

June 4, 2020

Carol Quinn
Deputy Director of Lobbying Guidance
New York State Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207

Transmitted electronically to: carol.quinn@jcope.ny.gov

Dear Ms. Quinn:

On behalf of the Board of Directors and members of the Empire State Society of Association Executives (ESSAE), we respectfully submit the following comments regarding the JCOPE Proposed Revisions to Comprehensive Lobbying and Source of Funding Regulations, which we believe will likely echo comments and submissions by a number of other professional associations and citizen groups.

ESSAE is a nonprofit professional organization for persons engaged in the management of voluntary trade and professional associations. ESSAE provides quality educational, leadership, and professional development opportunities to association executives and supplier members, to encourage high professional standards in the management of associations. ESSAE's membership is comprised of over 465 members statewide.

Below please find ESSAE's comments based on the recently proposed regulatory amendments:

943.3 Definitions

(g) Designated Lobbyist

The proposed definition of "designated lobbyist" as amended says it means a *person who is selected, appointed, named or otherwise intended to lobby*. In previous comments we have mentioned our concern that this takes an overly broad position, essentially providing that where there is an organization that lobbies, that entity is required to treat more than just its employees and officers as authorized lobbyists. Often an organization may create a taskforce or ad hoc committee to address one particular issue. These members would now potentially fall within this definition and we believe it dampens our ability to encourage valuable participation.

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Associations are proud of their volunteer activists who participate in various advocacy efforts, but are uncompensated. They do this because of their belief in their profession, mission or cause. The draft definition could be read to require associations to include on its statement of registration, individuals who merely participate in a lobby or advocacy day, and are by no means professional lobbyists. Such individuals are not “designated” to lobby on behalf of a particular association, but may nonetheless join the association in its efforts to advocate for certain issues. These volunteers are exercising their rights to the freedom of speech. For these reasons, we reiterate our belief that it is imperative to revise the definition of designated lobbyist to clearly exclude persons who are truly volunteers and have no fiduciary or formal management responsibilities to the organization.

(l) (1) *Lobbying Organization*

We would like to request clarification about the expansion of the definition to specifically include limited liability companies. What is the purpose for this expansion?

943.6 Direct Lobbying

(6) *Examples of Reportable Expenses of Lobbying Organizations or Individuals Lobbying*

(i) (a) and (b) We believe the language pertaining to time spent by employees is difficult for an organization to quantify, especially when it comes to non-designated/individual lobbyists. It is no longer even specific to a lobby day which significantly broadens the previous regulations. Does this mean administrative staff who provide support for any lobbying activities would need to be accounted for?

943.9 Reportable Lobbying Activity

(i)(c), (iii) and (h)(3) *Coalitions*

Defines a contribution to a Coalition to include the “donation of services and the incurrence of expenses on behalf of the Coalition.” We request additional clarification of whether or not the donation of services includes the time of one registered lobbyist drafting a letter for the entire group/Coalition? Would the printing and delivering of letters to legislative offices be considered an expense?

This expansion of “contributions” will have a huge impact on the work of many organizations. It is regular practice for associations to participate on sign-on letters that are circulated among various entities that are not formal Coalitions. Is there an expectation that lobbying organizations must start keeping track of all of these activities?

The proposed regulations also include Coalition expenses as counting towards the lobbying threshold. This will deter many organizations from signing onto group letters, holding joint events and releasing joint press statements, etc. if it means they may reach the lobbying threshold. This will impact our membership’s constitutional freedom of expression by stifling associations’ abilities to be effective advocates for their memberships.

The regulations require lobbyists to identify “other parties to the Lobbying,” including “Coalitions” and “a list of all members of the Coalition who exceed \$5,000 in cumulative annual Lobbying compensation and expenses.” These requirements are burdensome and impractical. At the time of registration, it will be difficult for organizers to know their Coalition partners. Moreover, requiring lobbyists to know the filing status and lobby expenditure levels of each of its Coalition partners is extremely time consuming and provides little benefit to JCOPE, as the entities otherwise required to report will provide that information independently.

Associations and non-profits with limited resources assemble as coalitions to share information and get their voices heard. Typically, these coalitions are unincorporated, do not share bank accounts, have a relatively informal structure and each group contributes based on its level of resources and the assessment of the issue's relative priority to the group. The ability to form these coalitions is critical to both the coalition members and the functioning of democracy. These requirements infringe upon protected First Amendment free speech and associational rights. ESSAE recommends that all filers meet requirements by either including a list of Coalition members on each communication or provide a link to a website that lists current Coalition partners.

ESSAE continues to believe that the issues listed above can be seen as disproportionately and inaccurately inflating the political activities of many non-profit associations across New York State. This threatens to add compliance costs to these vital non-profit organizations and can distort common perceptions of these organizations and their missions.

Ethics for Lobbying Training

As currently written, we believe it is now clear that JCOPE expects all individual lobbyists listed in Statements of Registration to be required to take the training, which in some cases would be our member's volunteer board members. We would like to request that JCOPE consider creating a train the trainer program for the Ethics for Lobbyists Training. This would allow our member organizations to have one person trained by JCOPE and then that person give training to larger groups such as volunteer board of directors who would be "designated lobbyists." We believe this will give more flexibility for the organizations themselves to manage compliance with regards to which of their members have taken the training.

Additionally, we would like to encourage JCOPE to offer opportunities for training on the newly revised Lobbying Regulations when they are promulgated. All New York State associations (whether they retain a lobbyist or not) would benefit by understanding the new regulations, their impact on an association's operations and to ensure compliance. ESSAE would be pleased to work with JCOPE in offering such training to our members.

If you have any questions, or would like additional information about the impact of associations on the life of New York State, please feel free to contact Executive Director Vanessa LaClair, CAE, CMP at (518) 463-1755 or vanessa@essae.org.

Thank you for your time and consideration.

Sincerely,



Rita Ferris
Chair, ESSAE Board of Directors



Vanessa E. LaClair, CAE, CMP
Executive Director