540 BROADWAY
ALBANY, NEW YORK 12207
ethics.ny.gov

SANFORD N. BERLAND
EXECUTIVE DIRECTOR

PHONE: (518) 408-3976
FAX: (518) 408-3975
ethics@ethics.ny.gov

Advisory Opinion No. 24-04: Due dates for statements of registration submitted by retained lobbyists who exceed or reasonably anticipate exceeding $5,000 in lobbying compensation and expenses, computed cumulatively, in a calendar year.

Introduction

The following advisory opinion is issued by the New York State Commission on Ethics and Lobbying in Government ("Commission"), pursuant to Executive Law § 94(7)(c) and Legislative Law § 1-d(f), to clarify when a statement of registration must be submitted by a retained lobbyist as determined by the date such lobbyist has been authorized to lobby on behalf of a client when the lobbyist has exceeded or reasonably anticipates exceeding $5,000 in combined lobbying compensation and expenses in a calendar year.

Background

In response to correspondence recently received by the Commission, the Commission is clarifying when a statement of registration becomes due under the following scenarios[1]:

1. A lobbyist is retained by a client pursuant to a contract or agreement for lobbying only, and lobbying activity has yet to occur.

2. A lobbyist is retained by a client pursuant to a contract or agreement for both lobbying and non-lobbying services, and lobbying activity has yet to occur.

[1] This Advisory Opinion addresses the due date of statements of registration for lobbyists who are retained to lobby after December 15th prior to the start of a biennial filing period. If the lobbyist has been retained as a lobbyist under an agreement in effect both on or before December 15th of the calendar year immediately preceding the start of a biennial filing period and after January 1st of the first year of that biennial period, such statement of registration is due January 1st. *See* Legislative Law §1-e(a)(4).

Applicable Law

Legislative Law Article 1-A, also known as the "Lobbying Act," and the Commission's regulations at 19 NYCRR Part 943 set forth disclosure requirements for lobbying activity.

Legislative Law § 1-c(a) defines the term "lobbyist" to mean "every person or organization retained, employed or designated by any client to engage in lobbying."

Legislative Law § 1-e prescribes when lobbyists must file a statement of registration with the Commission. Specifically, section 1-e(a)(4) states that persons who have been retained, employed or designated ***as a lobbyist*** and who ***reasonably anticipate*** (emphasis added) combined reportable compensation and expenses in excess of $5,000 in a calendar year must file a statement of registration within 15 days thereafter, but no later than 10 days after actually incurring or receiving such reportable compensation and expenses.

Legislative Law § 1-e(a)(1) provides that "[t]he amounts expended, incurred, or received of reportable compensation and expenses for lobbying activities shall be computed cumulatively for **all** (emphasis added) lobbying activities," that is, across all lobbying clients of the lobbyist, when determining whether the thresholds set forth in this section have been met.

Legislative Law § 1-e(c)(3) requires retained lobbyists to attach a copy of their retainer agreement or contract with each statement of registration.

Legislative Law §§ 1-h(a) and 1-i(a) provide that any lobbyist required to file a statement of registration who in any lobbying year ***reasonably anticipates*** (emphasis added) that during the year they will expend, incur, or receive combined reportable compensation and expenses in excess of $5,000 for lobbying must also file bi-monthly reports with the Commission. Such reports must disclose information related to lobbying activity, including the compensation paid or owed to the lobbyist.[2]

Legislative Law § 1-d provides the Commission with the power and duty to administer and enforce all provisions of the Lobbying Act, prepare uniform forms for the statements and reports required by the Lobbying Act, and issue advisory opinions. Executive Law § 94(5)(a) further provides the Commission with the authority to adopt regulations implementing the Lobbying Act.

Pursuant to its broad authority under Executive Law § 94(1)(a) to administer, enforce, and interpret the state's lobbying laws, and to "adopt, amend, and rescind any rules and regulations pertaining to" the Lobbying Act under Executive Law § 94(5)(a)(i), the Commission has adopted comprehensive lobbying regulations implementing the Lobbying Act, which are set forth in 19 NYCRR Part 943. Relevant regulatory provisions include:

[2] Legislative Law §§1-h(b)(5)(i) and 1-i(b)(6)(i).

Section 943.10(a) of Title 19 of the NYCRR provides that the purpose of the statement of registration is to memorialize the engagement of the lobbyist by the client and should reflect the then-current terms of the engagement at any point in time.

Section 943.10(b)(1) of Title 19 of the NYCRR requires that every lobbyist that incurs, expends, or receives or *reasonably anticipates incurring, expending, or receiving* more than $5,000 in combined reportable compensation and expenses for lobbying activity on a state and/or local level, in any calendar year during the biennial period, must file a biennial statement of registration with the Commission.

Section 943.10(j)(1) of Title 19 of the NYCRR requires every lobbyist to submit their lobbying agreement or contract with each statement of registration. Such agreement or contract must contain a **start date, which is the first date the lobbyist has agreed to or been authorized to lobby for the client**.

Section 943.10(d) of Title 19 of the NYCRR explains that once a lobbyist meets or ***anticipates meeting*** the cumulative $5,000 threshold, that lobbyist must file a statement of registration for *every client for whom the lobbyist lobbies, regardless of compensation or expenses paid by each client individually*.

Sections 943.10(e)(2)(i)(a) and (c) of Title 19 of the NYCRR require a lobbyist to file a statement of registration within 15 days of the date upon which the lobbyist **has agreed to or been authorized to begin lobbying,** or no later than 10 days after exceeding the $5,000 threshold if the lobbyist actually incurs or receives combined compensation and expenses in excess of $5,000 before filing a statement of registration.

Discussion

The stated purpose of the Lobbying Act is to preserve and maintain the integrity of the governmental decision-making process in New York state through the public and regular disclosures of the identity, expenditures and activities of persons and organizations retained, employed or designated to lobby on behalf of clients.[3]

Toward that end, the Lobbying Act requires lobbyists to file biennial statements of registration, and corresponding bi-monthly reports, for each client who has retained, employed or designated them to lobby, provided the lobbyist "reasonably anticipates" receiving more than $5,000 in combined reportable compensation and expenses in a calendar year.[4] It is important to note that the Lobbying Act makes clear that the $5,000 threshold is cumulative across all clients.[5] Therefore, once a lobbyist exceeds or reasonably anticipates exceeding the $5,000 threshold for one or all clients cumulatively, they must file a statement of registration, and corresponding bi-monthly reports, in accordance with the Lobbying Act for each client individually.[6]

[3] Legislative Law § 1-a.
[4] Legislative Law §§ 1-e(a)(4); 1-h(a); 1-i(a).
[5] Legislative Law § 1-e(a)(1).
[6] 19 NYCRR 943.10(d).

The Lobbying Act also makes clear that the due dates for statements of registration required to be filed pursuant to section 1-e are measured from when a lobbyist has been retained, employed or designated to engage in lobbying by a client.[7] Notably, the due date is not measured from when the lobbyist first engages in lobbying activity, but rather the date from which the client has authorized the lobbyist to engage in lobbying activity on the client's behalf.

The Commission's regulations clearly articulate that point by providing that statements of registration must be filed on a biennial basis by either January 1st of the first year of the biennial period (if applicable) or within 15 days of the date on which the lobbyist **has agreed to, or been authorized to, begin lobbying activity** (or no later than 10 days after exceeding the $5,000 threshold if the lobbyist actually incurs or receives compensation and expenses exceeding $5,000 before filing a statement of registration).[8]

Consequently, if a lobbying agreement or contract authorizes a retained lobbyist to lobby on behalf of a client and such lobbyist is either already registered as a lobbyist or reasonably anticipates exceeding the $5,000 threshold based on this new lobbying agreement or contract, then the due date for the statement of registration is based on the date the agreement or contract ***authorizes*** the retained lobbyist to start lobbying on the client's behalf. It is not based on if or when lobbying activity takes place.

In fact, the Commission notes that many lobbyists are retained and compensated to be available in case the client wishes the lobbyist to engage in lobbying activity for, or conversely against, a bill, resolution or other governmental action that might emerge which could positively or adversely affect the client's interests. The amount of money that client is paying its lobbyist constitutes reportable lobbying compensation and must be disclosed.

Based on the foregoing, the Commission hereby interprets and applies the Lobbying Act and Commission Regulations to clarify when a statement of registration is due in the following two scenarios:

> **Scenario 1-** A lobbyist is retained by a client pursuant to a contract or agreement for lobbying only, but lobbying activity has yet to occur.
>
> Once a lobbyist has exceeded or anticipates exceeding the cumulative $5,000 threshold, the lobbyist must file a statement of registration for all, even pro bono, clients. Under Scenario 1, if the lobbyist is already registered, or if the retainer agreement or contract includes compensation and expenses such that the lobbyist would reasonably anticipate exceeding the $5,000 threshold based on this agreement, the statement of registration is due within 15 days of the start date[9] listed in the retainer contract or agreement, even if lobbying activity has yet to occur.[10]

---

[7] Legislative Law §1-e(a)(4).
[8] 19 NYCRR 943.10(e)(1) and (2).
[9] The "start date" is the first date a lobbyist has agreed to or been authorized to lobby for a client. 19 NYCRR 943.10(j)(1)(i)*(a)*.
[10] Registrations are generally due within 15 days of the start date of the lobbying agreement, but no later than 10 days from when the lobbyist actually incurs or receives combined compensation and expenses in excess of $5,000 before filing a statement of registration. *See 19 NYCRR 943.10(e)(2).* For example, the 10-day due date may apply when a lobbyist has a specific date of payment in the lobbying agreement, such as, but not limited to, "payment due upon execution."

Scenario 2: A lobbyist is retained by a client pursuant to a contract or agreement for lobbying and other non-lobbying services, but lobbying activity has yet to occur.

In Scenario 2, the key difference is that the contract or agreement authorizes other services in addition to lobbying. Again, the determination is not based on when lobbying activity occurs.

To provide clarity, the Commission finds that a **presumption exists, *unless otherwise specified in the agreement*,** that the start date in a retainer agreement that authorizes both lobbying and non-lobbying services is the date that applies to determining when a statement of registration is due. Furthermore, ***unless otherwise specified in the agreement***, it is presumed that all compensation and expenses set forth in the agreement are to be allocated for lobbying services.

Therefore, pursuant to this presumption, if the lobbyist is already registered, or if the retainer agreement includes compensation and expenses such that the lobbyist would reasonably anticipate exceeding the $5,000 threshold for this client or across all clients, the statement of registration is due within 15 days of the start date[11] of the retainer agreement, even if lobbying activity has yet to occur.[12]

These presumptions may only be overcome if the retainer agreement or contract includes a separate start date for lobbying services and a specific breakdown of compensation and expenses for lobbying, as opposed to non-lobbying, services.

Conclusion

The Commission hereby reaffirms that the Lobbying Act and Commission Regulations require retained lobbyists to register within 15 days of the start date of an agreement or contract authorizing only lobbying services if the retained lobbyist either has exceeded or reasonably anticipates exceeding the $5,000 cumulative threshold in a calendar year.[13] All compensation and expenses provided for in this lobbying-only agreement or contract count as lobbying compensation and expenses.

If a lobbyist is retained for both lobbying and non-lobbying services, it is presumed that the start date in the retainer agreement or contract is the date that applies for determining when a statement of registration is due. Furthermore, unless otherwise specified in the agreement or contract, it is also presumed that all compensation and expenses provided for in the agreement or contract count as lobbying compensation and expenses. This presumption may be overcome if the retainer agreement or contract includes a separate start date for lobbying services and a

[11] The "start date" is the first date a lobbyist has agreed to or been authorized to lobby for a client. 19 NYCRR 943.10(j)(1)(i)*(a)*.
[12] See supra note 10.
[13] See supra note 10.

specific breakdown of compensation and expenses for lobbying, as opposed to non-lobbying, services.

This opinion, until and unless amended or revoked, is binding on the Commission and in any subsequent proceeding.

Concur:

Leonard B. Austin, Chair
Ava Ayers, Vice-Chair
Dolly Caraballo
James W. Caras
Michael A. Cardozo
Claudia L. Edwards
Nancy G. Groenwegen
Seymour W. James, Jr.

Members

Dated: December 18, 2024