

# New York State Seeking Public Comment on Proposed Pay-to-Play-Type Contribution Prohibition

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By D. Mark Renaud and Eric Wang

New York State's Joint Commission on Public Ethics (JCOPE) recently issued a draft advisory opinion that would prohibit statewide executive and legislative branch elected officials from accepting campaign contributions from certain persons subject to their enforcement powers. JCOPE is seeking public comment on its proposed interpretation, which is based on a state ethics law prohibiting officers and employees from engaging in any transactions that are in "substantial conflict with the proper discharge" of their official duties or that create the "impression that any person can improperly influence" them.

Although these statutory provisions are quite vague and do not specifically address political contributions, JCOPE's predecessor agency interpreted them in a 1998 advisory opinion to prohibit state employees from soliciting political contributions on behalf of candidates and elected officials from individuals or business entities which (1) have matters before the employee or the agency an employee supervises; (2) the employee has substantial reason to believe will have matters before the employee or agency the employee supervises; or (3) had matters within the past 12 months before the employee or agency the employee supervises. The 1998 opinion exempted statewide elected officials from the solicitation prohibition, and did not address legislative officials and employees because the predecessor agency lacked jurisdiction over the legislature.

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## Practice Areas

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JCOPE's latest draft opinion would extend the 1998 opinion to prohibit statewide elected officials and members of the legislature from soliciting and accepting contributions from individuals and entities if they are subject to the "investigative, prosecutorial, or audit power" of the elected official or the official's agency, or if they are involved in litigation adverse to the elected official or official's agency. The contribution prohibition also would extend to owners and certain other parties with a financial interest in an affected corporation or entity, as well as certain relatives of affected individuals.

Consistent with the 1998 opinion, it appears that the latest proposal would apply the contribution ban not only to pending conflicts, but also prospectively to anticipated conflicts and retrospectively to conflicts during the past 12 months. Although the proposal does not appear on its face to apply to candidates who are not incumbents at the time they are campaigning, candidates who accept contributions and are elected may later be required to recuse themselves from participating in matters where they accepted contributions from someone subject to their or their agency's enforcement powers.

JCOPE has not established a deadline as of this time for accepting public comments on this proposed interpretation of the state ethics law. Please contact us if you are interested in submitting a comment, or if you have any questions about the proposal.