

STATE ETHICS COMMISSION

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TO: Regulated Lobbyists, Prospective Regulated Lobbyists, and Elected State Officials

SUBJECT: Lobbyist Campaign Finance Activity for State Officials and Candidates - Policy Definition Issues (Md. Code Ann., Gen'l. Prov. §§ 5-708, 5-714, 5-715 and 5-716)

This memorandum addresses those provisions of the Ethics Law related to regulated lobbyist campaign finance activity and includes some questions and answers to assist in understanding the Law. It is based on discussions with the State Ethics Commission but does not constitute an advisory opinion of the Commission. The information in this document addresses issues that are common to many lobbyists and describes some approaches that may bring lobbyists into compliance with the technical provisions of the law. Prior to taking any actions that are not clearly consistent with the guidelines in this memorandum, you should ask for specific review by the Commission.

§ 5-714 – Lobbyist Prohibitions

Section 5-714 addresses most of the standards of conduct for regulated lobbyists. Many of these standards have general application but some specifically address campaign finance and election activity.

Section 5-714 (14) prohibits a regulated lobbyist, if serving on a State or local central committee of a political party, from participating as an officer of the Central Committee, engaging in fundraising activity on behalf of the political party or action to fill a vacancy in a public office. There are other general standards in § 5-714, which apply in campaign finance or election situations. For example, § 5-714 (3) prohibits a regulated lobbyist from counseling a person to violate any provision of Title 5 or any other State or Federal Law, and § 5-714(4) prohibits a regulated lobbyist from engaging in any fraudulent conduct.

§ 5-715 – Restriction on Campaign Contributions

A lobbyist or a person acting on behalf of a regulated legislative branch or executive branch **lobbyist may not**, for the benefit of the Governor, Lt. Governor, Attorney General, Comptroller, member of the General Assembly or candidate for these offices, **engage in the following activities:**

1. **Soliciting or transmitting a contribution** from any person or political committee;
2. **Serving on a fundraising committee** or a political committee;
3. **Acting as a treasurer for a candidate** or official, chairman or treasurer of a political committee; or

4. **Organizing or establishing a political committee** for the purpose of soliciting or transmitting contributions from any person; or
5. **Forwarding tickets for fundraising activities** or other solicitations for political contributions to a potential contributor.

The Law specifically **allows the lobbyist** to 1) **make a personal political contribution** in accordance with the Election Law and 2) **inform** the lobbyist's employer, or others of the position taken by a particular candidate for office. These two items are examples of what a lobbyist may do but are not intended to be a list of all permitted lobbyist activity. **The Law allows activities not specifically prohibited.**

§ 5-708 – Lobbyist Campaign Contribution Activity Report

Section 5-708 of the Ethics Law requires an individual regulated lobbyist to **file a report disclosing political contributions** made **directly or indirectly** by the regulated lobbyist during the reporting period for the benefit of the Governor, Lt. Governor, Attorney General, Comptroller, member of the General Assembly or a candidate for election to any of those offices in accordance with the provisions of State Election Laws. The information is submitted as part of the lobbyist's personal disclosure report and **names the officials or candidates** for whose benefit a contribution was made, discloses the **total contribution** to that candidate, and is **filed with the State Ethics Commission** at the same time as the Lobbying Activity Report.

§ 5-716 – Lobbyist Employer Campaign Disclosure

This section establishes a **campaign contribution disclosure program for persons and entities that compensate lobbyists**. The Law sets out thresholds and rules of attribution to determine under what circumstances a contribution triggers disclosure by a person or a business entity. The forms are to be **filed with the State Board of Elections** using procedures and forms specified by that agency.

General Guidelines

1. **How is the language regarding a person acting on behalf of a lobbyist to be interpreted?**

Answer: The Law is intended to address attempts at avoiding the prohibitions on campaign finance activities by using a non-lobbyist to act on behalf of the lobbyist. Persons engaged in soliciting or transmitting contributions governed by the Law should not be under the direction, supervision, or control of a lobbyist. **The ultimate test is whether in fact the non-lobbyist is acting on behalf of the lobbyist in carrying out prohibited solicitation and transmittal activities.** If a lobbyist or a group of lobbyists owns a law firm or lobbying firm, it will generally be presumed its employees are acting on behalf of a lobbyist.

2. **Does the Law prohibit a lobbyist from soliciting contributions for a general purpose PAC if any of the money raised is to be contributed to the State officials or candidates covered by the Law?**

Answer: **Yes**, the purpose of the Law is to bar lobbyists from fundraising as to these offices from any person or entity (clients or non-clients) and also bar transmittal of contributions if any of the fund is for the State officials and candidates covered by the Law.

3. **Is there any PAC work a lobbyist can do if the PAC is involved in contribution activity related to the State officials or candidates covered by the Law?**

Answer: Assuming the lobbyist is not serving on a fundraising committee or acting as an officer or treasurer of a committee, the lobbyist may perform **very limited ministerial tasks that do not amount to solicitation, transmittal of contributions or organization of a PAC.** Great care should be taken to limit this activity to clerical, ministerial or administrative tasks and to avoid activities that could identify or otherwise directly involve the lobbyist as making a solicitation or transmittal or organizing a committee. Specific questions should be referred to the State Ethics Commission.

4. **What if the funds solicited by a lobbyist may be used for a variety of candidates, only some of which will be for the State officials or candidates covered by the Law?**

Answer: **If any funds are to go to State officials or candidates for that office, then the prohibitions apply.** Generally, if none of the funds is to go to these persons, then the restrictions in § 5-715 do not apply but § 5-714 does prohibit lobbyist members of central committees from engaging in any fundraising on behalf of the political party.

5. **If asked by an employer about a State official or candidate covered by the Law, what can a lobbyist say?**

Answer: **The lobbyist can say anything if he or she does not engage in soliciting, transmitting or other specific conduct prohibited under the statute.** A lobbyist generally can **respond to any reasonably contemporaneous contribution related questions** from an employer regarding a State official or candidate. Discussions can include substantive evaluation and may also include specific contributions recommendations where these are requested. In complying with § 5-714, one central test is whether the lobbyist's conduct is in fact a solicitation or transmittal of a contribution as restricted in the statute. **A key fact in evaluating this activity is whether the lobbyist is responding to an inquiry or initiating a solicitation.**

6. **May a lobbyist solicit contributions for PACs or other committees or candidates as long as the activity is limited to officials and candidates not covered by § 5-715?**

Answer: Generally, unless the lobbyist is also limited by the further restrictions of § 5-714 as a member of a central committee, the lobbyist can solicit for these other groups **as long as the money is not going to a State official or candidate covered by the Law.**

7. **What does the word "solicit" mean?**

Answer: Solicit generally means to **ask or seek, or to appeal for.** Solicit is an affirmative action such as asking for funds, holding or hosting a fundraising event or having involvement in these activities.

8. **What does the word "transmit" mean?**

Answer: "Transmitting" means **forwarding the contributions by hand, mail, or other conveyance.** It also means having someone else transmit the contribution at the lobbyist's direction.

9. **May a lobbyist serve on a PAC or other committee or be Treasurer or Chairman of a political committee that does not contribute to State officials and candidates covered by the Law?**

Answer: Generally, a lobbyist **may serve on a PAC or other committee if it does not raise funds for or contribute to the State officials and candidates covered by the Law.** However, while a lobbyist can be a member of a central committee, a lobbyist **cannot be an officer of a central committee or do any fundraising on behalf of a political party.**

10. **If a lobbyist's employer buys a ticket to a fundraiser, may the employer give the ticket to the lobbyist so that the lobbyist can attend free?**

Answer: The **lobbyist may attend** the fundraiser with the ticket assuming the lobbyist did not solicit the contribution and that it was **paid for without the lobbyist's involvement in transmitting the payment.**

11. **If a lobbyist buys a ticket to a fundraiser, may he or she request the employer to reimburse him?**

Answer: No.

12. **How should a lobbyist handle a situation in which a State official or candidate covered by the Law solicits him or her personally to buy tickets to a fundraiser?**

Answer: The lobbyist may **use personal funds to buy the tickets** within the limits allowable by the Election Law. If the lobbyist decides not to buy the tickets, the best approach to avoid the restrictions in the Ethics Law would be to **discard the tickets or return them to the sender.** Section 5-715(d)(1)(v) specifically prohibits forwarding tickets for fundraising activities or other solicitations for political contributions to a potential contributor.

13. **Are contributions to the Woman's Caucus, Black Caucus, and similar organizations covered by this legislation?**

Answer: **No**, unless these organizations take on the function of political committees carrying out activities that are controlled by the Law. These contributions may, however, be considered to be a lobbying expense to be reported on the General Lobbying Activity Report.

14. **May a lobbyist ask State officials and candidates covered by the Law about the dates of their fundraisers in order to make personal contributions and attend the fundraiser?**

Answer: The Law **does not prohibit this inquiry or otherwise prohibit personal contributions** by lobbyists. (See also Question 13.)

15. **May a lobbyist let clients know that a lobbyist may advise them on campaign finance at their specific request subject to the limitations of the Law?**

Answer: The **mere advising clients of permissible activities under the Law are not prohibited.** The lobbyist should be careful, however, that the content, circumstances, and frequency of this advice do not take on the characteristics of solicitation. Also, the lobbyist has to make sure this does not become part of organizing or establishing a political committee, which is prohibited by § 5-714.

16. **Do the limitations of the Law apply to contributions to State officials covered by the Law running for other offices?**

Answer: They apply if the contributions are for the benefit of a current State official who is running for a State or local office. However, the State Ethics Commission recognizes that the Federal Election Campaign Act of 1981 supersedes and preempts any provision of State law with respect to election to federal office (52 U.S.C. § 30143; 11 CFR 108.7(a)). The Federal Election Commission has determined that Federal law preempts § 5-715 (d) of the Public Ethics Law and allows regulated lobbyists to fundraise for State officials running for federal office. The federal law (and its preemption of State law) applies to candidates for federal office only.

17. If a lobbyist is sent fundraising tickets, are there any circumstances by which he or she would be permitted to send the tickets to the client?

Answer: **No.** The revisions of the Law in 2001 were intended to prohibit lobbyists from forwarding to others solicitations for officials or candidates. The Robertson Commission specifically states that while it may be acceptable for a regulated lobbyist to respond to inquiries regarding the appropriate contact person for the specific entity that employs a lobbyist, it is inappropriate for the lobbyist to forward solicitations.

18. May the in-house staff of a trade association that is under the management and control of a board be involved in campaign finance activities if the Director of the association is a lobbyist?

Answer: The Law impacts lobbyists and those acting on behalf of lobbyists. The best way to assure compliance is to **have people who normally would not be under the lobbyist's supervision handle campaign finance activities relating to State officials and candidates** covered by the Law. If this is not done, any activity by association staff must clearly not be on behalf of the lobbyist. In order to help assure this separation, the following general guidelines should be followed:

1. **The lobbyist's director should not be involved in solicitation, transmittal and other practices prohibited** by the Law.
2. **The lobbyist should not direct the staff in these campaign finance activities.** A board member or other appropriate person should direct this activity. There should be a **written policy** and procedure to document this process and give guidance to staff, board members, and trade association members who need to know how these matters should be handled.
3. **The lobbyist's name should not appear on contribution solicitation letters** or related contribution transmittal documents.
4. **The lobbyist cannot be involved**, in any manner, in organizing or establishing the political committee.

(See Questions 1 and 3 for more explanation and issues that may arise in this context.)

19. May a lobbyist solicit friends or relatives to make political contributions to officials and candidates covered by the Law?

Answer: **No.** The Law prohibits any contribution solicitation or transmittal activity as to covered officials and candidates and this includes friends and relatives.

20. May a lobbyist serving as an elected voting member on an association board vote on decisions to request a closely related Political Action Committee to make political contributions to State officials and candidates covered by the Law?

Answer: Based on the specific facts presented, voting to make a contribution request to the Political Action Committee would be **prohibited** by the solicitation provisions of the Law.

21. Are lobbyists allowed to serve on a county political party central committee?

Answer: Lobbyists **may serve on county political party central committees**, but in accordance with § 5-714 **cannot participate as officers of the central committee and cannot participate in fundraising activity on behalf of the political committee**. Additionally, lobbyists **cannot participate in actions relating to filling a vacancy in a public office**.

22. Does § 5-715 restrict the fundraising activities of the State official or candidate covered by the Law?

Answer: Section 5-715 contains **no express limitations on these activities**. However, the State lobbying law provisions address both civil and criminal penalties. This means that a knowing and willful violation of the Law is a crime subject to the jurisdiction of the State Prosecutor. Therefore, if a State official or candidate covered by the Law knowingly and willfully attempted to have someone violate the Law (for example, directing a lobbyist to make a prohibited solicitation) there could be a criminal violation. The State Ethics Commission does not administer the criminal enforcement of the Lobbying Law. If a State official or candidate covered by the Law wants advice on the possible application of the criminal law, the Office of the State Prosecutor should be contacted.

23. May a lobbyist be involved in fundraising and related activity on behalf of candidates who are not State officials or candidates covered by the Law?

Answer: The Law does not prohibit fundraising activities on behalf of a person who is not a candidate for a listed State office or the General Assembly. This is true even if the candidate may later transfer some of his total funds to a State official or candidate who is covered by the Law. However, this assumes that the lobbyist has not entered into an express understanding or agreement that funds are to be transferred to covered races. A lobbyist could not condition his fundraising on a promise to make such transfers. Although the fundraising would generally be allowed, the lobbyist would not be permitted to serve on a committee or be treasurer of a candidate committee making transfers to covered races.

Lobbyists, of course, cannot solicit contributions for covered candidates. A lobbyist may not develop an understanding that a person will make a contribution to a State official if the lobbyist or some other person makes a contribution to a non-State official race in or outside of Maryland. However, if a lobbyist is serving on a State or local central committee for a political party, the lobbyist cannot participate in any fundraising activity on behalf of the political party.

24. May a lobbyist covered by the Law run for a State office covered by the Law?

Answer: **Yes.** The Law does not prevent a lobbyist from running for a State office covered by the Law and raising campaign funds. However the Law continues to limit the lobbyist's activity as to others. Therefore activities involving slates, transfers of funds, and other similar activities would be impacted by the restrictions of the Law.

25. If a lobbyist is covered by the campaign finance restrictions, for what period of time do restrictions apply?

Answer: The Law applies **while the person is a regulated lobbyist**. Additionally, if the lobbyist terminates lobbying, the restrictions in § 5-715 continue to apply **for the remainder of that calendar year**.

26. **What should a lobbyist do to avoid violating the prohibition in § 5-715 against organizing or establishing a political committee for the purpose of soliciting or transmitting contributions from any person?**

Answer: This provision mandates that a lobbyist not be involved in any way in activities assisting an employer or others in organizing or establishing such committees.

27. **Are there other similar restrictions in State Law regarding lobbyist and campaign finance activity for local political campaigns?**

Answer: There are also State Law campaign finance restrictions relating to local campaigns for persons registered to lobby in Montgomery and Prince George's County. These are detailed in Sections 5-848 and 5-849 of the Ethics Law.

28. **What lobbyist campaign contributions are reportable under § 5-708?**

Answer: The Law requires a report for **contributions for the benefit of the Governor, Lt. Governor, Attorney General, Comptroller, or member of the General Assembly or a candidate for election to any of these offices**, due at the same time as the lobbying activity report covering contributions for the six-month reporting period. The Law explicitly **covers direct or indirect contributions** by the regulated lobbyist. For example, reported contributions would include those to a political committee for an applicable candidate and also for a slate on which a candidate is a member. Other examples cited by the Robertson Commission include a contribution to a PAC created to support a specific candidate or group of candidates, a PAC contribution where a contribution is designated for transfer to a particular candidate or candidates, or contributions directed or arranged by a regulated lobbyist and the funds used could be considered to be under the lobbyist's control. This may include a contribution by a family member or a political action committee. Of course, the lobbyist also may not solicit these contributions.

29. **How is a lobbyist employer's campaign contribution disclosure in § 5-716 to be administered?**

Answer: This program covers the employers paying compensation to lobbyists. The disclosure is filed with the State Board of Election, which has developed the forms for this activity. The form can be found at <https://businessdisclosure.elections.maryland.gov>.