Doing Public Health in New Jersey: Lawmaking, Advocacy, and Lobbying

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Disclaimer

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at Mitchell-Hamline College of Law.

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What is the Network?

» **Funded by Robert Wood Johnson Foundation**
   The mission of the Foundation is to improve the health and health care of all Americans.

» **One National Coordinating Center**
   Donna Levin, Executive Director

» **Five Regional Offices**
   Northern, Western, Mid‐States, Southeastern, Eastern

» **Three Program Partners**
   1. Public Health Law Research Program
   2. Change Lab Solutions
   3. Public Health Law Center/Tobacco Control Legal Consortium
Today’s Topics

- Lawmaking in New Jersey
- What is lobbying?
- How is lobbying restricted?
- What is allowed?
- What if…
Lawmaking in New Jersey

- New Jersey State Legislature
  - General Assembly (80 members)
  - Senate (40 senators)
- Meet in Trenton every Monday and Thursday all year with a recess during July and August
- 40 legislative districts
  - Drawn every 10 years after the census to ensure they contain approximately the same population
Lawmaking in New Jersey

- How a bill becomes a law...
  - Bill drafted
  - Bill introduced
  - Committee Action
  - Second Reading
  - Third Reading
  - House Vote
  - Second House
  - Governor’s Action
  - Codified Law

Source: schooltube.com
Lawmaking in New Jersey

- Using the NJLeg Website to find:
  - Your legislators
  - Bills
    - By number
    - By topic area
    - By sponsor
  - Committee information
  - Legislative calendar

http://www.njleg.state.nj.us/
Competing Realities

- Need to promote and protect the public’s health
  - Stagnant or shrinking budgets
  - Greater demand than ever for evidence-based solutions
  - Population level change often requires policy change

- Restrictions on lobbying
  - Recipients of federal funds
  - Nonprofit organizations
  - State/tribal/local restrictions
Definitions

Merriam-Webster Definitions:

**Lobbying**

“To conduct activities aimed at influencing public officials and especially members of a legislative body on legislation.”

**Advocacy**

“The act or process of supporting a particular cause or proposal.”

...So what’s the difference?
Advocacy vs. Lobbying

While all Lobbying is advocacy, not all advocacy is lobbying

- Advocacy and lobbying are similar, and the distinction is not always clear.

- Instead of trying to distinguish between advocacy and lobbying, we’re going to determine:

  1. The federal and state restrictions on lobbying, and
  2. Given these restrictions, what is allowed
Restrictions on Lobbying

- Lobbying Disclosure Act, 2 U.S.C. § 1605
- Internal Revenue Code
- Federal Appropriations Act § 503
- State and Local Laws
  - NJ Rev Stat §52:13C-21
Two Main Factors:

1. **Nature of Employer**
   - Government
   - Nonprofit

2. **Source of Funds**
   - Federal government
   - State or local government
   - Private
Internal Revenue Code
Internal Revenue Code

- Limits, but does not prohibit, nonprofits from lobbying
  
  “In general, no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). A 501(c)(3) may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.” – IRS website

- What is substantial?
  
  - Case-by-case determination made by time and money spent by organization on lobbying
  
  - Devoting less than 5% of activities to lobbying is not substantial
Direct Lobbying

Three Elements:

1. **Direct written or oral communication** to a legislator, legislative staff, or other government official working on legislation

2. That **reflects a view** (for or against)

3. **Specific legislation.**
   - “Specific legislation” means introduced bills, legislative proposals not yet introduced, budget bills, ballot measures, U.S. Treaties and confirmation of appointees
Grassroots Lobbying

Four Elements:

1. A written or oral communication to the public (e.g., speeches, ads, op-eds, blog)
2. That reflects a view
3. On specific legislation, and
4. Includes a call to action.
What constitutes a call to action?

- Asks audience to contact a legislator;
- Identifies a legislator as being the audience’s representative;
- Provides legislator’s contact information;
- Provides a vehicle for contacting the legislator (e.g., form email, petition);
- Identifies a legislator’s position on the legislation as being undecided or opposing the communication’s viewpoint;
- Identifies a legislator as sitting on the voting committee; OR
- A paid ad that expresses a view on prominent legislation within 2 weeks of a vote, even if it doesn’t contain a CTA.
Key Points

- Nonprofits are not prohibited from lobbying, but rather limited in the amount they can lobby
- IRS lobbying restrictions expressly limit
  1. Communications
  2. Expressing a view on specific legislation
- Restrictions apply to legislation only, meaning Congress, any state legislature, or local legislative body
  » IMPORTANT: Does not include executive, judicial or administrative bodies*
- Nonprofits should consider the 501(h) election
  - Funds may be spent on lobbying within certain limits, up to $1 million per year
  - Ex.: Up to 20% of the first $500K in “exempt purpose expenditures” may be spent on lobbying
Lobbying Restrictions for Federal Grantees
Consolidated Appropriations Act, 2012

In 2011, Congress established clear restrictions on the use of HHS funds, including CDC grant funds, for lobbying and related activities.

Division F, Title V, Section 503

“No part of any appropriation…shall be used:

(a) For publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body…or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.

(b) To pay the salary or expenses of any grant or contract recipient, related to an activity to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government...

(c) To advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing…”
What is prohibited?

- All direct and grassroots legislative lobbying
  - Same rules as for nonprofits
  - Applies to legislation pending in federal, state and local legislative bodies

- Lobbying on federal, state or local level executive actions
  - Restrictions now extend to agency regulations, administrative actions and executive orders*

- Advocacy related to any proposed, pending or future: (1) tax increase or (2) regulation of a consumer product
What is allowed?

- Health departments may work directly on policy-related issues, and on policy implementation, with other executive agencies
  - Ex.: A city health department can lobby another city agency

- Nonpartisan policy research, study or analysis

- Examination of broad social, economic, or health problems that do not refer to specific legislation or contain a call to action
What is allowed?

- Health departments may work with the state legislature, city council, board of selectmen, etc., if it is part of the normal scope of your work
  - **Important:** Non-government grantees, may upon formal, written request, provide technical assistance to public officials (e.g., testify before a committee)

- Educate the public on:
  - Personal health behavior and choices
  - Health issues and their public health consequences
  - Examples of best practices or success stories across states or localities
Key Additional Points

- The lobbying restrictions only apply to the use of federal grant dollars. Employees on federal grants may lobby if using other, unrestricted funds.

- If an activity constitutes lobbying, it does not mean you cannot do it, but rather that the activity must be paid from a non-federal funding source.

- Seek guidance! The lobbying restrictions are legally complex, you should consult, for example:
  - CDC guidance documents
  - CDC project officer
  - Legal counsel
New Jersey Law
New Jersey Law and Regulations

- Require anyone who is paid (or receives anything of value) in excess of $100/3 month period to influence NJ legislation, administrative rules, or government processes to register as a governmental affairs agent with the NJ Election Law Enforcement Commission (ELEC).

- Government officials probably exempt when operating in the normal scope of their jobs.

- Seek guidance!
  - NJ Center for Non-Profits—www.njnonprofits.org
What if…
Scenario #1

May the local health officer, whose salary to work on childhood obesity issues is covered under federal funds, testify on a city council bill seeking to tax sugar-sweetened beverages about the health value of imposing such a tax?

- **Yes.** The health officer’s testimony would fall under the “normal and recognized executive-legislative relationship” exception. In fact, any health department representative would likely qualify and be able to testify.
Scenario #2

The board of selectmen hold a public hearing to consider incorporating electronic cigarettes into the town’s smoke-free ordinance. May a local tobacco coalition that is funded with federal grant dollars inform the public about the hearing and urge people to attend if they are passionate about the issue?

- **It depends.** Notifying the public of a legislative hearing is not lobbying. However, if the coalition urged the public to support the bill or otherwise took a side, it would constitute impermissible lobbying.

- Also, the coalition may notify its members and urge them to testify since that would not be a communication with the public. Or, the health department may notify the coalition and urge them to testify. Since the coalition is a grantee, it again would not be a public communication.
Scenario #3

May a federally funded nonprofit organization accept an invitation from a city council to present research findings at an upcoming bill hearing?

- **Yes.** A research analysis does not constitute lobbying. The analysis may also include evidence of policy effectiveness (e.g., decreased smoking rates in jurisdictions with comprehensive clean indoor air laws).

- The nonprofit grantee must receive a formal, written request to testify.
Questions?

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