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Association of Corporate Counsel
Central Pennsylvania Chapter

Doing Business with Pennsylvania State Government:

A Guide to Laws, Regulations and Policies Governing Contacts with Public Officials and Employees

December 9, 2009

Hilton Harrisburg
Harrisburg, Pennsylvania

Speakers:
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Stephen Cooper, Government Affairs Counselor, K&L Gates LLP

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Agenda

2:30 p.m. – 3:00 p.m.	Registration
3:00 p.m. – 5:00 p.m.	Introduction and Description of Practices Most Significant Pennsylvania Laws and Regulations Which Govern the Conduct and Ethics of Public Officials and Employees Raymond P. Pepe, Partner, K&L Gates LLP Peter A. Gleason, Partner, K&L Gates LLP Status of the House and Senate Legislation and the Likely Impact of the Legislation Upon Businesses Stephen Cooper, Government Affairs Counselor, K&L Gates LLP
5:00 p.m. –	Reception **Location:** K&L Gates LLP 17 North Second Street 18th Floor Harrisburg, PA 17101-1507

Presentation Overview

I. What Constitutes Lobbying?

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H. Written notice must be given to each State official or employee who is listed in an expense report under this paragraph at least seven days prior to the report's submission including both the amount incurred during the quarter and the cumulative amount incurred from January 1st.

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3. Percentage of the protected categories of individuals having requisite skills in the immediate labor area and in the "reasonable recruitment area"

4. Percentage of the protected categories of those promotable or transferable within the facility

5. Percentage of protected categories among those provided training in requisite skills by a contractor

6. The degree of training which a contractor is "reasonably able to undertake" in order to make all job classifications available to otherwise qualified minorities or women

7. The degree to which good faith efforts have been made to hire and promote within protected categories.

8. Both the terms "labor area" and "recruitment area" are defined as "the local area within which the contractor can reasonably expect people to commute"

Doing Business With Pennsylvania State Government: A Guide to Laws, Regulations and Policies Governing Contacts With Public Officials and Employees

Raymond P. Pepe
K&L Gates, LLP
December 9, 2009

Pennsylvania has adopted numerous laws, regulations and policies intended to protect the integrity of state and local government operations and which regulate permissible business relationships and other contacts with public officials and employees. These laws, regulations and policies govern lobbying, campaign contributions, conflicts of interest, and the payment of gifts or gratuities to public officials and employees. Whenever businesses, individuals or associations interact with state and local officials with respect to permits and approvals, protests and appeals, audits or compliance actions, contracts, or in efforts to advocate changes in governmental policies, these laws, regulations and policies impose a important restrictions and obligations, and mandate the filing of various types of reports. The failure to understand and comply with these requirements may have serious consequences, including civil fines and penalties, the invalidation of permits, approvals or contracts, and possible criminal prosecution.

The most significant Pennsylvania laws and regulations which govern the conduct and ethics of public officials and employees are:

- The Lobbying Disclosure Act;
- The Campaign Finance Law (*i.e.*, Article XVI of the Election Code);
- The Public Official and Employee Ethics Act;
- The State Adverse Interest Act;
- The Legislative Code of Ethics;
- The Code of Conduct for Appointed Officials and State Employees; and
- The Commonwealth Procurement Code and Procurement Management Directives.

The major requirements of these laws, regulations and policies are summarized below of relevance to businesses interacting with state and local officials and employees are summarized below.

Lobbying Disclosure Act

A. Overview

Subject to limited exceptions, Pennsylvania requires persons who receive compensation or incur expenditures for the purpose of influencing a broad range of state legislative and executive agency actions either on their own behalf or on behalf of other persons to register as "lobbyists." Pennsylvania also requires detailed quarterly expense reporting by "principals" who engage lobbyists, or conduct lobbying on their own behalf, and requires the payment of sales and use taxes for various types of lobbying related expenditures. Under the Pennsylvania Lobbying Disclosure Act, registrations must be filed with and quarterly expense reports submitted to the Department of State and enforcement actions may be undertaken by the State Ethics Commission and Attorney General.[1] The law applies to most persons who incur expenditures or receive compensation relating to any "direct" or "indirect" communications" with state officials and employees for the purpose of influencing "legislative or administrative action" subject to a limited set of exclusions and exemptions. The law also applies to persons who provide "gifts, hospitality, transportation or lodging" to any state official or employee to "advance the interests" of any person engaged in lobbying or pay "office expenses" relating to lobbying.[2] Violations of the law may result in significant civil and criminal penalties and a disqualification for up to five years from incurring expenditures or receiving compensation for the purpose seeking to influence legislative or administrative actions.

B. Scope

Lobbying registration and expense reporting may be required whenever a person incurs expenses or makes payments to other persons the purpose or reasonably foreseeable effect of which will be to influence legislative or administrative actions by state officials or employees. Legislative and administrative actions relate to decisions made by the General Assembly or agencies of the executive branch of state government relating to:

- Bills, resolutions, amendments and "any other matter that may become the subject of action by either chamber of the General Assembly." Other matters that constitute legislation may include legislative procurement decisions, legislative rules, decisions to conduct hearings or investigations, or personnel matters;

- The Governor's approval or veto of legislation;

[1] 65 Pa.C.S. § 13A01 *et seq.*
[2] 65 Pa.C.S. § 13A03.

- The nomination, appointment, or confirmation of individuals as officers or employees of the Commonwealth or as members of public boards or commissions by the General Assembly, the Governor or executive agencies;

- The proposal, consideration, promulgation, rescission, approval, or rejection of regulations by administrative agencies or the Independent Regulatory Review Commission;

- The development or modification by an executive agency of a "statement of policy." Statements of policy differ from regulations in that they consist of guidelines pertaining to the implementation of laws and regulations which need not be published for review and comment before being adopted and need not be published in the Pennsylvania Bulletin or Pennsylvania Code;

- The proposal, consideration, promulgation or rescission of executive orders; and

- The procurement of supplies, services and construction pursuant to the Commonwealth Procurement Code.

C. Direct and Indirect Communications

The Lobbying Disclosure Act applies not only to "direct communications" relating to legislative and administrative actions, but also to "indirect communications," the provision of "gifts, hospitality, transportation or lodging" for the purpose of "advancing the interest" of persons engaged in lobbying, and the use of resources to pay for "office expenses" relating to lobbying.

By expanding its coverage beyond "direct communication" and also encompassing "indirect communication," the Lobbying Disclosure Act applies to activities that many may regard as nothing more than the use of private resources to publicly express views and opinions regarding issues of public concern. While "direct communications" consist of efforts undertaken through written, oral or any other mediums of communication to influence legislative or administration actions that are directed to a state official or employee, indirect communications consist of any such efforts "to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is directly influence legislative action or administrative action."

D. Registration Requirements

The Lobbying Disclosure Act classifies individuals and organizations that receive compensation to influence legislative or administrative action on behalf of others as "lobbyists;" persons who hire lobbyists or engage in lobbying on their own behalf as "principals;" and

entities that engage in lobbying on behalf of other principals as "lobbying firms."[3]

Principals, lobbying firms and lobbyists are required to register with the Department of State within ten days of "acting in any capacity" as principals, lobbying or principals, including being retained for compensation to engage in lobbying, regardless of whether the commencement of any direct or indirect communications pertaining to legislative and administrative action occurs at the time a person is engaged for the purpose of conducting lobbying.[4] Registration covers a biennial period ending on December 31st of each even numbered year. After the expiration of each biennial registration period, registration must be renewed within ten days of the commencement of any lobbying activity.[5] Registrations must be accompanied by a $100 fee payable by each person required to register for each biennial registration period and an election to file registration and expense reports in writing or electronically.[6] A registration statement filed by a "principal" must contain:[7]

- The name, permanent address, daytime phone number and e-mail address of the principal;
- A description of the nature of the principal's business;
- The name, registration number and acronym of any "affiliated political action committees;"
- The name and permanent business address of each individual "who will for economic consideration engage in lobbying on behalf of the principal;"
- Any prior registration numbers assigned by the Department of State; and
- The number of dues-paying members in the most recently completed calendar year of any principal that is an association or organization.

An affiliated political action committee is a political committee that has an officer required to be included on a registration statement under the Pennsylvania Election Code who is a principal, an officer or employee of a principal, a lobbyist, or an employee of a lobbyist, unless the individual serves "in what is clearly a personal capacity and the goals and mission of the political committee clearly have no relationship to the goals and mission of [a principal, lobbyist or lobbying firm]."[8] The Pennsylvania Election Code requires any political committee receiving contributions of $250 or more to register individuals to serve as chair and treasurer of the

[3] 65 Pa.C.S. § 13A03.
[4] 51 Pa. Code § 53.2.
[5] 65 Pa.C.S. § 13A04(a).
[6] 65 Pa.C.S. § 13A10(a) & (c).
[7] 65 Pa.C.S. § 13A04(b)(1) & (3).
[8] 65 Pa.C.S. § 13A03.

committee.[9]

The registrations statement for a "lobbyist" must contain the same information as the registration statement of a "principal," but must also include:[10]

- A recent photograph of the lobbyist;
- The name and registration number (when available) of any lobbying firm with which the lobbyist "has a relationship involving economic consideration;" and
- The name, registration number, and acronym of any candidate political action committee of which the lobbyist is an officer who must be included on the committee's registration statement filed pursuant to the Election Code.

E. Quarterly Expense Reports

The Lobbying Disclosure Act requires that a "registered principal shall, under oath or affirmation, file quarterly expense reports with the Department of State no later than 30 days after the last day of the quarter."[11] In the event that total expenses for any reporting period are less than $2,500, a principal may file a statement to that effect in place of an expense report.[12] Otherwise, expense reports must include:[13]

- The name and registration number of all lobbyists representing the principal and the general subject matter being lobbied;
- The total costs of lobbying for the period, including office expenses, personnel expenses and expenses related to attempts to influence an agency's "preparing, bidding, entering into or approving a contract;"
- The costs for gifts, hospitality, transportation, and lodging for state officials or employees or their immediate families;
- The costs for direct communication;
- The costs for indirect communication;
- The name of each State official or employee receiving anything of value is required to be included in the official's or employee's Statement of Interests filed pursuant to the Ethics Act and each occurrence upon which such benefits were

[9] 25 P.S. § 3244.
[10] 65 Pa.C.S. § 13A04(c).
[11] 65 Pa.C.S. § 13A04(a).
[12] 65 Pa.C.S. § 13A04(d).
[13] 65 Pa.C.S. § 13A05(b).

provided to the official or employee, except for the costs of receptions attended by State officials or employees "in connection with public office or employment;"

- The name, permanent business address and daytime telephone number of any individual or entity which contributed more than 10% of the "total resources received by the principal during the reporting period;" and

- The signature each lobbying firm or lobbyist not associated with a lobbying firm registered on behalf of the principal attesting to the "validity and accuracy" of the report "to the best of the attestor's knowledge;"

In preparing expense reports, personnel and office expenses related to lobbying must be allocated either to the costs of direct or indirect communications through the use of "reasonable methods of estimation and allocation." Documents reasonably necessary to substantiate expense reports must be retained for four years from the date of filing and made available upon request for inspect by the Office of Attorney General, the Disciplinary Board of the Supreme Court, the Ethics Commission or the Department of State.[14]

"Personnel expenses" included in quarterly expense reports differ from "office expenses" the expenditure of which may make a person subject to mandatory reporting or registration. While "office expenses" consist only of expenditures for an office, equipment or supplies "utilized for lobbying," personnel expenses consist of salaries, benefits, vehicle allowances, bonuses and reimbursable expenses paid to "lobbyists, lobbying staff, research and monitoring staff, consultants, publications, public relations staff, technical staff, and clerical support staff."[15] As a result, staff members and consultants providing research, monitoring, technical and clerical support, but not engaged in direct or indirect communications, may not be required to register and file expense reports, even though expenses for such services are required to be included in quarterly reports.

At least seven days prior to the submission of any expense report to the Department of State, a principal, lobbying firm or lobbyist must give written notice to any State official or employee regarding the disclosure items required to be included in the official's or employee's Statement of Interests filed pursuant to the Ethics Act sufficient information to enable the state official or employee to comply with their Ethics Act reporting requirements.[16] Things of value provided to State officials or employees for expense reporting requirements need not include the cost of receptions attended by officials or employees "in connection with public employment" or "anything of value received from immediate family when the circumstances make it clear that motivation for the action was the personal or family relationship."

In the event that a principal's expense report does not contain lobbying expenses incurred

[14] 65 Pa.C.S. § 13A05(c).
[15] 65 Pa.C. S. § 13A03.
[16] 65 Pa.C.S. § 13A05(b)(3)(iv).

by a lobbying firm or lobbyist, the lobbying firm or a lobbyist not associated with a lobbying firm must submit a separate expense report.[17] The requirement that lobbying firms or lobbyists not affiliated with lobbying firms report expenses incurred for lobbying not reported on the report of a principal includes expenses incurred on behalf of a principal exempt from reporting requirements under the Lobbying Disclosure Act (as further discussed below).[18]

The Lobbying Disclosure Act requires that whenever a person makes an expenditure for any indirect communication "for the purpose of disseminating or initiating a communication, such as a mailing, telephone bank, print or electronic media advertisement, billboard, publication, or education campaign," the communication must "clearly and conspicuously" state the name of the person who made or financed the expenditure for the communication.[19] These disclosure requirements do not apply to indirect communications not of the same class or character as mailings, telephone banks, print or electronic advertisements, billboards, publications or "education campaigns."

F. Exemptions

The Lobbying Disclosure Act contains a variety of specific, but narrow exclusions from its registration and reporting requirements for types of "persons and activities."[20] Exemptions from registration and reporting apply to the following classifications of "persons:"

- Individuals who limit their lobbying activity to "preparing testimony and testifying before a committee of the General Assembly or participating in an administrative proceeding;"
- Individuals who are employees of an entity engaged in the business of publishing or broadcasting while engaged in providing news to the public in the ordinary course of business;
- Individuals who do not receive economic consideration for lobbying from any principal;
- Individuals whose consideration in the aggregate from all principals they represent is less than $2,500 in any reporting period;
- Individuals who lobby on behalf of their employers less than 20 hours during any calendar quarter;

[17] 65 Pa.C.S. § 13A05(b)(6).
[18] 65 Pa.C.S. § 13A05(b)(8).
[19] 65 Pa.C.S. § 13A05(e).
[20] 65 Pa.C.S. § 13A06.

- Individuals who are elected or appointed state or local officials acting in an official capacity, including members appointed pursuant to law to state advisory boards or commissions;

- Individuals who represent and are members of a bona fide religious organization and limit lobbying "solely for the purpose of protecting the constitutional right to the free exercise of religion;"

- Individuals who serve on an advisory board, working group or task force at the request of (as opposed to appointment by) an agency or the General Assembly, and who are not registered lobbyists; and

- Persons participating as a party or as attorneys or representatives in "a case or controversy in any administrative adjudication."

To the extent these exemptions apply only to individuals, they will not provide exemptions from registration and reporting by associations, corporations, partnerships, business trusts or other entities on whose behalf individuals undertake activities and will not exempt principals, lobbyists and lobbying firms from including expenditures related to these activities in their expense reports.

Exemptions from registration and reporting also apply to the following types of "activities:"

- Expenditures or transactions subject to reporting under the Pennsylvania Election Code, i.e., contributions to and expenditures by candidates and political committees; and

- Vendors whose efforts are directly related to responding to a publicly advertised invitation to bid or request for proposal for a small or emergency procurement.

G. Additional Requirements

In addition to requiring registration and reporting, the Lobbying Disclosure Act imposes a variety of restrictions and prohibitions upon the activities of principals, lobbyists and lobbying firms.[21]

- A lobbyist may not serve as a treasurer or other officer required to be included in a registration statement by a candidate political committee for a candidate seeking election to a statewide office, i.e., the Governor, Lieutenant Governor, State Treasurer, Auditor General, Supreme Court, Commonwealth Court or Superior Court, or to the State House or Senate;

[21] 65 Pa.C.S. § 13A07.

- A lobbyist may not charge or receive a fee or any other economic consideration "based on a contract, either written or oral, that any part of the fee or economic consideration will be converted into a contribution to a candidate for public office or a political committee;"

- A lobbyist, lobbying firm, or principal may not make a knowingly false statement intended to influence legislative or administrative action;

- A lobbyist, and the employer or partner of a lobbyist, may not represent any principal with respect to subject matter in which that principal's interests are directly adverse to the interests of another principal currently represented by the lobbyist, unless a lobbyist "reasonably believes the lobbyist will be able to provide competent and diligent representation to each affected principal," provides written notice to each affected principal "upon becoming aware of the conflict," and obtains informed consent by the involved principals waiving the conflict of interest;

- A lobbyist, lobbying firm, or principal (other than a vendor) may not agree to compensate or receive compensation that is in any way contingent upon any outcome of legislative or administrative action, except that contingent relationships are permissible for procurement of supplies, services, and construction under the Commonwealth Procurement Code;

- A lobbyist or principal may not instigate legislation to obtain employment in opposition to that legislation;

- A lobbyist or principal may not counsel a person to violate any of the requirements of the Lobbying Registration Act; engage in fraudulent conduct; commit a criminal offense "arising from lobbying;" or influence or attempt to influence a State official or employee by "coercion, bribery or threats of economic sanctions;"

- A lobbyist or principal may not attempt to influence a State official or employee by "the promise of financial support or the financing of opposition to the candidacy of the State official or employee in a future election;"

- A lobbyist or principal may not influence a State official or employee with respect to legislative or administrative action by making or facilitating a loan to a State official or employee; and

- A lobbyist or principal may not engage in conduct that brings the "practice of lobbying or the legislative or executive branches of state government into disrepute."

H. Sanctions and Audits

Generally, intentional violations of the Lobbying Disclosure Act are punishable as a misdemeanor of the third degree with fines up to $25,000 against a principal found guilty in addition to "any other penalties imposed under this chapter."[22] Third degree misdemeanors are punishable by imprisonment of up to one year.[23] In addition, administrative penalties of up to $2,000 per-offense may be imposed by the Ethics Commission and individuals may be banned from engaging in lobbying for economic consideration for up to a five-year period. In addition, the intentional failure to file a registration statement, or the filing of a knowingly false or incomplete report is punishable as a misdemeanor of the second degree.[24] Second degree misdemeanors or punishable by imprisonment of up to two years.[25]

The Ethics Commission provides advice and opinions to all parties affected by the Act that request such information. A person that acts in good faith based upon the written advice or opinion of the Commission may not be held liable for doing so.[26] The Department of State provides the forms used under the Act (i.e., registration and reporting forms) and has posted those forms on its website.[27] The Department will provide public access to completed registration statements, expense reports, and notices of termination on file and will post all registration and reporting statements on the internet, for a period of 4 years. On an annual basis, the Department will publish an annual report on Commonwealth lobbying activities and a list of principals' lobbyists, lobbying firms, and affiliated political action committees, along with a list of registered lobbyists, for each lobbying firm.[28]

Every 2 years, the Department of State is required to engage a certified public accountant to audit 3% of randomly selected registration and expense reports filed under the Act. The audit report and findings shall be confidential, unless the Commission is conducting an investigation of the audited registration or report.[29] The Commission may also initiate an investigation and may hold a hearing concerning an alleged violation of Act 134.[30]

The Department of State and the Ethics Commission are required to refer all intentional violations of the Lobbying Disclosure Act to the Attorney General for criminal prosecution, and to refer violations involving attorneys to the Disciplinary Board of the Supreme Court.[31] The Attorney General may also investigate and prosecute violations of the Act without referral and

[22] 65 Pa.C.S. § 13A09(e).
[23] 18 Pa.C.S. § 106(b)(8).
[24] 65 Pa.C.S. § 13A08(e).
[25] 18 Pa.C.S. § 106(b)(7).
[26] 65 Pa.C.S. § 13A08(a).
[27] 65 Pa.C.S. § 13A08(b).
[28] 65 Pa.C.S. § 13A08A(c) and (e).
[29] 65 Pa.C.S. § 13A08(f).
[30] 65 Pa.C.S. § 13A08(g).
[31] 65 Pa.C.S. §§ 13A07(d)(8) and 1309-A(h).

shall have exclusive jurisdiction to prosecute criminal violations.[32]

I. Sales and Use Taxes

The Pennsylvania Tax Reform Code imposes sales and use taxes upon the purchase or use of lobbying services.[33] Because the term "lobbying services" is defined in the manner provided in the 1961 Lobbying Registration and Regulation Act, rather than pursuant to current law, the Department of Revenue requires the collection and payment of sales and use tax only to the extent set forth in Statement of Policy issued by the Department which defines as taxable some, but not all types of expenditures that constitute lobbying under the current version of the Lobbying Disclosure Act.[34] In particular, pursuant to the Department's Statement of Policy, the Department does not impose sales and use tax upon:

- The review of proposed legislative or administrative actions;
- Communications with a client, other lobbyists, members of the trade associations, or private individuals;
- The drafting of testimony;
- Attending legislative or administrative agency meetings for the purposes of monitoring developments; and
- The purchase of services by charitable organizations, volunteer fire companies, religious organizations or nonprofit educational institutions, except to the extent used in an unrelated trade or business.

In addition, because sales and use tax is imposed only upon the "purchase price" of taxable services collected by a vendor from a "purchaser" or upon use of taxable services "purchased at retail," and the term "purchaser" excludes an employer who obtains services from its employees in exchange for wages or salaries, the tax on lobbying services does not include the value of "in-house" personnel and office expenses used for lobbying.[35]

Campaign Finance Act

A. Overview

Article XVI of the Pennsylvania Election Code, often referred to as the Campaign Finance Act, allows unlimited individual donations to candidates for election to state and local offices and to political committees, but prohibits corporate contributions or expenditures to be

[32] 65 Pa.C.S. § 13A09(h).
[33] 72 P.S. § 7201(w).
[34] 61 Pa. Code § 60.6.
[35] 72 P.S. §§ 7201(h), 7202(a) & (b).

made for the benefit of candidates or political committees, except for contributions and expenditures made by registered political committees that collect and disburse donations collected from individual donors. Corporations may, however, utilize their funds for political communications with officers, directors, and shareholders, and to facilitate the organization and management of affiliated political committees. Political committees must file periodic reports disclosing contributions received and expenditures made to support or oppose the election of candidates to state or local office. In addition, registered lobbyists must file reports of political contributions and expenditures in the same manner as political committees. Persons receiving non-bid contracts from state and local agencies, must also file annual reports regarding their political contributions with the Pennsylvania Department of State.

B. Corporate Contributions

Article XVI of the Pennsylvania Election Code, often referred to as the Campaign Finance Act, declares it to be unlawful for corporations and unincorporated associations, except corporations organized as a political committee, to make any "contributions" or "expenditures" on behalf of any candidate or for any "political purpose whatever," except in connection with ballot questions.[36] Criminal penalties for improper corporate contributions and expenditures include fines of between $1,000 to $10,000 and imprisonment for a term of one month to two years.[37] For purposes of these prohibitions, the term "unincorporated association" does not include a partnership or a limited liability company treated as a partnership for Federal tax purposes, provided that any contribution made by a partnership or LLC does not contain corporate funds.[38]

The definitions of the terms "contribution" and "expenditure" are so broad as to include virtually any type of activity undertaken in support of a political candidate for elective office. The term "contribution" is defined to include "any payment, gift, subscription, assessment, contract, payment for services, dues, loans, forbearance, advance or deposit of money or any valuable thing" provided to a candidate or political committee or for the benefit of a candidate to influence the outcome of an election. The term "expenditure" is defined to mean "the payment, distribution, loan or advancement of money or any valuable thing," "providing ... a service" or "compensat[ing] any person for services rendered" for the purpose of influencing the outcome of an election. As utilized in the definition of contributions and expenditures, the term "valuable thing" is defined to include "all securities, goods, facilities, equipment, supplies, personnel,

[36] 25 P.S. § 3253(a).
[37] 25 P.S. § 3543.
[38] The term "unincorporated associations" as used in the Campaign Finance Act is not defined. In these circumstances, the Statutory Construction Act defines the term "association . . . when used in any statute finally enacted before Dec. 7, 1994, [as] any form of unincorporated enterprise owned by two or more persons *other than a partnership or limited partnership*." 1 Pa.C.S. § 1991 (emphasis added). Because the Campaign Finance Law was enacted before Dec. 7, 1994, as used in the law, the term "unincorporated association" does not include partnerships and limited partnerships.

advertising, services, membership lists ... or other in-kind contributions."[39]

C. Permissible Use of Corporate Resources

Notwithstanding the general prohibition upon contributions and expenditures, the Campaign Finance Act allows direct private communications by a corporation to its stockholders and their families "on any subject" and allows the use of corporate funds for "the establishment, and administration by a corporation ... of a separate segregated fund ... created by voluntary individual contributions, including those solicited by the corporation," provided the fund is organized and registered as a political committee.[40]

The exception to the prohibition against corporate contributions and expenditures for "direct private communications" by a corporation is limited to communications with stockholders and their families, and the exception does not apply to corporate communications with employees, consultants and contractors. The restrictions on communications with employees, consultants, contractors and others, however, only apply to communications which expressly or by logical implication advocate the election or defeat of candidates, and do not apply to non-partisan get-out-the-vote, voter education, and issue advocacy communications not timed or intended to influence the outcome of elections.[41] Corporate communications soliciting contributions to separate segregated fund may also be directed to employees, consultants, contractors, and other individuals.

Corporate funds may be used to establish and maintain political committees, provided that (1) no administrative expenses are used for activities directly involved in influencing elections; (2) no administrative expenses are used to pay debts incurred by candidates or committees; (3) no payments are made to compensate an agent for services rendered to a committee or to a candidate; and (4) administrative expenses are not paid by another political committee. Regulations adopted by the Department of State further provide that "[c]orporations and unincorporated associations may expend their own funds to establish and administer funds for political purposes," provided that (1) "[e]ach political fund shall be separate and segregated from any other account of the corporation or unincorporated association;" (2) "[e]ach political fund shall be created by voluntary individual contributions including those solicited by the corporation or unincorporated association;" and (3) "[e]ach political fund shall be deemed to be a

[39] 25 P.S. § 3241(b) & (d).
[40] 25 P.S. § 3253(c).
[41] This occurs because both the terms "contribution" and "expenditure" are defined as activities intended to "influence the outcome of elections." In construing comparable provisions of the Federal Election Campaign Act which prohibit the use of corporate funds "in connection with" any federal election, the U.S. Supreme Court in *Fed. Election Com. v. Mass. Citizens for Life, Inc*., 479 U.S. 238, 249 (1986) held that to avoid an overly broad interpretation of the law that would infringe upon freedom of speech, the law must be interpreted as only barring expenditures or contributions that directly or by clearly implication constitute "express advocacy of the election of particular candidates."

political committee and subject to the same requirements as political committees."[42]

C. Reporting of Contributions and Expenditures

Contributions or expenditures in support of a candidate must be reported either by the candidate's political committee, by another political committee or by the individual as "independent" political expenditures.[43] Reports by persons making independent political expenditures must include the same information required of candidate or political committees. In addition, if an individual making any contributions or expenditures is registered as a lobbyist, the Campaign Finance Act requires registration by the lobbyist in the same manner as required for a political committee.[44]

Exceptions for the reporting of individual contributions or expenditures are provided for *"de minimus* items," including:[45]

- The value of personal services rendered on behalf of a political committee or candidate by a volunteer;
- The provision of food and beverages for consumption by the candidate or members of the candidate's immediate family;
- The use of real or personal property, including a community room or church used on a regular basis by members of a community for noncommercial purposes;
- The cost of invitations, food and beverages voluntarily provided by an individual to any candidate in rendering voluntary personal services on the individual's residential premises or in the church or community room to the extent that the cumulative value of the invitations, food and beverages does not exceed $250;
- The provision of food or beverage by a vendor other than a corporation or unincorporated association for use in any candidate's campaign at a charge less than the normal comparable charge, provided the charge is at least equal to the cost of the food or beverages and the cumulative value of such reduced charge does not exceed $250;
- Un-reimbursed travel expenses of up to $250; and
- The use of the personal residence, personal property or the business or office space of a volunteer, other than a corporation or unincorporated association, provided the cumulative value of the use does not exceed $250.

[42] 4 Pa.. Code § 178.4.
[43] 25 P.S. §§ 3244(a), 3246(a) & 3246(g).
[44] 25 P.S. § 3245.
[45] 25 P.S. § 3241(k).

D. Registration of Political Committees

Any "committee, club, association or other group of persons" which receives contributions for the purpose of influencing elections in an aggregate amount of $250 or more, must file a registration statement as a "political committee" with the Pennsylvania Department of State. A statement must be filed within 20 days after the date the committee receives such amount. A political committee not formed on behalf of or authorized by a specific candidate is known as a "political action committee." A political committee formed on behalf of or authorized by a specific candidate is knows as a "candidate committee." A political committee may not use any of its funds to make contributions to candidates or other political committees until it is registered.[46]

The registration statement for a political committee must include (1) the name, address and phone number of the committee; (2) the name address and phone number of the committee's treasurer and chairperson; (4) the names, addresses and relationship of other affiliated or connected organizations supporting the establishment and operation of the committee; (5) a list of offices of candidates the committee intends to support; (6) any ballot questions that the committee supports or opposes; (7) the bank, safety deposit boxes or other repositories used by the committee; and (8) the proposed period of operation of the committee (which may be indefinite). Changes to a political committee's registration must be reported within 30 days of the change.

E. Management of Political Committees

Every political committee must designate a treasurer and a chairperson who cannot be the same person. No contributions may be received or expenditures made if there is a vacancy in either office. A political committee may also designate an assistant treasurer or vice chairperson to assume the duties and responsibilities of the treasurer or chairperson in the event of a temporary or permanent vacancy in the office.

All money received and disbursement made must be through the committee treasurer. Any person receiving any contribution on behalf of the committee must turn such contributions over to the treasurer within 10 days of its receipt. The committee treasurer is responsible for the filing of all campaign finance reports. The treasurer is also personally responsible for late filing fees in the amount of $10 a day for the first 6 days and $20 a day thereafter up to a maximum of $250.

A political committee must keep records of the names and addresses of each person who makes a contribution over $10. Records must be retained by the committee for the period of three years following the date that the committee is required to file a report disclosing receipt of the contribution. All records must be retained by the treasurer for a period of three years

[46] Forms for the registration of a political committee in Pennsylvania and for filing campaign finance reports are available at, http://www.dos.state.pa.us/campaignfinance.

A political committee which receives contributions or makes expenditures or incurs liabilities exceeding the sum of $250 must file cumulative annual campaign finance reports. A political committee which receives contributions or makes expenditures or incurs liabilities in an amount not exceeding the sum of $250 shall file a sworn statement to that effect on the current version of Form DSEB-503. The reports must be submitted on the following schedule:

- A pre-election report must be filed not later than 2nd Friday or at least 15 days prior to an election for which the committee has made expenditures to influence the election or made contributions to another political committee.

- A post-election report must be filed 30 days after an election for which the committee has incurred expenditures or made contributions, or 10 days after a special election.

- An annual report must be filed on January 31st of each year for the prior calendar year.

Federally registered PACs must also register in Pennsylvania, but the Department of State allows federally registered committees to file expense reports using portions of reports filed with Federal Election Commission Report that identify only Pennsylvania contributions and expenditures and provide a summary of the committee's other activities.

Whenever a political committee makes expenditures for the purpose of financing communications expressly advocating the election or defeat of a candidate or a position on ballot questions through a broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or other type of general public political advertising, the communication, a disclosure statement must accompany the communication. If authorized by the candidate, his authorized political committee or their agents, the communication must clearly and conspicuously state that the communication has been authorized. If not authorized by a candidate, his authorized political committee or their agents, the communication must clearly and conspicuously state the name of the PAC that made or financed the expenditure for the communication, and the name of any affiliated or connected organization. These requirements do not apply to bumper stickers, pins, buttons, pens and similar small items upon which the statement cannot be conveniently printed.

F. Nonbid Contractors

The Campaign Finance Law also requires any business entity that has been awarded non-bid contracts by the state or any political subdivision during the proceeding calendar year must file a report by February 15th of each year with the Secretary of Commonwealth containing an itemized list of all political contributions known to the business entity by virtue of the knowledge of each officer, director, associate, partner, limited partner, or individual owner to have been made by any officer, director, associate, partner, limited, partner, individual owner, employee, or members of the immediate families. The report must disclose contributions made

by (1) any officer, director, associate, partner, limited partner or individual owner or members of their immediate family when the contributions exceed an aggregate of $1,000 by any individual during the preceding year; or (2) any employee or members of his immediate family whose political contribution exceeded $1,000 during the preceding year. For purposes of this subsection, "immediate family" means a person's spouse and any un-emancipated child.[47]

Upon receipt of these reports, the Secretary of the Commonwealth within 60 days is required to publish a complete itemized list of all contributions reported. The penalties for failing to file required reports include a late filing fee of up to $250 and potential criminal misdemeanor prosecution punishable by imprisonment of up to one year.[48]

These reporting requirements are triggered if a "business entity" is awarded a "non-bid" contract during the preceding calendar year by the Commonwealth or a political division. The term "business entity" is construed narrowly to mean only the actual business association entering into a non-bid contract and does not include parents or subsidiaries.[49] The term "non-bid contract," by way of contrast is construed broadly to apply to all "contracts let by virtue of some selection process or exercise of governmental discretion."[50] In particular, as the terms are utilized in the Pennsylvania Procurement Code, non-bid contracts include contracts awarded through competitive proposals or RFPs.[51] The term "Commonwealth" is defined to mean all executive and independent agencies of state government, excluding interstate compact commissions, and the term "political subdivision" is defined to mean "any county, city, borough, incorporated town, township, school district, vocational school district and county institutional district."[52]

Contributions required to be included in non-bid contractor reports include those made in relation to the election of candidates to "all offices, Federal or State, for which votes are cast by Pennsylvania electors" and to any "donation of money or other valuable thing to a candidate for nomination or election, or to a political committee."[53]

Public Official and Employee Ethics Act

A. Overview

[47] 25 P.S. § 3260a.
[48] 25 P.S. §§ 3252, 3550.
[49] 4 Pa.Code § 174.1.
[50] 4 Pa.Code 174.2.
[51] *See* 62 Pa.C.S. §§ 103, 512 & 513 which draw distinctions between a "bidder," *i.e.*, "a person that submits a bid in response to an invitation for bids," versus an "offeror," *i.e.*, "a person that submits a proposal in response to a request for proposals," and between "competitive sealed bidding" which involves the submission of "bids." versus the use of "competitive sealed proposals" involving the submission of "proposals" in response to RFPs.
[52] 4 Pa.Code § 174.3.
[53] 4 Pa.Code § 174.6.

The Public Official and Employee Ethics Act, commonly referred to as the "Ethics Act," establishes the Commonwealth Ethics Commission and prescribes basic rules of conduct for public officials,[54] employees[55] and candidates for public office.

B. Restricted Activities

The Ethics Act establishes categories of restricted activities:

- Public officials and public employees are prohibited engaging in any conduct that constitutes a "conflict of interest," *i.e.*, using their offices or confidential information received through holding office to obtain financial gain for themselves, members of their immediate families or businesses with which they are associated. The prohibition does not apply to actions having "a de minimis economic impact," *i.e.*, "insignificant economic consequences."[56]

- Whenever a matter comes before a governmental body for which a public official has a conflict of interest, the official is required to abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of the conflict in a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken.[57]

- No person may offer or give to a public official, employee or a candidate for public office or a member of their immediate families or businesses with which they are associated, "anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment based on [any understanding] that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby." The Act also prohibits public officials, employees and candidates from soliciting or accepting any such gifts, loans, contributions or other benefits.[58]

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[54] Public officials are individuals elected or appointed to serve in the executive, legislative or judicial branch of the state government or any political subdivision, other than members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense or to otherwise exercise the power of the State or any political subdivision. 65 Pa.C.S. § 1102.

[55] Public employees are individuals employed by the state or a political subdivision responsible for taking or recommending non-ministerial official action regarding contracting or procurement, the administration or monitoring of grants or subsidies, planning or zoning, inspections, licensing, regulation, or auditing, or any other activity where the official action has more than a de-minimis economic impact. 65 Pa.C.S. § 1102.

[56] 65 Pa.C.S. §§ 1102, 1103(a).

[57] 65 Pa.C.S. § 1102(h). Where necessary to retain a quorum needed for public action, an exception to these restrictions is provided.

[58] 65 Pa.C.S. § 1103(b) & (c).

- The payment and acceptance of an honorarium by any public officials or public employee is prohibited. An honorarium is payment made in recognition of published works, appearances, speeches and presentations and which is not intended as consideration for the value of nonpublic professional or occupational services except for "tokens presented or provided which are of de minimis economic impact."[59]

- The solicitation and acceptance of severance payments contingent upon the acceptance of public office or employment is prohibited.[60]

- Public officials, public employees, spouses and children of public officials and employees and businesses with which the former are associated are only permitted to enter into contracts or subcontracts with governmental bodies with which officials or employees are associated valued at $500 or more if the contracts are awarded through an open and competitive process which includes prior public notice and the subsequent disclosure of all proposals considered and contracts awarded. Officials and employees awarded such contracts may also not have any supervisory or other overall responsibility with respect to the administration of such contracts.[61]

- Former public officials and employees are prohibited from representing persons before the governmental body which they were associated for one year after leaving the governmental body.[62]

- No person may use for any commercial purpose information copied from statements of financial interests filed by public officials or employees pursuant to the Ethics Act or from lists compiled from such statements.[63]

- Former "executive-level state employees" may not represent businesses which they participated in recruiting to the state, or in inducing the opening of new facilities or the expansion of existing facilities through grants or loans for a period of two years.[64]

C. Financial Disclosure Statements

By May 1st of each year for the prior calendar year public officials and employees must

[59] 65 Pa.C.S. §§ 1102, 1103(d).
[60] 65 Pa.C.S. § 1103(e).
[61] 65 Pa.C.S. §§ 1102, 1103(f). These restrictions do not apply to contracts relating to payments made to public officials or employees as wages or salaries, expense reimbursement, retirement or other benefits, tenure or other matters in consideration of his current public employment or service.
[62] 65 Pa.C.S. § 1103(g).
[63] 65 Pa.C.S. § 1103(h).
[64] 65 Pa.C.S. § 1103(i).

file annual statements of financial interest.[65] This requirement includes full or part-time solicitors for political subdivisions. Candidates also must file statements of financial interest prior to appearing on ballots.[66] Nominees for appointment to public office must file statements ten days prior to any vote being taken regarding an appointment to public office.[67]

The statements of financial interest must include:[68]

- The identification of any direct or indirect interest in real estate which is sold or leased to the Commonwealth.
- The name and address of any creditor whom the public official or employee owes an excess of $6,500 and the applicable interest rate, except for intra-family obligations and residential mortgage loans.
- The name and address of any direct or indirect source of income totaling in the aggregate $1,300 or more, except for confidential information that may not be divulged pursuant to professional codes of ethics or common law privileges.
- The name and address of the source and the amount of any gift or gifts valued in the aggregate at $250 or more and the circumstances surrounding each gift. Gifts from family members and friends are excluded from this reporting requirement "when the circumstances make it clear that the motivation for the action was a personal or family relationship." However, a registered lobbyist or an employee of a registered lobbyist is specifically excluded from the definition of “friend.”
- The name and address of the source and amount of payments or reimbursements for actual expenses for transportation and lodging or hospitality received in connection with the public office or employment when such actual expenses for transportation, lodging or hospitality exceed $650 for a single occurrence.
- Any office, directorship or employment of any nature in any business entity.
- Any financial interest in any legal entity engaged in business for profit.
- The identity of a financial interest in a business which the person filing the report has been associated with in the preceding year, but which has been transferred to a member of the reporting person's immediately family.

The Ethics Commission is authorized biennially to increase the applicable thresholds for

[65] 65 Pa.C.S. § 1104(a).
[66] 65 P.S. §404(b).
[67] 65 Pa.C.S. § 1104(c). Regulations interpreting the requirement to file a statement of financial interest are codified at 5 Pa. Code Ch. 15.
[68] 65 Pa.C.S. § 1105(b)(3) – (10); 51 Pa. Code §§ 17.2 – 17.9.

reporting financial information in annual statements, but has not done so since the establishment by law of the current thresholds in 1998. The Ethics Commission also is required to adopt a code of conduct to govern the activities and ethical standards of its members.[69]

D. Sanctions

The failure to make proper or timely filings of financial statements may be punishable as a misdemeanor subject to fines of up to $1,000, imprisonment of up to one year, or both. In addition to other penalties, persons obtaining financial gains in violation of the Ethics Law are also required to pay three times the amount of any such gains to the State Treasury.[70]

The Ethics Act also prohibits the disclosure of any information relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which is before the Commission, except for final orders of the Commission, hearing notices, requests for legal advice, the filing of appeals, communications with the Commission and its staff and law enforcement agencies, or disclosures made by a person who is the subject of a complaint, inquiry, hearing, investigation or petition.[71] Violations of these confidentiality requirements constitute misdemeanors subject to fines of up to $1,000, and imprisonment of to one year, or both.[72] A recent preliminary injunction issued by the Middle District Court, however, in *Stilp v. Contino* has stayed the enforcement of these provisions as an excess infringement upon the freedom of speech.[73]

The Ethics Commission is authorized to conduct investigations of persons filing "frivolous" complaints, filing complaints without probable cause or publicly disclosing or causing the disclosure that complaints have been filed.[74] If the Commission determines that complaints are frivolous or filed without probable cause, the Commission may award damages to an injured party for defamation, expenses and attorneys fees, pecuniary losses, emotional distress and punitive damages.[75] Retaliation by public entities against public officials or employees filing complaints before the Ethics Commission is prohibited.[76] Immunity from prosecution is provided to public officials of political subdivisions who act in good faith reliance on the written, non-confidential opinions of municipal solicitors.[77]

Violations of the law are subject to penalties of up to $10,000 per offense or five year

[69] 65 Pa.C.S. §§ 11-5(d), 1106(j).
[70] 65 Pa.C.S. § 1109.
[71] 65 Pa.C.S. § 1108(k).
[72] 65 Pa.C.S. § 1109(e).
[73] *Stilp v. Contino*, 629 F.Supp. 449 (M.D. Pa. 2000).
[74] 65 Pa.C.S. § 1108(1).
[75] 65 Pa.C.S. § 1110(d).
[76] 65 Pa.C.S. § 1108(j).
[77] 65 Pa.C.S. § 1109(g).

imprisonment, or both, and treble civil damages payable to the State Treasury.[78] The decisions of courts reviewing alleged violations of the Ethics Act have consistently concluded that only actions which confer private pecuniary benefits not authorized by law upon public officials or employees or members of their immediately families are contrary to law, as opposed to actions which confer benefits upon "the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business."

In *Pulce v. Pa. State Ethics Comm'n*, 713 A.2d 161 (Pa. Cmwlth. 1998), petition for allowance of appeal denied, 557 Pa. 642; 732 A.2d 1211 (1998), the Commonwealth Court considered whether a member of a school board violated the Ethics Act by participating in a personnel committee meeting which approved the creation of a new position of Assistant Principal/Athletic Director and subsequently voting to approve the hiring of his son-in-law in the new position at a salary higher than was previously paid by the school district to his son-in-law. Stressing that violations of the Ethics Act can be found to occur only when "clear and convincing proof" exists of a violation of the law, the Court held that the school board member did not violate the Ethics Act because neither the creation of new position, to which any qualified member of the public could apply, nor the payment of a salary as authorized by law, conferred a private pecuniary benefit upon the board member's son-in-law. 713 A.2d at 162, 164-65. The Court held that the Ethics Act declares to be unlawful only "any effort to realize personal financial gain through public office other than compensation provided by law … [and] was not intended to be concerned even with immediate family members who receive only compensation provided by law." 713 A.2d at 165.

Likewise, in *Kraines v. Pa. State Ethics Comm'n*, 805 A.2d 677 (Pa. Cmwlth. 2002), petition for allowance of appeal denied, 572 Pa. 761, 818 A.2d 506 (2003), the Commonwealth Court considered whether a County Controller violated the Ethics Act by approving payments to her husband for performing autopsy's for the county at rates in excess of those stipulated in contracts between the county and its medical examiners. The Court reversed a finding by the State Ethics Commission that a violation of the Ethics Law had occurred because it concluded that the County Controller's husband was paid the same amount as other medical examiners performing autopsy's on behalf of the county and her actions in approving payments to her husband and other medical examiners benefited a "subclass" of the "general public" consisting of the members of an "occupation," rather than primarily conferring a private pecuniary benefit upon the County Controller. The Court held that, "The Ethics Act specifically prohibits a public official from using the authority of her office in order to obtain a private pecuniary benefit for a member of her immediate family, including spouse … [but] does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated." Instead, "In order for a public official to

[78] 65 Pa.C.S. § 1109.

violate § 1103(a) [of the Ethics Law], … the public official must 'use' his public office to obtain financial gain." 805 A.2d at 681.

Most recently, in *Keller v. State Ethics Comm'n*, 860 A.2d 659 (Pa. Cmwlth. 2004), the Commonwealth Court held that a borough mayor violated the Ethics Act by accepting more than $16,000 in fees to preside over weddings, even thought the fees were subsequently donated by the mayor to charity. The Court rejected the claims of the mayor that he had accepted the gratuities in constructive trust for the charities to which the fees were donated because the mayor (1) accepted compensation for official duties without statutory authority in addition to his salary as provided by law; (2) deposited the proceeds into his private bank account over which he exercised exclusive control; and (3) used the account to make charitable donations in his own name and for his personal benefit. In rejecting claims that the mayor received only de minimis economic benefit from the fees collected, the Court noted that "if [the mayor] had deposited this amount with the Borough, the Borough's treasury would have been enriched by $16,000." 860 A.2d at 665.

State Adverse Interest Act

The State Adverse Interest Act governs the relationship between state agencies, advisors, consultants and employees with respect to the contractual obligations of state agencies.[79]

Any "state advisor" or "state consultant" who has recommended to a state agency either the making of a contract, or "a course of action of which the making of a contract is an expressed or implied part," is prohibited from "having an adverse interest" in the contract. "Having and adverse interest" is defined as being a party to the contract or being a stockholder, partner, member, agent, representative or employee of a party to a contract.[80]

State employees are prohibited from influencing, supervising or dealing with any contracts in which they have adverse interests or from obtaining adverse interests in contracts with state agencies. Persons having adverse interests in contracts with state agencies may not become employees of the agencies until the adverse interests have been wholly divested.[81]

The State Adverse Interest Act also prohibits state employees from representing any other person "upon any matter pending before or involving any state agency" for remuneration either directly or indirectly. The term "state employee" is defined as "an appointed officer or employee in the service of a state agency who receives a salary or wage for such service."[82]

Violations of the law are subject to fines of up to $1,000, imprisonment of up to one year,

[79] 71 P.S. § 776.1-776.8)
[80] 71 P.S. §§ 775.3, 776.2(4).
[81] 71 P.S. § 776.4-776.6.
[82] 71 P.S. §§ 776.2(10), 776.7.

and loss office or employment with state agencies.[83]

Legislative Code of Ethics

The Legislative Code of Ethics supplements the Public Officials Ethics Law by establishing standards for members and employees of the General Assembly.[84] Where the Legislative Code of Ethics conflicts with the provisions of the Public Officials Ethics Law, the provisions of the Public Officials Ethics Law controls.[85]

The Legislative Code of Ethics prohibits members and employees of the General Assembly from:

- Accepting employment or engaging in any business or professional activity which requires the disclosure of confidential information or otherwise disclosing confidential information "gained by reason of his official duties."
- Using or attempting to use the member's or employee's official position to secure "unwarranted privileges or exemptions for himself or others."
- Knowingly soliciting, accepting or receiving any gift or compensation "which is intended to influence the performance of official duties or. . . for doing any act intended to influence the passage or defeat of legislation."
- Receiving any compensation for consultations the subject matter of which relates to the responsibilities, programs or the operations of the General Assembly or draws upon official data or ideas which have not become part of the body of public information.
- Participating as a principal in any transactions with the Commonwealth in which the member or employee "as a substantial personal economic interest."
- Receiving any compensation or entering into any agreement for compensation for services for assisting persons in transactions involving the Commonwealth, unless a written disclosure has been filed with the Chief Clerk of the House of Representatives or the Secretary of the Senate.

The prohibitions contained in the Legislative Code of Ethics do not apply to the "receipt of bona fide reimbursement, to the extent permitted by law, for actual expenses for travel and such other necessary subsistence. . . for which no Commonwealth payment or reimbursement is

[83] 71 P.S. §776.8.
[84] 46 P.S. §143.1-143.8
[85] 65 Pa.C.S. § 1112.

made."[86]

The Act also does not apply to the acceptance of "awards for meritorious public contribution given public service or civic organizations," sharing compensation from low-bid contracts, campaign contributions, and receipt of compensation under certain circumstances for legal services.[87]

Violations of the Legislative Code of Ethics are subject to fines of up to $1,000, imprisonment of up to two years, or both.[88] In addition, a state agency may cancel or rescind contracts without further liability to the agency if a violation of the Legislative Code of Conduct has "influenced the making" of a contract, provide that "rescission shall be limited so as not to affect adversely the interests of innocent third parties." The Attorney General may also initiate civil proceedings to recover the amount of any "economic advantage" gained by a member or former member of the General Assembly due to violations of the Act. Contracts may not be canceled or rescinded, or civil proceedings initiated, however, before an "affirmative finding of the appropriate House or Senate Committee on Ethics that a violation has occurred."[89]

Code of Conduct for Appointed Officials and State Employees

Since 1974, Pennsylvania Governors, by Executive Order, have established Codes of Conduct and Financial Disclosure Requirements for appointed officials and state employees.[90] Under certain circumstances, Executive Orders may have the force and effect of law. *See Shapp v. Butera*, 348 A.2d 910 (1975).

Generally, the Code of Conduct restates provisions of the Ethics Law and Adverse Interest Act with respect to adverse pecuniary interest, representation on behalf of private parties before the Commonwealth, and the misuse of confidential information. The Code, however, supplements provisions of statutory law by establishing detailed rules with respect to gifts and favors, supplemental employment, honoraria and political activity.[91]

The Code of Conduct prohibits employees, appointees or officials of the Executive Branch from soliciting or accepting for personal use any "gift, gratuity, favor, entertainment, loan or other thing of monetary value" from any person who:

- Is seeking to obtain business from or has financial relationships with the Commonwealth;
- Conducts operations or activities that are regulated by the Commonwealth;

[86] 46 P.S. § 143.5(e)(1).
[87] 46 P.S. § 143.5(e)(2)-(7).
[88] 46 P.S. § 143.6.
[89] 46 P.S. § 143.7.
[90] The current Code of Conduct is codified at *4 Pa. Code* §7.151-7.164.
[91] 25 Pa. Code §7.153.

- Is engaged either as a principal or attorney in proceedings before the Commonwealth or in court proceedings to which the Commonwealth is an adverse party; or

- Has interests that may be substantially affected by the performance or nonperformance of an official duty.

Limited exceptions to the blanket prohibition against the acceptance of gifts and favors occur only in the following instances:

- The solicitation or acceptance of gifts from family members;

- The acceptance of food and refreshment of "nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting;"

- The acceptance of loans from banks or other financial institutions "on customary terms of finance for proper and usual activities;"

- Acceptance of unsolicited advertising or promotional material of "nominal intrinsic value;"

- The receipt of bona fide reimbursement for actual expenses in travel and other necessary subsistence;

- Participation in the affairs or acceptance of an award for a meritorious public contribution or achievement;

- Voluntary gifts of nominal value or donations in nominal amounts made on special occasions such as marriage, illness or retirement; and

- Plaques, mementos or gifts of nominal value offered as a token of esteem or appreciation.

Commonwealth officials, appointees and employees may not accept reimbursement for "excessive personal living expenses, gifts or other person benefits" and any reimbursement of bona fide actual expenses must be made to the Commonwealth rather than to the employee directly.[92]

Section 7.156 of the Code prohibits employees, appointees or officials of the Executive Branch from engaging in or accepting supplemental private employment without the prior approval of the head of the agency. Supplemental employment may be undertaken only when not in conflict with the conditions of the public employment and when not undertaken "in a

[92] 25 Pa. Code § 7.153(5). *See also*, Management Directive 230.10.

manner inconsistent with the impartial administration of ... official duties."

The Code of Conduct entirely prohibits employees, appointees, and officials of the Executive Branch from accepting honoraria, speaking fees, consulting fees or other valuable consideration for ideas or data derived from official duties. Commonwealth officials and employees may, however, designate nonprofit charitable organizations to be the recipients of honoraria or speaking fees. The prohibition against the receipt of honoraria does not apply to individuals appointed to serve on boards and commissions provided such individuals do not accept honoraria from groups that are regulated by the boards or commissions.[93]

Employees, appointees, and officials of the Executive Branch are prohibited from engaging in political activity during specified working hours or at any other time which may interfere with the ability of the official or employee to effectively carry out their duty. Further, employees, appointees and officials are prohibited from coercing another person in government service or employment to contribute time, money or services to a political candidate or campaign.[94]

The financial disclosure requirements of the Governor's Code of Conduct exceed in detail the reporting requirements of the Public Officials Ethics Law, but generally do not expand the scope of reporting required by the Ethics Act.[95] The only substantive area in which the Code of Conduct requires disclosure of information not covered by the Ethics Law involves reporting of severance arrangements with prior employers of public officials and employees.

Commonwealth Procurement Code and Procurement Management Directives

A. Overview

The Commonwealth Procurement Code declares it to be a "breach of public trust" for any state employee "to attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the duties" and requires state employees to "avoid any conflict of interest or improper use of confidential information." It is also a breach of trust for a Commonwealth employee to require that any bond necessary to contract with the Commonwealth be furnished by a particular surety company or through a particular agent or broker.[96] Likewise, any effort by persons who are not state employees to influence state employee to breach the standards of ethical conduct set forth in this section also constitutes a breach of ethical standards. When any person has reason to believe that any breach of these ethical standards has occurred, a report is required to be filed providing all relevant facts to the

[93] 4 Pa. Code § 7.157.
[94] 4 Pa. Code § 7.158.
[95] 4 Pa. Code § 7.161-7.164.
[96] 26 Pa.C.S. § 2311.

State Ethics Commission and to the Attorney General.[97]

The Commonwealth Procurement Code requires all contracts for the construction, alteration or repair of any public building or public work to contain provisions prohibiting discrimination by any contractor, subcontractor or any person acting on behalf of the contractor or subcontractor in the hiring of employees by reason of gender, race, creed or color or to discriminate or intimidate any employee hired on such a basis. Contracts may be canceled or terminated, and all moneys due under contacts may be forfeited for a violation of these antidiscrimination requirements.[98]

The Commonwealth Procurement Code also declares it to be unlawful for any person "to conspire, collude or combine with another in order to commit or attempt to commit bid-rigging involving a contract or subcontract for the purchase of equipment, goods, services or materials or for construction or repair. Bid rigging consists of concerted activity of two or more persons to determine in advance the winning bidder of a contract, including agreements to (1) sell items or services at the same price; (2) submit identical bids; (3) rotate bids; (4) share profits with a contractor who does not submit the low bid; (5) submit prearranged bids, agreed-upon higher or lower bids or other complementary bids; (6) set up territories to restrict competition; or (7) not to submit bids. Bid rigging is a felony of the third degree punishable by fines of up to $1,000,000 for business associations, $50,000 for an individual, and imprisonment for up to three years. In lieu of criminal prosecution, the Attorney General may bring an action for a civil penalties of up to $100,000; may initiate a civil action to recover tremble damages, costs and attorneys fees; and may issue debarment orders effective for up to five years. All persons responding to invitations to bid may be required to submit non-collusion affidavits confirming their compliance with these requirements.[99]

To implement the Commonwealth Procurement Code, the Department of General Services may promulgate regulations and establish policies governing the procurement, management, control and disposal of any and all supplies, services and construction to be procured by Commonwealth agencies.[100] Pursuant to this grant of authority, the Secretary of General Services and the Secretary of Budget have published directives and manuals governing the award and administration of Commonwealth contracts.[101] While these policy pronouncements do not have the force and effect of law or regulations, they establish important policies applicable to persons doing business with state government agencies. *Cutler v. State Civil Service*, 924 A.2d 706, 711 (Pa. Cmwlth. 2007).

B. Contractor Integrity

[97] 62 Pa.C.S. §§ 2302, 2303, 2311.
[98] 62 Pa.C.S. § 3701.
[99] 62 Pa.C.S. §§ 4501 – 4507.
[100] 62 Pa.C.S. § 311.
[101] 4 Pa. Code § 1.1.

Management Directive 215.8 (December 20, 1991) establishes standard Contractor Integrity Provisions which must appear in all contracts between private parties and state agencies within the Governor's jurisdiction. The Contractor Integrity Provisions contain the following provisions:

- The contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirement that govern contracting with the Commonwealth.

- The contractor shall not disclose to others any confidential information gained by virtue of this agreement.

- The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

- The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

- Except with the consent of the Commonwealth, neither the contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

- Except with the consent of the Commonwealth, the contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

- The contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

- The contractor, by execution of any agreement with the Commonwealth and by the submission of any bills or invoices for payment pursuant thereto, must certify and represent that it has not violated any of contractor integrity program requirements.

- A contractor, upon the inquiry or request of the Inspector General or an agents or representatives, must provide any information deemed relevant by the Inspector

General to the contractor's integrity or responsibility. Such information may include the contractor's business or financial records.

- For violations of any of any contactor integrity program requirements, the Commonwealth may terminate any agreement with the contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the Commonwealth.

C. Contractor Responsibility

Management Directive 215.9 (April 16, 1999) establishes a "Contractor Responsibility Program."[102] The Directive requires any agency awarding a contract for services or supplies of $10,000 or more to make a determination that a contractor is "responsible" before awarding the contract or approving a subcontract included within the award of a contract. Any subcontractor which was not identified prior to the award of the contract, must be certified by the contractor to be not currently suspended or disbarred by the Commonwealth or federal government and current in the payment of state taxes.

The Directive also establishes suspension and debarment of contractors which automatically prohibits an agency from awarding contracts to such contractor. The factors to be considered in determining whether a contractor is responsible include judgment, skill, promptness, workmanship, honesty, financial standing, reputation, experience, resources, facilities, the past history of the contractor's compliance with plan and specifications, adherence to state and federal laws and regulations, and the capacity and ability to do the work in a timely and efficient manner. The following are reasons for suspending or debarring a contractor if substantial evidence of the alleged conduct is available:

- Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

- Commission of fraud or a criminal offense or improper conduct in association with obtaining, attempting to obtain, or performing a public contract or subcontract, by a contractor, any affiliate, officer, employee or other individual, or the acquiescence in, or the acceptance of benefits derived from such activities.

- Violation of federal or state anti-trust statutes.

- Violation of any state or federal law regulating campaign contributions.

- Violation of any state or federal environmental law.

[102] 4 Pa. Code §§ 7.501 – 7.504.

- Violation of any state or federal law regulating hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages; or child labor violations.
- Violation of the Pennsylvania Worker's Compensation Act.
- Violation of any state or federal law prohibiting discrimination in employment.
- Debarment by any other state or by any agency or department of the federal government or by any other state.
- Three or more occurrences where a contractor has been declared ineligible for a contract.
- Unsatisfactory performance of a contract.
- Providing false or misleading information as part of an investigation, audit, program review, prequalification statement or certification, contract bid or proposal, contractor applications or claims for payment.
- Other acts or omissions indicating a lack of skill, ability, capability, quality control, business integrity, or business honesty that serious and directly affects the present responsibility of a contractor.

Management Directive 215.09 also establishes contractor responsibility provisions that must be included in all contracts of any amount entered into by agencies under the Governor's jurisdiction except contracts with permittees, licensees, or any agency, instrumentality, or political subdivision of the Commonwealth. The contractor responsibility provisions are:

- A contractor must certify for itself, and all of its subcontractors, that it is nor currently under suspension or debarment by the Commonwealth, any other state, or the federal government or provide a written explanation of why such a certification cannot be made.
- A contractor must certify that is has no "tax liabilities" (*i.e.*, a contractor is not current in the payment of any federal, state, or local taxes, or the filing of returns or reports for such taxes) or other Commonwealth obligations.
- The contractor must agree that if any time during the term of a contract "tax liabilities" or Commonwealth obligations arise, or the contractor, or any of its subcontractors are suspended or debarred by any governmental entity, notice shall be give the Commonwealth within 15 days.

- A contactor must acknowledge that it failure to notify the Commonwealth of the suspension or debarment of itself or any of its subcontractors constitutes an event of default.

- A contractor must agree to be responsible for reimbursing the Commonwealth for all necessary and reasonable costs and expenses incurred by the Office of the Inspector General relating to any investigation of the contractor's compliance the requirements of the Contractor Responsibility Program or any other agreement between the contactor and the Commonwealth.

D. Contractor Compliance Program

Management Directive 215.16 (June 30, 1999) adopts a "Contract Compliance Program which requires all contracts and subcontracts to contain nondiscrimination and sexual harassment clauses and which authorizes the Bureau of Contract Administration and Business Development of the Department of General Services to conduct routine reviews of contractors to ensure compliance with these requirements and investigations of suspected violations. The Commonwealth's mandatory nondiscrimination and sexual harassment clause requires contractors to agree that:

- In the hiring of employees, the contractor, its subcontractors, or any person acting on behalf of the contractor or its subcontractors, will not discriminate against any person qualified and available to perform work by reason of gender, race, creed or color.

- Neither the contractor and its subcontractors will in any manner discriminate against or intimidate any employee of account of gender, race, creed or color.

- Both contractors and subcontractors will establish and maintain written sexual harassment policies and inform employees of such policies in a notice stating that sexual harassment will not be tolerated and employees who practice it will be disciplined.

- Contractors shall not discriminate against qualified subcontractors or suppliers by reason of gender, race, creed or color.

- The contractor and each subcontractor will furnish "all necessary employment documents and records" and permit access to their books and records to the Bureau of Contract Administration and Business Development for purposes of investigation and to ascertain compliance with nondiscrimination and sexual harassment requirements, and if records are not available containing the information requested, will furnish such information on reporting forms supplied by the contracting agency or the Bureau.

- The Commonwealth may cancel or terminate a contract, and all money due or to become due under a contract, may be forfeited for a violation of nondiscrimination and sexual harassment requirements, and debar or suspend a contractor.

To document compliance with nondiscrimination and sexual harassment requirements, or to conduct investigations, the Bureau of Contract Administration and Business Development is authorized to for any job category to request information regarding (1) the percentage of protected categories of individuals in the "labor area" surrounding a facility; (2) the percentage or protected categories of individuals in the work force of a contractor as compared to the total work force in the "immediate labor area;" (3) the percentage of the protected categories of individuals having requisite skills in the immediate labor area and in the "reasonable recruitment area;" (4) the percentage of the protected categories of those promotable or transferable within the facility; (5) the percentage of protected categories among those provided training in requisite skills by a contractor; (6) the degree of training which a contractor is "reasonably able to undertake" in order to make all job classifications available to otherwise qualified minorities or women; and (7) the degree to which good faith efforts have been made to hire and promote within protected categories. Both the terms "labor area" and "recruitment area" are defined as "the local area within which the contractor can reasonably expect people to commute."

Management Directive 215.16 provides that proportional representation of protected categories of employees is not required, but that "good faith efforts implementing nondiscrimination policies, taking into account the effects of past discrimination," are required. To the extent a contractor has a Equal Opportunity Plan approved by a state or federal agency or issued pursuant to a court order, the Bureau of Contract Administration and Business Development may accept the plan as evidence of compliance with the Management Directive, provided a contractor has undertaken "good faith efforts to make the program work."

Other Laws and Regulations

In addition to the laws and regulations outlined above, there are numerous other laws, regulations and directives which establish rules relevant to government ethics in specific circumstances. These include the various laws governing political subdivisions, the Crimes Code, public bidding laws and regulations, anti bid-rigging laws and an extensive body of Management Directives governing the operations of state government. Of particular note is a recently enacted Code of Conduct for persons providing services to municipal pension funds; ordinances adopted by a number of municipalities, including the City of Philadelphia; and special requirements relevant to persons obtaining gaming and liquor licenses and hauling solid waste. The Ethics Act expressly provides that any governmental body may adopt requirements to supplement its requirements of the Act, provided that no such requirements shall "less restrictive" than the Ethics Act.[103]

[103] 65 Pa.C.S. § 1111.

Outline of Requirements for the Organization and Management of Political Committees Under Federal and Pennsylvania Law

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December 9, 2009

I. Federal Election Commission Requirements

A. Establishing a PAC

1. Registration. A Registration Form (FEC Form 1) must be filed within 10 days of the date of establishment of a PAC (technically a "separately segregated fund"). A PAC is deemed to be established on the date of a vote by a board of directors or other comparable governing body to create the PAC; the selection of officers to administer the PAC, or the payment of any operating expenses for the PAC. PACs which raise or spend more than $50,000 in a calendar year must file electronically.[1]

2. Changes to Registration Information. Whenever any of the information disclosed on the FEC Form 1 changes, notice of the changes must be provided to the FEC within 10 days. For electronically registered PACs, notice must be provided by filing an amended FEC Form 1. Otherwise notice may be provided by letter.

3. Appointment of Treasurer. A treasurer must be appointed for the PAC within 10 days of its establishment and identified on the FEC Form 1. A PAC may not raise or expend any funds until a treasurer is appointed, or if there is a vacancy in the office of Treasurer. The FEC recommends that an assistant treasurer be appointed who may assume the treasurer's duties if the treasurer is not available. The treasurer (or assistant) is responsible for filing complete, accurate and timely reports; signing reports; depositing the receipts of the committee; authorizing expenditures; conducting monitoring to ensure compliance with federal law and regulations; and keeping required records.

4. Designation of Record Custodian. A record custodian must be designated and identified on the FEC Form 1 who will be in possession of the PAC's books and records. The custodian may be the treasurer or assistant treasurer, but may be another person. PACs must

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[1] Forms to establish and file campaign finance reports as required by the FEC are available at **http://www.fec.gov/info/forms.shtml**.

keep reports and accounts of their financial activities for at least three years. The appointment of a record custodian does not relieve a treasurer or assistant treasure of the obligation for ensuring that records are properly maintained.

5. Indemnities and Insurance. Because the treasurer and assistant treasurer may be personally responsible for compliance with federal law and regulations, a organization establishing a PAC should consider whether appropriate measures are in effect providing for the defense and (where appropriate) the indemnification of the treasurer or assistant treasurer for alleged violations of federal law and regulations and whether any modifications to the terms of any applicable insurance policies are necessary.

6. Incorporation. It is not necessary to incorporate a PAC, but it is permissible to do so. An organization establishing a PAC should consider whether from the perspective of limiting its liability, incorporation is desirable.

7. By-Laws. It is not necessary for a PAC to establish by-laws to govern its management, but a PAC may do so. By-laws may be useful, however, to the extent a PAC includes a substantial number of contributors who may have conflicting political objectives. By-laws may provide for the designation of officers or an executive committee to manage the affairs of the PAC.

8. Designation of a Connected Organization. The name of any corporate business entity that is sponsoring, organizing, or paying expenses associated with the PAC must be identified on the FEC Form 1. A connected organization is one that uses its treasury funds to establish, administer or solicit contributions for a PAC.

9. Assignment of a Name. A PAC must be assigned a name that includes the full name of its connected organization and must identify its name on its Form FEC 1. If a connected organization has a parent company or subsidiaries, the names of the parent and sponsoring organization need not be included in the name of the PAC. The PAC may also designate and identify on its FEC Form 1 an abbreviated that may be used on checks and letterhead. Any abbreviated name must include a clearly recognizable acronym or form of the sponsoring organization's name.

10. Receipt of Financial Support from a Connected Organization. A connected organization and its affiliates may use corporate funds to pay for office space, phones, salaries, utilities, supplies and fundraising activities for the PAC and may control the activities of the PAC.[2] A PAC may also use its own funds for administrative expenses and obtain reimbursement from its connected organization. Any reimbursement must be paid, however, within 30 days of the disbursements by the PAC for which reimbursement is requested. A PAC

[2] Restrictions exist on the provision of meals, entertainment or prizes used to promote fundraising. *See* Paragraph I(C)(11) ("Use of Corporate Funds for Promotional Items").

may be created without a connected organization, or based on the sponsorship of a partnership or unincorporated association, but such a PAC (*i.e.*, a "nonconnected PAC") must use monetary or in-kind donations to pay its administrative expenses or support its operations, and any donations from an unincorporated sponsor may not exceed $5,000 per calendar year.

11. Establishment of a Separate Administrative Account for Financial Support from a Connected Organization. A PAC receiving payments from a connected organization to support its administration must establish a separate administrative account used only to pay for the establishment, solicitation and administrative costs of a PAC. A connecting organization may also make direct payments to vendors to support the activities of a PAC, but may not commingle its funds with those of a PAC.

12. Identification of Affiliated PACs. The SEC Form 1 must identify any other PACs, known as "affiliated committees," established by the connected organization, its parent, or if the parent is the connected organization, by its subsidiaries. Affiliated committees must also be identified which are organized by other entities with which the connected organization has controlling interests or authority, overlapping membership or management, or with which the PAC or connected organization coordinates its activities. For purpose of determining compliance with contribution limits, contributions among all affiliated PACs must be treated as having been made from a single entity. In addition, for purposes of determining the class of persons who may be subject to solicitation by a PAC, each affiliated PAC may solicit funds from the "restricted class" of other affiliates.

13. Designation of a Depository. A PAC must designate a bank whether the committee will deposit its funds and identify the depository on its FEC Form 1. Affiliated PACs may not share the same bank account.

14. Notification of Multicandidate Status. When A PAC receives contributions from 51 or more donors, has been registered at least six months, and has made contributions to at least five federal candidates, a Notification of Multicandidate Status must be provided to the FEC on FEC Form 1M and any recipients of contributions must be advised that the PAC has qualified as a multicandidate committee. Different contribution limits apply to multicandidate committees than to non-multicandidate committees.[3]

B. Restrictions and Limitations Imposed on Donations and Contributions

1. Donation Limits. Donations to a PAC may not exceed $5,000 per calendar year from any one individual (either in the form of direct contributions, contributions made through partnerships, or in the form of earmarked contributions made through other PACs). A separate $5,000 limit applies to contributions from spouses. If a joint-check is used to make a contribution, the contribution is divided equally between each party to the joint account

[3] *See* Paragraph I(B)(5) ("Contribution Limits").

unless accompanied by a statement providing for a different allocation.[4] In making contributions to the PAC, individuals are further subject to a biennial limit of $108,200, consisting of not more than $42,700 of contributions to all candidates, and not more than $65,500 to all PACs and political parties. These limits are subject to adjustment for inflation in odd-numbered years.

2. Partnership Contributions. Contributions to a PAC, federal candidates and campaign committees may be made by entities treated as partnerships for federal tax purposes. Each partnership is limited to making annual donations to a PAC not to exceed $5,000. Contributions from partnerships also count proportionally against each contributing partner's $5,000 per year limit for contributions to each PAC, candidate or candidate committee. Generally, if all partners in a partnership are joining in a particular contribution, the contribution must be attributed to each partner based on the partner's share of profits. If partnership contributions are attributed only to certain partners, or a partnership elects to attribute contributions to partners on a basis other than partnership profits, the contributing partner's profits must be reduced (or losses increased) by the amount of the contributions attributed to them and the profits of other partners may not be affected. Partnership contributions may not be made from the share of profits earned by any corporate partner or a partner who is a foreign national. In addition, partnerships that have entered into, or are negotiating, contracts with the federal government may not make contributions.

3. Determining the Amount of Donations to PACs. The total amount paid to attend a fundraiser or purchase an item from a PAC is treated as a contribution regardless of whether a portion of the amount paid is used to defray the expenses of the PAC. Outstanding loans or loan guarantees to a PAC are considered contributions.

4. Donation Restrictions. Contributions exceeding $100 in the aggregate must be made by check. Anonymous contributions in excess of $50 are prohibited. A PAC may also not accept donations from corporations, banks, federal government contractors, individuals who are not citizens of the U.S. or permanent residents, entities organized under the laws of foreign countries or having a principal place of business in a foreign country, foreign governments, foreign partnerships, foreign political parties, or foreign associations or corporations. In addition, contributions may not be made by one person in the name of another person.

5. Contribution Limits. A multicandidate PAC may contribute up to $5,000 to each candidate or candidate committee per election; up to $15,000 per calendar year to national party committees; and up to $5,000 per calendar year to state, district and local party committees. Subject to inflation adjustments in odd numbered years, a non-multicandidate PAC may contribute up to $2,300 to each candidate or candidate committee per election; up to $28,500 per calendar year to national party committees; and up to $10,000 per calendar year to

[4] *See* Paragraph I(C)(14) ("Handling Illegal Contributions"). Somewhat different rules apply if excessive contributions are received.

state, district and local party committees. Both multicandidate and non-multicandidate PACs may contribute up to $5,000 per calendar year to other PACs.

6. Designation of Contributions. To ensure compliance with limits on donations to candidates and candidate committees, when making contributions the FEC recommends that PACs designate whether the contributions are intended to support a general or primary election. Undesignated contributions are attributed to the next scheduled election. Designated contributions may be made for future elections or to retire debts from a prior election to the extent such debts exist. A candidate or candidate committee may request a PAC to re-designate the election for which a contribution is given to avoid exceeding contribution limits, but a re-designation to be effective must be received within 60 days of receipt of the original contribution. In addition, a candidate or candidate committee may unilaterally re-designate contributions received from non-multicandidate committees prior to primary elections for use in general elections.

7. Monitoring Contributions by Affiliated PACs. Where affiliated PACs exist, the affiliated PACs must set up a centralized recordkeeping system to ensure that contributions made and received by all affiliates comply with donation and contribution limits.

8. Earmarked Contributions. To the extent a PAC is directed by a contributor orally or in writing to use a contribution for the benefit of a clearly identified candidate or committee, the PAC is considered a "conduit" or "intermediary."[5] While a PAC may act as a conduit, corporations and individuals acting on behalf of corporations are prohibited from acting as conduits. Other individuals may act as conduits, but must disclose their activities in writing to the FEC in a letter within 30 days. Contributions made through a conduit must be credited against the donation limits for the donor.[6] If a PAC acting as a conduit exercises any direction or control over the donor's choice of a recipient candidate, the full amount of the contribution also counts against the PAC's donation limits. In addition, if a PAC requests that a donor earmark funds for a specific candidate, the cost of the solicitation incurred by the PAC constitutes an in-kind contribution to the candidate and further applies against the PAC's donation limits. All earmarked contributions received by a PAC must be forwarded either in the form of the original check received or as a contribution from the PAC within 10 days of receipt together with a transmittal report containing the information the candidate or the candidate's committee will need for its own records. If payroll deductions are earmarked, the PAC must

[5] The terms "conduit" and "intermediary" are synonymous.

[6] Individuals may contribute up to $2,300 per election to each candidate or candidate committee (subject to inflation adjustments each odd numbered year); up to $28,500 per calendar year to each national party committee; up to $10,000 per calendar year to state, district, and local party committees; up to $5,000 to other political committees; and are subject to the aggregate biennial contribution limits noted above. The donor's aggregate permissible contributions to a candidate or committee consist of donations made both directly, through earmarks, or through partnership contributions allocated to an individual.

receive a signed and dated statement from each contributor designating the contribution to a particular candidate or committee.

C. Solicitation and Collection of Contributions

1. Solicitations Directed to the "Restricted Class" of a PAC. A PAC may direct fundraising solicitations *at any time* only to a restricted class of personnel consisting of the executive and administrative personnel of a connected organization or its affiliates, stockholders, and their family members. Under limited circumstances which require a case-by-case evaluation, solicitations may also be directed to consultants and commissioned employees, compensated board members, or executive or administrative personnel of controlling corporations or partnerships. Except for permissible twice annual solicitations direct to all employees (discussed in the next paragraph), solicitations by a PAC may not be directed to professional employees represented by a labor union; lawyers, consultants and other personnel retained by a corporation who are not employees; uncompensated board members; salaried foreman and supervisors of hourly employees; and former or retired personnel.

2. Payroll and Annuity Deductions. Donations to a PAC from members of its restricted class may be collected by a connected organization through voluntary payroll or annuity deductions provided a written authorization is obtained before making any deductions. When collecting donations, a connected organization may not use a reverse check-off plan.

3. Twice Yearly Solicitations. Twice a year a corporation or its connected PAC may solicit contributions from all employees of the connected organizations and its affiliates and members of their families who do not qualify as executive and administrative personnel. Solicitations may not be directed to other PACs. Employees whose wages are not subject to income tax withholding may not be solicited. Payroll deductions may *not* be used to collect donations raised through the twice yearly solicitations.

4. Employee Participation Plans. In addition to permissible twice-yearly solicitations, a corporation may establish a trustee-administered employee participation plan supported by separate donations or payroll deductions. An employee participation plan must be made available to all corporate employees and must afford the employees complete control over the disbursement of funds. The administrator of the plan may not provide information to the corporate sponsor regarding individual donations made by employees, but may only provide information to the corporation as necessary to establish any authorized payroll deductions and regarding the total number of participants in a plan and the combined total contributions made to all candidates and committees. Donations made from an employee participation plan to a PAC, candidate, or candidate committee may not identify the corporate sponsor of the plan. Participation is any trustee administered plan must be strictly voluntary and no stockholder, director, or employee of the corporation may exert pressure of any kind on employees to participate.

5. Solicitation Disclosures. Any solicitation of donations conducted by or on behalf of a PAC must disclose that contributions are being solicited to promote the political purposes of the PAC and are voluntary. Potential donors must be advised that a decision to make a donation or refuse to do so will not confer any benefit or disadvantage on the person solicited. Contributions may not be secured by job discrimination, financial reprisal, or threats of force, and any dues or fees collected as a condition of membership or employment in a connected organization may not be used as donations, even if the amounts are refundable. If a PAC has annual gross receipts that normally exceed $100,000, the solicitations must include a notice that contributions are not tax deductible.

6. Collecting Contributions for a PAC. A connected organization, a parent or subsidiary of a connected organization, or an affiliated PAC, may solicit and collect contributions for a PAC from its restricted class provided that (1) all restrictions and disclosures required for solicitations are followed; (2) the collecting agent either transmits any checks received directly to the PAC, establishes a restricted transmittal account for the temporary deposit of funds, or keeps separate records of all receipts and deposits; and (3) collects and forwards information regarding individual donors to the PAC to the same extent to which the PAC would be required to collect information for directly connected donations.[7] Separate deposits must be made for each cash contribution received. Contributions of $50 or less must be forwarded to the PAC within 30 days and larger contributions must be forwarded to the PAC within 10 days

7. Appointment of Custodian for Twice Yearly Solicitations. Before conducting a twice yearly solicitation, a connected organization must appoint a custodian to collect donations, transfer the donations to the PAC, and provide recordkeeping information regarding contributions exceeding $50 or and the total number and amount of contributions received of $50 or less. The custodian must preserve the anonymity of individuals who do not wish to donate or who donate $50 or less. The custodian may not be a stockholder, officer or employee of the connected organization or a union of the connected organization, except that the custodian may be the treasurer of the PAC if the treasurer preserves the anonymity of contributors as required and does not participate in decisions regarding contributions or expenditures made by the PAC. In order to comply with recordkeeping requirements for aggregate contributions of $50 or more, the custodian must keep records of all contributions received.

8. Method of Making Twice-Yearly Solicitations. Twice yearly solicitations must be made in writing and mailed to the home of the solicitee. The solicitations must contain the disclosures required of to be given in solicitations directed to a connected organizations restricted class (Paragraph 1 above) and must also notify recipients of the custodial arrangement for the collection of contributions and note that the custodian will preserve the confidentiality of

[7] *See* Paragraph I(D)(5) ("Records of Receipts").

those hw do not contribute or make contributions of $50 or less, including multiple contributions of $200 or less.

9. Notification to Labor Unions. A corporation must notify any labor union representing any of its employees of its intent to conduct a twice yearly solicitation and make available to the labor union the method it uses for soliciting and collecting donations and allow the labor union to conduct a campaign to solicit donations to the union's PAC from the executive and administrative personnel of the corporation; employees of the corporation, its subsidiaries and affiliated, including workers not represented by the labor union; the corporation's stockholders; all employees of the labor union; and family members of any person from whom donations may be solicited.

10. Other Solicitations and Unsolicited Donations. Except for solicitations of its restricted class and permissible twice yearly solicitations, a PAC may not solicit funds from other individuals or PACs. While unsolicited donations may be accepted from other individuals or PACs, a PAC may not advise such donors that contributions may be accepted.

11. Use of Corporate Funds for Promotional Items. If corporate funds are used for promotional items, entertainment or raffles in connection with fundraising by a PAC, the aggregate cost may not be "disproportionate" in comparison with the amount of funds raised, and the PAC must reimburse the connected organization for costs that exceed one-third of the amount raised. For example, if goods are donated worth $300 for a raffle that generates $600, $100 must be reimbursed by the PAC.

12. Use of Credit Cards. Individuals may make donations to a PAC using credit cards.

13. Matching Charitable Donations. A connected organization may encourage contributions to a PAC by pledging to match all or a portion of contributor's gift to a charity.

14. Handling Illegal Contributions. If a PAC receives contributions that are or appear to be excessive or prohibited, within 10 days the contribution must either be returned, or deposited subject to restrictions that will reserve sufficient funds to make refunds if the contributions are ultimately determined to be impermissible. If a check appears to exceed a contributor's annual limit, the PAC must seek a reattribution of the donation or return it. If a check appears to come from a prohibited source, the PAC must confirm its legality, and return it if it is determined to be illegal or its legality cannot be established within 30 days. Where excessive contributions are received via a written instrument with more than one person's name on the account, the PAC may attribute the permissible portion to the signer and assign the remaining portion to the other party or parties, provided the reattribution does not exceed any permissible contribution limit, and advise the donor that he or she may either request a refund or provide written consent to the reattribution. If consent to the reattribution is not obtained within 60 days, the excessive contribution must be refunded. Written records must be maintained

noting the basis of concern for each potentially illegal contribution deposited by a PAC and explaining how the concern was resolved.

D. Administrative Requirements

1. Tax Payments. Investment income earned by a PAC may be subject to federal and state income tax which must be paid using PAC funds and may not be paid for a PAC by its connected organization.

2. Independent Expenditures. In addition to making contributions to candidates, candidate committees and other PACs, a PAC may make expenditures for independent communications expressly advocating the election or defeat of a candidate if the communication is not made in consultation or cooperation with, or at the suggestion of a candidate, candidate's committee, party committee or their agents. Independent expenditures are not subject to contribution limits. Corporate funds and the funds of connected organizations may not be used for independent expenditures. Expenditures for communications that do not qualify as independent expenditures must be treated as contributions to a candidate or candidate's committee. Any communication that solicits the public for contributions on behalf of a candidate, distributes or republishes campaign material produced or prepared by the candidate's campaign, or coordinated with the candidate's campaign constitutes an in-kind contribution.

3. Notices. Any public communication made by a PAC, even those which do not contain direct advocacy, must "clearly and conspicuously" disclose the full name and abbreviated name of the PAC and state whether the communication was authorized or not authorized by one or more candidates. In-house publications circulated to persons outside the restricted class of permissible donors may not be used to solicit contributions unless they contain a caveat stating that contributions will be screened and those received from persons outside the restricted class returned and the number and percentage of unsolcitable persons receiving the publication are "incidental." Any solicitation materials should also include a notice that federal law requires to PAC to use its best efforts to obtain the name, mailing address, occupation, and name of the employer of each contributor donating $200 or more in any calendar year.

4. Record Retention. A PAC must maintain copies of each statement, disclosure report and notice filed with the FEC and "back up records relevant to the report" for three years from the date of filing. For contributions of $50 or more, a PAC must also maintain for three years full-size photocopies or digital images of each check or instrument used to make the contributions.

5. Records of Receipts. For contributions received, a PAC must maintain records of the amount received, the date of receipt, and the name and address of the source. If individual contributions are received in amounts of less than $50 (such as gate receipts at a fundraiser or small cash contributions), it is only necessary to identify the event, the date of receipt, and the total amount of such contributions received on a daily basis. For individual

contributions which exceed $200, records must be maintained identifying the donor's occupation and employer. The date of receipt of contributions may be earlier than the date of receipt by the PAC if a collecting agent is used.[8] For contributions made by credit card, the date of receipt is the date of receipt of a signed authorized to charge the account. The FEC recommends, but does not require, that records of other receipts be maintained as back-up to reports filed with the FEC, including receipts of transfers from affiliated PACs, bank loans, interest and dividends, and loan repayments.

6. Deposit of Contributions. Contributions must be deposited with 10 days of receipt. Contributions not deposited within 10 days must be returned to donors.

7. Records of Disbursements. For all disbursements, a PAC must maintain records of the date, amount, name and address of the payee, and the purpose of the disbursement. If disbursements exceed $200, a receipt, invoice or cancelled check must be kept. For contributions to candidates or candidate committees, records must also record the office sought by the candidate and the election for which the disbursement was made. The PAC must maintain either a full size photocopy or digital image of each check of $50 or more used to make political contributions. When disbursements are made using a credit card, the PAC must retain either monthly billing statements or receipts for each transaction. Records must also be kept for all transfers of funds to affiliated PACs.

8. Documentation of "Best Efforts". Because circumstances may occur in which PACs are unable to obtain all required information regarding donations and disbursements, PACs must maintain records of "best efforts" to obtain the required information. This documentation must include evidence that any solicitation documents included a notice regarding the information that must be provided by donors; evidence that if donations of $200 or more are received without the required information, a request is made for the information and at least one follow-up request is made within 30 days. If receipts, invoices, or cancelled checks are not available for disbursements of $200 or more, records must also include a request for such information.

9. Election to Make Reports to the FEC on a Quarterly or Monthly Basis. PACs may elect to file reports with the FEC either on a quarterly or monthly basis. During election years, PACs filing on a quarterly basis must file three quarterly reports, a report prior to any primary or special election, and reports before and after the general election. In non-election years, PACs filing on monthly basis are only required to file semi-annual reports. During election years, PACs filing on a monthly basis must file nine monthly reports, a year-end reports, and reports before and after the general election. In non-election years, PACs filing monthly reports must file 11 monthly reports and a year-end report. Monthly filing is advantageous if a PAC makes contributions in multiple states having different primary dates. The designation

[8] *See* Paragraph I(C)(6) ("Collecting Contributions for a PAC").

regarding quarterly or monthly reporting is made by noting the type of reports being filed on the reports themselves, except that if a PAC filing on a monthly basis wishes to file on a semi-annual basis in non-election years, prior notification must be given to the FEC.

10. Due Dates for Quarterly Reports. PACs electing to file reports on a quarterly basis must file reports using the following schedule:

- A pre-primary report is due 12 days before the primary election, but only if the PAC has made any previously undisclosed contributions during the period up to 20 days before the date of the primary election.
- During election years, quarterly reports are due on April 15th, July 15th and October 15th.
- A pre-general election report is due 12 days before the general election covering activity from October 1st through the 20th day before the election, but only if the PAC has made any contributions during the period.
- A post-general election report is due 30 days after the general election regardless of whether any contributions were made by the PAC that covers the period between the last report filed by the PAC and the 20th day after the general election.
- In a non-election year, a mid-year report is due July 31st covering the period of January through June.
- In all years an end-of-year report is due on January 31st.

11. Due Dates for Monthly Reports. PACs electing to file reports on a monthly basis must file reports using the following schedule:

- During election years, reports are due on the 20th of each month from February to October covering the prior month.
- A pre-general election report is due 12 days before the general election covering activity from October 1st through the 20th day before the election, but only if the PAC has made any contributions during the period.
- A post-general election report is due 30 days after the general election regardless of whether any contributions were made by the PAC that covers the period between the last report filed by the PAC and the 20th day after the general election.

- During non-election years, reports are due on the 20th of each month from February to December covering the prior month.

- In all year an end-of-year report is due on January 31st.

12. Additional Reports for Independent Expenditures. Up until 20 days prior to any election, PACs which make independent expenditures must file additional reports within 48 hours each time independent expenditures aggregate $10,000 or more. Within the last 20 days prior to any election, PACs which make independent expenditures must file reports within 24 hours whenever independent expenditures aggregate $1,000 or more.

13. When Reports Must Be Received. The FEC imposes administrative penalties if reports are not filed on a timely basis. Generally reports must be actually be received by the FEC on or before the due date, even if the due date falls on a weekend or holiday. If reports are sent by registered or certified mail, or by priority or express mail service having delivery confirmation, reports are deemed received on the postmarked date or the date recorded in the delivery service's tracking system. If reports are filed electronically by Internet connection, they must be validated by the FEC's computer system as received on or before 11:59 p.m. on the filing date. Incomplete or inaccurate Internet reports that do not receive validation are not considered to have been filed. PACs required to file electronically may also submit reports on 3.5" diskettes which must be received in the same manner as paper reports. Electronic filers may not file paper reports.

14. "Salting" Reports to Detect Misuse. Federal law makes PAC reports available for public inspection, but prohibits the sale or use of the names of individual contributors for commercial purposes or to solicit funds. For the purpose of detecting the misuse of lists of contributors filed with the FEC, up to ten fictitious names may be included in reports, provided a list of fictitious names is sent under separate cover to the FEC's Reports Analysis Division. No restrictions are imposed on the use of lists of PACs who make contributions to other PACs.

15. Reporting Forms. Required reports must be filed with the FEC using original paper copies of FEC Form 3X or electronic versions of the form either obtained from the FEC website or from commercial software vendors. If computer generated forms provided by commercial vendors are used, samples of the reports must first be submitted to the FEC for approval prior t their use, even if the commercial software provider has been designated by the FEC for use in filing reports.

E. Use of a Federal PAC to Support Federal and Non-Federal Elections

1. Option to Establish Combined or Separate Accounts. A federally registered PAC engaging in both federal and non-federal election activity may either set up one federal account that supports both federal and non-federal elections or set up separate accounts

for federal and non-federal elections. If a combined account is utilized, all funds received by the PAC are subject to the prohibitions, limits, solicitation restrictions and reporting requirements pertaining to contributions arising under federal law and regulations and the PAC must report non-federal election disbursements as "other disbursements" on Schedule B of its FEC Form 3X reports. If separate accounts are used, only the federal account is subject to the FEC's registration and reporting requirements, and the non-federal account is not subject to federal contribution limits or solicitation rules.

2. Contribution Restrictions. Regardless of how a PAC is organized, a non-federal account may not accept contributions from national banks, federally chartered corporations, or foreign nationals.

3. Expense Allocation. Where a PAC maintains a separate federal and non-federal account, unless all of the expenses of the PAC are paid for by the federal account, or all of the expenses are paid for by the PAC's connected organization, various types of expenses must be allocated between the federal and non-federal account. Expenses that must be allocated consist of administrative expenses (such as rent, salaries and supplies); fundraising costs (if funds are raised for both the federal and non-federal account); generic voter drives (that urge support of all candidates of a particular party or supporting particular issues without reference to specific candidates), generic public communications (that refer to political party or issue without reference to clearly identified federal or non-federal candidates), and direct candidate support activities that relate to the election or defeat of both federal and non-federal candidates. Expenses for communications and voter drives that refer only to federal candidates must be allocated entirely to the federal account, even if the communications include generic references to a political party, and expenses for communications and voter drives that refer only to non-federal candidates must be allocated entirely to the non-federal account, even if the communications include generic references to a political party. Expenses allocated to the federal account must be reported on the PACs FEC Form 3X report.

4. Prohibition on Funds Transfers. Where a PAC maintains a separate federal and non-federal account, subject to the following exceptions, funds may not be transferred between the two accounts. The non-federal account may act as a collection agent for the federal account and may transfer amounts collected for the federal account to the federal account, and the non-federal account may transfer funds to the federal account to cover the non-federal portion of expenses benefiting both accounts. In the event an excessive amount of funds are transferred from a non-federal account to a federal account to pay non-federal expenses based upon an estimated allocation of expenses, a further transfer from the federal to the non-federal account is authorized to avoid an excessive transfer.

5. Methods for Paying Expenses. A PAC with federal and non-federal accounts and allocating expenses between the two accounts must use one of two permissible methods of pay its expenses. The PAC must either (1) transfer funds from the non-federal account to the federal account for the non-federal account's expenses, and have the federal

account pay the expenses; or (2) the PAC must establish a separate allocation account for the sole purpose of paying joint expenses into which both accounts may make payments. If an allocation account is established, the allocation account constitutes a federal account and the PAC must include the account's receipts and disbursements in its FEC Form 3X reports. In either event, all expenses payments must be reported to the FEC and the non-federal account may not be used for the payment of expenses.

6. Temporal Limits on Funds Transfers. When joint expenses are incurred that will be paid by the federal account, any transfers from a PAC's non-federal account to its federal account must occur not more than 10 days before or 60 days after the payment of any vendors.

7. Allocation Methods. Three alternative sets of rules apply to the allocation of expenses between a federal and non-federal account maintained by a PAC. Administrative expenses (not directly attributed to any particular candidate), expenses associated with generic voter drives (supporting particular party or issue without mentioning any particular federal or non-federal candidates), and generic public communication expenses (that refer to a political party, but not to any particular federal or non-federal candidates) must be shared equally between the federal and non-federal account (unless a justification can be provided for an alternative allocation method). Voter drives and public communications that refer to both federal and non-federal candidates must be allocated based on the ratio of time or space devoted to candidates to federal versus non-federal elections. For example, phone banks must allocate costs based on the number of questions that relate to federal versus non-federal candidates. Direct fundraising costs that benefit both the federal and non-federal account must be allocated based on the ratio of funds received by the federal versus the non-federal account.

8. Initiation of Fundraising. If a PAC raises money for both a federal and non-federal account, prior to the initiation of fundraising the PAC must report to the FEC an estimated allocation ratio of funds received for federal purposes to total funds raised for each fundraising program or event and must give each program or name a unique name or code.

9. Adjustment of Allocation Ratios. Within 60 days of the completion of each fundraising event or program, a PAC allocating expenses between a federal and non-federal account must determine the actual ratio of federal funds to total funds raised and transfer funds from its federal account back to its non-federal account to the extent necessary to avoid an excessive transfer of funds to the federal account. The revised allocation ratio and the funds transfer must be reported in the next set of reports filed by the PAC with the FEC.

10. Reports. A PAC allocating expenses between its federal and non-federal accounts must disclose the information on Schedules B, H2, H3 and H4 of its FEC Form 3X filings.

II. Requirements for Pennsylvania Political Contributions

1. Registration. Any "committee, club, association or other group of persons" which receives contributions for the purpose of influencing elections in an aggregate amount of $250 or more, must file a registration statement as a "political committee" with the Pennsylvania Department of State using Form DSEB-500. A statement must be filed within 20 days after the date the committee receives such amount. A political committee not formed on behalf of or authorized by a specific candidate is known as a "political action committee." A political committee formed on behalf of or authorized by a specific candidate is knows as a "candidate committee." A political committee may not use any of its funds to make contributions to candidates or other political committees until it is registered.[9]

2. Registration Information. A registration must include (1) the name, address and phone number of the political committee; (2) the name address and phone number of the committee's treasurer; (3) the name, address and phone number of the committee's chairperson; (4) the names, addresses and relationship of other affiliated or connected organizations; (5) a list of offices of candidates the committee intends to support; (6) any ballot questions that the committee supports or opposes; (7) the bank, safety deposit boxes or other repositories used by the committee; and (8) the proposed period of operation of the committee (which may be indefinite).

3. Changes to Registration Information. Changes to a political committee's registration must be reported within 30 days of the change.

4. Committee Officers. Every political committee must designate a treasurer and a chairperson who cannot be the same person. No contributions may be received or expenditures made if there is a vacancy in either office. A political committee may also designate an assistant treasurer or vice chairperson to assume the duties and responsibilities of the treasurer or chairperson in the event of a temporary or permanent vacancy in the office.

5. Duties of Treasurer. All money received and disbursement made must be through the committee treasurer. Any person receiving any contribution on behalf of the committee must turn such contributions over to the treasurer within 10 days of its receipt. The committee treasurer is responsible for the filing of all campaign finance reports. The treasurer is also personally responsible for late filing fees in the amount of $10 a day for the first 6 days and $20 a day thereafter up to a maximum of $250.

5 Required Records. A political committee must keep records of the names and addresses of each person who makes a contribution over $10. Records must be retained by the committee for the period of three years following the date that the committee is required to file a report disclosing receipt of the contribution. All records must be retained by the treasurer for a period of three years

[9] Forms for the registration of a PAC under Pennsylvania law and for filing campaign finance reports are available at.: **http://www.dos.state.pa.us/campaignfinance**.

6 Reports. A political committee which receives contributions or makes expenditures or incurs liabilities exceeding the sum of $250 must file cumulative annual campaign finance reports using Form DSEB-502. If a committee makes independent campaign related expenditures to support the election or a candidate, the committee must also file an independent campaign finance report using Form DSEB-505. A political committee which receives contributions or makes expenditures or incurs liabilities in an amount not exceeding the sum of $250 shall file a sworn statement to that effect on the current version of Form DSEB-503. The reports must be submitted on the following schedule:

- A pre-election report must be filed not later than 2nd Friday or at least 15 days prior to an election for which the committee has made expenditures to influence the election or made contributions to another political committee.

- A post-election report must be filed 30 days after an election for which the committee has incurred expenditures or made contributions, or 10 days after a special election.

- An annual report must be filed on January 31st of each year for the prior calendar year.

7. Simplified Reporting for Federally Registered PACs. Federally registered PACs must also register in Pennsylvania, but a PAC that is federally registered is only required to file cumulative campaign finance reports consisting of (1) the cover page of Form DSEB-502; (2) Schedule III of Form DSEB-502 reporting expenditures in support of Pennsylvania elections, but reporting as a single lump sum all other expenditures; and (3) the summary pages for FEC Form 3X, i.e., pp. 1 through 5.

8. Prohibited Contributions. It is unlawful for corporations and unincorporated associations, except corporations organized as a political committee, to make any "contributions" or "expenditures" on behalf of any candidate or for any "political purpose whatever," except in connection with ballot questions. For purposes of these prohibitions, the term "unincorporated association" does not include a partnership or a limited liability company treated as a partnership for Federal tax purposes and that any contribution made by a partnership or LLC does not contain corporate funds.[10] Each person making contributions to a political

[10] Section 1633(a) of the Pennsylvania Campaign Expense Reporting Law, 25 P.S. § 3253(a), prohibits "unincorporated associations" from making political contributions and expenditures and does not define what constitutes an unincorporated association. The Pennsylvania Statutory Construction Act defines the term "association . . . when used in any statute finally enacted before Dec. 7, 1994, [as] any form of unincorporated enterprise owned by two or more persons other than a partnership or limited partnership." 1 Pa.C.S. § 1991 (emphasis added). The Campaign Expense Reporting Law was finally enacted before Dec. 7, 1994, and therefore its term "unincorporated association" does not include partnerships and limited partnerships. This interpretation has been informally confirmed on multiple occasions by the PA

committee must do so in his or her own name and may not make anonymous contributions, cash contributions in excess $100, or contributions using funds provided by another person.

9. Use of Corporate Funds to Sponsor a PAC. Corporate and unincorporated association funds may be used to establish and maintain political committees, provided that (1) no administrative expenses are used for activities directly involved in influencing elections; (2) no administrative expenses are used to pay debts incurred by candidates or committees; (3) no payments are made to compensate an agent for services rendered to a committee or to a candidate; (4) all contributions made to the political committee are made voluntarily; and (5) the funds of the political committee are separate and segregated from any other account of the corporation or unincorporated association.

10. Disclosure Statements. Whenever a political committee makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a candidate or a position on ballot questions through a broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or other type of general public political advertising, the communication, a disclosure statement must accompany the communication. If authorized by the candidate, his authorized political committee or their agents, the communication must clearly and conspicuously state that the communication has been authorized. If not authorized by a candidate, his authorized political committee or their agents, the communication must clearly and conspicuously state the name of the PAC that made or financed the expenditure for the communication, and the name of any affiliated or connected organization. These requirements do not apply to bumper stickers, pins, buttons, pens and similar small items upon which the statement cannot be conveniently printed.

11. Lobbyist PAC Registration. Any lobbyist who has given a contribution or pledge regardless of amount to any candidate is subject to the same registration and reporting requirements as are political committees. These requirements are in addition to separate lobbyist registration and reporting requirements.

12. Federal Registration. A Pennsylvania political committee may not contribute to candidates in federal elections unless also registered with the Federal Election Commission.

13. Non-Bid Contractor Reports. Any business entity that has been awarded non-bid contracts by the state or any political subdivision during the proceeding calendar year must file a report using Form DSEB-504 by February 15th of each year with the Secretary of Commonwealth containing an itemized list of all political contributions known to the business entity by virtue of the knowledge of each officer, director, associate, partner, limited partner, or individual owner to have been made by any officer, director, associate, partner, limited, partner, individual owner, employee, or members of the immediate families, when contributions exceed $1,000 by any such individual during the preceding calendar year.

Election Bureau.

Federal Restrictions on Lobbying by Section 501(c)(3) Tax-exempt Public Charities

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This outline discusses general restrictions on lobbying by charitable organizations organized and operating under section 501(c)(3) of the Internal Revenue Code ("IRC").[1]

SUMMARY AND CONCLUSIONS

Section 501(c)(3) prohibits charitable organizations from engaging in political campaign activity. The penalty for violation of this prohibition is revocation of a charitable organization's 501(c)(3) tax-exempt status This prohibition is not entirely absolute. But because political campaign activity is so heavily restricted and because the penalty for violation of this provision is so severe, charitable organizations should seek legal advice prior to the undertaking of any political campaign activity.

In contrast, Section 501(c)(3) allows charitable organizations to engage in lobbying, so long as the lobbying activity is not substantial relative to the organization's other activities. Uncertainty exists as to what types of activities will be considered lobbying and how much of a charitable organization's expenditures and activities the Internal Revenue Service ("IRS") will consider "substantial."

Because of this uncertainty, the tax code was revised in 1976 to allow charitable organizations to make an "election" under section 501(h). Based solely on a charitable organization's expenditures, the section 501(h) election provides a simple formula to determine whether the organization's legislative activities are “substantial”. (The penalty for violation of restrictions on lobbying for nonelecting charitable organizations is revocation of tax-exempt status, while the penalty for violation of this restriction on organizations making a 501(h) election is generally payment of an excise tax on the excess lobbying expenditures with revocation of tax-exempt status reserved for exceptionally egregious violations.) Because of this comparative clarity and because of the severe consequences for contravening IRS restrictions on lobbying, we recommend that any charitable organization that is contemplating engaging in lobbying consider making a section 501(h) election.

[1]This outline is for general information only and should not be relied upon for legal advice. Organizations are urged to seek qualified legal counsel on matters related to the issues discussed in this outline. Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.

I. BACKGROUND ON FEDERAL TAX STANDARDS

A charitable organization may be granted an exemption from federal income tax and donations to that organization are deductible by the donor if, in addition to certain other prerequisites, it is (1) "operated exclusively" for one or more of the purposes specified in the tax statutes (e.g., religious, charitable or educational) (the "operational test"), and (2) does not engage in political activity and limits its lobbying activities to an insubstantial amount. The actual language of the tax code for this latter requirement reads:

> no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, . . . and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.[2]

The requirement concerning legislation is known as the "substantial activities" test or standard. Charitable organizations have struggled greatly in their efforts to determine how much and what kind of activities are "substantial," and decisions published by the courts and the IRS have added to this confusion and uncertainty.

Primarily because of this uncertainty, Congress revised the tax code in 1976 to allow charitable organizations to make an "election" under section 501(h). Based solely on a charitable organization's expenditures, section 501(h) provides a simple formula to determine whether the organization's legislative activities are "substantial." This election offers an alternative, a "safe harbor," to the amorphous substantial activities test. If this safe harbor standard is affirmatively elected by an organization, it supersedes the "substantial activities" standard for purposes of verifying allowable lobbying by that organization.

A. The Operational Test.

An organization must be "operated exclusively" for one or more exempt purposes to qualify as a tax-exempt organization.[3] In the context of an organization's legislative activities, an organization is deemed not to be "operated exclusively" for exempt purposes if "a substantial part of its activities is attempting to influence legislation by propaganda or otherwise."[4] In this respect, then, the operational test appears to be very similar if not identical to the substantial activities test discussed below.

B. The Substantial Activities Test.

If a "substantial part" of an organization's activities is attempting to influence legislation, the organization is deemed to be an "action" organization and may lose its status as a tax-exempt

[2]IRC § 501(c)(3).

[3]IRC § 501(c)(3); IRC Reg. § 1.501(c)(3)-l(c)(1).

[4]IRC Reg. § 1.501(c)(3)-l(c)(3)(ii); see also Better Business Bureau v. U.S., 326 U.S. 279, 283 (1945) (an organization is operated exclusively for exempt purposes if there is no nonexempt purpose that is "substantial").

entity.[5] The term "legislation" includes any action by Congress, state legislatures, local councils or a similar governing body, or by public referendum, initiative, constitutional amendment, or "similar procedure."[6]

Until 1976, when the safe harbor standard was adopted, the Tax Code described no numerical guideline or formula for determining "substantial" or "insubstantial" legislative activity. Prior to the availability of a safe harbor guideline (discussed below) three analyses were used by courts to determine if an organization had complied with the substantial activities standard: (a) a percentage test that focused on the "time and effort" devoted to legislative advocacy activities;[7] (b) a percentage test based on the expenditures devoted to legislative advocacy activities;[8] and (c) a broad balancing of the organization's legislative advocacy activities in relation to its objectives and circumstances.[9] These analyses are still applicable to charitable organizations which do not make the section 501(h) election.

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[5]IRC Reg. § 1.501(c)(3)-l(c)(3).

[6]IRC Reg. § 1.501(c)(3)-l(c)(3).

[7]In Seasongood v. Commission of Internal Revenue, 227 F.2d 907, 912 (6th Cir. 1955), the court held that where less than five percent of the "time and effort" of the organization in question was devoted to "political" activities those activities were not substantial in relation to the organization's other activities. Seasongood provides only limited guidance because it is not clear how the percentage figure of "time and effort" is established. See Exempt Organizations Handbook, Internal Revenue Manual, 7751 § 394 (1977). Accordingly, most courts have avoided applying a strict percentage test to determine whether political or legislative activities are substantial. See Haswell v. U.S., 500 F.2d 1133 (Ct. Cl. 1974); Christian Echoes National Ministry, Inc. v. U.S., 470 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973).

[8]This test was adopted by the Court of Claims in Haswell v. U.S., as part of the substantial activities test:

> "Although a percentage test is not determinative of the substantiality, one measure of the relative significance of [the organization's] various activities in relation to its objectives is the amount of money devoted to each category of operations."

Haswell at 1145. Under this implicit percentage approach, the amount of expenditures allocated to legislative advocacy activities is considered in relation to an organization's total expenditures, to assess the substantiality of the organization's legislative activities. The Haswell court computed a sum of expenditures attributable to lobbying activities by adding travel and entertainment expenses (which the organization acknowledged were related to lobbying) to certain administrative expenses which the court found were necessarily incidental to the organization's lobbying activities. Using these figures, the court found that the organization had spent between 19 and 20 percent of its total expenditures on political activities. Though the court noted that the "[d]istribution of expenditures is only one measure of the substantiality of [the organization's) political activities" it found that the percentage of expenditures, coupled with a primary objective that was political in nature, resulted in political activity that was "more than insubstantial" and "not ancillary to [the organization's) charitable purposes." Haswell at 1146-47 (emphasis added)

[9]In Christian Echoes, the court rejected any percentage test to determine whether the political activities were substantial because it "obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances." Christian Echoes at 855. The court instead proposed that the "political activities of an organization must be balanced in the context of the objectives and circumstances of the organization to determine whether a substantial part of its activities was to influence or attempt to influence the legislation." Id. (court's emphasis).

Christian Echoes was a religious organization that published numerous articles attempting to influence legislation through appeals to the public to react to certain issues. Specific legislation was not always mentioned but the publications specifically requested readers to write their congressional representatives to influence political decisions:

C. The 501(h) Election or Safe Harbor Standard.

Largely in response to the vagueness of the "substantial activities" test, Congress adopted the safe harbor guidelines of section 501(h) in 1976. Absent an election of the safe harbor guidelines by an organization, however, the traditional and ill-defined "substantial activities" test continues to apply.

For the safe harbor test to apply, an organization must be eligible and must affirmatively make the election. (The election is made by filing IRS Form 5768.) The safe harbor expenditures test is effective for all taxable years that end after the election is made.[10] Once the election is made, it cannot be revoked for a taxable year after that year has begun.[11] Finally, nothing in the safe harbor guidelines is to be construed to affect the interpretation of the operative phrase of the "substantial activities" standard.[12] As a result, absent election of the safe harbor guidelines, there is no assurance that the IRS will extend those rules to apply to the activities of non-electing exempt organizations.

D. Deciding Whether to Make a 501(h) Election.[13]

1. Advantages of Making a 501(h) Election.

- Volunteer's time and influence are not counted; only actual expenditures count.
- The revocation of exemption calculation is based on a four-year average, not on an ongoing annual test.
- Mathematical limits are specific.
- The degree of certainty provided by specific tests applied to electing organizations is preferable to the subjective and untested standards for nonelecting ones. Section 501(h) allows examining agents to use the definitive rules only for electing organizations, not for nonelecting ones.

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to support the Becker Amendment relating to the restoration of prayer in the public schools, to maintain certain immigration laws, to support the retention of the House Committee on UnAmerican Activities, to eliminate foreign aid spending, to discourage support for the world court, to cut off diplomatic relations with communist countries, etc. Id. at 855. The court alluded to no percentage figures either with respect to percentage of activities or percentage of expenditures related to legislative activities. The court did find, however, that the activities of the organization influenced or attempted to influence legislation and were "substantial and continuous" and not "incidental."

[10]IRC § 501(h)(6).

[11]Id.

[12]IRC § 501(h)(7).

[13]This section is taken directly from J. Blazek, Tax Planning and Compliance for Tax-Exempt Organizations: Forms, Checklists, Procedures, pp. 497-499 (2nd Ed. 1993).

- Many practitioners expect the IRS to scrutinize nonelecting organizations.

- The membership communications exclusion does not classify as lobbying the "objective reporting on the contents and status of legislation" to members.

- Recordkeeping requirements may be less because volunteer time need not be recorded.

2. Advantages of Not Making a 501(h) Election.

- Grassroots lobbying limit is not separately limited to five percent of exempt purpose expenditures.

- Directors and officers can be personally liable for penalties for excess lobbying.

- Affiliated organization's lobbying activities must be consolidated or combined to measure limitations under the election, but are otherwise measured on a per entity basis.

- The maximum amount of expenditures allowed is $1 million for any one organization. For an organization with a $50,000,000 annual budget, for example, the maximum of $1 million equals two percent of the budget, a de minimus amount in relation to the five percent considered permissible by some experts.

- It may be preferable to avoid the uncertainty caused by the multiple proposed regulations and the controversy surrounding the allocation of indirect expenses.

II. LIMITS ON POLITICAL CAMPAIGN ACTIVITY

Section 501(c)(3) organizations are completely prohibited from engaging in "political activity," as this term has been defined.[14] The key statutory language involved requires that the organization "does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office." This prohibition has been in force since 1954. Unlike the rules limiting lobbying by charities, this language seems absolute in its terms. Nevertheless, according to one study, "the IRS and the courts have tended to allow some political activity, so long as the amount of electioneering is incidental in comparison to the organization's exempt activities."[15] Under current law, the only sanction for engaging in political campaign activity available to the IRS is revocation of section 501(c)(3) status. Because political

[14]The limitation on political activities are incorporated into the definition of an "action" organization. An organization will be an action organization if, in part, it participates or intervenes in any political campaign. Treas. Reg. § 1.501(c)(3)-(c)(3)(iii). Such action organizations are deemed not to be operated exclusively for exempt purposes, and thus are not entitled to continuing tax exemption. Treas. Reg. § 1.501(c)(3)-(c)(3)(i).

[15]S. Simpson, Exempt Organization: Public Charities A-41 (Tax Management, Inc., 1984), citing St. Louis Union Trust Co. v. U.S., 374 F.2d 427 (8th Cir. 1967).

campaign activity is so heavily restricted and because the penalty for violation of this provision is so severe, we recommend that legal advice be sought prior to the undertaking of any political campaign activity by a 501(c)(3) organization.

III. LIMITS ON LOBBYING

Section 501(c)(3) places limits on the amount of "lobbying" a charitable organization may undertake, in contrast to the complete prohibition on political activity. Lobbying is defined fairly broadly to include all direct and grass roots efforts to influence legislation.

A charitable organization found to have engaged in lobbying activities to a prohibited extent is deemed an "action" organization and thus is not entitled to continuing tax exemption.[16] An organization will be deemed an action organization by virtue of its lobbying activities if (1) its primary objective(s) can be accomplished only through legislation, and it advocates or campaigns for such objectives; or (2) a substantial part of its activities consists of attempting to influence legislation.[17]

An organization having a primary objective obtainable only by legislation (or defeat of proposed legislation) will be an action organization if it advocates or campaigns for the attainment of such objective. An organization engaging solely in "nonpartisan analysis, study or research and making the results thereof available to the public," however, is not an action organization.[18]

An organization will be regarded as attempting to influence legislation if the organization advocates the adoption or rejection of legislation, or contacts, or urges the public to contact, members of a legislative body with respect to legislation.[19] The term "legislation" means "action with respect to Acts, bills, resolutions, or similar items by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure."[20] An organization does not engage in attempts to influence legislation if, at the express request of a committee of the United States Congress, a representative of the organization provides expert testimony on pending legislation.[21]

Organizations may choose to have compliance with the restrictions on influencing legislation (so-called "lobbying restrictions") evaluated under one of two tests. The organization may elect to be evaluated under section 501(h), a special section added to the tax code in 1976 to provide a "safe

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[16]Treas. Reg. § 1.501(c)(3)-(c)(3).

[17]Treas. Reg. § 1.501(c)(3)-(c)(3)(ii).

[18]Treas. Reg. § 1.501(c)(3)-1(c)(3)(iv).

[19]Id.

[20]Id. Under IRC § 4911(e)(2), the term "action" is limited to the "introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items."

[21]Revenue Ruling 70-449, 1970-2 C.B. 111.

harbor" for section 501(c)(3) organizations concerned about lobbying limits.[22] Alternately, if the organization does not make the section 501(h) election, it will be evaluated under the so-called "substantiality test." This test denies section 501(c)(3) status to a group unless "no substantial part of its activities . . . is carrying on propaganda, or otherwise attempting, to influence legislation . . . ."[23] The section 501(h) lobbying expenditure rules are discussed below.

A. Definition of Lobbying for Purposes of Section 501(c)(3).

Lobbying has not been strictly defined under section 501(c)(3), although some guidelines have been established under section 4911.[24] The general rule is that lobbying consists of all "direct" efforts to propose, support or oppose legislation through uninvited contacts with legislators, their staffs, or government officials who may participate in formulation of the legislation, and all "grass roots" efforts to encourage others to contact legislators, their staffs, or any other government official who may participate in formulation of the legislation.[25]

B. Activities that do not Constitute Lobbying.

The term "lobbying" does not necessarily include all activities that involve a communication with a member or employee of a legislature. In fact, the Internal Revenue Code explicitly excludes a number of activities from the definition of "influencing legislation," i.e., lobbying:[26]

- dissemination of the results of nonpartisan analysis, study or research;
- provision of technical advice or assistance in response to a written request by a governmental body;
- appearances before, or communications to, any legislative body with respect to a possible decision by that body that might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deduction of contributions to it (self defense);
- communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to them, unless the communications

[22]An organization that elects the expenditure test may nevertheless be considered an action organization if its primary objective(s) can be accomplished only through legislation, and it advocates or campaigns for such objectives. Treas. Reg. § 1.501(h)-1(a).

[23]IRC § 501(c)(3).

[24]IRC § 501(h)(7) expressly declares the lobbying rules found in IRC § 4911 to be inapplicable to organizations not eligible to elect, or that choose not to elect. Despite the statutory disclaimers, such provisions defining "attempts to influence legislation" seem likely to serve as guidelines for section 501(c)(3) organizations that choose to remain subject to the "substantiality" standard.

[25]See IRC § 4911(d)(1).

[26]IRC § 4911(d).

directly encourage the members to influence legislation or urge members to contact nonmembers to influence legislation; and

- routine communications with government officials or officials or employees, including the executive branch and agencies.[27]

C. Lobbying under the Section 501(h) Election

Congress adopted section 501(h) in 1976 to provide optional "bright line" rules for organizations that were insecure about their status under the traditional substantiality test. An organization may make the election under section 501(h) by filing Form 5768 (attached to this memorandum) with the IRS. Certain exempt organizations, including churches and private foundations, are not eligible to make the election.[28]

The main provisions of section 501(h) include the following:

- Establishment of a "lobbying nontaxable amount". The new law establishes definite limits on the percent of an organization's expenditures that may be devoted to lobbying. The limits are on a sliding scale allowing smaller organizations to expend a relatively greater amount toward lobbying. Under sections 501(h) and 4911, organizations may spend 20% of their first $500,000 of "exempt purposes expenditures" on lobbying, 15% of the second $500,000, 10% of the third $500,000, and 5% of any additional expenditures, so long as total lobbying expenses do not exceed $1,000,000.[29]

- Grass roots limits. The law penalizes organizations that spend more than one fourth of the total lobbying nontaxable amount on grass roots lobbying. Thus, for example, an organization with exempt purposes expenditures of $500,000 or less may spend up to 5% of these expenditures on grass roots lobbying, but this amount will count toward the overall 20% lobbying limit.[30]

- Graduated penalties for exceeding limits. The law applies a 25% excise tax to grass roots and non-grass roots lobbying expenditures in excess of the limits.[31] However, if an organization normally spends more than 150% of its limits on lobbying, the IRS may revoke the organization's section 501(c)(3) status.[32]

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[27]Treas. Reg. § 56.4911-2(c).

[28]IRC § 501(h)(3)(B).

[29]IRC § 4911(c)(2).

[30]IRC § 4911(c)(4).

[31]IRC § 4911(a). If both the organization's lobbying and grassroots expenditures exceed the applicable nontaxable amount, the excise tax is imposed on the larger of the two excess amounts.

[32]IRC § 501(h)(1); see also Treas. Reg. § 56.4911-1. While the code does not define "normally" for these purposes, the legislative history indicates that the relevant standard is whether on the average over the four preceding years, the

- Aggregation rule. Where two or more "charitable" organizations are members of an affiliated group and at least one of the members has elected coverage under these guidelines, the calculations of lobbying and exempt purpose expenditures must be made by taking into account the expenditures of the group. If these expenditures exceed the permitted limits, each of the electing member organizations must pay a proportionate share of the penalty excise tax, with the nonelecting members treated under preexisting law.[33]

On August 31, 1990, the Internal Revenue Service promulgated a new set of regulations for 501(c)(3) organizations that make the 501(h) election.[34] The purpose of the regulations is to provide organizations the guidance needed to comply with sections 501(h) and 4911 requirements by clarifying what is meant by direct and grass roots lobbying. The effective date of the regulations is for tax years beginning after August 31, 1990. The following discussion outlines the lobbying expenditure rules.

1. How is the Amount of an Organization's "Exempt Purpose Expenditures" Calculated?

In general terms, an expenditure is an "exempt purpose expenditure" if it is paid or incurred by a charitable organization to accomplish its exempt purposes. The calculation of the dollar limit on lobbying expenditures begins with the calculation of an organization's "exempt purpose expenditures." This is defined as the total amount expended by an organization during its taxable year to accomplish its exempt purposes, plus administrative expenses paid or incurred for such purposes, and all expenditures made to influence legislation, whether or not such expenditures advanced the organization's exempt purposes.[35] Thus, exempt purpose expenditures do not include amounts paid or incurred that are neither expenditures to accomplish an exempt purpose nor lobbying expenditures.[36] Exempt purpose expenditures also do not include amounts chargeable to a

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organization exceeded 150% of the permitted amount. Joint Committee Staff, General Explanation of the Tax Reform Act of 1976 at 408; see also Treas. Reg. § 1.501(h)-3(b)(c).

[33]IRC § 4911(f). Generally, under these rules, two organizations are deemed "affiliated" where (1) one organization is bound by decisions of the other on legislative issues pursuant to its governing instrument or (2) the governing board of one organization includes enough representatives of the other (usually, an "interlocking directorate") to cause or prevent action on legislative issues by the first organization. Where a number of organizations are affiliated, even in chain fashion, all of them are treated as one group of affiliated organizations.

However, if a group of autonomous organizations controls an organization but no one organization in the controlling group alone can control that organization, the organizations are not considered an affiliated group by reason of the interlocking directorates rule. See Treas. Reg. §§ 56.4911-7 through 56.4911-10 for a discussion of the rules affecting affiliated organizations.

[34]55 Fed. Reg. 35,579 (Aug. 31, 1990). The proposed regulations are found at 51 Fed. Reg. 40,211 (Nov. 5, 1986) and 53 Fed. Reg. 51,826 (Dec. 23, 1988).

[35]IRC § 4911(e)(1); Treas. Reg. § 56.4911-4(b).

[36]Treas. Reg. § 56.4911.4(c)(1).

capital account, such as property acquisition, but do include a reasonable allowance for exhaustion, wear and tear, obsolescence, or amortization of the capital asset.[37] In addition, exempt purpose expenditures do not include fund raising expenditures paid to or incurred for a separate fund raising unit of the organization or a non-employee or non-affiliated organization, but do include other fundraising expenditures.[38] Finally, exempt purpose expenditures do not include expenditures paid or incurred for the production of income.[39]

Special rules govern "transfers" between different organizations.[40] A transfer from a section 501(c)(3) organization to another section 501(c)(3) organization, such as payment of dues by a local organization to a national organization, is treated as an exempt purpose expenditure if it is made in furtherance of the transferor's exempt purposes and is not "earmarked" for any purpose other than the transferor's exempt purposes.[41] Similarly, a "controlled grant" transfer from a section 501(c)(3) organization to a non-section 501(c)(3) organization is treated as an exempt purpose expenditure, but only to the extent of the amounts that are paid or incurred by the transferee that would be exempt purpose expenditures if paid or incurred by the transferor.[42] If a substantial purpose of the transfer is to artificially inflate the amount of the transferor's or transferee's exempt purpose expenditures, the transferor will not be considered an exempt purpose expenditure of the transferor,

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[37]IRC § 4911(e)(4); Treas. Reg. § 56.4911-4(b)(c) (straight-line method of depreciation required). According to Mr. Walsh Skelly, Office of Assistant Chief Counsel, Internal Revenue Service, the principal draftsman of the lobbying expenditure rules, it is somewhat unclear whether the statute or regulations were meant to exclude capital expenditures from the exempt purpose expenditure base if such capital expenditures were in furtherance of the exempt purposes of the organization. Given the wording of the statute, which generally excludes capital expenditures from the exempt purpose expenditure base, and until clarification is received from the IRS, we believe that charitable organizations should not include capital expenditures within its exempt purpose expenditure base.

[38]IRC § 4911(e)(1)(C); Treas. Reg. § 56.4911-4(b)(8) and (c)(3)(4). The final regulations clarify that amounts incurred for the creation, production, copying, and distribution of a separate fundraising unit's fundraising communications are amounts paid to or incurred for a separate fundraising unit, regardless of whether the charity pays some of the costs directly rather than through the separate fundraising unit. See Treas. Reg. § 56.4911.4(f)(2).

[39]Treas. Reg. § 56.4911-4(c)(7). For purposes of this section amounts are paid or incurred for the production of income if they are paid or incurred for a purpose or activity that is not substantially related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the organization's charitable, educational or other purpose that is the basis for the organization's exception under section 501(c)(3). For example, the cost of managing an endowment are amounts that are paid or incurred for the production of income and are thus not exempt purpose expenditures.

[40]Treas. Reg. § 56.4911-4(d)(e).

[41]Treas. Reg. § 56.4911-4(d)(2). A transfer, including a grant or payment of dues, is "earmarked" for a specific purpose (i) to the extent that the transferor directs the transferee to add the amount transferred to a fund established to accomplish the purpose; or (ii) to the extent of the amount transferred or, if less, the amount agreed upon to be expended to accomplish the purpose, if there exists an agreement, oral or written, whereby the transferor may cause the transferee to expend amounts to accomplish the purpose or whereby the transferee agrees to expend an amount to accomplish the purpose. Treas. Reg. § 56.4911-4(f)(4).

[42]Treas. Reg. § 56.4911-4(d)(3). A "controlled grant" is a grant that meets the following requirements: (i) the donor limits the grant to a specific project of the recipient that is in furtherance of the donor's exempt purposes; and (ii) the donor maintains records to establish that the grant is used in furtherance of the donor's exempt purposes. Treas. Reg. § 56.4911-4(e)(3).

but will be an exempt purpose expenditure of the transferee to the extent that the transferee expends the transfer in the active conduct of its charitable activities or attempts to influence legislation.[43]

On the other hand, a transfer made to a member of any affiliated group of which the transferor is a member is not treated as an exempt purpose expenditure.[44] Likewise, a non-controlled grant transfer made to a non-501(c)(3) organization that does not attempt to influence legislation is not treated as an exempt purpose expenditure.[45] Charitable organizations need to be careful in any transfers between themselves and any lobbying organization if the organization wishes to avoid the transfer being considered a lobbying expenditure. Charitable organization will not have to consider as a lobbying expenditure a transfer of funds to a section 501(c)(4) lobbying organization (i) if the transfer is in furtherance of a charitable organization's exempt purposes and the charitable organization maintains records to establish that the grant is indeed used in furtherance of its exempt purposes or (ii) if the charitable organization receives adequate consideration in exchange for its transfer (such as in the form of a report it can use in its activities).

2. How is an Organization's "Lobbying Nontaxable Limit" Calculated?

A charitable organization must determine its exempt purpose expenditures before it can calculate its "lobbying nontaxable amount" for any given year. Under section 501(h), an organization with "exempt purpose expenditures" of $500,000 or less may spend up to 20% of such expenditures on lobbying; but no more than 5% of such expenditures may be spent on indirect or grass roots lobbying. Lobbying expenditures that do not require expenditures, such as certain unreimbursed lobbying activities conducted by bona fide volunteers, are not included in the lobbying expenditures for the organization.[46] A charitable organization's ability to make direct and grass roots lobbying expenditures will increase as its yearly expenditures increase.

Example.

An organization made the expenditure test election under section 501(h) effective for taxable years beginning with 1977 and has not revoked the election. The organization has $500,000 of exempt purpose expenditures during each of years 1981 through 1984. In addition, during each of those years, the organization has spent $75,000 for direct lobbying and $25,000 for grass roots lobbying. Since the amount expended for the organization's lobbying (both total lobbying and grass roots lobbying) is within the respective nontaxable expenditure limitations, the organization is not liable for the 25 percent excise tax imposed under section 4911(a) upon excess lobbying expenditures, nor is the organization denied tax-exempt status by reason of section 501(h).[47]

[43]Treas. Reg. § 56.4911-4(e)(3).

[44]Treas. Reg. § 56.4911-4(e)(2).

[45]Treas. Reg. § 4911-4(e)(4).

[46]55 Fed. Reg. 35,579 (Aug. 31, 1990).

[47]Treas. Reg. § 1.501(h)-3(e), Example (4).

This result does not change even if numerous unpaid volunteers conduct substantial lobbying activities with no reimbursement on behalf of the organization. Since the substantial lobbying activities of the unpaid volunteers are not counted towards the expenditure limitations and the amount expended for the organization's lobbying is within the respective nontaxable expenditure limitations, the organization is not liable for the 25 percent excise tax under section 4911, nor is it denied tax-exempt status by reason of section 501(h).[48]

3. What Types of Expenditures Does a Direct or Grass Roots Lobbying Communication Include?

Expenditures for a direct or grass roots lobbying communication include amounts paid or incurred as current or deferred compensation for an employee's services attributable to the direct or grass roots lobbying communication, and the allocable portion of administrative, overhead, and other general expenditures attributable to the direct or grass roots lobbying communication.[49]

An organization that elects the section 501(h) expenditure test must keep a record of its direct and grass roots lobbying expenditures for the taxable year.[50] The organization reports its lobbying expenditures in its annual tax return (IRS Form 990). The lobbying expenditure record must include the following:

- Amounts directly paid or incurred for lobbying, including payments to another organization earmarked for lobbying, fees and expenses paid to individuals or organizations for lobbying, and printing, mailing, and other direct costs of reproducing and distributing materials used in lobbying;

- The portion of amounts paid or incurred as current or deferred compensation for an employee's services in connection with lobbying;

- Amounts paid for out-of-pocket expenditures incurred on behalf of the organization and in connection with lobbying, whether or not incurred by an employee;

- The allocable portion of administrative, overhead, and other general expenditures attributable to direct lobbying;

- Expenditures for publications or for communications with members to the extent the expenditures are treated as expenditures for lobbying; and

[48]Treas. Reg. § 1.501(h)-3(e), Example (5).

[49]Treas. Reg. § 56.4911-3(a)(1).

[50]Treas. Reg. § 56.4911-6.

- Expenditures for lobbying of a controlled organization to the extent included by a controlling organization in its lobbying expenditures.[51]

These somewhat burdensome recordkeeping requirements under the lobbying expenditure rules will necessitate that charitable organizations implement some type of accounting system that will keep track of organizational expenditures and activities that are lobbying related in sufficient detail to segregate them by type of expenditure and by type of lobbying (direct or grass roots).

4. When is a Communication a Direct Lobbying Communication?

The regulations adopt a relatively simple, two-part definition for direct lobbying. To be direct lobbying, a communication with a legislator, an employee of a legislative body, or other government official or employee involved in the legislative process must both: (1) refer to specific legislation; and (2) reflect a view on that legislation.[52] "Specific legislation" includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes.[53] Thus, specific legislation does not include the promulgation of regulations by the administrative agency responsible for implementing an existing statute.[54]

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[51]A member of a limited affiliated group is a controlling member organization if it controls one or more of the other members of the limited affiliated group, and a member of a limited affiliated group is a controlled member organization if it is controlled by one or more of the other members of the limited affiliated group.

For purposes of the preceding sentence, whether an organization controls a second organization shall be determined by whether the second organization is bound, under its governing instruments, by the first organization on national legislative issues. Treas. Reg. § 56.4911-10(c).

[52]Treas. Reg. § 56.4911-2(b)(1). The final regulations provide that expenditures for attempts to influence referenda at ballot initiatives are considered direct lobbying expenditures. Treas. Reg. § 56.4911-2(b)(1)(iii). However, the final regulations do not modify the definition of direct lobbying (which requires that a communication with legislators refer to and reflect a view on specific legislation). Therefore, communications on referenda and ballot initiatives will be considered direct lobbying if they refer to and reflect a view on specific legislation without the requirement (found in the definition of grass roots lobbying) for an encouragement to action.

[53]Treas. Reg. § 56.4911-2(d)(1)(ii).

[54]Treas. Reg. § 56.4911-2(d)(4). This regulation distinguished between contacts made with a legislative body (which may be direct lobbying) and contacts made with an executive body (which will not be direct lobbying). The relevant portion of the regulation reads:

> Thus, for example, for purposes of section 4911, the term "any attempt to influence any legislation" does not include attempts to persuade an executive body or department to form, support the formation of, or to acquire property to be used for the formation or expansion of, a public park or equivalent preserves (such as public recreation areas, game, or forest preserves, and soil demonstration areas) established or to be established by act of Congress, by executive action in accordance with an act of Congress, or by a Sate, municipality or other governmental unit described in section 170(c)(1), as compared with attempts to persuade a legislative body, a member thereof, or other governmental official or employee, to promote the appropriation of funds for such an acquisition or other legislative authorization of such an acquisition. Therefore, for example, an organization would not be influencing legislation for purposes of section 4911, if it proposed to a Park Authority that it purchase a particular tract of land for a new park, even though such an attempt would necessarily require the Park Authority eventually to seek appropriations to support a new park. However, in such a case, the organization would be influencing legislation, for purposes of section 4911, if it provided the Park Authority

Example

An organization assigns its employee to approach members of the legislature to gain their support for a pending bill. The employee drafts and the organization prints a position letter on the bill. The employee distributes the letter to members of the legislature. Additionally, the employee personally contacts several members of the legislature or their staffs to seek support for the organization's position on the bill. The letter and the personal contacts are direct lobbying communications. Therefore, the costs of the employee's time in preparing the letter and making the personal contacts, together with any associated overhead expenses, must be included in the organization's lobbying expenditures.[55]

Once the bill is enacted though, the organization may contact the agency in charge of preparing the regulations to implement the bill without any of its communications being considered lobbying communications. This is because the promulgation of regulations is not considered legislation for purposes of the lobbying expenditure rules. Thus, in the example provided above, the organization may send a letter to the agency responsible for implementing the bill providing detailed proposed regulations that the organization suggests to the agency as the appropriate standards to follow in implementing the bill.[56]

5. When is a Communication a Grass Roots Lobbying Communication?

To be considered grass roots lobbying, the communication must meet, in addition to the two-part test outlined above, a third test: does the communication encourage the recipients of the communication to take action with respect to the legislation.[57] A communication encourages its recipients to take action only if the communication: (i) states that the recipient should contact a legislator, an employee of a legislative body, or other governmental official or employee involved in the legislative process; (ii) states the address, telephone number, or similar information of a legislator or an employee of a legislative body; (iii) provides a petition, tear-off postcard, or similar material for the recipient to communicate his or her views to a legislator, an employee of a legislative body, or other governmental official or employee involved in the legislative process; or (iv) specifically identifies one or more legislators who will vote on the legislation as opposing the communicator's view with respect to the legislation, being undecided with respect to it, being the

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with a proposed budget to be submitted to a legislative body, unless such submission is one of the exceptions set forth in paragraph (c) of this section.

[55]Treas. Reg. § 56.4911-2(b)(4)(i), Example (1).

[56]Treas. Reg. § 56.4911-2(b)(4)(i), Example (4).

[57]Treas. Reg. § 56.4911-2(b)(2)(ii).

recipient's representative in the legislature, or being a member of the legislative committee that will consider the legislation.[58]

Communications that are described in categories (i) through (iii) above are deemed not only to encourage action with respect to legislation, but also to "directly encourage" action with respect to legislation.[59] This distinction is important because only communications in category (iv), that encourage the recipient to take action with respect to legislation without "directly encouraging" such action, may be within the exceptions for communications with members or nonpartisan analysis, study, or research and, as a result, not be grass roots lobbying communications. See subsections 7 and 11 below.

A charitable organization will have to include in its grass roots lobbying expenditures any expenditures made in encouraging its members and nonmembers to take action with respect to specific legislation. These expenditures will include employee time in preparing the lobbying communication, printing and mailing costs in distributing the lobbying communication to the public, and any associated overhead expenses.

Example

An organization sends a letter to all persons on its mailing list. The letter includes an update on numerous environmental issues with a discussion of general concerns regarding pollution, proposed federal regulations affecting the area, and several pending legislative proposals. The letter endorses two pending bills and opposes another pending bill, but does not name any legislator involved (other than the sponsor of one bill, for purposes of identifying the bill), nor does it otherwise encourage the reader to take action with respect to the legislation. This communication is not a grass roots lobbying communication.[60] It also is not a direct lobbying communication, unless the letter is sent to a legislator who may vote on the bill.

Communications made through the mass media are generally subject to the usual three-part test for grass roots lobbying. However, there is a special rule for certain mass media communications. The regulations contain a rebuttable presumption that, if within two weeks before a vote by a legislative body, or committee (but not a subcommittee) thereof, on a "highly publicized piece of legislation," an organization's paid advertisements appears in the mass media, the paid advertisement will be presumed to be a grass roots lobbying communication, but only if the paid advertisement both reflects a view on the general subject of the legislation and either (i) refers to the highly publicized legislation or (ii) encourages the members of the public to communicate with their legislators on the general subject of the legislation.[61] An organization may rebut this presumption by demonstrating that the communication is a type of communication regularly made by the organization in the mass media without regard to the timing of legislation (described as a "customary course of business" exception) or that the timing of the communications was for reasons unrelated to the upcoming

[58]Treas. Reg. § 56.4911-2(b)(2)(iii).

[59]Treas. Reg. § 56.4911-2(b)(2)(iv).

[60]Treas. Reg. § 56.4911-2(b)(4)(ii)(A), Example (3).

[61]Treas. Reg. § 56.4911-2(b)(5).

legislative action.[62] Of course, the communication will constitute grass roots lobbying in any case if it satisfies the general three-part test.

Example

The state legislature is considering a bill that if enacted, would allow for more stringent growth management regulations. The growth management bill is controversial and highly publicized during the two weeks preceding the vote, as evidenced by numerous front-page articles, editorials, and letters to the editor published in the state's general circulation daily newspapers, as well as frequent coverage of the bill by the television and radio stations servicing the state. During the two weeks before the legislative vote, an organization places advertisements on radio stations serving the state. The advertisements do not encourage listeners to contact their legislators to vote for the bill, but do attack the current legislation which the bill would strengthen. Because the advertisements are mass media communications made within two weeks of a vote on highly publicized legislation and because the advertisements refer to that highly publicized legislation and reflect a view on the general subject of such legislation, the advertisements are presumed to be grass roots lobbying communications. Therefore, the organization must include as grass roots lobbying expenditures any expenditures made in making and distributing the advertisements.[63]

6. When are Research and Report Preparation and Distribution Costs Included in Grass Roots Lobbying Expenditures?

The costs of preparing and distributing advocacy communications or research materials will be treated as grass roots lobbying expenditures only in cases of abuse. Thus, the fact that such communications or research materials are used in a lobbying campaign will not necessarily cause the preparation and distribution costs to be treated as lobbying expenditures. Special rules governing nonpartisan analysis, study, and research are discussed in subsection 7 below.

The costs of preparing and distributing advocacy communications or research materials will be treated as grass roots lobbying expenditures because of subsequent use of the communication or research materials in a grass roots lobbying effort unless the "primary purpose" of the organization in preparing the communication or research materials was not for use in lobbying.[64] The "primary purpose" of an organization in preparing an advocacy communication or research materials is not lobbying if, prior to or contemporaneously with the use of the communication or research materials in grass roots lobbying, the organization makes a "substantial" nonlobbying distribution of the communication or research materials (without the direct encouragement to action).[65] The

[62]Treas. Reg. § 56.4911-2(b)(5)(ii).

[63]See Treas. Reg. § 56.4911-2(b)(5)(iv), Examples (1) and (2).

[64]Treas. Regs. §§ 56.4911-2(b)(2)(v) -2(c)(1)(v).

[65]Treas. Reg. § 56.4911-2(b)(2)(v)(E).

characterization of expenditures as grass roots lobbying expenditures shall apply only to expenditures paid less than six months before the first use of the advocacy communications or research materials with a direct encouragement to action.[66]

In the case of advocacy communications or research materials that are not nonpartisan analysis, study, or research, a nonlobbying distribution is not substantial unless it is at least as extensive as the subsequent lobbying distribution.[67] Where the nonlobbying distribution of advocacy communication or research materials is not substantial, all of the facts and circumstances must be weighed to determine whether the organization's primary purpose in preparing the communication or research materials was not for use in lobbying.[68] While not the only factor, the extent of the organization's nonlobbying distribution of the advocacy communications or research materials is particularly relevant, especially when compared to the extent of their distribution with the direct encouragement to action. Another particularly relevant factor is whether the lobbying use of the advocacy communications or research materials is by the organization that prepared the document, a related organization, or an unrelated organization. Where the subsequent lobbying distribution is made by an unrelated organization, clear and convincing evidence (which must include evidence demonstrating cooperation or collusion between the two organizations) will be required to establish that the primary purpose for preparing the communication was for use in lobbying.

Example

An organization prepares a nonlobbying "report" (that is not nonpartisan analysis, study or research) and distributes this report to only 50 people. The organization then sends the report to 10,000 people along with a letter urging recipients to write their Senators about the legislation discussed in the report. Because the report's nonlobbying distribution is not as extensive as its lobbying distribution, the report's nonlobbying distribution is not substantial for purposes of the lobbying expenditure rules. Accordingly, the organization's primary purpose in preparing the report must be determined by weighing all of the facts and circumstances. In light of the relatively minimal nonlobbying distribution and the fact that the lobbying distribution is by the preparing organization rather than by an unrelated organization, and in the absence of evidence to the contrary, both the report and the letter are grass roots lobbying communications. Assume that all costs of preparing the report were paid within the six months preceding the mailing of the letter. Accordingly, all of the organization's expenditures for preparing and mailing the two documents are grass roots lobbying expenditures.[69]

Implications. To avoid including the costs of preparation and nonlobbying distribution of a nonlobbying report in its direct or grass roots lobbying expenditures, charitable organizations will need to make sure that the nonlobbying distribution of a nonlobbying report is more extensive than any lobbying distribution of the report.

[66]Treas. Reg. § 56.4911-2(b)(2)(v)(D).

[67]Treas. Reg. § 56.4911-2(b)(2)(v)(F).

[68]Treas. Reg. § 56.4911-2(b)(2)(v)(G).

[69]Treas. Reg. § 56.4911-2(b)(2)(v)(H), Example (1).

7. When is Nonpartisan Analysis, Study or Research Included in Direct or Grass Roots Lobbying Expenditures?

Engaging in and making available "nonpartisan analysis, study, or research" does not constitute lobbying.[70] To qualify as nonpartisan analysis, study, or research, the communication must be "an independent and objective exposition of a particular subject matter." Thus, such a communication "may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion."[71]

A communication is not within the nonpartisan analysis exception if the communication directly encourages recipients of the communication to contact legislators or certain other governmental officials in favor of or in opposition to specific legislation.[72]

Example

An organization researches, writes, prints and distributes a study on the use and effects of pesticide X. A bill is pending in the U.S. Senate to ban the use of pesticide X. The organization's study leads to the conclusion that pesticide X is extremely harmful and that the bill pending in the U.S. Senate is an appropriate and much needed remedy to solve the problems caused by pesticide X. The study contains a sufficiently full and fair exposition of the pertinent facts, including known or potential advantages of the use of pesticide X, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bill. In its analysis of the pending bill, the study names certain undecided Senators on the Senate committee considering the bill. Although the study meets the three part test for determining whether a communication is a grass roots lobbying communication, the study is within the exception for nonpartisan analysis, study or research, because it does not "directly" encourage recipients of the communication to urge a legislator to oppose the bill. If, on the other hand, the study concludes that the reader "should write to the undecided committee members to support this crucial bill," the study is not within the exception for nonpartisan analysis, study or research because it "directly" encourages the recipients to urge a legislator to support a specific piece of legislation.[73]

Analysis, study, or research that reflects a view on specific legislation is not nonpartisan if the analysis, study, or research is subsequently used as or with a lobbying communication that directly encourages recipients to take action with respect to specific legislation.[74]

[70]IRC § 4911(d)(2); Treas. Reg. § 56.4911-2(c)(1).

[71]Treas. Reg. § 56.4911-2(c)(1)(ii).

[72]Treas. Reg. § 56.4911-2(c)(1)(vi). See subsection 5 above for a description of the communications that are deemed to "directly encourage" action with respect to legislation.

[73]Treas. Reg. § 56.4911-2(c)(1)(vii), Examples (8) and (9).

[74]Treas. Reg. § 56.4911-2(c)(1)(v). See subsection 6 above.

Example

An organization plans to conduct a lobbying campaign with respect to illegal drug use in the United States. It incurs $5,000 in expenses to conduct research and prepare an extensive report for use in the lobbying campaign. Before using the report in a lobbying mailing to its 10,000 members, the organization sends the research and report (without an accompanying lobbying message) to universities and newspapers. At the same time, the organization also advertises the availability of the report in its newsletter. This distribution is similar in scope to the normal distribution patterns of similar nonpartisan reports. In light of all of the facts and circumstances, the organization's distribution of the report is substantial. Because of its substantial distribution of the report, the organization's primary purpose will be considered to be other than for use in lobbying and the report will not be considered a grass roots lobbying communication. Accordingly, only the expenditures for copying and mailing the report to the 10,000 individuals on the organization's mailing list, as well as for preparing and mailing the letter, are expenditures for grass roots lobbying communications.[75]

Implications. A charitable organization will be able to claim the nonlobbying exception for "nonpartisan analysis, study, or research" if such communication contains a full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion and such communication does not "directly" encourage recipients to take action with respect to the legislation discussed in the communication. To avoid including the costs of preparation and nonlobbying distribution of "nonpartisan analysis, study, or research" in its grass roots lobbying expenditures, charitable organizations will need to make sure that the nonlobbying distribution of a nonlobbying report is substantial based on normal distribution patterns for such a report.

8. When are Discussions of Broad Social, Economic, and Similar Problems Included in Direct or Grass Roots Lobbying Expenditures?

Discussions of broad social, economic, and similar problems are not lobbying activities.[76] This exception does not apply, however, where a communication directly encourages recipients of the communication to contact legislators or certain other government officials in favor of or in opposition to specific legislation. For example, an organization's discussions of problems such as environmental pollution or population growth are not grass roots lobbying communications, unless the discussions directly address specific legislation being considered and encourage recipients of the communication to contact a legislator, and employee of the legislative body, or a government official or employee who may participate in the formulation of legislation.

[75] See Treas. Reg. § 56.4911-2(c)(1)(vii), Example (11).

[76] Treas. Reg. § 56.4911-2(c)(2).

9. When are Requests for Technical Advice Included in Direct or Grass Roots Lobbying Expenditures?

A communication is neither direct lobbying nor grass roots lobbying communication if the communication is for the purpose of providing technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either in response to a written request by the body, committee, or subdivision.[77]

10. When are Communications Pertaining to "Self-Defense by the Organization Included in Direct or Grass Roots Lobbying Expenditures?

A communication is neither a direct lobbying or grass roots lobbying communication if it is an appearance before, or communication with, a legislative body with respect to a possible decision of such body which might affect the existence of the organization or an affiliated organization, its powers and duties, it tax exempt status, or the deduction of contributions to the organization or affiliated organization.[78]

11. When are Communications with Members Included in Direct or Grass Roots Lobbying Expenditures?

A communication pertaining to and reflecting a view on legislation or proposed legislation is not lobbying where the communication is directed only to members of the organization, the legislation is of direct interest to the organization and its members, and the communication does not directly encourage the members to engage in direct or grass roots lobbying.[79] The communication is considered "direct lobbying" when it directly encourages the recipient member to engage in direct lobbying, but does not directly encourage the member to engage in grass roots lobbying.[80] The communication is considered "grass roots lobbying" when it encourages the recipient member to engage in grass roots lobbying.[81]

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[77]IRC § 4911(d)(2); Treas. Reg. § 56.4911-2(c)(3).

[78]IRC § 4911(d)(2); Treas. Reg. § 56.4911-2(c)(4).

[79]IRC § 4911(d)(2); Treas. Reg. § 56.4911-5(b).

[80]Treas. Reg. § 56.4911-5(f)(6)(i). A communication directly encourages a recipient to engage in direct lobbying if the communication: (i) states that the recipient should contact a legislator, legislative body employee, or government official or employee; (ii) states the address, telephone number or similar information of a legislator or a legislative body employee; or (iii) provides a petition or tear-off postcard, or similar material to be sent to a legislator, legislative body employee, or other government official or employee. Id.

[81]Treas. Reg. § 56.4911-5(f)(6)(ii). A communication directly encourages a recipient to engage in grass roots lobbying if the communication: (i) states that the recipient should encourage a nonmember to contact a legislator, legislative body employee, or government official or employee; (ii) states that the recipient should provide to a nonmember the address, telephone number or similar information of a legislator or legislative body employee; or (iii) provides (or requests the recipient to provide to nonmembers) a petition, tear-off postcard or similar material for the recipient or nonmember to use to ask nonmembers to communicate views to a legislator, legislative body employee or government official or employee. An example is an organization sending multiple signature blocks to its members. Id.

This exemption applies only if the communication is directed solely to members of the organization.[82] Members of an organization may include people who are not members in the legal sense. Contributions of "more than a nominal amount" or "more than a nominal amount of time" will suffice for membership.[83]

There are special rules applicable to communications directed primarily to members of an organization.[84] A communication is directed primarily to members of an organization if more than half of the recipients of the communication are members of the organization.[85] If the written communication directly encourages readers to engage individually or through the organization in direct lobbying but does not encourage them to engage in grass roots lobbying, the cost of the communication is allocated between expenditures for direct lobbying and grass roots lobbying as follows: (i) the amount allocable as a grass roots expenditure is the total cost of the communication multiplied by the sum of the nonmember subscribers percentage and the all other distribution percentage;[86] and (ii) the amount allocable as a direct lobbying expenditure is the excess of the total cost over the grass roots expenditure.[87] The cost to be allocated includes all costs of preparing all the material with respect to which readers are urged to engage in direct lobbying plus the mechanical and distribution costs attributable to the lineage devoted to this material.[88]

If the communication directly encourages readers to engage individually or collectively (whether through the organization or otherwise) in grass roots lobbying (whether or not it also encourages readers to engage in direct lobbying), the grass roots expenditure includes all the costs of preparing the material with respect to which readers are urged to engage in grass roots lobbying plus the mechanical and distribution costs attributed to the lineage devoted to this material.[89] If the

[82]Treas. Reg. § 56.4911-5(b)(1).

[83]Treas. Reg. § 56.4911-5(f)(1).

[84]See Treas. Reg. § 56.4911-5(e).

[85]Id.

[86]Solely for purposes of the allocation described in the text, the nonmember subscribers percentage is treated as zero unless it is greater than 15% of total distribution. Treas. Reg. § 56.4911-5(e)(2)(ii).

[87]Treas. Reg. § 56.4911-5(e)(2). With respect to the communication described in the text, (i) "member percentage" means the percentage of total distribution that represents distribution of a single copy to a member; (ii) "nonmember subscribers percentage" means the percentage distribution that represents distribution to nonmember subscribers (including libraries); and (iii) "all other distribution percentage" means 100% reduced by the sum of the member percentage and the nonmember subscribers percentage. Treas. Reg. § 56.4911-5(e)(7). A person is a "subscriber" to a written communication if (i) the person is a member of the publishing organization and the membership dues expressly include the right to receive the written communication, or (ii) the person has affirmatively expressed a desire to receive the written communication and has paid more than a nominal amount for the communication. Treas. Reg. § 56.4911-5(e)(5).

[88]Treas. Reg. § 56.4911-5(e)(2)(i).

[89]Treas. Reg. § 56.4911-5(e)(3).

communication does not directly encourage readers to engage in either direct lobbying or grass roots lobbying, expenditures for the communication are not lobbying expenditures.[90]

Implications. A charitable organization may have more of its lobbying communications be considered "direct lobbying" rather than "grass roots lobbying" if it limits these communications to its members only.

12. When are Transfers of Funds from one Organization to Another Direct or Grass Roots Lobbying Expenditures?

A "transfer" that is earmarked for direct lobbying purposes or for direct lobbying and grass roots lobbying purposes is treated as a grass roots expenditure in full except to the extent the transferor demonstrates that the amounts transferred were expended for direct lobbying purposes, in which case that part of the amounts transferred is a direct lobbying expenditure by the transferor.[91]

A "transfer" to an organization other than a section 501(c)(3) organization is deemed to be a lobbying expenditure, first, as a grass roots expenditure, up to the amount of the transferee's grass roots expenditures, and then, as a direct lobbying expenditure, up to the amount of the transferee's direct lobbying expenditures.[92] However, this does not apply to a grant for a specific exempt purpose project where the donee maintains records establishing the use of the funds for the grant purposes. "Transfers" which are considered lobbying expenditures exclude transfers which are excluded for purposes of calculating an organization's exempt purpose expenditures.[93]

Implications. A charitable organization will need to be careful in any transfers between it and any lobbying organization if it wishes to avoid the transfer being considered a grass roots lobbying expenditure.

13. How Does an Organization Allocate the Costs of a Preparing and Distributing a Single Document that Has Both Lobbying and Nonlobbying Articles or that Has Both Direct and Grass Roots Lobbying Articles?

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[90]Treas. Reg. § 56.4911-5(e)(4).

[91]Treas. Reg. § 56.4911-3(c)(2). A transfer, including a grant or payment of dues, is "earmarked" for a specific purpose (i) to the extent that the transferor directs the transferee to add the amount transferred to a fund established to accomplish the purpose, or (ii) to the extent of the amount transferred or, if less, the amount agreed upon to be expended to accomplish the purpose, if there exists an agreement, oral or written, whereby the transferor may cause the transferee to expend amounts to accomplish the purpose or whereby the transferee agrees to expend an amount to accomplish the purpose. Treas. Reg. § 56.4911-4(f)(4).

[92]Treas. Reg. § 56.4911-3(c)(3)(ii). The final regulations clarify and limit the meaning of the term "transfer" to situations where the charity receives less than fair market value in return for the transfer. Treas. Reg. § 56.4911-3(c)(3)(i)(A). Also, the final regulations do not apply the transfer rule if the transfer is made for less than fair market value and a significant number of the general public receive goods or services from the charity at the same favorable (less than fair market value) price. See Treas. Reg. § 56-4911-3(c)(3)(i)(D).

[93]See Treas. Reg. §§ 56.4911-3(c) and 56.4911-4(e). See discussion of Treas. Reg. § 56.4911-4(e) under subsection 1 above.

The lobbying regulations adopt an approach to allocation based on the nature of the audience.

a. Communications Sent Only or Primarily to Members

As to communications which have a lobbying purpose or a bona fide nonlobbying purpose and are sent only or primarily to members (namely, communications sent to more members than nonmembers), an organization must make a reasonable allocation between the lobbying and nonlobbying amounts.[94] An organization that includes as a lobbying expenditure only the amount expended for the specific sentence or sentences that encourage the recipient to take action with respect to legislation has not made a reasonable allocation.

Example

An organization distributes only to members a pamphlet with two articles on unrelated subjects. The total cost of preparing, printing and mailing the pamphlet is $11,000, $1,000 for preparation and $10,000 for printing and mailing. The cost of preparing one article, a nonlobbying communication, is $600. The article is printed on three of the four pages in the pamphlet. The cost of preparing the second article, a grassroots lobbying communication that states that the recipient members should contact their congressional representatives, is $400. This article is printed on one page of the four page pamphlet. The organization allocates $400 of preparation costs and $2,500 of printing and mailing costs (25% of total cost) as expenditures for direct lobbying. The allocation is reasonable. The allocation would not be reasonable if the organization based its allocation upon the fact that out of the 200 lines in the second document, only two stated that the recipient member should contact legislators about the pending legislation.[95]

An organization must also allocate lobbying expenditures between direct lobbying expenditures and grass roots lobbying expenditures in accordance with Treas. Reg. § 56.4911-5. See subsection 11 above.

Example

A membership organization prepares a three page document that is mailed to 3,000 persons on the organization's mailing list. 75% of the recipients of the three page document are members of the organization, and 25% of the recipients are nonmembers and are not subscribers. The first two pages of the three page document, titled "The Need for Child Care," support the need for additional child care programs, and include statistics on the number of children living in homes where both parents work or in homes with a single parent. The two pages also make note of the inadequacy of the number of day care providers to meet the needs of these parents. The third page of the document, titled "H.R. 1," indicates the organization's support of H.R. 1, a bill pending in the U.S. House of Representatives. The document states that H.R. 1 will provide for $10,000,000 in additional subsidies to child care providers, primarily for those providers caring for lower income children. The third page also notes that H.R. 1 includes new federal standards regulating the quality of child care providers. The document ends with the organization's request that readers should write to Congress in support of H.R. 1, but does not state that the readers should urge nonmembers to write

[94]Treas. Reg. § 56.4911-3(a)(2)(ii).

[95]Treas. Reg. § 56.4911-3(b), Example (3).

to Congress. The organization treats the document as having a bona fide membership purpose, the purpose of educating its members about the need for child care. Accordingly, the organization allocates one-half of the cost of preparing and distributing the document as a lobbying expenditure, of which 75% is a direct lobbying expenditure and 25% is a grass roots lobbying expenditure. The organization's allocation is reasonable and correct.[96]

b. Lobbying Communications Not Sent Only or Primarily to Members

For lobbying communications that are not sent only or primarily to members, all costs attributable to those parts of the communication that are on the "same specific subject" as the lobbying message must be included as lobbying expenditures for allocation purposes.[97] The "same specific subject" is said to depend on the circumstances, but generally to include discussion of "an activity or specific issue that would be directly affected" by the legislation that is the subject of the lobbying part of the communication as well as "the background or consequences" of such an activity or issue or the legislation itself. Examples indicate that a description of the organization and an appeal for funds will not be treated as being on the "same specific subject" as the lobbying part of the communication. However, the examples also show that the costs of general discussions of the problem that would be addressed by legislation advocated in the same communication count as lobbying costs.[98]

Example

A particular monthly issue of an organization's newsletter, which is distributed mainly to nonmembers of the organization, has three articles of equal length. The first article is a grass roots lobbying communication, the sole specific subject of which is pending legislation to help protect seals from being slaughtered in certain foreign countries. The second article discusses the rapid decline in the world's whale population, particularly because of the illegal hunting of whales by foreign countries. The third article deals with air pollution and the acid rain problem in North America. Because the first article is a grass roots lobbying communication, all of the costs allocable to that article (e.g., one-third of the newsletter's printing and mailing costs) are grass roots lobbying expenditures. The second article is not a lobbying communication and the pending legislation relating to seals addressed in the first article does not affect the illegal whale hunting activities. Because the second and third articles are not lobbying communications and are also not on the same specific subject as the first article, no portion of the costs attributable to those articles is a grass roots lobbying expenditure.[99]

c. Mixed Grass Roots and Direct Lobbying Communications

A mixed grass roots and direct lobbying expenditure would be treated as a grass roots expenditure. However, to the extent the organization can demonstrate that the expenditure was incurred primarily (not solely) for direct lobbying purposes, a reasonable allocation may be made as between

[96]Treas. Reg. § 56.4911-3(b), Examples (8) and (9).

[97]Treas. Reg. § 56.4911-3(a)(2)(i).

[98]Compare Treas. Reg. § 56.4911-3(b), Examples (4) and (5), with Example (8).

[99]Treas. Reg. § 56.4911-3(b), Example (7).

the expenditures associated with the two types of lobbying.[100] These rules do not apply to communications only or primarily to members which are subject to Treas. Reg. § 56.4911-5. See subsection 11 above.

Example

A member organization sends a one page letter to all persons on its mailing list (90% of whom are members). The only subject of the letter is the organization's opposition to a pending bill allowing private uses of certain national parks. The letter requests recipients to send letters opposing the bill to their congressional representatives, but does not state that readers should urge nonmembers to write to legislators. A second one page letter is sent in the same envelope. The second letter discusses the broad educational activities and publications of the organization in all areas of environmental protection and ends by requesting the recipient to make a financial contribution to the organization. The organization allocates one-half of the mailing costs as a lobbying expenditure, of which 90 percent is a direct lobbying expenditure and 10 percent is a grass roots lobbying expenditure. The organization's allocation is reasonable.[101]

Implications. A charitable organization will have to evaluate any communication it sends out (whether in the form of a letter, a report, or a newsletter) to see if any parts of the communication are either direct or grass roots lobbying. This determination will depend upon whether the communication is being sent only to members, primarily to members, or primarily to nonmembers, whether the different parts of the communication are on separate or the same subject matter, and what type of legislative action is encouraged.

Charitable organizations then will have to allocate the costs involved in preparing, printing, and mailing the communication between nonlobbying, direct lobbying, and grass roots lobbying expenditures. The allocation of printing and mailing costs is made on a proportional basis depending upon the amount of space occupied by the nonlobbying, direct lobbying, and grass roots lobbying parts of the communication (e.g., one page out of four = 25% of the costs). However, for communications only or primarily to members where there are lobbying articles and related articles, an allocation may reflect the fact that the related articles are partially educational, and therefore nonlobbying, and partially lobbying by virtue of being related to the lobbying article.

[100]Treas. Reg. § 56.4911-3(a)(3).

[101]Treas. Reg. § 56.4911-3(b), Examples (11) and (12).

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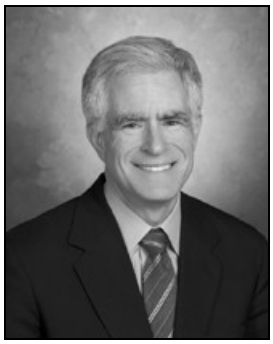

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AREAS OF PRACTICE

Administrative Law: General representation in adjudicative proceedings; rulemaking proceedings; government contract litigation; insurance, health and welfare representation; professional licensure issues; economic development grants and loans; escheat and abandoned property administration; civil forfeitures. Some typical projects have included challenges to the adoption of proposed revisions to solid waste and Medicaid reimbursement regulations; assistance to clients in responding to RFPs and challenging decisions regarding the award of government contracts; applications for environmental, health care and insurance permits and approvals; adjudications concerning professional license applications and revocations; contract claims litigation; health care reimbursement audits and appeals; and federal civil rights litigation.

Commercial/General Corporate: Real estate sales and acquisitions; purchase and sale of businesses; financing; general corporate representation. Some typical projects have included the development and sale of solid waste landfills, and transfer stations; acquisitions and mergers involving health care facilities and water companies; and commercial real estate development and litigation.

Environmental Law: Counseling applicants for permits and approvals from federal, state and local regulatory agencies; permit appeals; defense of penalty and enforcement actions; zoning and land use management; and due-diligence reviews associated with real estate and business acquisitions. Some typical projects have involved solid waste landfills, quarries, power plants, manufacturing facilities, shopping centers and residential subdivisions.

Governmental Affairs: Legislative and regulatory lobbying; government contracts and procurements; counseling with regard to ethics, campaign finance, and lobbying registration law. Some typical engagements have included securing modifications to solid waste and tax legislation and regulations; professional licensure legislation and regulations and economic development grants and legislation.

Health Care: General representation in adjudicative proceedings, rulemaking, audits and compliance counseling concerning health care facilities and professional licenses and certifications and third-party public and private provider payments. Lead counsel in *Rite Aid of Pennsylvania v. Houstoun*, 998 F. Supp 520 (E.D. Pa 1997), 1998 W.L. 254082 (May 8, 1998) and 1998 W.L. 31960 (Aug. 31, 1998).

State and Local Taxation: Pennsylvania state and local corporate, personal and property tax planning, appeals and litigation.

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- American, Pennsylvania and Dauphin County Bar Associations
- National Conference of Commissioners on Uniform State Laws (Commissioner)
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- Director and Board of Directors, American Red Cross of the Susquehanna Valley
- Pennsylvania Association for Government Relations
- National Solid Waste Management Association

COURT ADMISSIONS

- All Pennsylvania State Courts
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Peter A. Gleason

AREAS OF PRACTICE

Mr. Gleason concentrates his practice as Pennsylvania and federal legislative and regulatory policy counsel. Building on his experience with the Office of the Governor in Pennsylvania, the Pennsylvania General Assembly and the United States Congress, Pete has a unique perspective on and an understanding of the legislative and administrative processes, and an insider's view of the political considerations and other motivations that drive those processes. He currently represents a diverse client base, including prominent leaders within industries such as: manufacturing, rail freight transportation, natural gas production, financial services, emerging growth and high tech, health care and retail.

PROFESSIONAL BACKGROUND

Prior to joining K&L Gates, Mr. Gleason served in Pennsylvania Governor Mark Schweiker's Cabinet as Secretary for Legislative Affairs. In that capacity, he advised the Governor, the Governor's senior staff and fellow cabinet secretaries on legislative, regulatory and policy matters affecting all agencies under the governor's jurisdiction. On his departure from state government, Governor Schweiker had this to say about Mr. Gleason:

> "Pete Gleason has been a vital advisor to me, and a trusted liaison with the General Assembly. He helped my Administration win passage of many historic pieces of legislation, including reforms to Pennsylvania's Medical Malpractice and Joint and Several Liability laws, not to mention the 2002-03 Budget – one of the most difficult budgets in Commonwealth history."

From 1997 to 2001, Mr. Gleason had served as deputy secretary for legislative affairs with the office of the governor in Pennsylvania. He worked with former Governor Tom Ridge until his appointment as director of Homeland Security.

During his tenure with the office of the governor, as the Governor's liaison to Pennsylvania General Assembly legislative leaders and committee chairs, Mr. Gleason played an integral role in the enactment of the following legislative initiatives:

- The 2002-03 General Fund Budget (in the wake of a structural deficit in excess of $1.4 billion dollars).
- All legislative tax policy matters; including several significant amendments to the Public Utility Realty Tax Act (PURTA), changes to the Corporate Net Income Tax (CNIT), the phase-out of the Capitol Stock and Franchise Tax (CSFT) and changes to the state Sales Tax.
- The creation and expansion of Keystone Opportunity Zones (KOZ), Enhancement Zones (KOEZ) and Improvement Zones (KOIZ)..
- Historic reforms to Pennsylvania's Medical Malpractice and Joint and Several Liability laws.
- The enactment of the Commonwealth's Procurement Code.
- Natural Gas Deregulation.

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- The Uniform Electronic Transactions Act.
- Land Use Reform ("Growing Smarter").
- The Environmental Stewardship Act ("Growing Greener").
- The Uniform Construction Code.
- Workers' Compensation Reform.

Mr. Gleason's past positions also include director of legislative affairs at the Pennsylvania Department of Labor & Industry, special projects director to the Republican Leader of the Pennsylvania House of Representatives, and special assistant to former United States Senator John Heinz.

In 2008, *Pennsylvania Report* named Mr. Gleason as one of Pennsylvania's "Top 100 Most Influential People," in a list comprised of the 100 people most likely to have an impact on government and politics in Pennsylvania in 2008. In a 2004 poll conducted with state legislators, staff, lobbyists and other state policy stakeholders, he was named as "Most Effective Lobbyist" in Pennsylvania. Mr. Gleason was recently honored by the *Pennsylvania Law Weekly* and the *Legal Intelligencer* as one of forty lawyers under forty "On the Fast Track" for his work at K&L Gates and in the office of the governor.

REPRESENTATIVE EXPERIENCE

- **Competitive Industrial Electric Rates**: Assisted large manufacturing clients in enacting legislation permitting large industrial customers to negotiate competitive rates with incumbent electric utilities, paving the way for significant, historic capital investments by those customers.
- **Economic Development Incentives**: Secured tens of millions of economic incentives for clients seeking to make large capital investment and significantly increase jobs in the Commonwealth, including grants and low interest loans, transportation assistance, rail capital and community development funds.
- **Business Tax Reform:** Successfully led a large coalition of manufacturers and high/bio tech companies to secure dramatic statutory changes in Pennsylvania's Corporate Net Income Tax structure that had penalized companies for increased capital and employee investment in the Commonwealth.
- **Tax Free Zones:** Successfully assisted large manufacturing client with the enactment of legislation creating several state and local tax free zones throughout Pennsylvania to facilitate business expansion and relocation.
- **Civil Justice Reform**: Successfully represented several clients in passing legislation repealing the doctrine of joint & several liability in Pennsylvania.
- **Procurement Bid Protests:** Managed several, successful bid protests on behalf of clients that wanted to pursue a protest without jeopardizing agency relationships.
- **Health Care:** In separate matters, successfully represented several hospitals and the pharmaceutical industry in reversing or mitigating proposed agency recommendations that would have caused significant harm to those clients.

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PROFESSIONAL/CIVIC ACTIVITIES

- Supreme Court of Pennsylvania
- Dauphin County Bar Association
- Pennsylvania Bar Association
- Chairman of the Board of Directors: The Bridge Educational Foundation
- Board of Directors: The Country Club of Hershey
- Deny Township Planning Commission

PRESENTATIONS

- "Procedural Pitfalls in the Legislative Process," presented in the Governor's "Office of General Counsel University"
- "Lobbying Disclosures and the Pennsylvania Ethics Act," presented to the Cumberland County, PA Inn of Court.
- "Interaction with the Legislature by Government Attorneys," presented to the Governor's Office of General Counsel.

BAR MEMBERSHIP

Pennsylvania

EDUCATION

J.D., Widener University School of Law, 1995
B.S., Arizona State University, 1989

K&L GATES

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Stephen Cooper

AREAS OF PRACTICE

Mr. Cooper has more than 25 years of experience in government and government relations, representing large corporations such as Time Warner, AIG, Boeing, Dupont, Cigna, financial institutions, trade associations, state government, and health care plans and health care providers.

Over the years Mr. Cooper has represented numerous health plans, purchasers of health care and health plan associations. He is intimately familiar with the myriad of issues confronting health care insurers and providers – from Medicare payment methodologies, the complexity of the individual health care insurance market to HIPAA related issues. Mr. Cooper's experience includes:

- President of the New York Health Plan Association.
- Vice President of the Hospital Association of New York State.
- Executive Director of the New York State Council on Health Care Financing.
- Retainer counsel representing numerous health care plans and state and national provider associations- including the Health Insurance Association of America (HIAA), Cigna, United Healthcare, Torchmark, Metropolitan Life Company, and Travelers.
- Director of Congressional Relations at the Blue Cross/Blue Shield Association, representing 49 Blue Cross/Blue Shield plans in Washington.

Mr. Cooper's clients look to him for advice on developing and coordinating effective government relations with public relations strategies, and grass-roots campaigns. He is often asked to speak at national forums on matters related to health care plans and Washington politics.

Mr. Cooper has extensive experience in politics, working on numerous Congressional campaign committees and a Presidential debate team. For a number of years, Mr. Cooper served on the board of a rural teaching hospital and is Chairman of the Board of a small nonprofit social service agency in Washington, D.C.

EDUCATION

M.A., State University of New York at Albany, 1973
B.A., State University of New York at Albany, 1969