

ETHICS AND LOBBYING

The League has long felt that the laws of New York State inadequately define, monitor or discipline unethical behavior in the public sector, both on the part of public officials and lobbyists, those who seek to influence the behavior of public officials.

Recent League Activity

2016

Even after the indictment and conviction of the Assembly Speaker and Senate Majority Leader, the legislature once again failed to pass meaningful ethics and campaign finance reforms during the 2016 legislative session. Although the Governor had stated he planned to institute new ethics reforms, no legislation was proposed until the final days of session. The Senate and Assembly had both created independent ethics bills which they passed during the budget. The two packages were completely different with the Assembly focusing on outside income and lobbying practices while the Senate only passed a bill to limit term limits for leaders. The Senate also restated their support of a pension forfeiture bill they had advanced in 2015. The League issued a memo calling on the two houses to work together and pass a single ethics package to address all of these reforms as well as reforms to campaign financing, restructuring of JCOPE, and strengthening financial reporting.

In total the League held 5 press conferences on ethics and issued both memos and letters to the legislature and Governor. We requested several meetings with Governor Cuomo but did not get to speak with him until the last two weeks of session. During that time he created a bill to reform independent expenditures but did not address any of the other ethics reforms we had been asking for all session. On the final day of session the legislature announced that they had reached a deal on ethics and in the dead of the night passed their package without public review. The reforms included tightening the coordination rules determining what is or is not an independent expenditure, disclosure of political consultants who also act as lobbyists, lowering the threshold for source of funding disclosures for (c)(4) organizations that lobby and (c)(3)s who receive support from (c)(4)s, and pension forfeiture. The package did not address any of the larger issues we had advocated for all session. Besides being relatively weak reforms, the League was extremely displeased that the bill was passed with such little transparency. In short, very little was accomplished this session with regard to ethics.

2015

Good government groups proposed strong reforms similar to their past efforts, but made little advances. New York's leading reform groups asked Cuomo and the legislators to work together and fix Albany's broken ethics system. NYPIRG, Common Cause, Citizens Union, and Reinvent Albany sent letters to the governor and assembly and senate leaders asking for a complete ethics overhaul. The groups suggested several alterations including ethics reforms to JCOPE, better ethics disclosures, stricter oversight of lobbyists, and changes to the campaign finance system.

The groups asked that lawmakers merge the Legislative Ethics Commission into the Joint Commission on Public Ethics (JCOPE). They asked that changes be made to the new JCOPE board, including reducing the number of members, banning elected officials from becoming members, and prohibiting executive or legislative staff from becoming JCOPE staff until after a

certain period of time. The groups asked that JCOPE comply with FOIL and Open Meetings Law, and enact a strict requirement that board members are sworn to protect the interests of the public – not the interests of their appointing authorities.

Attention was also focused on lawmaker's financial disclosures and their relationships with lobbyists. The groups said that full disclosure of outside business clients for all lawmakers, including lawyers, should be accounted for. Stricter oversight of lobbyists was proposed by broadening the definition of lobbying to include public relations efforts in support of government actions. Finally, the groups suggested much lower campaign contributions from lobbyists and those receiving government contracts as well as enhanced disclosures of such contributions.

The League agreed with nearly all suggestions put forward by the groups except a ban on outside income for legislators. Instead the League advocated for stricter disclosure requirements for members and increasing transparency when submitting these disclosures.

In April, the governor announced that he would be creating an ethics review panel to evaluate the performance of the Joint Commission on Public Ethics and the Legislative Ethics Commission. The groups asked that the panel be chosen on a nonpartisan basis and that they conduct their review openly and independently. They urged the new panel to comply with FOIL and open meeting laws, maintain a public website, and supply webcasts or archived videos and materials from its meetings. They asked that the panel hold public hearings across the state and identify the best ethics practices nationwide and apply them to the evaluation. The panel's report is expected to be released November 1st 2015.

In 2015, Governor Cuomo came under fire after a report regarding his office's email retention policy was leaked by a state employee. The email procedure would permanently delete unsaved emails after only 90 days. Instead of immediately addressing the issue, the Governor defended the nearly decade old policy that had been instituted during Governor Eliot Spitzer's administration. Cuomo had expanded the procedure to cover most other state agencies, which previously operated under different guidelines. After severe backlash from the public, Cuomo called for a joint meeting with legislators, the comptroller, and attorney general but most elected officials chose to skip the meeting and little was accomplished.

The League along with NYPIRG, Citizen Union, and eleven other good government groups wrote a letter to the Governor imploring him to issue an executive order requiring state agencies to keep emails for 7 years; a policy that has already been implemented by most federal government agencies. Cuomo's 90 day policy had the potential to inadvertently delete emails containing public records that would be subject to disclosure under the Freedom of Information law.

Eventually the Governor agreed to change the policy but would not follow the model put forward by the federal government. Instead the staff will delete emails on their own accord and are only required to keep certain important records for a longer period of time; however no official retention time has been established. The League believes that a more formal retention policy needs to be enacted in order to prevent government documents subject to FOIL rules from being deleted.

Watchdog groups also pushed to see the passage of the “Faster FOIL” bill. This legislation would reduce the total time government agencies in New York State have to appeal a judge’s decision ordering the release of public records to three months from ten, to improve agency compliance. The bill passed both houses and is awaiting Governor Cuomo’s signature.

Past League Activity on Ethics

The League has lobbied since 1954 for legislation regarding conflict of interest, financial disclosure, revolving-door prohibitions and related areas of conduct for state employees and office holders.

The 1987 Ethics in Government Act, which took effect January 1, 1989, attempted to change the ethical environment in New York State significantly by providing the public with closer scrutiny of the financial activities of elected and appointed New York State officials and certain of their employees.

The conflict of interest prohibitions and financial disclosure measures of the act were strongly advocated by the League and came after many false starts and long months of negotiations between the houses of the legislature and the governor. However, its passage was followed almost immediately by proposed revisions that would lessen its impact.

In 1991, legislation was introduced as a result of a Governor’s Temporary State Commission on Local Municipal Ethics, which contained regulations concerning financial disclosure, conflicts of interest, involvement in political campaigning and campaign contributions. No action was taken by the legislature.

The League continued to advocate for a tightening of ethics legislation during the remainder of the 1990’s. Much advocacy during this period was done with the media and editorial boards, however, Governor Pataki and the legislature continued to ignore us.

In 2004, prison convictions, scandals, and other complaints of ethical misconduct appeared on the front pages of New York State’s newspapers. As a result, how New York State regulates political ethics again became a front burner issue in the legislature. Because New York’s ethics laws are loophole-riddled and poorly-if at-all enforced, the need for legislative reform became ever more clear to everyone but legislative leaders.

During the 2005 legislative session, little was accomplished. However, one weakness in the law was strengthened. New York State’s ethics law previously limited enforcement only to those who were still working for government. Once a government employee left public service, the short arm of the ethics law could not reach them. In order to ensure that government officials do not flaunt the public’s trust, the League and other civic groups, argued that New York State’s ethics law should be enforceable even after public employment. A limited version of reform was approved that closed this egregious loophole.

Because only modest reforms to the state's ethics laws were done in 2005, there was increasing demand for further reforms to the ethics law in the 2006. The good government groups, led by the League, NYPIRG, and Common Cause advocated for the following reforms:

- Restrict gifts from lobbyist to lawmakers and other top policy makers.
- Ban on lawmakers accepting honoraria.
- Create a new, independent ethics oversight agency for both the executive and legislative branches.
- Establish a full one-year "cooling off" period for all legislative staffers and top party officials to prohibit them from lobbying immediately after leaving their government jobs.
- Restrict campaign contributions from lobbyists and those receiving government contracts.
- Strengthen ban on use of campaign contributions for personal use.
- Require disclosures of and recusal for potential conflicts of interest.

(For further information see A Work in Progress, January 2006 Blair Horner, NYPIRG)

The 2nd Annual Reform Lobby Day was held in May 2006, where citizens including many members of local Leagues, came to Albany to press for the above reforms. Although legislator's rhetoric in this election year was: "I'm a true reformer", no legislative action was taken during the 2006 session.

In 2007, which marked the 20th anniversary of the original Ethics in Government Act, both houses of the legislature unanimously passed and Governor Spitzer signed into law legislation that reformed the state's ethics and lobbying laws and created a "Commission on Public Integrity."

Because this agreement between the three leaders was done primarily behind closed doors, the good government groups, expressed concerns about the process, the groups and sought legislative hearings to review key elements of the proposed legislation. The groups were particularly concerned with the proposed "Commission on Public Integrity" and urged further public deliberation on the proposal before a vote was taken in the legislature. Unfortunately, the Governor and the legislative leadership did not hold the hearings as requested, and on February 14, 2007, the both houses of the legislature unanimously passed and the Governor signed this legislation into law.

This legislation:

- Banned all gifts of more than a nominal value from registered lobbyists to public officials;
- Strictly limited lobbyists from paying or reimbursing travel and accommodation expenses of a public official;

- Strengthened the “revolving-door” provisions that applied to legislative employees for a “cooling off” period that prohibited lobbying before the Legislature for two years after leaving their position;
- Banned lawmakers from accepting honoraria;
- Forbid elected officials and candidates for elected local, state or federal office from appearing in taxpayer-funded advertisements;
- Toughened penalties for ethics and lobbying law violations;
- Created a permanent executive branch watchdog, the Commission on Public Integrity (CPI) with 13 members, seven appointed by the governor, and one each appointed by: the comptroller, the attorney general, and each legislative leader.
- Reconstituted the Joint Legislative Ethics committee as a nine-member commission with five legislators and four non-legislators appointed by legislative leaders.

Also under the bill, both the Commission on Public Integrity and the Joint Legislative Ethics Commission would be required to maintain Web sites and make publicly available notices of reasonable cause to initiate an investigation, disposition agreements, settlement agreements and summaries of advice.

While the ethics changes of 2007 included important reforms, major items were ignored and remain unresolved. The Commission on Public Integrity and the Joint Legislative Ethics Commission continued the tradition of splitting ethics oversight between the executive and legislative branches. Furthermore, the ethics oversight commissioners have limited independence because they monitor the ethics of the officials who appoint them.

In 2009 the Inspector General issued a scathing report of the Commission on Public Integrity (CPI) investigation of *Troopergate*, in which he found the Commission had repeatedly failed to investigate clear allegations that the Public Officers Law had been violated. The report called for the resignation of Executive Director Herbert Teitelbaum, whose testimony about the matter it found unbelievable. During the course of the investigation, Chairman John Feerick resigned.

In 2009, the League supported a Senate bill, which adopted the League-supported approach of placing enforcement in the hands of a nonpartisan commission. This bill failed to win support of the Assembly, which supported a weaker bill.

In 2010, the League supported an ethics and campaign finance reform bill, S.6457/A.9544 that passed both houses. While the bill fell far short of the League ideal, it moved forward by requiring disclosure of independent third party expenditures. It also expanded the powers of the enforcement arm of the State Board of Elections, appointed the Executive Director for a fixed term, removable only for cause, and made the enforcement process more transparent to the public. However, in February 2010, Governor Patterson vetoed the bill, stating it failed to go far enough.

Following the election of Governor Cuomo in the fall of 2010 on a platform that included ethics reform, efforts to reform the ethics system continued. In June of 2011, a three-way agreement was reached between Governor Cuomo, Majority Leader Skelos and Speaker Silver on an ethics reform package, the Public Integrity Reform Act of 2011. The Act established an independent Joint Commission on Public Ethics (JCOPE) to oversee violations of law by both the executive and legislative branches, oversee financial disclosure and lobbying rules. Disclosure requirements were significantly expanded and made fully available to the public for the first time. The League, along with our good government colleagues, supported this bill as a significant improvement over the status quo, particularly with respect to strengthening disclosure and unifying oversight of the executive and legislative branches, although we will continue to monitor how JCOPE works in practice.

In June 2012, the League testified before JCOPE on developing guidelines and regulations for new reporting requirements for lobbyists and clients of lobbyists.

In January 2013, the League testified before the NYS Office of the Attorney General on proposed regulations related to disclosure requirements for nonprofits that engage in electioneering. The League commended Attorney General Schneiderman and his staff for taking an important step in providing transparency in political spending and provided suggestions for the improvement and implementation of the regulations. The disclosure requirements, which went into effect in June 2013, require nonprofits to disclose in annual reports to the Attorney General their political spending, donors, and expenditures related to New York

Past League Activity - Lobbying

In 1995 the League, Common Cause, and NYPIRG supported draft legislation, which would reform the lobbying regulations in NYS. The proposal called for an outright prohibition on lobbyists from direct campaign contributions to state lawmakers, a prohibition on lobbyists from offering gifts of any size to lawmakers or top policy makers, and a requirement that lobbyists' clients annually disclose the amount of campaign contributions they gave to state legislatures' re-election efforts. In addition, it would create a permanent Lobby Commission, which has been operating since 1977 on a temporary basis and has required an extension every two years. Giving the Commission permanent status and strengthening its investigative powers would constitute a major reform in improving the climate in which legislation is enacted in NYS.

In 1996, United We Stand America/NYS joined with the League, Common Cause, and NYPIRG to form the Take Back Democracy Coalition, and continued to call for lobbying reform. In 1997, with the "Temporary" State Commission on Lobbying due to expire on December 31, the opportunity to reform the lobbying laws in New York State took on a new urgency. The Integrity in Government legislation was introduced by Assembly members Grannis and Galef. This legislation built on the 1995 draft legislation, also supported by the League. Different in the 1997 legislation was the extension of lobbying regulations to localities. Local Leagues across the state held press conferences and lobbied county legislatures to pass resolutions calling on their state representatives to pass this legislation. After a session-long media blitz and much lobbying of all legislators and leadership, including the governor's office, both houses of the

legislature, in the final hours of the 1997 session, passed another two-year extension, until March of 2000, of the “Temporary” State Commission on Lobbying, now 20 years old.

After intensive lobbying by the League and its coalition partners AND a major lobbying scandal involving tobacco giant Phillip Morris, limited lobby reform was passed in December 1999. This “reform” provides greater disclosure of lobbying activity and extends the law to include local government lobbying. The League wanted much more. We lobbied for an extension of the regulations to include state agencies and a ban on gifts from lobbyists to legislators. We also wanted a restriction on campaign fundraising during the legislative session. This deal was struck between Governor Pataki and Assembly Speaker Silver to protect their own constituents.

Following much media pressure, the Senate voluntarily pledged not to accept gifts and expensive dinners from lobbyists. The Assembly refused to do the same.

During the 2000 session the League attempted to secure the inclusion of procurement lobbying disclosure of State Agencies into the procurement law which was about to expire; instead the legislature merely extended the procurement law for another 14 months.

No action was taken on lobbying reform of State Agency procurement during the 2001-2002 session; however, because of several “government scandals” procurement lobbying became a visible issue in the Legislative Session 2003. Early in 2003, the League, NYPIRG, and Common Cause secured majority Senate sponsorship to expand the definition of lobbying to include contract procurement by State Agencies. The session was spent lobbying both houses to pass “same as” legislation. Following much media work and editorial support throughout the state, it appeared that legislation to include State Agency procurement lobbying would actually pass. Very late the last night of the 2003 session, the assembly did pass its bill and we moved our efforts to the State Senate. Four hours later, in the early morning hours of the last day of session, the State Senate introduced legislation under new sponsorship. This legislation advanced much weaker legislation and removed the existing members of the Lobbying Commission.

Cloaked, as a “reform” measure the legislation would seriously undermine the work of the Lobbying Commission. It would “vacate” the current members of the Lobbying Commission. The bill also sets a much higher standard for the Commissions’ investigators to punish lobbying violations. It does this by requiring the lobbyist “intentionally” violated the law, instead of the current “willfully” violated the law.

The League and NYPIRG tried for the rest of the night to stop the legislation in the senate, however, it did pass. The Assembly, however, went home the next day without addressing the Senate version of the bill. The status quo in procurement lobbying continues. It is speculated that Governor Pataki put pressure on the State Senate to halt any disclosure of procurement lobbying of his state agencies.

During the summer of 2003 the League, NYPIRG and Common Cause mounted a media campaign to address procurement lobbying when they returned for the fall session. However, the Assembly never returned for a fall session and the Senate in its one-day fall session did not address the issue.

The 2004 legislative session saw agreement by the Governor and the Senate leadership on legislation that was narrow and weak compared to the Assembly lobbying reform legislation which expanded the definition of lobbying by any public official relating to the procurement of goods or services, it also covered executive orders and tribal-state compacts. The Senate bill, which was supported by the Governor, expanded lobbying oversight only. However, these bills could not be reconciled in Conference Committee and no action was taken.

In 2005 legislative session, New York State lobbyists and their clients reported spending well over \$149 million persuading and cajoling state officials to grant favors or block policies that may affect them. The common Albany practice of holding political fundraisers that are attended by professional lobbyists exacerbates the public perception that lobbyists are “buying” access to elected officials. In a typical session, lawmakers are scheduled to be in Albany for 60 days, including 40 nights. During that time, as many as 200 Albany-based fundraisers can occur.

The League and its good government colleagues put forward the following reform measures to restore the public’s confidence in their government:

- End Albany’s “pay to play” culture. Lobbyists in Albany curry favor with public officials with large campaign contributions to their campaign committees and to the legislative leadership committees known as “housekeeping” accounts. Through such contributions, lobbyists create an uneven playing field that allows them or their clients to have greater access to officials than members of the public.
- A ban on gifts from lobbyists to lawmakers and other top policymakers. Allowing lobbyists to offer gifts to lawmakers is inappropriate. It was, in fact, at the heart of the Philip Morris/lobbying scandal. Some states have a “zero tolerance” standard for gift giving. Massachusetts, South Carolina, and Wisconsin are such states. New York State should adopt this standard.
- A ban on lawmakers accepting honoraria. Giving speeches and being available to the public are part of a legislator’s official duties. Allowing groups to offer state lawmakers honoraria allows special interests to subsidize the income of these officials. In doing so, the practice creates an obvious conflict-of-interest. Twenty-three states prohibit honoraria if they are offered in connection with a legislator’s official duties. New York State is one of the remainder that does not. It should.
- Create a new, independent ethics oversight agency for both the executive and legislative branches. Thirty-nine states provide external oversight of state government through an ethics commission. New York is one of six of those states (the others are Illinois, Michigan, North Carolina and Ohio) whose commissions do not have authority over the legislature. New York State should create a new, independent ethics watchdog for both the executive and legislative branches.
- The establishment of a full one year “cooling off” period for all legislative staffers and top party officials. New York State currently places such limits on state legislators, elected officials in the executive branch and staff of the executive branch to begin lobbying immediately after leaving their government jobs. However, legislative staff and party officials enjoy far weaker restrictions. A minimum one-year “cooling off” period

would ensure that no one could immediately cash in on political contacts by lobbying their former colleagues.

- The elimination of the loophole that prohibits prosecutors from investigating ethical misconduct. If either the state attorney general or local prosecutors wish to investigate political corruption, there should be no legal barrier to such activities.
- Ensure that the public knows the fate of prosecutorial actions. The enforcing agency must be required to announce the outcome of any publicly filed complaint as well as other information that will allow the public to know of the agency's decisions.

The legislation session of 2005 did see agreement on legislation that ended the five-year fight over the expansion of the lobbying law. The new law went into effect on January 1, 2006. This was a hard fought for and won League victory.

Key elements in the new law include:

- Definition of lobbying was expanded to cover lobbying to influence executive orders, state-tribal compacts, and procurement decision of governmental agencies. The old monitored lobbying efforts that targeted state and local government legislation, utility rates, agency rules and regulations.
- Procurement lobbying; monitoring. The new law addresses procurement lobbying differently than any other type of advocacy. Contracts worth less than \$15,000, contracts relative to procurements for "preferred sources" (typically entities whose workers have handicaps), intergovernmental agreements, certain railroad and utility accounts, eminent domain transaction and grants are all exempt.