



November 6, 2014  
9:30am-11:00am

### **Lobbying for Lawyers**

Attorneys are uniquely qualified to serve as advocates. This panel will provide an overview of lobbying and discuss how to use your attorney legal training to help members of their community. Tips for successful meetings with federal and local legislators and effective advocacy techniques will be covered. Attendees will be able to use the skills gained from Convention Lobby Day to advocate in their communities at home.

Program Chair & Moderator:

Suzan Chau, *Manager, Section 3 Program*, Philadelphia Housing Authority

Speakers:

Ruthe Catolico Ashley, *Chair*, California Law Academy Support Council

Paul O. Hirose, *Senior Counsel*, Perkins Coie LLP

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# A NEW ERA FOR LOBBYING IN PHILADELPHIA

Stella M. Tsai, Archer & Greiner, P.C.

## INTRODUCTION

At the turn of the 20<sup>th</sup> century the journalist Lincoln Steffens published *Shame of the Cities*, a series of articles exposing municipal corruption across the United States. In St. Louis, Steffens encountered Edward “Boss” Butler, a “boodler” who made his fortune by trading “the rights, privileges, franchises, and real property of the city” to businessmen and companies. Minneapolis had Mayor “Doc” Ames and his police force which ignored prostitution and gambling in exchange for bribes, a system which attracted even more criminals to the city. In Pittsburgh, a league of businessmen took control of city government and steered millions of dollars of business to their own firms, before being ousted by a citizen’s group and replaced by a new party boss which led the revolt.

Finding little virtue in city governments, which were so prone to control by political machines, Steffens remarked “(a)ll our municipal governments are more or less bad.” But Steffens expressed particular contempt for the City of Brotherly Love where, despite the recent adoption of reforms and a new city charter, the political machine controlled the vote and “practices fraud at every stage:”

“Philadelphia is simply the most corrupt and the most contented.”

During the 1950s, Philadelphia Mayor Joseph Clark and his successor Richardson Dilworth campaigned to sweep out corruption and enact true reforms, replacing patronage with civil service and re-invigorating the City’s housing and infrastructure in key neighborhoods. Although Clark and Dilworth made great strides in dismantling the existing political machine, the City was still unable to shed its “pay to play” reputation, having earned double digit federal indictments for City officials in 2004.

In 2005, outraged by the federal corruption charges and criminal trials, nearly 9 of 10 Philadelphia voters (87%) voted “YES” on the Ethics Reform Ballot Initiative in 2005.

2007 marked the beginning of another new era for Philadelphia government when then-Councilman Michael Nutter and colleagues introduced legislation to create The City’s first independent board of ethics, limit campaign contributions, and impose a transparent and publicly accessible process for awarding contracts. Mark Lange, *Get Real on Ethics Reform*, Christian Science Monitor (June 28, 2007) <http://www.csmonitor.com/2007/0628/p09s01-coop.html>. Described by *the Christian Science Monitor* as “the most remarkable example of urban ethics reform,” Philadelphia has made tangible progress in its fight against municipal corruption. *Id.*

In 2010, The City of Philadelphia expanded its efforts to promote transparency and accountability in decision-making by passing legislation to require *for the first time ever* the registration of lobbyists and disclosure of lobbying expenditures. These reforms did not take effect until January 2012 due to a lawsuit filed by the Philadelphia Bar Association. The Bar

Association did not oppose lobbying reforms per se, but asserted that the original provisions were vague and overly broad, infringed on the Supreme Court of Pennsylvania’s exclusive authority to regulate lawyers, and improperly required disclosure of client matters that required lawyers to interact with City agencies, but did not involve traditional “lobbying.” The Bar Association withdrew its lawsuit after the Board of Ethics agreed to delay enforcement of the lobbying law and consider proposed changes to the implementing regulations.

## **DEFINING AND REGULATING LOBBYING IN PHILADELPHIA**

As of January 3, 2012, individuals, companies, and law firms which get compensated for lobbying for legislative or administrative action in Philadelphia and the principals who retain lobbyists had to register and report under the new law, Philadelphia City Code Sections 20-1201 et seq. – or at least verify whether they don’t have to.

### **What is lobbying?**

Lobbying is defined as an effort to influence legislative or administrative action including:

- (1) Direct or indirect communication;
  - (2) Incurring office expenses; and
  - (3) Providing any gift, hospitality, transportation or lodging to a City official or employee for the purpose of advancing the interest of the lobbyist or principal.
- ¶9.1(X).

**Legislative action** is one taken by a City official or employee involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of legislation, legislative motions, a veto by the Mayor, or nominations or appointments to public boards and commissions by the Mayor or Council. ¶9.1(W).

**Administrative action** is an Agency’s proposal or consideration of legislation or statement of written policy, its procurement or requests for proposals, zoning and other land use decisions, a veto by the Mayor, or nominations or appointments to public boards or commissions by the Mayor or Council. ¶9.1(B). The definition of “Agency” includes, among others, the Philadelphia Industrial Development Corporation, the Philadelphia Authority for Industrial Development, City-related agencies, and the School District of Philadelphia unless the lobbying is subject to 65 P.C.S. § 13A01 et seq. (Pennsylvania Lobbying Disclosure Law).<sup>1</sup>

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<sup>1</sup> City-related agency is defined as “all authorities and quasi-public corporations which either: receive appropriations from the City, have entered into continuing contractual or cooperative relationships with the City, or operate under legal authority granted to them by City ordinance.” City Code §17-1401(9)

The [Board's Regulation No. 9, as amended](#), is the conclusive guidance from the Board of Ethics as to who must register and when.<sup>2</sup> Registration and reporting requirements are triggered when two conditions are met:

- (1) 10 days have elapsed after the commencement of lobbying and
- (2) the economic consideration to an individual (or firm) for lobbying exceeds \$2,500.

### **Is anyone exempt from the definition of lobbying and the corresponding reporting and registration requirements?**

The long list of exemptions appears in Paragraph 9.24 of Regulation No. 9 along with informative hypotheticals. Lawyers are not exempt.

For general purposes, the more pertinent exemptions include

- individuals and firms who are not paid for lobbying (¶9.24 (C));
- individuals and firms who prepare and present testimony at City Council hearings or participate in administrative agency proceedings or specific agency action in the normal course on behalf of a particular client (¶9.24 (A));
- those who receive less than \$2,500 per quarter from all clients for lobbying (¶9.24 (D));
- those businesses that spend less than \$2,500 per quarter on lobbying (¶9.24 (F))<sup>3</sup>;
- those who spend less than 20 hours a quarter lobbying on behalf of an employer (¶9.24 (E));
- those who work for media outlets (¶9.24 (E)); and
- those who are lobbying on behalf of a religious organization in a matter which pertains solely to protecting the constitutional right to the free exercise of religion (¶9.24 (H)); and
- City or other government officials or employees who are acting in an official capacity (¶9.24(G)).

Contact with a government official as to a specific client is not exempt if an individual contacts City officials or employees to influence general policy or legislation, addresses a matter which is not in the normal course--such as the renewal of a contract--or if the communication goes beyond or outside the normal chain of command in making the determination at issue. See ¶9.1(x).

### **Are nonprofit organizations exempt?**

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<sup>2</sup> The amendments implemented certain [modifications to the Lobbying Code in October 2011](#) made by [ordinance](#).

<sup>3</sup> In a reporting period in which total expenses are \$2,500 or less, a statement to that effect shall be filed. City Code §20-1203(7).

The lobbying rules do not exempt nonprofit organizations from its scope other than lobbyists who are seeking to protect a religious organization's constitutional right to freedom of religion. There is one hypothetical example, however, that is intended to illustrate how unlikely it would be for a nonprofit organization, employee, or volunteer to be covered by the lobbying registration and reporting rules (§ 9.24 (F)). First, a lobbyist who does not receive more than \$2,500 in the quarter, is exempt. (Also, those who receive no economic consideration for their efforts are exempt). Second, an executive director or other employee of the nonprofit who spends less than 20 hours in lobbying each quarter is exempt. Finally, a nonprofit group which incurs less than \$2,500 of lobbying expenses during the quarter would therefore be exempt from reporting as a principal under §9.24(F).

### **What are non-exempt lobbyists, lobbying firms, and principals required to do as of January 3, 2012?**

Under the registration and reporting requirements set forth in Subparts B, C, G, and H of Regulation No. 9, lobbyists, lobbying firms, and principals who are required to register:

- (1) Must register within 10 days of the lobbying action if they have charged more than \$2,500 for lobbying. See §9.3 and November 16, 2011 Advisory Alert. The interim registration forms can be found on the Board of Ethics website [here](#).
- (2) Must pay an annual registration fee of \$100 to the Board for the lobbying firm, made payable to the "City of Philadelphia." §9.5.
- (3) Must pay a separate annual registration fee each annual registration period for the client, principal and individual lobbyist, even if the lobbyist is employed by a registered lobbying firm. §9.7.
- (4) Shall file a separate registration statement for each registrant. §9.7 (Lobbying firm/principal); §9.9 (Lobbyist).
- (5) As a principal, must file, under affirmation, an expense report with the Board, in electronic format and with an electronic signature or signatures, as required by this Regulation, no later than 30 days after the last day of each reporting period. §§9.13-19. Until the Ethics Board finalizes the on-line registration process, which is expected to happen in March 2012, the report must be done manually.
- (6) As a lobbying firm or lobbyist, while generally not required to file an expense report, shall file one if either (a) the principal does not report the lobbying activities in its expense report or (b) the lobbyist is exempt under the City Code §20-20-1204(7) relating to City officials acting in an official capacity. §9.20.

- (7) Shall within 120 days of filing a registration statement attend an initial training session conducted by the Board regarding the requirements of Chapter 20-1200 and other relevant sections of the City Code. ¶9.33.
- (8) Shall refrain from prohibited activities and unlawful acts including, but not limited to, serving as a treasurer or other officer for a candidate's political action committee if the candidate is seeking office; charging contingency-based fee; instigating the introduction of legislation to produce employment by opposing it; offering financial support to a City official; engaging in coercion, bribery, or fraud; or simultaneously representing two principals with adverse interests in a matter without proper disclosures and waivers. ¶¶9.26-27.

**Do these reporting requirements signify a change in the prohibition on gifts to City employees?**

**No.** The provisions of Chapter 20-1200 do not relieve a lobbyist, lobbying firm, principal, or City official or employee from the restrictions in City Code §20-1200 or City Ethics Code, §20-604 (Gifts, Loans, and Favors to City Personnel), or from financial disclosure requirements such as those in Code §20-610, or from departmental or other restrictions or prohibitions on the offer or acceptance of gifts, hospitality, transportation, and lodging such as [Mayor Nutter's Executive Order No. 3](#).

**Are entities required to report when a City official or employee attends a reception in his or her official capacity under the new lobbying rules?**

As explained at ¶9.17(A) of Regulation No. 9, as amended, when a City official or employee attends a reception in connection with his or her public office at the invitation of and hosted by an organization and, at the reception, receives food, beverage, entertainment, and admission without charge, the fair market value of the same shall **not** be considered a gift to the individual official or employee within the meaning of Code §20-1200. Accordingly, the host is neither required to report the related expenditure on any expense report required to be filed under this Regulation or City Code §20-1200 nor to include it in the calculation of any reporting thresholds under this Regulation or City Code §20-1200, *unless lobbying occurs at such reception*.

**What are the penalties for non-compliance with the Registration and Reporting requirements?**

A person who violates the registration and reporting requirements is subject to a civil penalty of up to \$2,000, plus up to \$250 per day (up to a total of \$2,000) when a required registration or report is filed late. ¶9.32; City Code §20-1207(1). If the Board determines that the violation of lobbying law is intentional, the Board of Ethics may prohibit the individual from lobbying for pay for up to five years. The Disciplinary Board of Pennsylvania

is additionally notified whenever the penalized lobbyist or principal is an attorney. City Code §20-1207(1)(d).

If the lobbyist, Firm or principal learns that an already filed statement includes a material misstatement or omission and corrects it within fifteen (15) days, it shall not be regarded as a violation §9.27(B).

### **Whom do I contact for official guidance regarding the registration and reporting requirements?**

The Board of Ethics will offer an Advisory Opinion to a lobbyist, lobbying firm, or principal seeking to determine whether that person or entity is required to register or file expense reports pursuant to Chapter 20-1200 and Regulation No. 9. The procedures for making such requests for Advisory Opinions are governed by the [Board's Regulation No. 4](#) as amended by Regulation No. 9 at ¶9.30(A)(2).

### **Lobbying regulations are good in theory, but will they be enforced?**

**Yes.** In May 2014, The City of Philadelphia Board of Ethics prosecuted its first enforcement action under the lobbying laws. Responding to a complaint filed by Parents United for Public Schools (Parents United), The Board fined the Philadelphia School Partnership (PSP), a nonprofit organization focused on education issues, \$1500 for its 18 month delay in registering as a lobbying organization and filing financial disclosures. Parents United alleged that PSP had engaged in “undisclosed and unregulated” lobbying in 2012, such as the payment for City and school officials’ travel expenses to Denver to learn more about decentralized school administration systems, but had failed to disclose the expenditures. Parents United said it filed the complaint because the “public deserves to know what’s being said on matters of massive importance to our schools and our city...what’s being said and who’s paying it.”

In press accounts, PSP claimed that, during the relevant time frame, it had been unaware that Philadelphia’s new lobbying law would be applicable, contending that its scope is broader than its federal and state counterparts.

The Board initiated an investigation and concluded that PSP’s lobbying activity in 2012 had triggered reporting and registration requirements. The Board entered into a settlement agreement with PSP, waiving and reducing monetary penalties due to the cooperation and remedial actions it received from PSP.

## **CONCLUSION**

Lincoln Steffens undoubtedly would be surprised to learn that a fellow journalist had dubbed The City of Philadelphia as a “remarkable example” of urban ethics reform in the 21<sup>st</sup> century. Through this comprehensive package of ethics reforms, including the implementation and monitoring of lobbying disclosures by an independent Board of Ethics, the public and press now have unprecedented access to data and information which provide insight into the

decisions made by public officials and the political process itself. Although it is easy to be cynical, these measures, along with an informed and vigilant public, may very well help prevent the cycle of corruption from rebooting itself.

## **Lobbying for Lawyers**

### **Course Outline and Agenda**

11:00 to 11:05 am – Introduce Panel and outline issues

11:05-11:20 – Building a case for advocacy – issue spotting, research, education, networking, and creating alliances

11:20-11:35 – Vocal/Focal point –lessons on how to become an effective advocate when meeting with decision makers

11:35-11:50 – Interactive mock advocacy session

11:50 to 12:15 – Questions and discussion of how APA lawyers can help and a call for action