



STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION  
20 Trinity Street • Hartford, Connecticut 06106 - 1628

DECLARATORY RULING 2006-1  
LOBBYIST CONTRIBUTION AND SOLICITATION BAN

At its Special Meeting on September 20, 2006, the Commission voted to initiate a declaratory ruling concerning the application of Conn. Gen. Stat. §§9-333l(h) and 9-333l(i), as amended by October 25 Special Session, Public Act No. 05-5, *An Act Concerning Comprehensive Campaign Finance Reform for Statewide Constitutional and General Assembly Offices*, and Public Act 06-137, *An Act Concerning the Campaign Finance Reform Legislation and Certain Election Law and Ethics Provisions* (hereinafter collectively referred to as “the Act”), to the political activities of lobbyists on and after December 31, 2006, the effective date of the Act and amendments thereto.

The Commission has received many questions concerning the applicability of the ban, particularly the solicitation ban, which indicate very common and widely held misperceptions about the scope and application of the ban. The Commission decided to issue this ruling to correct those misperceptions and provide guidance to those subject to the ban regarding the Commission’s interpretation and prospective enforcement of the ban.

Pursuant to Conn. Gen. Stat. §4-176(h) a declaratory ruling shall have the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of section 4-183. No one is on file with the Commission pursuant to Conn. Gen. Stat. §4-176(c) as having requested notice of declaratory ruling petitions on this subject matter.

The relevant statutory sections encompassing the lobbyist contribution ban were enacted in Section 29 of October 25 Special Session, Public Act 2005-5, and amended by Section 24 of Public Act 06-137, as follows:

Sec. 29. Section 9-333l of the general statutes is amended by adding subsections (h) and (i) as follows (*Effective December 31, 2006, and applicable to elections held on or after said date*):

(NEW) (h) No communicator lobbyist, member of the immediate family of a communicator lobbyist, or political committee established or controlled by a communicator lobbyist or a member of the immediate family of a communicator lobbyist shall make a contribution or contributions to, or for the benefit of (1) an exploratory committee or a candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, Secretary of the State, state senator or state representative, (2) a political committee established or controlled by any

such candidate, (3) a legislative caucus committee or a legislative leadership committee, or (4) a party committee.

(NEW) (i) No communicator lobbyist, immediate family member of a communicator lobbyist, agent of a communicator lobbyist, or political committee established or controlled by a communicator lobbyist or any such immediate family member or agent shall solicit (A) a contribution on behalf of a candidate committee or an exploratory committee established by a candidate for the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, Secretary of the State, state senator or state representative, a political committee established or controlled by any such candidate, a legislative caucus committee, a legislative leadership committee or a party committee, or (B) the purchase of advertising space in a program for a fund-raising affair sponsored by a town committee pursuant to subparagraph (B) of subdivision (10) of section 9-333b, as amended by this act.

(j) The provisions of subdivision (1) of subsection (h) of this section and subsection (i) of this section shall not apply to the campaign of a communicator lobbyist, immediate family member of a communicator lobbyist or agent of a communicator lobbyist who is a candidate for public office or to an immediate family member of a communicator lobbyist who is an elected public official.

Any person who violates any provision of subsections (h) and (i) of this section shall be subject to a civil penalty, imposed by the State Elections Enforcement Commission, of not more than five thousand dollars or twice the amount of any contribution donated or solicited in violation of subsection (h) or (i) of this subsection, whichever is greater.

Those subject to the contribution and solicitation ban are *communicator lobbyists*, as distinct from client lobbyists. A communicator lobbyist is someone compensated for lobbying over the threshold amount of \$2,000 in any calendar year. “Communicator lobbyist” is further defined in Conn. Gen. Stat. §1-91(v) as “a lobbyist who communicates directly or solicits others to communicate with an official or his staff in the legislature or executive branch of government or in a quasi-public agency for the purpose of influencing legislative or administrative action.” Conn. Gen. Stat. §9-333a (16) provides that lobbyist has the same meaning as Conn. Gen. Stat. §1-91 in the State Code of Ethics.

### **Prohibited Activities**

A communicator lobbyist cannot contribute or solicit a contribution for the covered candidates and committees. The ban also applies to such lobbyist’s immediate family, and political committees established or controlled by a communicator lobbyist. The

types of committees that a communicator lobbyist, his or her immediate family and political committees established or controlled by them cannot contribute to are:

- 1) Candidate committees for statewide office or general assembly or exploratory committees for those offices;
- 2) Political committees established or controlled by those candidates;
- 3) Legislative leadership and legislative caucus committees, or
- 4) Party committees (state central and town committees).

“Immediate family” is defined in Conn. Gen. Stat. §9-333a (24), as amended by the Act, to mean the spouse or dependent child of an individual. Spouse includes partners to a civil union, pursuant to Conn. Gen. Stat. §46b-3800. Minor children under the age of 16 who are not subject to the ban are already limited to contributing \$30, pursuant to Conn. Gen. Stat. §9-333m(e).

“Legislative caucus committee” is defined in Conn. Gen. Stat. §9-333a(22), as amended by the Act, as a committee established under subdivision (2) of subsection 9-333g by a majority of the members of a political party who are also state representatives or state senators, and “Legislative leadership committee” is defined in Conn. Gen. Stat. §9-333a(22), as amended by the Act, as a committee established under subdivision (3) of subsection 9-333g by a leader of the General Assembly.

October 25 Special Session Public Act 05-5 also amended the definition section of the state campaign finance laws, Conn. Gen. Stat. §9-333a, to add the following definition of “solicit:”

(26) "Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, campaign treasurer, deputy campaign treasurer or any other officer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. "Solicit" does not include (i) making a contribution that is otherwise permitted under this chapter, (ii) informing any person of a position taken by a candidate for public office or a public official, or (iii) notifying the person of any activities of, or contact information for, any candidate for public office.

Under the new lobbyist contribution ban, no communicator lobbyist can *request* that a contribution be made to one of the covered candidates or committees. The Commission construes this as requiring that either (1) an express request that a contribution be made; or 2) a request is made such that a reasonably prudent person would not construe it as anything other than a request that a contribution be made, to a covered candidate or committee in order to constitute a prohibition solicitation under the ban. Any implicit

request that a contribution be made by a lobbyist in violation of this section would have to be established by clear and convincing evidence.

No communicator lobbyist can *participate* in any fundraising activity for a covered candidate or committee under the new ban. In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language. Conn. Gen. Stat. §1-1. Dictionary definitions are an appropriate source to determine the ordinary meaning of words. See *Caldor v. Heffernan*, 183 Conn. 566, 440 A.2d 767 (1981). Participate is not defined in the act, so we rely on the common understanding of the word, as utilized in dictionary definitions. “Participate” has been defined as: 1) To take part in something: *participate in the festivities*; 2) To share in something: *If only I could participate in your good fortune*.

Dictionary.com. *The American Heritage® Dictionary of the English Language, Fourth Edition*, Houghton Mifflin Company, 2004.

<http://dictionary.reference.com/browse/participate> (accessed: October 11, 2006).

Using the ordinary meaning of the word participate, the Commission concludes that a lobbyist cannot attend a fundraiser for a covered candidate or committee, even if someone else pays for their ticket, as such attendance would constitute participation in the fundraiser within the common meaning of the word, by taking part in the fundraiser.

Participating in any fundraising activities is also specifically defined to include, but is not limited to:

- 1) Forwarding tickets;
- 2) Receiving contributions; and
- 3) Bundling contributions. Conn. Gen. Stat. §9-333a (26).

In the campaign finance context, bundling refers to the practice of collecting several contributions for forwarding or delivery to a campaign, generally so as to receive credit or good will for their collection.

Holding certain positions within a campaign or committee are also considered soliciting, pursuant to Conn. Gen. Stat. §9-333a (26). Any individual who is serving as the chairperson, campaign treasurer, deputy treasurer or other committee officer is considered “soliciting” *ex officio* pursuant to Conn. Gen. Stat. §9-333a(26)(C). A communicator lobbyist, his or her immediate family member or agent could not therefore serve in any such capacity for a covered candidate or committee.

“Agent” is defined in Conn. Gen. Stat. §9-333a (27) as any person acting at the direction of an individual.

Lobbyists, immediate family members, agents or their political committees cannot engage in any of the actions defined as soliciting for any of the following:

- 1) Candidates for statewide office and General Assembly
- 2) Committees established or controlled by such candidates
- 3) Legislative leadership or legislative caucus committees

4) Party committees.

Lobbyists, immediate family members, agents or their political committees also cannot solicit an advertising purchase for a program booklet prepared for a town committee's fundraising affair. The advertising purchases exemption from the definition of contribution has been eliminated for all but candidate committees for candidates for local office and town committees by another section of the Act, but lobbyists may not make such purchases from town committees pursuant to Conn. Gen. Stat. §9-333b(b)(10)(B).

**Permissible Activities**

The statutory definition of "solicit" also provides examples of what does *not* constitute soliciting, including "informing any person of a position taken by a candidate for public office or a public official." Consequently, communicator lobbyists may inform their clients (or anyone else, for that matter) that a certain legislator or public official has been helpful, or not, on an issue that they are concerned about.

The statutory definition of "solicit" also provides that solicit does not mean "notifying the person of any activities of, or contact information for, any candidate for public office." A lobbyist subject to the ban can provide anyone with a candidate's website, phone number or other contact information. A lobbyist subject to the ban could even inform someone that the candidate was having a fundraising event, but would have to avoid suggesting that they should attend or contribute.

The legislative history of the Act includes an explicit discussion of how allowing a lobbyist subject to the ban to inform a person of any activity of a campaign, including a fundraiser, weakens the ban. The Commission suggested clarifying language to exclude fundraising activities from the activities a lobbyist could inform any person of, which was rejected by the General Assembly. The Commission therefore believes it is clearly permissible conduct for a communicator lobbyist to orally inform a person of a fundraising event being held on behalf of a candidate's campaign. An express request that the person should attend or contribute, or an implicit request capable of no other construction by an ordinarily reasonably prudent person, would constitute a prohibited solicitation under the ban.

A lobbyist or other person subject to the ban still has many avenues of political campaign participation available to them. For example, a communicator lobbyist is still permitted to:

- 1) Volunteer for a covered candidate's political campaign (except as chairperson, treasurer, deputy treasurer or other officer, or in any fundraising capacity);
- 2) Put a sign on his or her lawn;
- 3) Make get out the vote calls;
- 4) Express support for a candidate or his or her views;
- 5) Advise someone whether a candidate is likely to be elected;
- 6) Communicate his or her evaluations of a legislator or candidate to his or her clients or anyone else;

- 7) Contribute to a political committee that is not established or controlled by one of the covered candidates (but could not contribute to one committee with the direction to pass through to another, otherwise known as laundering, earmarking or giving in the name of another);
- 8) Contribute to candidate committees for candidates for Judge of Probate, municipal office and referenda committees;
- 9) Make independent expenditures on behalf of a covered candidate (no coordination, as defined in Conn. Gen. Stat. §9-333a (19));
- 10) Provide advice to a candidate for public office;
- 11) Run for office;
- 12) Be the spouse or dependent child of someone running for office;
- 13) Attend campaign events for covered candidates that do not involve fundraising, such as debates or meet and greet events where fundraising is not involved;
- 14) Host an event for a candidate that was not a fundraising event;
- 15) Serve as chairperson, treasurer, deputy treasurer or other officer for a candidate committee of a candidate for municipal office.

It has been suggested that the lobbyist solicitation ban prevents a communicator lobbyist from making a statement to any person that could conceivably lead that person to conclude that they should consider making a political contribution. It has also been suggested that communicator lobbyists could not freely discuss political affairs, candidates, or elected officials without fear of prosecution. Neither is true. Any determination of whether a solicitation was made would be based upon the facts and circumstances surrounding the alleged solicitation, and not solely on the subjective belief of the individual communicating with the lobbyist. In other contexts, the Commission uses objective tests, and will also use such an objective test here to determine whether a reasonably prudent person would believe that they were being solicited to make a contribution.

The effective date of the lobbyist contribution and solicitation ban is December 31, 2006. Events occurring prior to that time are not subject to the ban. If, for example, at a Christmas party held before December 25, 2006, a lobbyist explicitly urges someone to contribute to a particular campaign, no violation of Conn. Gen. Stat. §9-333l(i) will have occurred, even if the event they were requested to contribute in connection with were not held until after December 31, 2006.

#### **Application of Exemptions from the Definition of Contribution**

“Contribution” is broadly defined as “anything of value,” therefore, in kind contributions from communicator lobbyists to the covered committees are also barred, unless specifically exempted under Conn. Gen. Stat. §9-333b(b). For example, a communicator lobbyist who cannot make a monetary contribution to a covered candidate cannot provide something of equivalent value to a covered candidate, like \$100 worth of stamps, unless an exemption applies. There are sixteen exemptions from the definition of contribution

in Conn. Gen. Stat. §9-333b(b) that detail permissible activity a communicator lobbyist could engage in, unless the exemption specifically applies to fundraising.

For example, Conn. Gen. Stat. §9-333b(b)(2) provides that any communication made by a corporation, organization or association to its members, owners, stockholders, executive or administrative personnel or their families is not a contribution. An in-house communicator lobbyist could include in a company newsletter a favorable analysis of a particular legislator's impact on the company, so long as the communication did not solicit contributions for the legislator.

A lobbyist could volunteer for a political campaign and it would not constitute a contribution, pursuant to Conn. Gen. Stat. §9-333b(b)(4), although a lobbyist should not be involved in campaign fundraising for a covered campaign.

A lobbyist could host an event for a covered candidate at his or her home, pursuant to Conn. Gen. Stat. §9-333b(b)(5), provided it was not a fundraising event. The exemption allows an individual to spend up to \$200 on invitations, food and beverage without it constituting a contribution to a covered campaign.

A lobbyist with a catering business could provide a discount on food or beverage to a campaign of up to \$200 in an election cycle or \$400 in a calendar year to on behalf of all party committees, pursuant to Conn. Gen. Stat. §9-333b(b)(6).

Pursuant to Conn. Gen. Stat. §9-333b(b)(7), a lobbyist could spend up to \$200 on unreimbursed travel expenses volunteering to drive a candidate campaigning and it would not constitute a contribution. If more than \$200 was spent by a lobbyist and the amount in excess of \$200 were reimbursed by a campaign, it would similarly not constitute a contribution.

Pursuant to Conn. Gen. Stat. §9-333b(b)(8) an individual could pay for the costs, preparation, display, mailing or other distribution with respect to a printed slate card, sample ballot or other printed list containing the names of three or more candidates, and it would not constitute a contribution.

Conn. Gen. Stat. §9-333b(b)(9) provides that the donation or purchase of an item of personal property by an individual for a fundraising affair does not constitute a contribution. However, because the exemption specifically applies to fundraising affairs, which communicator lobbyists cannot participate in, the Commission concludes that this exemption could not be utilized by a communicator lobbyist.

A lobbyist could purchase advertising space in a program booklet for a fundraising affair for a candidate for municipal office and it would not be consider a contribution, pursuant to Conn. Gen. Stat. §9-333b(b)(10). However, the same exemption explicitly bars a communicator lobbyist from making such a purchase from a town committee.

To the extent that a communicator lobbyist is a business entity, Conn. Gen. Stat. §9-333b(b)(12), which permits the donation of goods or services valued at or under \$100 by a business entity to a fundraising affair, would not apply because it specifically limited to fundraising affairs and use of the exemption would constitute participation in fundraising activities.

A communicator lobbyist could provide the security deposit to a telephone company for telecommunications services for a covered committee, provided it is refunded, pursuant to Conn. Gen. Stat. §9-333b(b)(13), and it would not constitute a contribution.

A communicator lobbyist could appear on a cable access television show and make statements supporting a candidate, and it would not constitute a contribution to the candidate's campaign, pursuant to Conn. Gen. Stat. §9-333b(b)(14). Similarly, if a lobbyist were featured on a bona fide news program, or a newspaper printed commentary or a letter to the editor written by a communicator lobbyist, it would not constitute an expenditure, pursuant to Conn. Gen. Stat. §9-333c(5), unless the facilities were owned or controlled by a candidate, committee or any political party.

Although a communicator lobbyist cannot contribute to a party committee, he or she could purchase food or beverage from a town committee at a town or county fair, or similar mass gathering, up to \$50 and it would not constitute a contribution to the town committee, pursuant to Conn. Gen. Stat. §9-333b(b)(15).

### **Lobbyists Cannot be Solicited**

Pursuant to Conn. Gen. Stat. §9-333x (10), it is illegal to make, receive or solicit a prohibited contribution. Since contributions from communicator lobbyists are prohibited with respect to the covered candidates and committees, candidates or anyone associated with a candidate's campaign are similarly prohibited from soliciting communicator lobbyists for such contributions.

### **Similar Analysis under State Contractor Ban**

Conn. Gen. Stat. §9-333n(g)(2)(A) and (B) bar principals of state contractors and prospective state contractors or holders of valid prequalification certificates from making or soliciting contributions to candidates for certain offices, political committees that can contribute to them and party committees, depending upon which branch of government the contractor has a contract with. For purposes of the solicitation ban in that section of the Act, the same definition of solicitation, and accordingly, the same analysis of prohibited and permissible conduct applies.

### **Responses to Comments on Revised Proposed Declaratory Ruling**

The definition of "agent" in Conn. Gen. Stat. §9-333a(27), is any person acting at the direction of an individual. The ban would not categorically apply to all employees of a business that is a communicator lobbyist. However, such employees could be found to be

agents of a communicator lobbyist for purposes of the ban if they received a specific direction from their employer to solicit a prohibited contribution or were utilized to circumvent the ban applicable to their employer.

A communicator lobbyist may not provide a copy of a fundraiser announcement for a covered candidate to his or her client: That would be forwarding tickets within the express meaning of “solicit” and is barred. An invitation, ticket, announcement or other written communication, electronic or otherwise, that advertises, requests contributions or other receipts or contains a ticket price or suggested donation should not be forwarded by a communicator lobbyist. That should be contrasted with *orally* informing someone of a campaign event, which is expressly defined as not constituting a solicitation and is permissible.

The actions of third parties, without more, will not convert a permissible activity into a prohibited activity on the part of a communicator lobbyist. For example, a communicator lobbyist could hold a meet and greet event for a candidate at his or her home, so long as it were not a fundraiser. If the invitation to the event described it as an opportunity to meet the candidate and not as a fundraiser, and did not request contributions or suggest a donation on its face, and an attendee asked how to contribute to the campaign while present at the event, those questions on the part of an attendee would *not* convert the event into a fundraiser and constitute a per se violation on the part of the communicator lobbyist. What a communicator lobbyist in that situation should do is remove him or herself from participation in that discussion. That situation can be contrasted with an event that is billed as a fundraiser, has a ticket price or includes a card to collect contributor information, which a communicator lobbyist should not participate in or host from its inception.

Similarly, a communicator lobbyist may make calls as a volunteer urging voters to support a certain candidate. However, if the voter asked how to contribute to the campaign, the communicator lobbyist should explain that they cannot be involved in fundraising, put another staffer on the phone, and/or provide contact information for the campaign or someone who could assist them. The posing of the question on the part of an individual not within the control of the communicator lobbyist does not convert the call into a prohibited solicitation on the part of the lobbyist. The fact that these situations may be awkward or “impractical” does not alter the Commission’s attempt to identify areas of permissible conduct that communicator lobbyists can still engage in consistent with the ban.

Expressions of views concerning candidates, statements of electability or communications concerning evaluations of legislators are permissible, as long as such statements are not in any way coupled with a solicitation. For example, a communicator lobbyist could say that Candidate X is great on environmental issues. He or she should not, however, follow that comment with a statement that Candidate X is having a fundraiser on Saturday and you should go.

The communicator lobbyist contribution ban does not reach contributions to entities like Greenpeace, Sierra Club or Planned Parenthood. The statute simply does not reach that far. The ban similarly does not extend to contributions to political committees established by such entities, unless they are established or controlled by covered candidates.

To the extent that lobbyists remain confused or uncertain as to the application of this new law, they are advised to seek further guidance from the Commission. Attempting to seek voluntary compliance is among the Commission's statutory powers and duties in Conn. Gen. Stat. §9-7b(a)(5). A communicator lobbyist may call and anonymously ask a question over the telephone, e-mail or write a letter requesting a written opinion by staff, an Advisory Opinion or further Declaratory Ruling by the Commission.

This constitutes a declaratory ruling pursuant to Conn. Gen. Stat. §4-176 as to the applicability of Conn. Gen. Stat. §9-333l(h) and (i), as amended by October 25 Special Session Public Act 2005-5 and Section 24 of Public Act 06-137.

Adopted this 15<sup>th</sup> day of November, 2006, by Order of the Commission.



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