



POLITICAL LAW

GEORGIA VENDOR LOBBYING ALERT

Ban on Contingency Lobbying Affects All Businesses Selling Goods and Services to any State Agency and Likely Bans Vendor Employees and Salespeople Selling to the State on a Commission Basis

In recent years, and in response to significant voter dissatisfaction with numerous reports of unethical behavior in Washington and a perceived “lack of lobbying transparency” in Georgia, Georgia law has been changed significantly regarding the registration and reporting requirements of individuals (“vendor lobbyists”) who attempt to influence the awarding of state contracts to the private sector. This new legislation greatly expands current definitions of those activities qualifying as “Georgia lobbying” and defines many more individuals who must register and disclose their activities with Georgia’s State Ethics Commission as a “Lobbyist”. Ultimately, by casting a much wider net as to “lobbying activities” and the definition of who is a “Lobbyist” obligated to disclose those activities, Georgia’s Ethics in Government Act sheds significantly more light and publicizes dramatically more information about the identities and activities of vendor lobbyists as well as the vendors they represent.

The “Law of Good Intentions”, however, is always accompanied by its symbiotic partner, the “Law of Unintended Consequences” and is so here as well. By defining many new commercial activities as “Lobbying” in the State of Georgia, Georgia’s vendor lobbying laws impose significant restrictions and disclosure obligations on activities which never existed before. It is thus very important for corporations and other entities that sell or attempt to sell goods or services to the State of Georgia to understand the full ramifications of vendor lobbying provisions and ensure appropriate compliance programs are in place. This is true in no area greater than in the ramifications of these new definitions on the long-standing Georgia ban on “Contingent Lobbying”.

GEORGIA LAW ON VENDOR LOBBYING

The question of whether a person attempting to sell a product or service to a state agency must register as a vendor lobbyist, and therefore disclose expenditures made on public officers, depends upon whether the person’s actions fall under the definition of lobbyist contained in O.C.G.A. § 21-5-70.

The specific language on vendor lobbying is as follows:

“Lobbyist” means: (G) Any natural person who, for compensation, either individually or as an employee of another person is hired specifically to undertake influencing a public officer or state agency in the selection of a vendor to supply any goods or services to any state agency but does not include any employee of the vender solely on the basis that such employee participates in soliciting a bid or in preparing a written bid, written proposal, or other document

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relating to a potential sale to a state agency; or (H) Any natural person who, for compensation, either individually or as an employee of another person, is hired specifically to undertake to promote or oppose the passage of any rule or regulation of any state agency.

O.C.G.A. § 21-5-70 (5)(G)-(H).

As is evident from the definition above, vendor lobbyists can be either outside individuals hired by a vendor or employees of a vendor seeking to supply goods or services. If a person qualifies as a vendor lobbyist, then the person must register as such with the State Ethics Commission pursuant to O.C.G.A. § 21-5-70 and must report expenditures biannually to the State Ethics Commission pursuant to O.C.G.A. § 21-5-73.

While there are specific rules and exceptions in O.C.G.A. § 21-5-70(1) for certain types of expenditures on public officers, the basic requirements of the vendor lobbying disclosure law in Georgia seek to reveal all money spent by vendors and their lobbyists in attempts to influence the award of state contracts.

It is important to note that the term “state agency” explicitly excludes local political subdivisions, so the vendor lobbying provisions discussed in this memo do not apply to lobbyists attempting to influence the issuance of contracts by counties, cities and other political subdivisions. Furthermore, beyond the statutory provisions cited herein, there may be state agency (e.g. DOAS, DCH, GTA) rules and regulations that might apply to various factual questions, and certainly the Georgia Vendor Manual provides added restrictions.

“CONTINGENT LOBBYING” AND COMMISSION SALES PEOPLE

One of the more far reaching, yet under-appreciated and seldom discussed, features of vendor lobbying law in Georgia is the extension of the ban on contingency lobbying to include situations involving the award of any state contract. Georgia law has long included a ban on legislative lobbying for a contingency fee, which was understood to prohibit lobbyists from receiving compensation based on whether or not certain legislation passed or failed. Applied to vendor lobbying, however, Georgia law now also includes a ban on vendor lobbying for a contingency fee as follows:

No person, firm, corporation, or association shall retain or employ an attorney at law or an agent to aid or oppose legislation for compensation contingent, in whole or in part, upon the passage or defeat of any legislative measure or upon the receipt or award of any state contract. No attorney at law or agent shall be employed to aid or oppose legislation for compensation contingent, in whole or in part, upon the passage or defeat of any legislation or upon the receipt or award of any state contract.

O.C.G.A. § 21-5-76 (a).

While the language lacks ultimate clarity, the effect of this provision would likely prevent any vendor of the state from compensating an employee based on whether certain state contracts were received or awarded. Therefore, Georgia law, unlike the law in other states, prohibits vendors from compensating salespersons on a commission basis to pursue state contracts.

GEORGIA LAW LACKS A “CARVE-OUT” FOR COMMISSION SALESPEOPLE OTHER STATES PASSING SIMILAR LAW HAVE INCLUDED

Other states that ban contingency lobbying provide an exception for salespersons pursuing state contracts. One potential avenue by which to remedy this unfortunate outcome in Georgia is to adopt contingency ban legislation similar to that enacted in the State of Florida. Two largely analogous statutes in Florida directly address the prohibition on contingency fees. The first involves legislative organization and procedure, while the second comes from the Florida Code of Ethics for Public Officers and Employees, yet each includes an exception to the contingency fee ban for any salesperson engaging in legitimate state business on behalf of a company for compensation or commission as part of a bona fide contractual arrangement with that company.

To summarize, there are heightened requirements and restrictions for individuals who attempt to influence the awarding of state contracts to vendors in the State of Georgia, and in fact, the ban on contingency lobbying

forbids the use of commission based salespersons by vendors seeking state contracts. Any corporation selling any goods or services to any state agency, and certainly any using commission salespeople to do so, should immediately examine their internal compliance program to ensure that their activities fully comply with existing state law and disclosure obligations.

For additional information, please feel free to contact any of the McKenna Long & Aldridge LLP attorneys listed above. Information about McKenna Long & Aldridge LLP's Political Law Group, including a list of professionals practicing in this area, is located at <http://www.mckennalong.com/politicallaw>.

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