



# STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

## **DECLARATORY RULING 2014-03:**

### **Application of the Program Book Exception to Communicator Lobbyists**

On February 18, 2014, the Commission received a petition for a declaratory ruling from Jay F. Malczynsky at the lobbying firm of Gaffney, Bennett and Associates, Inc. concerning whether General Statutes §§ 9-601a (b) (10) and 9-610, as amended by Public Act No. 13-180, An Act Concerning Disclosure of Independent Expenditures and Changes to the Campaign Finance Laws and Election Laws, would permit a lobbying firm and its lobbyists to engage in certain activities. At its regular meeting on March 19, 2014, the Commission voted to initiate a declaratory ruling proceeding responsive to this petition.

### **Questions Presented**

The petition asks the following:

Can a lobbying firm purchase an ad in an ad book produced in connection with a fundraiser sponsored by a political action committee and can a communicator lobbyist solicit their clients to purchase such ads?

### **Analysis**

General Statutes § 9-601a (b) (10) (B), as amended by Public Act 13-180, provides that the following is not considered a contribution:

*The purchase of advertising space which clearly identifies the purchaser, in a program for a fund-raising affair or on signs at a fund-raising affair sponsored by a party committee or a political committee, other than an exploratory committee, provided the cumulative purchase of such space does not exceed two hundred fifty dollars from any single party committee or a political committee, other than an exploratory committee, in any calendar year if the purchaser is a business entity or fifty dollars for purchases by any other person.* Notwithstanding the provisions of this subparagraph, *the following may not purchase advertising space in a program for a fund-raising affair or on signs at a fund-raising affair sponsored by a party committee or a political committee, other than an exploratory committee: (i) A communicator lobbyist, (ii) a member of the immediate family of a communicator lobbyist, (iii) a state contractor, (iv) a prospective state contractor, or (v) a principal of a state contractor or prospective state contractor.* As used in this subparagraph, “state contractor”, “prospective state contractor” and “principal of a state contractor or prospective state contractor” have the

same meanings as provided in subsection (f) of section 9-612, as amended by this act;

(Emphasis added). This exception to the definition of contribution is commonly known commonly “the ad book exception.”

General Statutes § 9-610 (h) provides:

“**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 knowingly solicit** from any individual who is a member of the board of directors of, an employee of or a partner in, or who has an ownership interest of five per cent or more in, any client lobbyist that the communicator lobbyist lobbies on behalf of pursuant to the communicator lobbyist’s registration under chapter 10 **(1) 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 (2) the purchase of advertising space in a program for a fund-raising affair sponsored by a town committee**, as described in subparagraph (B) of subdivision (10) of subsection (b) of section 9-601a. Public Act 13-180 did *not* amend this provision limiting lobbyist solicitations for ad books sponsored by political committees and state central committees when it broadened the law to allow those committees to use ad books for fundraising.

### **Ad Purchases by a Lobbying Firm**

Pursuant to the ad book exception to the definition of contribution, a business entity may purchase advertising space in a program or on signs at a fundraising affair held by a political committee if the cumulative amount for all such purchases from that political committee does not exceed \$250 per calendar year, while all “other person[s]” are limited to cumulative purchases of \$50 per calendar year. *See* General Statutes § 9-601a (b) (10) (B).

The ad book exception specifically provides that communicator lobbyists, as well as members of their immediate family, may not purchase advertising under the exception. *See* General Statutes § 9-601a (b) (10) (B). It does not provide any such restrictions as to client lobbyists and thus, client lobbyists may purchase advertising under this exception up to the normal limits (\$250 per year cumulatively if the client lobbyist is a business entity).

As far as the meaning of the terms “communicator lobbyist” and “client lobbyist,” the campaign finance statutes refer to General Statutes § 1-91<sup>1</sup> which contains definitions of both of these terms. *See* General Statutes 9-601 (16).<sup>2</sup> General Statutes § 1-91 defines a “communicator lobbyist” as “a lobbyist who communicates directly or solicits others to communicate with an official or his staff in the legislative or executive branch of government or in a quasi-public agency for the purpose of influencing legislative or administrative action” while it defines a “client lobbyist” as “a lobbyist on behalf of whom lobbying takes place and who makes expenditures for lobbying and in furtherance of lobbying.” General Statutes § 91 (u) & (v). “Lobbyist,” in turn, is generally defined as “a person who in lobbying and in furtherance of lobbying makes or agrees to make expenditures, or receives or agrees to receive compensation, reimbursement, or both, and such compensation, reimbursement or expenditures are two thousand dollars or more in any calendar year or the combined amount thereof is two thousand dollars or more in any such calendar year.” General Statutes § 1-91 (l).

We defer to the Office of State Ethics with respect to the interpretation of section 1-91 in the identification and registration of such lobbyists. Accordingly, we will defer to the Office of State Ethics as to whether or not the lobbying firm in question would be deemed a communicator lobbyist. To the extent that a lobbying firm is not considered a communicator lobbyist pursuant to the above definition, it would be permitted to purchase advertising space in a program book for a fundraiser held by a political committee so long as all such purchases by the lobbying firm do not exceed two hundred and fifty dollars in a calendar year. If, however, the lobbying firm is deemed to be a communicator lobbyist by the Office of State Ethics then such an advertising purchase would be prohibited pursuant to General Statutes § 9-601a (b) (10).

### **Communicator Lobbyist Solicitation of Clients to Purchase Program Book Advertising from Political Committees**

General Statutes § 9-610 (h) provides in part that a communicator lobbyist may not knowingly solicit certain individuals<sup>3</sup> at the client lobbyist for which they lobby to purchase “advertising space in a program for a fund-raising affair sponsored by a *town committee*.” Public Act 13-180 expanded the ad book exemption to permit political committees and state central committees to sell program book advertising, exempting such purchases from the definition of contribution. General Statutes § 9-601a (b) (10), as amended by Public Act 13-180. This Public Act, however, did not expand General

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<sup>1</sup> General Statutes § 1-91 is not a campaign finance statute, rather it is contained in the Code of Ethics, the enforcement and administration of which falls to the Office of State Ethics.

<sup>2</sup> General Statutes § 9-601 (16) provides: “‘Lobbyist’ means a lobbyist, as defined in section 1-91, and ‘communicator lobbyist’ means a communicator lobbyist, as defined in section 1-91, and ‘client lobbyist’ means a client lobbyist, as defined in section 1-91.”

<sup>3</sup> Specifically, the communicator lobbyist may not solicit such advertising from any individual who is a member of the board of directors of, an employee of or a partner in, or who has an ownership interest of five per cent or more in, any client lobbyist that the communicator lobbyist lobbies on behalf of. *See* General Statutes § 9-610 (h).

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Statutes § 9-610 (h) to prohibit communicator lobbyists from soliciting such advertising purchases for political committees or state central committees from their clients. Accordingly, a communicator lobbyist may solicit their clients to make such advertising purchases to the extent that they are within the monetary limits set forth in General Statutes § 9-601a (b) (10).

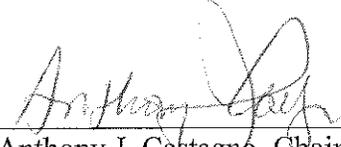
Note that advertising purchases which in the aggregate are in excess of the calendar year limits set forth in General Statutes § 9-601a (b) (10) would be deemed contributions under the law. General Statutes § 9-610 (h) prohibits communicator lobbyists from knowingly soliciting contributions on behalf of the following:

- (1) 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,
- (2) **a political committee established or controlled by any such candidate,**
- (3) **a legislative caucus committee, a legislative leadership committee or a party committee**

(Emphasis added.) Accordingly, if the political committee hosting the fundraiser in question is one of the types of political committees covered by the communicator lobbyist solicitation provision, then a communicator lobbyist who knowingly solicits the excessive purchase from his or her client would run afoul of this provision. Accordingly, any communicator lobbyist who solicits such a purchase from a client should make certain that the advertising purchase is not excessive and thus a prohibited solicitation.

This constitutes a declaratory ruling pursuant to General Statutes § 4-176. A declaratory ruling has 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 General Statutes § 4-183, pursuant to General Statutes § 4-176 (h). Notice has been given to all persons who have requested notice of declaratory rulings on this subject matter.

Adopted this 16<sup>th</sup> day of April, 2014, at Hartford, CT by vote of the Commission.

  
Anthony J. Castagno, Chair  
By Order of the Commission