

New York JCOPE Settles Lobbyist Investigations

May 2018

In early April, the New York Joint Commission on Public Ethics (JCOPE) settled two cases against state lobbyists who made payments to a 501(c)(4) entity at the behest of New York City Mayor Bill de Blasio. Nonprofit organization New Yorkers for Clean, Livable and Safe Streets (NYCLASS) agreed to pay JCOPE \$10,000 for failing to register and report as a lobbyist, and well-known New York City lobbyist James Capalino agreed to pay \$40,000 to settle the matter against him, although he did not admit to any violation of the lobbying law.

At issue in both matters were payments the lobbyists made to the Campaign for One New York (CONY), a 501(c)(4) entity organized by Mayor de Blasio's former campaign officials to educate the public and policymakers about legislative and public policy options. In effect, the purpose of the organization was to support the Mayor's legislative and policy agenda.

After de Blasio asked NYCLASS president Steven Nislick to donate to CONY in 2014, Nislick and NYCLASS board member Wendy Neu together made aggregate donations of \$125,000 between 2014 and 2015. During this time period, NYCLASS was actively lobbying City officials, including the Mayor; from January to July 2014, it was doing so without being properly registered as a lobbyist.

Similarly, in 2015 Mayor de Blasio asked lobbyist Capalino to support efforts to advance the City's legislative and policy objectives. The Mayor put Capalino in touch with CONY's treasurer, who then asked Capalino to make a donation. Capalino donated \$10,000 personally and obtained an additional \$90,000 in donations from his lobbying clients. Shortly after these donations, Capalino coordinated with the CONY treasurer to set up a meeting between the Mayor and the

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lobbying clients who had made donations.

After learning of these payments, JCOPE opened investigations to determine whether NYCLASS or Capalino had violated New York's lobbying law. Under the New York State Lobbying Act and JCOPE regulations, any gift from any individual or entity who is required to be listed on a New York lobbyist or client registration to a public official is presumptively impermissible. JCOPE regulations further provide that a lobbyist or client may not offer or give a gift to "a third party, including a Charitable Organization ... at the designation or recommendation of a Public Official" when the lobbyist would be prohibited from providing the gift to the official directly. Importantly, a "Charitable Organization," as defined in the regulations, includes not only 501 (c)(3) entities but also any entity registered with the New York Attorney General's Charities Bureau. Because CONY was registered as a charitable organization in New York, the lobbying law prohibited lobbyists and lobbyist clients from donating to CONY at the behest of a public official, such as Mayor de Blasio.

Notably, none of the respondents admitted to any violation of this gift-related provision of New York law. Nevertheless, it is clear that payments to nonprofit organizations, at the behest of a public official, present the possibility of investigation and potentially hefty civil penalties in New York state. We are aware of a number of other jurisdictions with similar restrictions or reporting requirements for "behested payments." As the penalties paid by NYCLASS and Capalino demonstrate, the best method for staying out of the headlines is to vet such donations first to ensure they comply with relevant laws.