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ADVISORY OPINION CASE NO. 01033.A

Lobbyist Retention Agreements

To: Board of Ethics

Date: August 24, 2001

The Board of Ethics has considered staff's request of August 9, 2001 for an advisory opinion on what information a registered lobbyist retained by a lobbying client entity pursuant to a written or oral agreement must provide to the Board to ensure compliance with Sec. 2-156-230(c) of the Governmental Ethics Ordinance. The Board concludes that, as explicitly stated in the law, a registered lobbyist who is retained or employed by a client to lobby pursuant to a written agreement must furnish to the Board a copy of the agreement, while one who lobbies pursuant to an oral agreement must provide the Board with a written statement of the substance of the agreement. The Board also concludes that those portions of the written agreement that do not relate to lobbying, or that are protected by attorney-client or other privilege, may be excised from the copy of the agreement furnished to the Board.

RELEVANT ORDINANCE PROVISIONS: Under Sec. 2-156-210 of the Ordinance (Persons Required to Register) lobbyists are required to register and file reports with the Board of Ethics.

Section 2-156-230 of the Ordinance (Information Required of Registrants) provides, in relevant part:

No later than January 20th of each year, or within five business days of engaging in any activity which requires such person to register, every person required to register shall file with the Board of Ethics a sworn written statement on a form prescribed by the Board containing the following information:

...

(c) If such registrant is retained by another business entity pursuant to a written agreement of retainer or employment, a copy of such agreement shall be attached. If the agreement of retainer is oral, a written statement of the substance thereof shall be attached.



ANALYSIS: Part II (Client Information), Sec. C, Question 3 of the 2001 Lobbyist Registration Statement requires the registrant to disclose the following:

I/we lobby on behalf of this client pursuant to (check the appropriate box):

a written retainer or employment agreement an oral agreement

Note: If the agreement is in writing, you must attach a copy of the agreement. If the agreement is oral, you must attach a written statement of the substance of the agreement, including but not limited to how your compensation, if any, is determined (e.g., *monthly retainer, hourly fee, "flat" fee per project or initiative, etc...*), whether you are authorized to incur expenditures, and whether expenditures you incur will be reimbursed by the client.

A. Written Agreements.

It is the Board's opinion that Part II C (3) of the Lobbyist Registration Statement accurately reflects the requirements set forth in Sec. 2-156-230(c) of the Ordinance as to written agreements. The phrase "a copy of the agreement shall be attached" is not ambiguous. It means just that—a copy of the written agreement for lobbying services between the lobbyist and its client must be attached. Therefore, if such an agreement exists, the Ordinance requires the registrant to provide a copy of it to the Board.

The Board recognizes that certain language in written agreements may be subject to privilege. The purpose of the required disclosures in the Lobbyist Registration Statement, however, is not to elicit privileged details of these agreements; rather, it is to further the public interest by regulating the activities of individuals and entities who lobby City officials and employees in an attempt to influence City action. To that end, information which does not relate to lobbying, or which relates to privileged matters, may be excised from the copy of the agreement furnished to the Board.

B. Oral Agreements.

The Ordinance requires that one who lobbies pursuant to an oral agreement attach a written statement of the substance of the agreement. While the term "substance" is not defined in the Ordinance, it is defined in Black's Law Dictionary as "...the material or essential part of a thing...That which is essential." The information asked for in the Statement is that which is essential to ensuring compliance with the Ordinance. Information regarding the form of compensation is necessary to ensure that the lobbyist is not compensated on a contingency basis, which is prohibited by Sec. 2-156-300 of the Ordinance.¹ Information concerning expenditures, and reimbursements of the same, is necessary for the Board to enforce the provisions concerning prohibited gifts in Sec. 2-

¹ 2-156-300. Contingent Fees. No person shall retain or employ a lobbyist for compensation contingent in whole or in part upon the approval or disapproval of any legislative or administrative matter, and no person shall accept any such employment or render any service for compensation contingent upon the approval or disapproval of any legislative or administrative matter.

156-040 of the Ordinance.² Again, the purpose of the disclosure requirement is to obtain information on lobbying activities, not to elicit details of privileged agreements. Therefore, the written statement of the substance of the agreement need not contain information which does not relate to lobbying, or which relates to privileged matters.

DETERMINATION: Accordingly, the Board determines the following: 1) A registered lobbyist who lobbies pursuant to a written agreement must furnish to the Board a copy of the employment or retainer agreement with his lobbying client; portions of the written agreement that do not relate to lobbying, or that are protected by privilege, may be excised from the copy of the agreement furnished to the Board; and 2) A registered lobbyist who lobbies pursuant to an oral agreement must provide the Board with a written statement of the substance of the agreement, containing, at a minimum, how the compensation is determined, whether the registrant is authorized to incur expenditures, and whether such expenditures are reimbursed by the client; the written statement of the substance of the agreement need not contain information which does not relate to lobbying, or which relates to privileged matters.

RELIANCE: This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.


Darryl L. DePriest
Chair

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²2-156-040. Offering, Receiving and Soliciting Gifts or Favors.

...

(b) No person shall give or offer to give to any official, employee or City contractor, or to the spouse or minor child of either of them, and none of them shall accept, anything of value, including, but not limited to, a gift, favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any official, employee or City contractor, concerning the business of the City would be influenced thereby. It shall be presumed that a nonmonetary gift having a value of less than \$50.00 does not involve such an understanding.

(c) No person who has an economic interest in a specific City business, service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect such transaction, or to the spouse or minor child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service other than an occasional one of nominal value (less than \$50.00) provided, however, nothing herein shall be construed to prohibit such person from accepting gifts from relatives.