



# Compliance Connections

Helping You Avoid Ethics, Lobbying & Campaign Finance Pitfalls

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## Corporate participation in national convention activities



By Maria J. Armstrong

The national conventions are right around the corner, and whether you are headed to Cleveland or Philadelphia, there are some basic rules to remember. Federal election law regulates nominating conventions and impact activity on the convention floor as well as off-site entertainment. Corporations can legally play a big part in convention-related activity, but they must be careful to avoid providing support to delegates and cannot engage in any election activity. As with any event, corporations that are hosting public employees and officials should also be aware of any applicable ethics and lobbying restrictions.

### Convention-related activities

There are several different kinds of events that can take place at a convention and several types of hosts that may be involved. Corporations should know the nature of any event before using corporate funds to support it.

### Official convention events

Federal law strictly prohibits direct corporate participation in “election activity.” The delegate selection process and national nomination conventions are defined as elections and, thus, constitute federal election activity. Thus, corporate support of official convention activity is not permitted.

However, corporations can sell, lease, rent or provide goods or services to a convention committee at reduced or discounted rates, or at no charge, so long as the transaction is conducted in the ordinary course of business. In other words, if the company has an established practice of providing the same reductions or discounts for non-political customers, it may provide the same discounts to a convention committee as well. Federal law provides that the value of the goods or services cannot exceed the “commercial benefit reasonably expected to be derived from the unique promotional opportunity presented by the national nominating convention.” Corporations may also sell or give away small promotional items of de minimis value (samples, discount coupons, maps, pens, pencils, etc.) to convention attendees.

### Political fundraisers

Some political parties, candidates and other political organizations may also host political fundraisers during the conventions. If the event is for a federal candidate or officeholder, or for a federal political party, then corporate contributions are not permitted. Fundraising events for state and local candidates or parties are regulated by the laws of the state where the candidate or party is registered, not the laws of the state where the event is held. Ohio law prohibits direct corporate support to its candidates

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and limits corporate support to Ohio political parties. Other states have different regulations.

### Host committees or municipal funds

Official host committees have long been at work in both Cleveland and Philadelphia and provide opportunities for corporations to sponsor various events and participate in various promotions that help to showcase the host city. Corporate contributions to host committees are permissible and may be used to defray specific convention-related expenses, such as meeting venues, local transportation services, law enforcement services and other purposes enumerated in federal law.

### Social events

Corporations can also host non-political receptions during the convention but must be careful that: (1) no attempt is made to influence the outcome of the convention in any manner; (2) the purpose of the function is neither to solicit contributions for, nor advocate the election or defeat of, any candidate for

federal office; (3) the purpose is not to defray any delegate's subsistence expenses during the convention; and (4) the corporation will exercise full control over the event.

### Delegates

Official delegates to the convention are governed by federal law and are generally prohibited from accepting corporate support for their convention-related activities. Similarly, corporations are specifically prohibited from making contributions to individual delegates in connection with federal elections, with limited exceptions. Even at the events where corporate participation is permitted, corporate funds cannot be used to defray the delegates' subsistence.

### Ethics and lobbying laws

National conventions draw public officials and employees from all across the country and, as with any event of this scale, can present prime opportunities for interactions between the private and public sectors. But it is important to remember that ethics and lobbying rules still

apply. Corporations that are directly providing gifts, meals or entertainment to a public official should consider any applicable state or local ethics laws.

General local, state and federal lobbying laws will also apply to interactions between corporate representatives and public officials during the conventions. Lobbyists should also be aware of some additional restrictions that apply specifically to attendance by public officials at convention-related events. For example, the U.S. Senate Code of Official Conduct prohibits senators from participating in any event directly paid for by a lobbyist or lobbyist's employer that honors the senator during a national convention for the senator's party. Similarly, the U.S. House Committee on Standards of Official Conduct prohibits representatives from participating in events honoring them during the convention. State regulators may provide similar restrictions or issue state-specific guidance to lobbyists and public officials governed by state laws.

## Who is a lobbyist? New York ethics opinion blurs lines and raises questions



By Marjorie J. Yano

Who qualifies as a lobbyist? Is a political consultant a lobbyist? What about someone with a public relations firm?

Understanding the definition of a lobbyist under state law and, additionally, who must register and complete lobbyist filings is an important consideration for both lobbyists and their employers and clients. In January 2016, the state of New York's Joint Commission on Public Ethics (JCOPE) issued an advisory opinion outlining when New York's Lobbying Act covers services provided by political consultants and public relations firms. The opinion also addresses when grassroots activity constitutes reportable lobbying activity.

The advisory opinion concluded that a consultant's preliminary contact with a public official to facilitate advocacy on behalf of a client is reportable lobbying. This preliminary contact does not necessarily need to include substantive lobbying to qualify under the advisory opinion's interpretation — communications could be initial outreach, designed to enable access to a public official so that a substantive conversation can occur later.

Grassroots communications are also considered lobbying if they reference, suggest or otherwise implicate an activity covered by New York's Lobbying Act or if the communication takes a clear position on the

issue in question and is an attempt to influence a public official through a call to action.

In its reasoning for expanding the definition of lobbying to cover consultants, JCOPE noted that lobbying begins, though one may call him or herself a consultant, when such individual communicates with a public official, or his or her staff, on behalf of a client in order to enable the client to explicitly advocate before the public official. As such, a consultant must report these activities if he knows or has reason to know that lobbying will occur in front of the public official.

In March 2016, a group of prominent public relations firms filed suit against JCOPE in the United States District Court for the Southern

District of New York. The plaintiffs are requesting a temporary restraining order and preliminary injunction against the advisory opinion's ruling. The public relations firms claim that JCOPE overstepped its mandate by adopting an advisory opinion that reinterprets the definition of lobbying. They also argue that the advisory opinion limits their right to free speech and press and due process.

Under Ohio law, lobbying is generally an attempt to promote, oppose or otherwise influence legislation, executive agency decisions or retirement system decisions on behalf of an employer through direct communication with a reportable person. A lobbyist is a person who is compensated by an employer for the purpose of engaging in lobbying activities.

For legislative lobbyists, Ohio law requires registration with JLEC as a legislative agent if the lobbyist spends 5 percent of his or her compensated time promoting, opposing or otherwise influencing the passage, defeat or modification of legislation through direct communication with a "reportable person," including a member of the general assembly or controlling board, certain legislative staff, and certain staff of the governor's office or department. "Direct communication" means verbal or written communication through any medium that is directed toward a reportable person.

While, under the JCOPE interpretation of New York law, a person may be a lobbyist after only one communication with a public

official, Ohio's compensated time threshold can mean that one call to a legislator by a consultant to facilitate a meeting will likely not result in the consultant being required to register as a lobbyist. However, repeated communications may result in the threshold being met and registration being required, even if the individual thinks of him or herself as a political consultant or public relations professional, rather than a lobbyist.

Ohio law also specifically excludes grassroots efforts from the definition of lobbying. Grassroots lobbying are efforts by uncompensated individuals who have a direct interest in pending legislation or administrative actions and who petition public officials for the redress of grievances.

## HELPFUL TIP

*House Bill 502, introduced by Ohio State Representative John Becker (R-Cincinnati) on March 30, 2016, proposes numerous changes to Ohio's campaign finance laws. The bill was referred to the House Government Accountability and Oversight Committee.*

## What went wrong? Using campaign funds for personal legal expenses



By Marjorie J. Yano

In March 2016, the U.S. Court of Appeals for the District of Columbia Circuit affirmed a lower court decision that former U.S. Senator Larry Craig and his campaign committee, Craig for U.S. Senate, unlawfully converted \$197,935 in campaign funds to pay for Senator Craig's personal legal expenses.

The Federal Campaign Act identifies six categories of permissible uses for contributions accepted by a federal candidate but does not permit conversion of funds to personal use. The act describes conversion to personal use as funds being used "to fulfill any commitment,

obligation or expense...that would exist irrespective of the candidate's election campaign or...duties as a holder of Federal office." 2 U.S.C. §439a(b)(2). The Federal Election Commission (FEC) conducts a case-by-case analysis to determine whether the use of campaign funds to pay legal expenses falls under the definition of personal use. 11 C.F.R. §113.1(g)(1)(ii)(A).

In 2007, Senator Craig was arrested for lewd conduct in the Minneapolis-St. Paul International Airport, and money from the senator's campaign account was used to pay

his legal bills. The defendants claimed that the use was permissible under the Federal Election Campaign Act and under an FEC advisory opinion from 2013 that appeared to approve the use of campaign funds for similar purposes.

Advisory Opinion 2013-11 responded to a question regarding the use of campaign funds for litigation purposes. Specifically, the committee, Citizens for Joe Miller, asked the FEC whether it may use campaign funds to post a cash deposit in lieu of a supersedeas bond on appeal from a state

court judgment against former candidate Joseph Miller and/or whether campaign funds could be used to pay the final judgement if Miller was unsuccessful in his appeal. The lawsuit in question concerned employment records sought by several media outlets from Miller's former employer, the Fairbanks North Star Borough (the Borough). When the Borough would not release the requested records, the media entities filed suit. Miller intervened as a defendant on grounds that he was an indispensable party in

protecting his privacy rights. The court ruled that while Miller had a legitimate expectation of privacy with respect to the documents in question, the expectation is outweighed by the public's significant interest in the background of a public figure running for office. Based on long-standing precedent that if a candidate "can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use," the FEC allowed

campaign funds to be used in the course of the lawsuit.

Unlike the Miller case, Senator Craig's legal troubles did not arise from his campaign activities or official duties as a senator. Campaigns that find their candidate in legal trouble should be cautious when confronted with legal bills and carefully consider whether the legal trouble is connected to the candidate or officeholder's campaign activity or official duties.



## Corporate Ethics and Compliance Manual

Bricker's Corporate Ethics and Compliance Manual will help you comply with state and federal regulations related to ethics, lobbying and campaign finance laws. For more information, contact Maria Armstrong at 614.227.8821 or [marmstrong@bricker.com](mailto:marmstrong@bricker.com).