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## MUNICIPAL LAW

BY JEFFREY D. FRIEDLANDER

### *Protecting Government Ethics, Local Law Number 34*

During the mid-1980s, with the discovery and prosecution of serious acts of corruption involving persons in and doing business with city government, Mayor Edward I. Koch moved decisively to adopt reforms of the city's political process to restore public confidence in municipal government.

These measures included reforming the procurement process, requiring financial disclosure by city employees, and enhancing the powers of the Department of Investigation to root out corruption at all levels of city government.

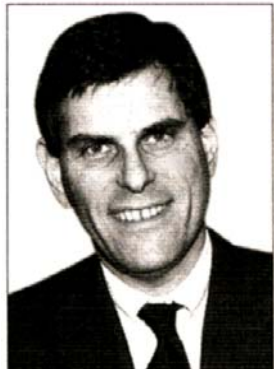
Two of the most important measures enacted at that time were Local Law Number 14 of the Year 1986, which greatly extended the reach of the city's Lobbying Law, and Local Law Number 8 of the Year 1988, the Campaign Finance Act, which established the city's Campaign Finance Law, a pioneering effort to reduce the size of campaign contributions and the level of spending on campaigns through the utilization of public matching funds. This law continues to provide a model for the nation.

Attorneys of the Law Department's legal counsel division worked closely at that time with the mayor's office and the City Council in all phases of preparing these enactments. Now, some 20 years later, attorneys of the Legal Counsel Division, assisting the staffs of Mayor Michael Bloomberg and Council Speaker Christine Quinn, have again been instrumental in preparing amendments to both local laws that address problems which have arisen during the intervening period and provide for the more effective regulation of crucial aspects of the city's political process.

#### **Regulation of Lobbying**

Last summer, the mayor and the City Council enacted legislation, Local Laws 15 and 16 of the Year 2006, to strengthen the city's regulation of lobbyists and modernize the way lobbyists and their clients report their activities to city government.

How do we define lobbying? Lobbying refers in general to the attempt to influence decisions made by persons working in government. The provisions on lobbying in the Administrative Code of the City of New York (§3-211 et seq., the "Lobbying Law") define lobbying as any attempt to influence any one of eight determinations made by persons in city government. These acts include action by the City Council on a bill before it, the mayor's approval or



disapproval of a bill passed by the council, and determinations made by elected city officials or city officers or employees regarding the procurement of goods, services or construction. Attempts to influence determinations relating to zoning or the development of real property and the adoption of rules also constitute lobbying.

The city's primary means of regulating lobbyists is through registration and reporting requirements. Persons who earn in excess of \$2,000 in compensation and expenses from lobbying activities must file a statement of registration with the city clerk. This statement of registration provides information about

the lobbyist, the client who has retained the lobbyist, and specific information about the subjects of the lobbyist's activities and the city officials or agencies contacted by the lobbyist in the course of those activities.

In addition to filing registration statements, the Lobbying Law requires lobbyists to file periodic reports, describing in detail the subjects on which the lobbyist has lobbied, the forum for such lobbying and how much compensation the lobbyist has been paid or is owed. The Lobbying Law also requires clients to file annual reports providing identifying information about the client and each lobbyist retained, the compensation paid to each lobbyist and any additional expenses incurred for the lobbying. Failure to file the required reports results in civil and criminal penalties. These reporting requirements shed light on the activities of lobbyists and their effects on decision making in city government.

Local Laws 15 and 16 of 2006 were intended to strengthen these regulations while maintaining the Lobbying Law's essential structure. Most important, Local Law 15 establishes a new reporting requirement for lobbyists who engage in fund raising or political consulting activities. Fund raising under Local Law 15 is the solicitation of contributions for a candidate for elective office, including the offices of mayor, public advocate, comptroller, borough president and City Council member. A lobbyist who is compensated for providing political advice to the campaign of a candidate for any of the above-noted offices, or to the campaign of a city officer or employee seeking any elective office, is engaged in political consulting activities under the local law, as is a lobbyist who receives compensation for providing political advice to the mayor, public advocate, comptroller, borough president or a City Council member. Local Law 15 requires lobbyists who engage in such fund raising or political consulting activities to file with the city clerk reports identifying, among other things, the lobbyist, the candidate or

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elected official on whose behalf the lobbyist provided fund raising or political consulting services, and any person with whom the lobbyist contracted for the purpose of providing such services.

Local Law 15 further augments the registration statements filed by lobbyists by requiring that the subject matter of the lobbyist's activities be described with sufficient specificity to make it possible to identify the local law, resolution, procurement, real property determination, rule or other matter in question. This amendment makes it possible for the public to understand, more precisely than under the previous law, the issues that are the subjects of lobbyists' activities and the city officials who are the objects of their efforts. Registration statements are also required to include, in addition to information relating to lobbyists themselves, the names, addresses and telephone numbers of the lobbyists' spouses or domestic partners and their unemancipated children, and, to the extent the lobbyist is an organization or division of an organization, the names, addresses and telephone numbers of officers and employee of the organization or division that engages in lobbying activities, as well as the same identifying information for their spouses or domestic partners and unemancipated children. Registration statements, like all information required under the Lobbying Law, must be filed in electronic form with the city clerk and, with the exception of information on the family members of lobbyists, are available for public inspection on the Internet.

The information regarding lobbyists, their families and activities that the Lobbying Law requires to be provided in registration statements is important for enforcement of the city's Campaign Finance Law, following recent amendments to that law which have made political campaign contributions from lobbyists and their families ineligible to be matched with public funds. The significance of these amendments is discussed below.

The Lobbying Law's filing requirements are enforced by the city clerk, who has authority under Local Law 15 to assess increased civil penalties for violations. The city clerk is also authorized to establish penalties for late filing, provided that the penalty schedule conforms to that of the New York State Temporary Commission on Lobbying. The city clerk has established a penalty schedule differentiating between first-time filers, who are assessed a late filing fee of \$10 per day for each day the required statement or report is late, and lobbyists who have filed previously, who are assessed a late filing fee of \$25 per day.

A notable feature of Local Law 15 is the requirement that the city clerk conduct random audits of the registration statements filed by lobbyists and their clients, and, further, that the city clerk prepare and post on the Internet an annual report of the enforcement of the Lobbying Law's requirements, including the number of random audits conducted, the number and amount of civil penalties imposed,

and the number and disposition of complaints received from the public.

Another significant change brought about by last summer's legislation is the prohibition, set forth in Local Law 16, on the offering or giving of gifts to any city officer or employee by any lobbyist or other person required to be listed on a lobbyist's statement of registration. The city's Conflicts of Interests Board has authority to investigate and adjudicate alleged violations of this prohibition, which is punishable by significant civil and criminal penalties. The board has defined "gift" by rule to include any gift with any value. Prior to 2006, city officers and employees were separately prohibited from accepting gifts from any person doing business with the city in excess of \$50 (a prohibition which continues in force), and lobbyists active at any level of government throughout New York State were prohibited by state law from offering to any public official gifts in excess of \$75. See Legislative Law §1-m. Since the enactment of Local Law 16, lobbyists registered under the city's Lobbying Law are prohibited from offering any valuable item to any city officer or employee. In this way, the Lobbying Law addresses an important and, as frequently perceived by the public, illegitimate means used by lobbyists to influence the deliberations of governmental decision makers.<sup>1</sup>

### **Campaign Finance Reform**

On July 3, 2007, Mayor Bloomberg signed into law Local Law Number 34 of the Year 2007, the latest in a series of amendments to the city's Campaign Finance Law. The changes made by this legislation include extending the ban on corporate campaign contributions to include partnerships and limited liability companies, increasing the rate at which contributions to candidates are matched with public funds, and requiring that candidates in receipt of public funds be engaged in competitive campaigns. Most significantly, the legislation also makes changes to the law to limit campaign contributions from individuals who do business with the city, addressing the issue of "pay-to-play" in New York City.<sup>2</sup>

Local Law 34 is the latest in a series of legislative enactments that have put New York City in the forefront of campaign finance reform. The original Campaign Finance Act, enacted in 1988, established the Campaign Finance Law in chapter 7 of Title 3 of the Administrative Code.

The act's declaration of legislative intent and findings stated that it was at that time "vitaly important to democracy in the city of New York to ensure that citizens, regardless of their personal wealth, access to large contributions or other financial connections, are enabled and encouraged to compete effectively for public office by educating the voters as to their qualifications, positions and aspirations for the city."

The law's premise was that the reliance by candidates for public office on large private campaign contributions had the appearance of corruption or undue influence and that a campaign finance program designed to limit such reliance

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would ameliorate the public perception of impropriety, and that the provision of public matching funds would allow more people to compete for elective positions.

The Campaign Finance Law is administered by the Campaign Finance Board, whose creation was approved by the voters in a citywide referendum in the general election of November 1988. The law subjects candidates who choose to participate in the campaign finance program to certain limitations, including expenditure limitations, while making them eligible for certain benefits, including public funds awarded to a candidate to match private contributions to that candidate. Since its inception, the Campaign Finance Board and its staff have pursued their mission with great dedication.

Indeed, in its nearly two decades of existence, the board has been led by only two chairs: Father Joseph A. O'Hare S.J., former president of Fordham University, who was appointed by Mayor Edward I. Koch, and Frederick A.O. Schwarz Jr., who served as corporation counsel under Mayor Koch.

Over the years, the Campaign Finance Law has been amended and strengthened in many ways. One significant change took place in 1996, when the law was amended to require that candidates wishing to receive public matching funds agree to participate in public debates. In 1998, the law was further amended to add chapter 8 of Title 3 of the Administrative Code, regulating transition and inaugural donations to elected candidates. Also in 1998, the matching rate (that is, public funds granted to a participating candidate to match a portion of private contributions received by the same candidate), which started at 1-1, grew to 4-1, with a maximum of \$1,000 in public funds per contributor.

This year's amendments to the law further increase the matching rate to 6-1, with a maximum of \$1,050 in public funds per contributor.

### **'Pay-to-Play'**

A principal feature of this year's campaign finance amendments, the limitation on campaign contributions from individuals who do business with the city, seeks to address the appearance that a person or entity can use campaign contributions to buy their way into a contract or other business dealing with city government, a practice often referred to as "pay-to-play."

This issue was first addressed in the charter revision of 1998. In that year's general election, the voters approved Charter §1052(a)(11), which provided for promulgation of rules by the Campaign Finance Board that would require candidates to disclose to the board the acceptance of campaign contributions from individuals and entities doing business with the city and regulate the acceptance by candidates of contributions from such individuals and entities. However, after considering the difficulties in creating and administering a program implementing this requirement, the Campaign Finance Board issued a report in 2006 that concluded that

doing business contributions are best regulated through legislation rather than rule-making.

The City Council and the mayor have now acted. Local Law 34 broadly defines "business dealings" with the city to include contracting with a city agency for the provision of goods, services or construction in excess of specified amounts, and, as noted above, the activities of lobbyists or other persons required to be listed in a lobbyist's registration statement.

It is important to note that lobbyists and others who have business dealings with the city are not prevented from supporting the candidate of their choice, but their ability to do so through campaign contributions is circumscribed in furtherance of the public interest to prevent the appearance or reality of attempting to influence the conduct of city business dealings.

### **Types of Restrictions**

The law establishes two types of restrictions for contributions made by those who do business with the city: First, it sets a maximum amount that a participating candidate may accept from a person who does business with the city that is substantially below the maximum which may otherwise be accepted from an individual contributor. Second, the law denies matching public funds for all contributions accepted by a candidate from persons who do business with the city.

This and the other provisions of Local Law 34 reflect, like the original Campaign Finance Act, a commitment to foster a political process free from the appearance of the exercise of undue influence by private individuals or entities through large and strategically placed campaign contributions. The drafters of the amendments understood that the regulation of contributions from people engaging in various dealings with the city is a complex undertaking and that the application of the law not only be transparent to the public but, very importantly, clear to candidates and campaigns subject to the law.

### **New Database**

The mayor's office is therefore charged with developing, in the course of the next 16 months, a database containing information regarding entities that have business dealings with the city and certain persons associated with them. Information from this source will be available to the public and to the candidates and Campaign Finance Board to monitor compliance with the law. The Campaign Finance Board, in turn, will create a user-friendly form to be distributed to and completed by campaign contributors regarding business dealings with the city, and promulgate rules establishing acceptable documentation by candidates of their compliance with the law's requirements.

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1. It should be noted that the state Legislature, in its 2007 session, further amended §1-m of the Legislative Law to prohibit lobbyists throughout New York State from offering a gift in any amount to any public official. See chapter 14 of the Laws of 2007. State and city law are therefore now consistent in their prohibition of gift-giving by lobbyists.

2. The provisions of Local Law 34 have been described and commented on in detail in a column that recently appeared in this publication, "City Revamps Campaign Finance Law" by Laurence Laufer and Jisha Vachachira, New York Law Journal, July 17, 2007 at page 4.