

COVINGTON'S ELECTION & POLITICAL LAW

COMPLIANCE FOR CORPORATIONS

Our clients often ask us to help them anticipate risks that they should be thinking about before they stumble on a regulatory trap for the unwary. One area of regulatory expertise in which we regularly do exactly that is election and political law. This highly specialized practice concerns the complex web of federal, state, and local laws governing corporate involvement in the political process.

Most major corporations regularly interact with public officials, through lobbying and campaign fundraising, but also through routine commercial sales activities that involve government procurement. The federal government, all 50 states, and hundreds of local jurisdictions have laws and rules that are implicated anytime a corporation deals with public officials. Examples include lobbying registration and reporting regimes, campaign contribution limits, and government gift and ethics rules.

Here are some examples of common “political law” compliance traps that corporations stumble into:

- **CORPORATE “FACILITATION” OF POLITICAL CONTRIBUTIONS:** A CEO is asked by a Congressman to support his campaign. The CEO writes a contribution check and asks a few others at the company to do the same. The CEO hands her check to her secretary, and the secretary collects checks from the other executives and forwards them to the company’s Washington office, which in turn sends them to the campaign. For good measure, the secretary has included a spreadsheet listing all of the contributions and prominently displaying the corporate logo. This may be deemed illegal corporate “facilitation” of campaign contributions, for which the Federal Election Commission has repeatedly imposed fines.
- **“PAY TO PLAY” LAWS:** A company has a multi-million dollar contract to provide goods or services to a state agency. The spouse of a member of the company’s board of directors makes a campaign contribution to an elected official in that same state. State law may require that the company’s contract be terminated. The company may be debarred from doing business with the state for two years and charged with a criminal offense. Such so-called “pay to play” laws are cropping up in states and municipalities all across the country, and they may apply to contributions by directors, executives, their spouses, their children and others.
- **GIFT RULES:** An executive buys lunch for a state official during a visit. Depending on the jurisdiction, the lunch may be an illegal “gift.”
- **SALES PERSONNEL WHO BECOME “LOBBYISTS”:** A sales manager travels the country meeting with state and local agencies to urge that they buy goods and services from the company. The manager doesn’t realize it, but in some of those jurisdictions his sales activity may be treated as “lobbying,” and both he and the company may have violated the law by not registering as lobbyists with the state or local government.
- **REIMBURSEMENT OF POLITICAL CONTRIBUTIONS:** A company employee is invited to a golf tournament by a professional association. He invites along several of his colleagues. They all turn in their “registration fees” for reimbursement by the company. The golf tournament is actually a fundraiser for the association’s political action committee. The company may be

deemed to have illegally reimbursed federal campaign contributions, and the Department of Justice opens an investigation.

- **COERCION OF POLITICAL CONTRIBUTIONS:** A disgruntled former employee who has just been laid off hires an employment lawyer. Among a standard list of questions the employment lawyer asks is “Have you ever been coerced into making a political contribution?” The employee recalls a particularly heavy handed solicitation by the company’s PAC, and the employment lawyer threatens to file a complaint against the company with the Federal Election Commission for violating the federal law against coercing political contributions.
- **LURKING TIME BOMBS IN LOBBYISTS’ BILLS:** A company hires a lobbying firm. The lobbying firm’s invoices include charges for dinners with congressional staff and catering costs for a political fundraiser. The documents raise compliance issues under the congressional gift rules and the campaign finance laws. When the lobbying firm gets swept into a criminal investigation of a Member of Congress, the company receives a subpoena calling for these documents.

These are all real world scenarios that we see in our practice. And while enforcement of these laws is erratic, and blockbuster fines less frequent than in some other regulatory areas, the business, public relations, and political consequences are disproportionately severe when these kinds of violations do come to light.

Covington’s 11-lawyer Election and Political Law Practice Group has one of the most extensive such practices in the nation and advises numerous major corporations and their Washington offices, trade associations, lobbying firms, and PACs. It is chaired by partner Rob Kelner and includes of counsel Bob Lenhard, the former Chairman of the Federal Election Commission.

If you have any questions concerning Covington’s Election and Political Law practice, please contact the following members of our group:

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