

TIP SHEET

Lobbying and Social Media

It is increasingly common for state and local government affairs programs to incorporate social media activity as an important part of advocacy campaigns. Communicating through social media platforms such as Facebook and Twitter has become a normal and expected form of communication. However, most lobbying regulations were written before these popular platforms even existed. State and local agencies are beginning to consider whether these forms of communication should be regulated in a similar manner to traditional modes of advocacy. Your organization needs to be aware that online activity could be regulated as direct communication with officials or as indirect grassroots lobbying.

TIP: Be on the lookout for legislation and agency rules regulating the use of social media to lobby. State and Federal Communications tracks bills relevant to this emerging issue across the country.

Direct Communications on Social Media

Whether lobbyist registration is required for social media communications can depend on if it is considered a direct communication with a covered official. For example, South Carolina issued an advisory opinion finding a communication through social media may be direct lobbying and an individual may qualify as a lobbyist if employed to influence legislators by posting messages on legislators' Facebook pages or other social media platforms. Merely posting a personal opinion on a legislator's Facebook page is a direct communication, but not lobbying. To amount to lobbying, the post must promote or oppose legislation and the individual posting must be employed to do so.

TIP: Know what communications are covered when determining if lobbyist registration could be required. State and Federal Communications' online publications provide registration threshold information at the state and local levels.

Indirect Communications on Social Media

Social media activity can trigger lobbyist registration through an indirect communication to officials by promoting a message or asking the public to contact legislators and sign petitions. New York created a three-prong test to determine if a social media communication constitutes lobbying. A communication is lobbying if the communication references or suggests an activity covered under the definition of lobbying or lobbying activity; takes a clear position on the issue in question; and is an attempt to influence a public official through a call to action.

Whether an indirect communication is lobbying does not always depend on whether the person responsible for the content was hired as a lobbyist. New York has advised that a social media consultant's activity on a grassroots campaign can be considered reportable lobbying if the consultant controlled the delivery of the message and had input into its content.

TIP: Even if online activity alone does not necessitate registration, those otherwise required to register may need to report expenditures or time spent associated with advocating on social media.

Timing of Social Media Communications

Additional constraints to online communications by lobbyists are starting to be seen around the country. In Florida, the prohibition on lobbyists being on the floor of the House while in session has been extended to electronic communications, including social media messaging. No electronic communication is permitted while the House is in daily session, or during any meeting of a committee or subcommittee to which the House member has been appointed.

TIP: As more legislatures suspend in-person meetings and capitol buildings close during the COVID-19 pandemic, it is important to remember that even if a lobbyist is properly registered, there still may be restrictions on when social media communications can be sent.

Before engaging in social media advocacy, you need to know whether the activity will be regulated as lobbying. State and Federal Communications has the online publications and resources so you can answer both questions and confidently state, "I Comply!"

WHO TO CONTACT FOR INFORMATION

Elizabeth Z. Bartz,
State and Federal
Communications, Inc.,
President and CEO for
questions and comments.

80 South Summit Street, Suite 100
Akron, Ohio 44308 USA

Email:
ebartz@stateandfed.com
Phone: 330-761-9960

This Tip Sheet has been prepared by
Alexandra Vernis, JD, Manager,
Compliance Services, State and
Federal Communications, Inc. under
the direction of Associate Director,
Compliance Services, John Cozine,
Esq., and Director of Client
Operations, Amber Fish Linke, Esq.

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