

CASE NOTES

¶ 1. The notice provisions of this section require publication in the City Record and another paper designated by the Mayor. While technical compliance with the publication provisions is not essential to the validity of a municipal statute, the noncompliance contained in the instant case goes beyond that because the publication in the City Record was incorrect, it was not corrected in a timely fashion by the City and only certain special interest groups were notified at the last moment of the incorrect publication in the City Record. Thus the notice provisions of the statute were frustrated and the municipal enactment must be and hereby is invalidated. 41 Kew Gardens Rd Assoc. v. Tyburski, 124 AD2d 553, [1986].

§ 3-210.1 **Fingerprinting.** a. Employees. The council shall require that any applicant or appointee for future employment by the council be fingerprinted as part of the application process. Such fingerprints and physical descriptive data are to be provided for the purpose of securing criminal history records from the state division of criminal justice services. The applicant shall pay a processing fee as required by the state division of criminal justice services. Notwithstanding the foregoing, the council need not require applicants or appointees under this subdivision to be fingerprinted if criminal history records concerning such applicants or appointees are not made available by the state division of criminal justice services.

b. Other Persons. The council may require that any candidate for direct appointment, designation, nomination, recommendation and advice and consent by the council as required by state legislation, the charter or administrative code be fingerprinted as part of the background investigation. Such fingerprints are to be provided for the purposes of securing criminal history records from the state division of criminal justice services. The applicant may pay a processing fee as required by the state division of criminal justice services. Notwithstanding the foregoing, the council need not require candidates under this subdivision to be fingerprinted if criminal history records concerning such candidates are not made available by the state division of criminal justice services.

HISTORICAL NOTE

Section added L.L. 118/89 § 1.

SUBCHAPTER 2

REGULATION OF LOBBYING*

§ 3-211 **Definitions.** Whenever used in this subchapter, the following words and phrases shall be construed as defined in this section:

(a) The term "lobbyist" shall mean every person or organization retained, employed or designated by any client to engage in lobbying. The term "lobbyist" shall not include any officer or employee of the city of New York, the State of New York, any political subdivision of the State, or any public corporation, agency or commission, or the United States when discharging his or her official duties.

(b) The term "client" shall mean every person or organization who

retains, employs or designates any person or organization to carry on lobbying activities on behalf of such client.

(c) (1) The term "lobbying" or "lobbying activities" shall mean any attempt to influence:

(i) the passage or defeat of any local law or resolution by the city council,

(ii) the approval or disapproval of any local law or resolution by the mayor,

(iii) any determination made by an elected city official or an officer or employee of the city with respect to the procurement of goods, services or construction, including the preparation of contract specifications, or the solicitation, award or administration of a contract, or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies,

(iv) any determination made by the mayor, the city council, the city planning commission, a borough president, a borough board or a community board with respect to zoning or the use, development or improvement of real property subject to city regulation,

(v) any determination made by an elected city official or an officer or employee of the city with respect to the terms of the acquisition or disposition by the city of any interest in real property, with respect to a license or permit for the use of real property of or by the city, or with respect to a franchise, concession or revocable consent,

(vi) the adoption, amendment or rejection by an agency of any rule having the force and effect of law,

(vii) the outcome of any rate making proceeding before an agency, or

(viii) any determination of a board or commission.

(2) The definition of the term "lobbying" or "lobbying activities" shall not apply to any determination in an adjudicatory proceeding.

(3) The following persons and organizations shall be deemed not to be engaged in "lobbying activities":

(i) persons engaged in advising clients, rendering opinions and drafting, in relation to proposed legislation, resolutions, rules, rates, or other proposed legislative, executive or administrative action, where such persons do not themselves engage in an attempt to influence such action;

(ii) newspapers and other periodicals and radio and television stations, and owners and employees thereof, provided that their activities are limited to the publication or broadcast of news items, editorials or other comment, or paid advertisements;

(iii) persons who participate as witnesses, attorneys or other representatives in public rule making or rate making proceedings of an agency, with respect to all participation by such persons which is part of the public record thereof and all preparation by such persons for such participation;

(iv) persons who appear before an agency in an adjudicatory proceeding;

(v) persons who appear before an agency in an adjudicatory proceeding;

(vi) persons who prepare or submit a response to a request for information or comments by the city council or one of its committees, the mayor, or other elected city official or an agency;

(vii) persons who prepare or submit a response to a request for information or comments by the city council or one of its committees, the mayor, or other elected city official or an agency;

(viii) (A) contractors or prospective contractors who communicate with or appear before city contracting officers or employees in the regular course of procurement planning, contract development, the contractor selection process, the administration of a contract, or the audit of a contract.

* Subchapter 2 repealed and added L.L. 14/86 § 1.

when such communications or appearances are made by such contractors or prospective contractors personally, or through;

1. such officers and employees of the contractors or prospective contractor who are charged with the performance of functions relating to contracts;

2. subcontractors or prospective subcontractors who are or will be engaged in the delivery of goods, services or construction pursuant to the contract of such officers and employees of the subcontractor or prospective subcontractor who are charged with the performance of functions relating to contracts; or

3. persons who provide technical or professional services, as defined in clause (B) of this subparagraph, on behalf of such contractor, prospective contractor, subcontractor or prospective subcontractor.

(B) For the purposes of clause (A) of this subparagraph:

1. "technical services" shall be limited to advice and analysis directly applying any engineering, scientific, or other similar technical discipline;

2. "professional services" shall be limited to advice and analysis directly applying any legal, accounting or other similar professional discipline in connection with the following elements of the procurement process only: dispute resolution, vendor protests, responsiveness and responsibility determinations, determinations of prequalification, suspensions, debarments, objections to registration pursuant to section 328 of the charter, contract interpretation, negotiation of contract terms after the award of a contract, defaults, the termination of contracts and audit of contracts. Any person who provides professional services pursuant to this subparagraph in connection with elements of the procurement process not specified above in this item, whether prior to, in connection with or after the award of a contract, shall be deemed to be engaged in lobbying activities, unless such person is deemed not to be engaged in lobbying activities under another provision of this paragraph; and

3. "city contracting officers or employees" shall not include elected officials or deputies of elected officials or any person not duly authorized to enter into and administer contracts and make determinations with respect thereto; and

(vii) persons or organizations who advertise the availability of goods or services with fliers, leaflets or other advertising circulars.

(d) The term "organization" shall include any corporation, company, foundation, association, labor organization, firm, partnership, society, or joint stock company.

(e) The term "compensation" shall mean any salary, fee, gift, payment, subscription, loan, advance or any other thing of value paid, owed, given or promised by the client to the lobbyist for the purpose of lobbying.

(f) The term "expenditure" shall mean any expenses incurred by or reimbursed to the lobbyist for lobbying.

HISTORICAL NOTE

Section added L.L. 14/86 § 1.

Subd. c amended L.L. 67/1993 § 1, eff. July 29, 1993.

§ 3-212 **Powers and duties of the city clerk.** In addition to any other powers and duties specified by law, the city clerk shall have the power and duty to administer and enforce all the provisions of this subchapter, subpoena witnesses and records, issue advisory opinions to those under

its jurisdiction, conduct any investigation necessary to carry out the provisions of this subchapter, prepare uniform forms for the statements and reports required by this subchapter and promulgate such rules as he or she deems necessary for the proper administration of this subchapter.

HISTORICAL NOTE

Section amended L.L. 67/1993 § 2, eff. July 29, 1993.

Section added L.L. 14/86 § 1.

§ 3-213 **Statement of registration.** (a) (1) Every lobbyist shall annually file with the city clerk, on forms prescribed by the city clerk, a statement of registration for each calendar year; provided, however, that the filing of such statement of registration shall not be required of any lobbyist who in any year does not expend, incur or receive an amount in excess of two thousand dollars of reportable compensation and expenses, as provided in paragraph five of subdivision (b) of section 3-216 of this subchapter, for the purposes of lobbying.

(2) Such filing shall be completed on or before January first by those persons who have been retained, employed or designated as lobbyists on or before December fifteenth of the previous calendar year who reasonably anticipate that in the coming year they will expend, incur or receive combined reportable compensation and expenses in an amount in excess of two thousand dollars. For those lobbyists retained, employed or designated after December fifteenth, and for those lobbyists who, subsequent to their retainer, employment or designation, reasonably anticipate combined reportable compensation and expenses in excess of such amount, such filing must be completed within fifteen days thereafter, but in no event later than ten days after the actual incurring or receiving of such reportable compensation and expenses.

(b) Such statements of registration shall be kept on file for a period of five years and shall be open to public inspection during such period.

(c) Such statement of registration shall contain:

(1) the name, address and telephone number of the lobbyist;

(2) the name, address and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated;

(3) if such lobbyist is retained or employed pursuant to a written agreement of retainer or employment, a copy of such shall also be attached and if such retainer or employment is oral, a statement of the substance thereof;

(4) a written authorization from the client by whom the lobbyist is authorized to lobby, unless such lobbyist has filed a written agreement of retainer or employment pursuant to paragraph three of this subdivision;

(5) a description of the general subject or subjects on which the lobbyist is lobbying or expects to lobby;

(6) the name of the person or agency before which the lobbyist is lobbying or expects to lobby;

(7) if the lobbyist has a financial interest in the client, direct or indirect, information as to the extent of such interest and the date on which it was acquired; and

(d) Whenever there is a change in the information filed by the lobbyist in the original statement of registration, an amended statement shall be submitted to the city clerk on forms supplied by the city clerk within ten

days after such change occurs; however, this shall not require the lobbyist to amend the entire registration form.

(e) Each statement of registration filed annually by each lobbyist shall be accompanied by a registration fee established by the city clerk in an amount not to exceed one hundred dollars. An additional fee may be imposed not to exceed twenty dollars for each client in excess of one identified on such statement.

(f) In the event of the retention, employment or designation of an organization wherein more than one member of the organization will be engaging in lobbying activities on behalf of a client, one statement of registration shall be filed by the organization with a listing of all such persons.

(g) All applicable forms as required under this subchapter shall be mailed by the city clerk to every lobbyist and client who filed an annual report in the prior year. In the event of non-receipt prior to the filing date, such person shall notify the city clerk of such non-receipt. In no event shall non-receipt of required forms constitute cause for failure to file or lateness in filing.

HISTORICAL NOTE

Section added L.L. 14/86 § 1.

§ 3-214 **Monthly registration docket.** It shall be the duty of the city clerk to compile a monthly docket of statements of registration containing all information required by section 3-213 of this subchapter. Each such monthly docket shall contain all statements of registration filed during such month and all amendments to previously filed statements of registration. Copies shall be made available for public inspection.

HISTORICAL NOTE

Section added L.L. 14/86 § 1.

§ 3-215 **Termination of retainer, employment or designation.** Upon the termination of a lobbyist's retainer, employment or designation, such lobbyist and the client on whose behalf such service has been rendered shall both give written notice to the city clerk within thirty days after the lobbyist ceases the activity that required such lobbyist to file a statement of registration; however, such lobbyist shall nevertheless comply with the reporting requirements for the last periodic reporting period up to the date such activity has ceased as required by this subchapter and both such parties shall each file the annual report required by section 3-217 of this subchapter. The city clerk shall enter notice of such termination in the appropriate monthly registration docket required by section 3-214 of this subchapter.

HISTORICAL NOTE

Section added L.L. 14/86 § 1.

§ 3-216 **Periodic reports.** (a) (1) Any lobbyist required to file a statement of registration pursuant to section 3-213 of this subchapter who in any lobbying year expends, receives or incurs combined reportable compensation and expenses in an amount in excess of two thousand dollars, as provided in paragraph five of subdivision (b) of this section, for the purpose of lobbying, shall file with the city clerk a first periodic written

report, on forms supplied by the city clerk, by the fifteenth day next succeeding the end of the reporting period on which the cumulative total for such lobbying year equalled such sum. Such reporting periods shall be the period from January first to March thirty-first, April first to May thirty-first, June first to September thirtieth, and October first to December thirty-first.

(2) Any lobbyist making a report pursuant to paragraph one of this subdivision shall thereafter file with the city clerk, on forms supplied by the city clerk, a periodic report for each reporting period that such person expends, receives or incurs combined reportable compensation and expenses in an amount in excess of five hundred dollars for the purposes of lobbying during such reporting period. Such report shall be filed not later than the fifteenth day next succeeding the end of such reporting period and shall include the amounts so expended, received or incurred during such reporting period and the cumulative total during the lobbying year.

(b) Such periodic report shall contain:

(1) the name, address and telephone number of the lobbyist;

(2) the name, address and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated;

(3) a description of the general subject or subjects on which the lobbyist has lobbied;

(4) the person or agency before which the lobbyist has lobbied;

(5) (i) the compensation paid or owed to the lobbyist, and any expenses expended, received or incurred by the lobbyist for the purpose of lobbying.

(ii) expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expense is more than seventy-five dollars on behalf of any one person, the name of such person shall be listed.

(iii) for the purpose of this paragraph, expenses shall not include:

(A) personal sustenance, lodging and travel disbursements of such lobbyist;

(B) expenses, not in excess of five hundred dollars in any one calendar year, directly incurred for the printing or other means of reproduction or mailing of letters, memoranda or other written communications.

(iv) expenses paid or incurred for salaries other than that of the lobbyist shall be listed in the aggregate.

(v) expenses of more than fifty dollars shall be paid by check or substantiated by receipts.

(c) Notwithstanding any inconsistent provision of this section, where a lobbyist required to file a statement of registration pursuant to section 3-213 of this subchapter is not required to file a periodic report pursuant to subdivision (a) or (b) of this section because he or she has not expended, received or incurred compensation and expenses as therein specified, he or she shall file a periodic report stating that he or she has not expended, received or incurred such compensation and expenses by the fifteenth day next succeeding the end of the reporting period.

(d) (1) All such periodic reports shall be subject to review by the city clerk.

(2) Such periodic reports shall be kept on file in the office of the city

clerk for five years and shall be open to public inspection during such time.

HISTORICAL NOTE

Section added L.L. 14/86 § 1.

Subd. (b) par (5) subpar (ii) amended L.L. 67/1993 § 3, eff. July 29, 1993.

Subd. (d) amended L.L. 67/1993 § 4, eff. July 29, 1993.

§ 3-217 **Annual reports.** (a) Annual reports shall be filed by:

(1) every lobbyist required to file a statement of registration pursuant to section 3-213 of this subchapter;

(2) any client retaining, employing or designating a lobbyist or lobbyists, if during the year such client expended, received or incurred an amount in excess of two thousand dollars of combined reportable compensation or expenses, as provided in paragraph five of subdivision (c) of this section, for the purposes of lobbying.

(b) Such report pursuant to paragraph one of subdivision (a) of this section shall be filed with the city clerk, on forms supplied by the city clerk, by the fifteenth day of January next following the year for which such report is made and shall contain on an annual cumulative basis all the information required in periodic reports by section 3-216 of this subchapter.

(c) Such report pursuant to paragraph two of subdivision (a) of this section shall be filed with the city clerk on forms supplied by the city clerk by the fifteenth day of January next following the year for which such report is made and shall contain:

(1) the name, address and telephone number of the client;

(2) the name, address and telephone number of each lobbyist retained, employed or designated by such client;

(3) a description of the general subject or subjects on which each lobbyist retained, employed or designated by such client has lobbied;

(4) the person or agency before which such client has lobbied;

(5) (i) the compensation paid or owed to each such lobbyist, and any other expenses paid or incurred by such client for the purpose of lobbying.

(ii) any expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expenses are more than seventy-five dollars on behalf of any one person, the name of such person shall be listed.

(iii) for the purposes of this paragraph, expenses shall not include:

(A) personal sustenance, lodging and travel disbursements of such lobbyist and client;

(B) expenses, not in excess of five hundred dollars, directly incurred for the printing or other means of reproduction or mailing of letters, memoranda or other written communications.

(iv) expenses paid or incurred for salaries other than that of the lobbyist shall be listed in the aggregate.

(v) expenses of more than fifty dollars must be paid by check or substantiated by receipts.

(d) (1) All such annual reports shall be subject to review by the city clerk.

(2) Such annual reports shall be kept on file in the office of the city clerk for a period of five years and shall be open to public inspection during such period.

HISTORICAL NOTE

Section added L.L. 14/86 § 1.

Subds. b, c, d amended L.L. 67/1993 § 5, eff. July 29, 1993.

§ 3-218 **Contingent retainer.** No client shall retain or employ any lobbyist for compensation, the rate or amount of which compensation in whole or part is contingent or dependent upon legislative, executive or administrative action where efforts by a lobbyist to influence such action are subject to the jurisdiction of the city clerk, and no person shall accept such a retainer or employment.

HISTORICAL NOTE

Section amended L.L. 67/1993 § 6, eff. July 29, 1993.

Section added L.L. 14/86 § 1.

§ 3-219 **Obligations of lobbyists.** Any person who is required to file a statement of registration under this subchapter has the following obligations:

a. To abstain from doing any act, with the express purpose and intent of placing a member of the city council, the mayor or any officer or employee charged by law with making a decision on a matter pending or proposed, under personal obligation to him or her or to his or her employer.

b. Never to knowingly deceive or attempt to deceive a member of the city council, the mayor or any officer or employee charged by law with making a decision on a local law, resolution or matter pending or proposed, as to any material fact pertinent to any pending or proposed local law, resolution or matter.

c. Never to cause or influence the introduction of any local law or resolution at the city council for the purpose of thereafter being employed to secure its granting, denial, confirmation, rejection, passage or defeat.

d. To abstain from any attempt to create a fictitious appearance of public favor or disfavor of any proposed local law or resolution before the city council or to cause any communication to be sent to a member of the city council, or the mayor, or any officer or employee charged by law with making a decision on a matter pending or proposed, in the name of any fictitious person or in the name of any real person, except with the consent of such real person.

e. Not to represent, either directly or indirectly through word of mouth or otherwise, that he or she can control or obtain the vote or action of the mayor, any member of the city council, or any employee or officer of the city charged by law with making a decision on a matter pending or proposed, or the approval or disapproval of a local law or resolution by the mayor of the city of New York.

f. Not to represent or solicit representation of, an interest adverse to such person's employer nor to represent employers whose interests are known to such person to be adverse.

g. To retain all books, papers and documents necessary to substantiate the financial reports required to be made under this subchapter for a period of five years.

HISTORICAL NOTE

Section added L.L. 14/86 § 1.
Subds. a, b, c, d, e amended L.L. 67/1993 § 7, eff. July 29, 1993.

§ 3-220 **Retention of records.** Every person to whom this subchapter is applicable shall keep for at least five years a detailed and exact account of:

- (1) all compensation of any amount or value whatsoever;
- (2) the name and address of every person paying or promising to pay compensation of fifty dollars or more and the date thereof;
- (3) all expenditures made by or on behalf of the client; and
- (4) the name and address of every person to whom any item of expenditure exceeding fifty dollars is made, the date thereof and receipted bill for said expenditure.

HISTORICAL NOTE

Section added L.L. 14/86 § 1.

§ 3-221 **Filing of statements and reports.** Any statement or report required by this subchapter may be filed with the city clerk either in person or by mail. It shall be deemed properly filed by mail when deposited in an official depository under the exclusive care and custody of the United States Postal Service, properly addressed in a post-paid wrapper. In the event it is not received, such statement shall be promptly filed upon notice from the city clerk of its non-receipt.

HISTORICAL NOTE

Section amended L.L. 67/1993 § 8, eff. July 29, 1993.
Section added L.L. 14/86 § 1.

§ 3-222 **Certification.** All statements and reports required under this subchapter shall contain the following declaration: "I certify that all statements made on this statement are true and correct to the best of my knowledge and belief and I understand that the wilful making of any false statement of material fact herein will subject me to the provisions of law relevant to the making and filing of false instruments and will render such statement null and void."

HISTORICAL NOTE

Section added L.L. 14/86 § 1.

§ 3-223 **Penalties.** (a) Except as provided for in subdivision b of this section, any person or organization who knowingly and wilfully violates any provision of this subchapter shall be guilty of a class A misdemeanor. In addition to such criminal penalties, said person or organization shall be subject to a civil penalty, in an amount not to exceed fifteen thousand dollars, to be assessed by the city clerk, or an order to cease all lobbying activities subject to the jurisdiction of the city clerk for a period of time as determined by said clerk not to exceed sixty days, or both such civil penalty and order.

(b) Any person or organization who violates a cease and desist order of the city clerk issued under subdivision a of this section or enters into a contingency agreement or accepts or pays any contingency fees as proscribed in section 3-218 of this subchapter, shall be guilty of a class A misdemeanor. In addition to such criminal penalties, said person or or-

ganization shall be subject to a civil penalty, in an amount not to exceed fifteen thousand dollars, to be assessed by the city clerk.

(c) Following a failure to make and file any statement or report required by this subchapter, the city clerk shall notify the person or organization of such fact by certified mail that such filing must be made within fourteen business days of the date of mailing of such notice. The failure to file any statement or report within such time shall constitute a class A misdemeanor. In addition to such criminal penalties, said person or organization shall be subject to a civil penalty, in an amount not to exceed ten thousand dollars, to be assessed by the city clerk. For the purposes of this subdivision, the chief administrative officer of any organization required to file a statement or report shall be the person responsible for making and filing such statement or report unless some other person prior to the due date thereof has been duly designated to make and file such statement or report.

(d) Any person or organization who violates any provision of this subchapter not punishable under subdivisions a, b or c of this section shall be subject to a civil penalty, in an amount not to exceed ten thousand dollars, to be assessed by the city clerk.

(e) Any civil penalty to be assessed under subdivision d of this section, or any order issued under subdivision a of this section, may only be imposed or issued after written notice of violation and the expiration of fourteen business days from the date of mailing of such notice. If such violation is cured within such fourteen-day period, then such civil penalty or order shall not be imposed or issued.

(f) The amount of any assessment made or duration of order issued pursuant to this section shall be determined only after a hearing at which the party shall be entitled to appear and be heard. Any assessment imposed under this section may be recovered in an action brought by the corporation counsel.

(g) The city clerk shall be charged with the duty of reviewing all statements and reports required under this subchapter for violations, and it shall be his duty, if he deems such to be wilful, to report such determination to the appropriate authority for criminal prosecution.

HISTORICAL NOTE

Section amended L.L. 67/1993 § 9, eff. July 29, 1993.
Section added L.L. 14/86 § 1.

CHAPTER 4**BOARD OF ESTIMATE****§ 3-406 Leases for public purposes.****CASE NOTES**

At issue is the fair market value for use and occupancy of land and a building on Grand Concourse, Bronx. Leased by the City University of New York the premises was being used by the City Board of Education following termination of a 10-year lease and during a holdover period. Option to renew contained in the lease provides best evidence of fair market value. Board of Estimate resolution authorizing the Board of Education leasing without statutorily finding the proposed rent "fair and