Navigating the Maze of State and Local Lobbying Laws

The laws that apply to lobbying activities vary widely across the country, but don’t let the complexity prevent you from advocating on your important issues. Awareness and some good legal advice will help keep you compliant.

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The ability to lobby federal, state and local government officials and employees on issues of importance is a First Amendment right. However, those who engage in lobbying must comply with a web of laws that are designed to track amounts spent on these activities and that require registration and regular reporting. People often shy away from engaging in lobbying for fear they may trip over laws they know little about.

Don’t be afraid of lobbying. Just be aware of the laws that may be implicated as a result of lobbying, and know when to ask questions about how they may affect your organization.

The biggest challenge: Lobbying laws vary from jurisdiction to jurisdiction, which makes them even more daunting. Some are straightforward, while others will make your head spin. The Lobbying Disclosure Act of 1995 regulates attempts to lobby the federal government. Meanwhile, every state has its own lobbying laws, many cities and counties do too, and even local governments have adopted lobbying ordinances.

Lobbying is defined in different ways in different jurisdictions. Most states’ definitions cover attempts to influence both legislative and administrative action, while a few (Oregon, for example) cover only
legislation. Some jurisdictions also cover efforts to influence quasi-judicial activity, which includes attempts to obtain permits, licenses and contracts (New York and Arizona are examples). Requirements for registration and disclosure reporting also vary: In some states, only the lobbyist registers and files reports, and in others, the client (commonly referred to as the “lobbyist employer” or “principal”) also may be required to register and/or file reports (Alabama, Arizona, California, New York and Ohio, to name a few).

Typically, to trigger a lobbying law, someone must be compensated to make a direct communication with a government official or employee in an attempt to influence that official. In some states (such as Florida, Oregon and Idaho), it takes only an attempt to obtain goodwill from a government official to trigger the law.

**Who Is a Lobbyist?**

In California, there are various tests for qualifying as a lobbyist. An “in-house employee lobbyist” who acts only on behalf of his or her employer, for example, must register as a lobbyist if that person spends one-third or more of his or her compensated time during any calendar month in direct communication, other than administrative testimony, with legislative or state agency officials for the purpose of influencing legislative or administrative action.

If an organization has an in-house lobbyist, it must register as a lobbyist employer and file quarterly reports (so must the lobbyist). Another requirement in California is that anyone who spends $5,000 or more in a calendar quarter to influence legislative or administrative action but does not employ a lobbyist or contract with a lobbying firm must file a report disclosing the amounts spent on lobbying activities.

Other states have slightly different parameters. In Nevada, for example, the lobbying activity must occur in person inside specific legislative buildings. In Illinois, there is no time or dollar threshold. In other states, such as Connecticut and Arkansas, a lobbyist compensation or expenditure threshold must be met.

**Lobbying Coalitions**

Often, organizations join lobbying coalitions or other groups that are retaining lobbying firms and managing the campaigns. This is a great way to support issues of interest to your organization without having to supervise the lobbying activities or register as lobbyists.

However, be aware that payments earmarked for lobbying activities in some jurisdictions (including at the federal level) may trigger disclosure requirements by the organization making the payment. Typically, membership dues paid to organizations (even if a portion is allocated for lobbying) will not alone trigger disclosure by the member, but it is always a good idea to check the laws of the jurisdiction in which the
allocation is made.

**Gift-Giving**

Gift and ethics laws are also important to keep in mind when engaging in lobbying activities. Federal, state and local government employees and officials are subject to a patchwork of such laws depending on their jurisdiction. Often, lobbyists and organizations that employ lobbyists are subject to more stringent gift-giving restrictions by virtue of their lobbyist status, or they may be required to disclose gifts on their lobbying reports.

A “gift” typically includes a meal, refreshments, transportation, travel, an invitation to an event, trinkets or any tangible item. Before providing gifts to government employees or officials (even if you do not employ lobbyists), always be sure to check the relevant lobbying and gift and ethics laws or consult with counsel experienced in the area.

Don’t be afraid to lobby on issues of importance to your organization. Just be vigilant about potential lobbying and gift and ethics laws, and seek guidance when you are unsure if a law may apply to you or your organization.