Co.*, 96 NY2d 475 (2001). Lobbying Act § 1-c(c)(i) through (x) identifies those actions that are "lobbying" or "lobbying activities" under the Lobbying Act. This section then sets forth in subdivisions (A) through (Q) those actions that the term "lobbying" shall not include. Section 1-c(c)(F) refers to attempts to influence the passage or defeat of legislation at the local level by a church, its integrated auxiliary, or a convention or association of churches. Thus, this provision does not, on its face, exclude the activities of any other person or entity, other than a church, its integrated auxiliary, or a convention or association of churches from the requirements of the Lobbying Act, including a lobbyist retained by a church. Furthermore, there is no exemption from compliance with the Lobbying Act for a lobbyist retained by a church within the Lobbying Act, for example, in Section 1-c(a), which defines the term "lobbyist," Section 1-e, which describes who must register as a lobbyist, Section 1-h which describes who must file bi-monthly reports, or Section 1-j, which defines who must file a client semi-annual report.

Under these circumstances, the exemption set forth in Section 1-c(c)(F) should be narrowly construed and not extended beyond its plain language. The Legislature could easily have broadened the scope of the exemption by specifically including a lobbyist retained by a church within the stated exemption. See McKinney's Laws of N.Y., Book 1, Statutes §230. For example, in exempting certain activities pertaining to competitive bidding from the definition of lobbying in Lobbying Act § 1-c(c)(H), the Legislature explicitly included in the exemption not

only a participant in a bid conference (i.e., client) but also a representative of a participant in such a conference, as follows:

(H) Participants, including those appearing on behalf of a client (emphasis added), in a conference provided for in a request for proposals, invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract[.]

The specific inclusion of a client representative in the exemption set forth in Section 1-c(c)(H) supports the Commission's determination that the failure to include a lobbyist for a church in the exemption set forth in Section 1-c(c)(F) militates against construing Section 1-c(c)(F) more broadly to include a lobbyist in the exemption.

The Commission's construction of Section 1-c(c)(F) furthers the Lobbying Act's stated purpose of maintaining the integrity of governmental decision-making by requiring public disclosure of certain paid efforts to influence certain official decisions, as set forth in Section 1-a of the Lobbying Act, which provides:

[T]he operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to appropriate officials their opinions on legislation and governmental operations; and that, to preserve and maintain the integrity of the governmental decision-making process in this state, it is necessary that the identity, expenditures and activities of persons and organizations retained, employed or designated to influence the passage or defeat of any legislation by either house of the legislature or the approval, or veto, of any legislation by the governor and attempts to influence the adoption or rejection of any rule or regulation having the force and effect of law or the outcome of any rate making proceeding by a state agency, and the attempts to influence the passage or defeat of any local law, ordinance, or regulation be publicly and regularly disclosed.

With respect to other jurisdictions, the federal Lobbying Disclosure Act, 2 U.S.C. §1601 et seq., includes an exemption for churches that is quite similar Section 1-c(c)(F). This section also excludes from the definition of a "lobbying contact" a communication "made by" a church. 2 U.S.C. § 1602(8)(B)(xviii). The Clerk of the House of Representatives has promulgated guidelines that, among other things, construe this provision to be limited to contacts made by a church. Further, the exemption does not apply to contacts made on behalf of a church by a retained lobbyist. The guidelines provide, in pertinent part, as follows:

Churches, Integrated Auxiliaries, Conventions or Association of Churches and Religious Orders
- Hiring of Outside Firms

Although the definition of a lobbying contact does not include a communication made by a church, its integrated auxiliary, a convention or association of churches and religious orders (Section 3(8)(B)(xviii)), if a church (its integrated auxiliary, a convention or association of churches, and religious orders) hires an outside firm that conducts lobbying activity on its behalf, the outside firm must register if registration is otherwise required. (Revised June 9, 2009)

The federal guidelines construing the federal statutory exemption for a lobbying communication made by a church from the definition of “lobbying contact” further supports the Commission’s determination that Section 1-c(c)(F) exempts only certain activities conducted by a church from the definition of “lobbying activity,” and does not extend to activities conducted by a lobbyist retained by or on behalf of a church.

With respect to the laws of other states, we have found only two states with a similar exemption in their lobbying statutes and those statutes do not exempt a lobbyist retained by a church from registration and reporting requirements. Pennsylvania Lobbying Disclosure Act, Chap. 57, §1306-A provides a limited exemption from registration and reporting lobbying activity for individuals who are members of a church or church organization who lobby only on matters of religious significance. South Carolina has a similar statute. South Carolina Code 2-17-10. We have not found any state whose law explicitly exempts a lobbyist retained by a church from registration and reporting requirements and no reported decisions that recognize such an exemption.

The lobbyist incorrectly contends in its request for an advisory opinion that the work the church engaged it to do is not lobbying activity under the Lobbying Act. The lobbyist was engaged to lobby on a local zoning matter; the Lobbying Act does not exempt such activity from the definition of “lobbying activity” for a lobbyist. Such activity is only exempt when it is undertaken by a church, its integrated auxiliary, or a convention or association of churches. Thus, we conclude that, provided the engagement otherwise meets the statutory criteria, a lobbyist retained by a church to lobby on any matter must register and file periodic reports with the Commission.

Finally, when a church retains a lobbyist, the church is then a “client” within the definition of that term set forth in Lobbying Act §1-j(a). As such, it must file client semi-annual reports required by the Lobbying Act. If a church, however, conducts lobbying at the local level with its own members and employees, without retaining an outside lobbyist, pursuant to Lobbying Act §1-c(c)(F), the church would not have to file a registration, a bi-monthly reports or client semi-annual reports since that activity would come within the exclusion set forth in Legislative Law §1-c(c)(F). Under those circumstances, the church would not be engaged in “lobbying” within the meaning of the Lobbying Act.

CONCLUSION

Lobbying Act §1-c(c)(F), which exempts a church engaged in local lobbying from the Act’s registration and reporting requirements does not apply to activities by a lobbyist retained by a church. Such a lobbyist is required to register and report provided the criteria set forth in the Lobbying Act are otherwise met. Further, if a church retains a lobbyist, the church must file client semi-annual reports to the extent otherwise required by the Lobbying Act.

This opinion, until and unless amended or revoked, is binding on the Commission in any subsequent proceeding concerning the persons or entities who requested it and who acted in good faith, unless material facts were omitted or misstated by the person in the request for opinion or related supporting documents.

All concur:

Michael G. Cherkasky,
Chair

Daniel R. Alonso

Virginia M. Apuzzo

John M. Brickman

Richard D. Emery

Steven C. Krane

John T. Mitchell,

Members

December 10, 2009