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Influencing Government: Rules of the Game

Campaign Finance, Lobbying Disclosure, and Gift
Laws

Presented by Scott Thomas and Michael Spencer
and Moderated by Kimberly White

Introducing the Panel

- Scott Thomas
 - Of Counsel, Dickstein Shapiro LLP
 - Michael Spencer
 - Associate General Counsel, Walmart
- Kimberly White
 - Director of Business Ethics & Senior Corporate Counsel, Underwriters Laboratories Inc.
 - Chair of ACC's Corporate Compliance & Ethics Committee

Federal Campaign Finance Law

- Overview: Longstanding prohibition of corporate “contribution” or “expenditure” in connection with federal election. FEC and DOJ enforce FECA.
- Broad definition of contribution: any direct or indirect payment, loan, advance, or gift of money or services or anything of value
- Meaning of non-coordinated “expenditure” is subject of great controversy; more later.

Federal Campaign Finance Law

- Prohibition of corporate contributions extends to direct payments and providing in-kind support to federal candidates or political committees.
- FEC rule identifies several examples of helping a committee raise funds that amount to impermissible “facilitation” of the making of contributions. This requires identifying what services of value are being provided and assuring the corporation is not paying such costs.

Federal Campaign Finance Law

- “Coordinated communications” are treated as a form of in-kind contribution to the benefitting federal candidate or party committee.
- “Content” test includes, e.g., message run with certain number of days of a referenced candidate’s election.
- “Conduct” test includes, e.g., any “request or suggestion” from a candidate’s or party committee’s operatives leading to the creation, production, or distribution of the message.

Federal Campaign Finance Law

- Non-coordinated corporate-paid messages that rise to level of “express advocacy” are prohibited (as of this writing). Big decision in Supreme Court pending on this issue.
- Non-coordinated “electioneering message” (radio or TV ad run close to election that “refers to” candidate) that reasonable person could only interpret as equivalent of express advocacy also is prohibited (as of this writing). Same pending Supreme Court decision will determine if this rule remains.

Federal Campaign Finance Law

- Important exceptions to corporate prohibition
 - Internal communications to restricted class, even express advocacy and even if coordinated with candidate; can involve candidate appearances
 - Nonpartisan candidate appearances, voting records, voter guides, and VR and GOTV activities
 - Occasional use of company facilities by employees undertaking volunteer activity (on own time); any increase in overhead must be paid to company
 - Establishment, administration, and solicitation costs relating to company's PAC

Federal Campaign Finance Law

- Operating a PAC
 - Limits on contributions to and by
 - Only stockholders, management, and their family members may be solicited for the PAC
 - Required notice regarding voluntariness
 - Payroll deduction is an option (even for raising contributions for a trade association's PAC)
 - Periodic reports (monthly system or quarterly system) identifying donors whose contributions exceed \$200 in year. Separate disclosure of "independent expenditures" above \$10,000 or just₉ before election.

Federal Lobbying Disclosure Law

- Overview: Lobbying firms and entities that have in-house “lobbyist” may have to register and report. Sec. of Senate, Clerk of House, and U.S. Attorney enforce. New tough penalties.
- Corporation would itself have to register if in-house employee was “lobbyist” and more than \$11,500 spent in quarter
- “Lobbyist” must spend more than 20% of time on “lobbying activities” and expect to make more than one “lobbying contact.” There are many exceptions to these two terms of art.

Federal Lobbying Disclosure Laws

- Registration form requires identifying information, list of “lobbyists,” list of broad subject areas to be lobbied, and name of any “affiliated” organization or related “foreign entity.”
- Quarterly reports also require list of particular bills or matters lobbied and total amount expended for “lobbying activities.” Latter includes activity of anyone at company, not just “lobbyists,” and portion of trade assn. dues.

Federal Lobbying Disclosure Law

- Now there is additional semi-annual reporting requirement for reporting entities and for listed lobbyists.
- Requires listing of certain contributions made to federal candidates, leadership PACs, or party accounts.
- Requires listing of payments to “honor” or “recognize” covered officials, to entity named for covered official or in recognition of such official, or to entity established, financed, maintained, or controlled by covered official.
- Requires certification that no improper gifts under congressional ethics rules have been provided.

Federal Gift and Travel Payment Law

- Overview: Congressional rules are enforced by Senate and House, but now some “givers” can be prosecuted by U.S. Attorney. Executive branch rules are enforced by agency ethics officials. Occasional serious matters can be prosecuted as bribery, illegal gratuity, or fraudulent deprivation of honest services case.
- Any time anything of value is provided to government official, BEWARE.

Federal Gift and Travel Payment Law

- Congressional rules impose \$0.00 limit on gifts paid by LDA-listed lobbyists, agents of foreign principals, and entities that retain or employ lobbyists or agents of foreign principals.
- Gifts paid for by others are subject to \$50 per occasion limit (and \$100 aggregate limit for year)
- There are many exceptions, though lobbyists and lobbying firms, and agents of foreign principals cannot use several of these exceptions.

Federal Gift and Travel Payment Law

- Most useful exceptions to congressional gift rules
 - Attendance at event paid for by political organization
 - Food and refreshment of nominal value at reception
 - Attendance at “widely attended event” or “charity event”
 - Attendance at award presentation
 - Item of nominal value
 - Officially-connected travel arranged in advance under “one day event” allowance

Federal Gift and Travel Payment Law

- Executive branch rules prohibit acceptance of gift from “prohibited” (interested) source or “because of official position.” This is broad restriction.
- Note that U.S. Attorney does not have authority to pursue “giver”
- Many of the exceptions available are similar to those found in the congressional rules.

Federal Gift and Travel Payment Law

- Useful executive branch exceptions:
 - Gift under \$20 per occasion (and under \$50 for year)
 - Attendance at official speaking event provided by sponsor
 - Approved attendance at “widely attended gathering”
 - Modest food and refreshment not a meal
 - Item of little intrinsic value

Federal Gift and Travel Payment Law

- New restrictions from Obama Administration; certain gift exceptions not available for political appointees
 - \$20/\$50 exception not available
 - Modest food and refreshment and item of little intrinsic value exceptions not available
 - Widely attended gathering exception not available
 - Note: 501(c)(3) groups and media entities not affected by these Obama Administration changes.

State Laws In This Area

- There is great variety among the states. Some prohibit corporate contributions. Others do not. Some have detailed lobbying disclosure requirements. Others do not. Some have strict gift prohibitions. Others do not.
- Counsel needs to inquire about the campaign finance, lobbying disclosure, and gift restriction laws in each state where company will be active.
- The 50-state charts prepared as part of this ACC InfoPAK are available to get you started.

Questions?

Chat with us now!

Or contact Scott Thomas at
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