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Today's podcast is on lobbying ethics rules. Lobbying of the government has been long enshrined in The United States Constitution, found in the First Amendment, which generally protects the right to petition government.

This protection applies to petitioning and lobbying, whether by practitioners, lobbyists, who are compensated or not compensated.

Lobbying is an honorable profession and, just like in other professions, the vast majority of those involved in the lobbying profession are honest, trustworthy, and hardworking individuals who take both their role in the legislative process and their profession quite seriously.

Moreover, lobbyists and legislators they lobby generally act responsibly and in compliance with numerous applicable state and federal laws. However, because there's so much scrutiny on politics, elected officials, and the legislative process, when something improper does occur, it gets into the public domain quickly.

As a result, if there's an alleged violation of the law, it often becomes high-profile and garners public attention and discussion.

There have been recent instances of lobbyists being fined by the FPPC for violating California's Political Reform Act of 1974, the PRA. Generally, these cases deal with violations of the gift limits or failure to timely file documents or accurately disclose payments.

In one notable case, the FPPC fined a lobbyist who also served as a political consultant and who had carried unpaid fees for campaign services for a number of legislators.

There are only a few specific laws that address ethical rules for lobbyists. Beyond those, lobbyists are encouraged to abide by a code of ethics in conducting their professional activities. These include the code of ethics adopted and maintained by the Institute of Governmental Advocates, IGA, an organization to which many Sacramento lobbyists belong.

In addition, the California Legislature has adopted by rule certain recommended conducts for lobbyists. Also of interest is the code of conduct by the Federal Lobbying Trade Association. All of these ethics guidelines provide substantial guidance for lobbyists who lobby California state government.

The following podcast is a general overview of these codes and these rules. What are some of the state lobbying laws?

The Political Reform Act, the PRA of 1974, was adopted by the voters in the June 1974 statewide election as Proposition 9. The PRA contains the main statutes concerning the

ethical rules for the lobbying profession in the state of California. They are found in the California government code.

The purpose of regulating lobbying activities is set forth in government code section 81002, subdivision B. It states, "The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials."

The California government code provides the following main provisions. One, lobbyists cannot make or arrange gifts in excess of \$10 per calendar month to any state elected officials, most of the legislative staff members, and certain state agency officials whom they or their lobbying firm lobbies.

Effective January 1, 2015, lobbyists and lobbying firms may not pay for the expenses of fundraising events held at their home or office for officeholders and candidates that they are registered to lobby.

Third, the PRA bans honoraria, and limits most gifts to state officials and candidates for state office. As a result, payments cannot be given in consideration for legislators giving speeches, or writing articles or attending gatherings.

The general gift limit is currently \$470 per calendar year for lobbyist employers. Be aware that the California constitution prohibits legislators from receiving earned income from lobbyists for any purpose.

The most specific lobbyist ethics provisions in the PRA are found in government code section 86205. It provides that no lobbyist or lobbying firm shall do any of the following.

A: do anything with the purpose of placing any elected state officer, legislative official, agency official, or state candidate under the personal obligation of the lobbyist, the lobbying firm, or the lobbyist or the firm's employer.

B: deceive or attempt to deceive any state officer, legislative official, agency official, or state candidate with regard to any material fact pertinent to any pending or proposed legislative or administrative action.

Subdivision C: cause or influence the introduction of any bill or amendment thereto for the purpose of thereafter being employed to secure its passage or defeat.

D: attempt to create a fictitious appearance of public favor or disfavor of any proposed legislative or administrative action, or to cause any communication to be sent to any elected state officer, legislative official, agency official, or state candidate, in the name of any fictitious person, or in the name of any real person, except with the consent of such real person.

E: represent falsely, either directly or indirectly, that the lobbyist or the lobbying firm can control the official action of any elected state officer, legislative official, or agency official.

Subdivision F: accept or agree to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.

How about agency ex parte communications? Although it's not a part of the PRA and the government code, there are other state laws that impose certain ex parte communication restrictions on the participants in administrative adjudicatory proceedings and before certain state agencies, such as the Public Utilities Commission.

Lobbyists who work on regulatory and adjudicatory matters at state agencies should familiarize themselves with such restrictions on their communications when they communicate with officials of those state agencies.

How about the revolving door rules for public officials who later become lobbyists? Revolving door prohibitions affect public officials who go into a lobbying profession, and essentially preclude them from communicating with or appearing before any state agency for which the official worked during the 12 months before leaving state employment.

Note, however, that this prohibition does not apply to legislative or judicial branch employees. A law that was enacted in the 2000 legislative session starts that 12-month upon the end of the legislator's term, which means that if a legislator left partway through his or her term, that would be added to the 12 months at the end of their normally scheduled term.

If an Assembly Member were elected to a normal two-year term but left to become a lobbyist one year into his or her term, the revolving door prohibition would actually be for two years. The one year remaining on his or her legislative term, followed by the normal 12-month after employment had ended.

What are the criminal laws affecting lobbyists? There are both constitutional and statutory state and federal criminal laws that affect lobbyists who engage in any wrongdoing.

The state bribery and extortion laws, such as penal code sections 85 and 86, as well as federal laws on bribery, extortion, mail fraud, and wire fraud, as well as the infamous RICO statute, Racketeering Influenced Criminal Organizations, are all based on violations of state laws. All of them have been used to successfully prosecute state lobbyists in the past.

For example, in Article 4, Section 15 of the California Constitution, it is stated, "A person who seeks to influence the vote or action of a member of the legislature in the member's legislative capacity by bribery, promise of reward, intimidation, or other dishonest means, or a member of the legislature so influenced, is guilty of a felony."

Finally, although there are no recent examples of its use, violations of the Political Reform Act by lobbyists can be prosecuted criminally as misdemeanors. A conviction could disqualify a person from acting as a lobbyist for up to four years.

As I mentioned earlier, there's also a legislative code of ethics, which the legislature adopted years ago. This legislative code of ethics is for lobbyists. The following are its provisions.

One: you may not offer employment to any member or legislative employee which impairs his or her independence of judgment as to his or her official duties.

Two: you may not offer employment which would require or induce a member or legislative employee to disclose confidential information.

Three: you may not use or disclose any confidential information obtained from a member or legislative employee for personal financial gain, or conspire with any person for such purpose.

Four: you may not offer any employment, fee, or any other form of compensation to any member or legislative employee for appearing, agreeing to appear, or taking any other action on behalf of you or a client before any state board or agency.

Five: you may not give or agree to give, directly or indirectly, any compensation, reward, or gift to any member or legislative employee for any service, advice, assistance, or other matter related to the legislative process.

Six: you may not offer, arrange for, give, or agree to give to any member or legislative employee any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity with that member or legislative employee which is in substantial conflict with the proper discharge of his or her official duties and responsibilities.

Seven: any person is prohibited from inducing or seeking to induce any member or legislative employee into committing a violation of any provision of these code of ethics. A violation is a misdemeanor, but any person who conspires to violate any provision of the code of ethics is guilty of a felony.

Now we have the Institute of Governmental Advocates Code of Conduct. Members of the Institute of Governmental Advocates, IGA, which is a professional association for California lobbyists, those members have agreed to abide by the IGA Code of Conduct, in addition to all the ethics rules imposed by law or the legislature.

The following rules comprise the standards of conduct agreed upon by the membership of the IGA. The first section is on obligations to the public and participants of a governmental decision-making process. It states, "All IGA members acknowledge and accept the concept of owing an ethical obligation to the public and participants of the governmental decision-making process."

Two: a member of IGA owes members of the state legislature and their staffs, the governor and members of the executive administration, and all governmental employees, an obligation of respect as legitimate and proper participants of the governmental decision-making process.

Three: an IGA member has a duty to protect confidences when information is given to him or her with an expectation of confidentiality.

Four: an IGA member owes participants of the governmental decision-making process an obligation not to mislead them. An IGA member owes participants of the governmental decision-making process an obligation to correct as quickly as practically possible any incorrect information that the IGA member provided them.

Five: an IGA member owes participants of the governmental decision-making process an obligation to make every reasonable effort to become and to stay as informed as possible on the issues and process involved in the IGA member's activities.

Number six: an IGA member owes the public an obligation to make every reasonable effort to promote public understanding of the governmental decision-making process, and the proper role of advocacy within that process.

Seven: an IGA member owes a public officeholder an obligation to inform that officeholder of the member's planned opposition to a proposal by the officeholder prior to the member's active opposition.

Eight: an IGA member owes participants of the governmental decision-making process an obligation to inform them of potential adverse effects of proposals, to the extent that it can be adverse to known interests of those participants.

Nine: an IGA member owes the public and participants of the governmental decision-making process an obligation to immediately cease representing a client in a pursued objective, and inform that client as quickly as practically possible of the IGA member's inability to continue representing the client in the pursued objective.

If it becomes known to the IGA member that the client's effort in the objective is purely harassment, taken out of spite, or otherwise not in good faith, or if the continued representation would violate applicable law or this code of conduct.

The second area of the IGA Code of Conduct is obligations to the client. One, all IGA members acknowledge that he or she has ethical obligations to their clients. Two, an IGA member owes his or her client an obligation of understanding, knowledge, competence, and continuing effort throughout the process of representation.

An IGA member owes his or her client an obligation to make every reasonable effort to become and to stay as informed as possible on the issues and process involved in the objectives pursued by the IGA member on his or her client's behalf.

Three: an IGA member owes his or her client an obligation that any assurances made by the IGA member to the client must be regarded as an obligation.

Four: an IGA member owes his or her client an obligation to make all legal and ethical efforts to accomplish an objective pursued by the IGA member on his or her client's behalf.

An IGA member owes his or her client an obligation to inform the client of the member's inability to accomplish a pursued objective as quickly as practically possible after the IGA member has determined such inability.

Five: an IGA member owes his or her client an obligation to fully inform the client of all material information accumulated and/or known by the IGA member relating to the objectives pursued by the IGA member on his or her client's behalf.

An IGA member may also owe another party an obligation to protect such material information from that client as confidential. In such a case, the IGA member must exercise great care and wisdom in properly dealing with the situation and the parties to whom the obligations are due.

Six: an IGA member owes his or her client an obligation not to mislead the client. An IGA member owes his or her client an obligation to correct as quickly as practically possible any incorrect information that the IGA member has provided to the client.

Seven: an IGA member owes his or her client an obligation to advise and counsel the client as to the proper course of conduct upon knowledge and/or suspicion of any contemplated action by the client related to the objectives pursued by the IGA member on his or her client's behalf which is contrary to applicable law, this code of conduct, or the best interests of the client.

Eight: an IGA member owes his or her client an obligation not to pursue an objective if the member's attitude, opinion, or another obligation interferes with the duties to be assumed by the IGA member within the scope of the pursuit.

An IGA member owes his or her client an obligation to immediately cease pursuing an objective on his or her client's behalf, and inform that client as quickly as practically possible of the IGA member's inability to continue pursuing the objective if the attitude, opinion, or another obligation interferes with the duties assumed within the scope of the pursuit.

Nine: an IGA member owes his or her client an obligation to avoid known or anticipated conflicts of interest arising from an inconsistent economic interest between the client and another client, the IGA member, an associate of the IGA member, a participant in a joint venture with the IGA member, or other persons or interests which share in any material way in the revenues of the IGA member.

An IGA member owes his or her client an obligation to immediately inform the client of the existence or appearance of any such known or anticipated conflict.

An IGA member owes his or her client an obligation to sever the relationship with the client if the existence or appearance of such a known or anticipated conflict between the client and the member, an associate of the member, a participant in a joint venture with the member, or other persons or interests which share in any material way in the revenues of the IGA member, cannot be resolved between the conflicted parties.

An IGA member owes his or her client an obligation to sever subsequently formed relationships with other clients who have or appear to have such a known or anticipated conflict with the client if the conflict cannot be resolved between the conflicted parties.

10: an IGA member owes his or her client an obligation to immediately cease pursuing an objective on his or her client's behalf, and inform the client as quickly as practically possible of the IGA member's inability to continue pursuing the objective on his or her client's behalf if a physical, mental, or similar condition causes the IGA member to be unable to pursue the objective in effective manner.

11: an IGA member owes his or her client an obligation not to charge fees incommensurate with the objectives pursued by the client.

An IGA member owes his or her client an obligation to return any charge fees that are incommensurate with the objectives pursued by the IGA member, unless the client has conducted himself or herself in a manner which would render such a return of fees an inequity.

An IGA member owes his or her client an obligation to return any charged fees unearned by the IGA member upon severing the relationship with the client, except fees charged solely for the purpose of ensuring the availability of the IGA member.

12: an IGA member owes his or her client an obligation to include the subject of expenses in any contractual agreement between the IGA member and the client.

An IGA member owes his or her client an obligation to only charge those expenditures made on behalf of the client, and in furtherance of the objective pursued by the IGA member on his or her client's behalf, unless expressly agreed upon by the client to the contrary in the contractual agreement.

13: an IGA member owes his or her client an obligation to communicate to the client as quickly as practically possible any significant offers of compromise or settlement.

An IGA member owes his or her client an obligation to decide within the understanding of the effort any significant offers of compromise or settlement on his or her client's behalf if it is practically impossible to timely communicate the offer to the client, and thereafter, as quickly as practically possible communicate with the client the IGA member's decision.

The third area that is covered by the IGA Code of Conduct is obligations to other governmental advocates.

One: all IGA members acknowledge and accept the concept of owing an ethical obligation to each other, and to all other lobbyists.

Two: an IGA member owes other lobbyists an obligation to inform a fellow lobbyist if the IGA member is contacted by a potential client, and the IGA member knows or should know that the potential client is represented by the other lobbyist, and advise the

potential client that the matter of potential employment should not be discussed without either involving the other lobbyist or severing that preexisting relationship.

Three: an IGA member owes other lobbyists an obligation not to mislead them if the IGA member chooses to provide them information. An IGA member owes other lobbyists an obligation to correct as quickly as practically possible any incorrect information that the IGA member has provided them.

Four: an IGA member owes other lobbyists an obligation to inform any other lobbyist with whom the IGA member is in communication on a pursued objective on his or her client's behalf as to the specific interest that the IGA member represents.

An IGA member owes other lobbyists an obligation to clarify to any other lobbyist with whom the IGA member is in communication on a pursued objective on his client's behalf as to the specific interest that the IGA member represents, if the IGA member makes an appearance represent an interest other than the interest of which the IGA member originally apprised the other governmental member.

Six: an IGA member owes other lobbyists an obligation to avoid acts or utterances which intentionally may have adverse economic effects upon the business of another governmental advocate.

Seven: an IGA member owes other lobbyists an obligation to inform a lobbyist of his or her client's interest on a pursued objective when his client's interest conflicts with the position advocated by the other governmental advocate, and such communication will not compromise the client's interests.

These forgoing rules are a statement by the IGA regarding the standards of conduct for lobbyists mutually agreed upon by the membership of the organization.

These rules reflect a general consensus of what the public, the participants of the governmental decision-making process, clients and IGA members, as well as other lobbyists, expect of IGA members when pursuing the objectives of their clients in the legislative and regulatory arenas.

In general, these rules abide by the maxim that you should deal with others as you would have them deal with you.

These statutes that are enforceable by civil and criminal laws, that are combined with the association ethics guidelines set forth above, provide a web of rules that govern lobbyists in conducting their professional work and activities.

Compliance with these statutes and rules is not only essential to stay out of trouble, but also fundamentally demonstrates respect to fellow lobbyists, their clients, the elected appointed officials they lobby, and the institutions of state government in which they operate. I hope you found this podcast regarding lobbyist ethic rules valuable. Thanks for joining.