

**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



April 2020

Charitable Giving in a Crisis: a Gift Law Reminder for New York Lobbyists and Their Clients

One thing that has become clear during the Coronavirus Disease 2019 (COVID-19) pandemic is that during times of great strife, business entities and individuals alike, rise to the occasion to show compassion. Throughout New York and across the country, individuals and organizations have been stepping up to make charitable contributions.

Donations are being made to established philanthropic organizations, newly formed groups helping front line workers or those in other sectors that have been directly affected by the economic effects of the current crisis, and in many instances, directly to the state of New York.¹ At times, these contributions occur organically and due to a sense of corporate or personal responsibility. Sometimes, however, public officials may request that individuals or entities support certain initiatives. Individuals and entities that are regulated by New York's lobbying laws should be aware that the Legislative Law and the Joint Commission on Public Ethics (JCOPE) regulations impose restrictions on certain gift giving.

As a general matter, New York lobbyists (whether employed or outside retained consultants) and their clients, are prohibited from offering or giving any gift to a state or municipal public official, "unless under the circumstances it is not reasonable to infer that the gift was intended to influence such public official."²

¹ See Governor Cuomo's press release regarding "[Donations Include Personal Protective Equipment, Hand Sanitizer, Equipment for Field Hospitals and Free Flights for Incoming Medical Volunteers; More Companies and Individuals are Still Reaching out to the State About Making Donations.](#)"

² N.Y. Leg. Law § 1-m.

JCOPE has concluded that gifts by lobbyists to officials are “presumptively impermissible.”³ Moreover, JCOPE’s regulations provide that lobbyists and clients are similarly prohibited from “offer[ing] or giv[ing] a [g]ift to a third party, **including a Charitable Organization**,” on behalf of a public official or “**at the designation or recommendation** of a” public official.⁴ Failure to comply with this prohibition could result in a monetary penalty of up to \$25,000 or three times the amount of the impermissible gift.⁵

Recognizing that the lobbying laws restrict many individuals or entities who would otherwise support the state’s efforts to combat COVID-19 – monetarily or through in-kind contributions that could benefit frontline medical professionals – from doing so, Governor Cuomo included in one of the many Executive Orders issued during March, a narrow exception to the lobbyist gift law. Executive Order 202.6 suspended/modified various laws through at least April 17 (which have since repeatedly been extended through at least mid-May), including the above described gift laws, but only “to the extent that any agency may receive a donation in kind or otherwise, in any amount from any source, **provided such donation is made to the State and is administered by a state agency in furtherance of the [COVID-19] response effort.**”

As a result of EO 202.6, lobbyists and their clients are free to respond to public officials’ requests for gifts **to the state**, but only to the state. To the extent that a legislator, member of the executive branch, or such individual’s employee, requests a New York lobbyist or lobbying client to contribute to a specific charity, or provide support for a particular community organization, the lobbyist and its clients must refrain from responding, unless it is clear that: “(1) it is not reasonable to infer that the Gift was intended to influence the Public Official; and (2) the Gift could not reasonably be expected to influence the Public Official, in the performance of his or her official duties; and (3) it is not reasonable to infer that the Gift was intended as a reward for any official action on the Public Official’s part.”⁶ While the Governor included the waiver of Legislative Law § 1-m in the Executive Order during this unprecedented time of need, the gift law exemption only applies if the contribution goes directly to the state.

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³ 19 NYCRR 934.3.

⁴ 19 NYCRR 934.3(e).

⁵ N.Y. Leg. Law § 1-m.

⁶ 19 NYCRR 934.3(a).

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