

MEMORANDUM

To: Board of Ethics

From: _____
Richard J. Superfine, Legal Counsel

Date: [Date], 2010

Re: Case No. 10041.36.LOB-Request by Terminated Lobbyist to Re-register

At its [earlier] meeting, the Board determined that [K], a registered lobbyist, violated §2-156-250 of the Ordinance by failing to file his semi-annual Lobbying Activity Report (due July 20), after noting for the record that he had received all required written reminders from the Board. The Board imposed sanctions, including terminating his lobbyist registration and assessing fines. But, as it has done in other lobbying cases, the Board has held these fines in abeyance until he ever wishes to re-register. The Board directed staff to inform him in writing of its determination and the sanctions; the sanctions included notifying departments that he had indicated he would or has lobbied of the determination. (See Exhibit 1, attached; he received this on [Date 1], 20[]).

On [Date 2], staff sent the letter (attached as Exhibit 2) to the Commissioner of the Department of [X]. On [Date 3] the Commissioner and one of her Deputies asked whether the letter and Board's determination would prohibit [K] from giving testimony before the [X] Board of Appeals. Staff advised her that morning that it did not, because this activity is not "lobbying" as defined in the Ordinance. *See* §2-156-010(p). Staff also advised her to remind him that he is in violation of the Ordinance and must set his record aright with the Board. Later that morning, he filed a semi-annual Activity Report. On [Date 4] 20[] ha asked staff, by telephone, whether and how he could attempt to again become a registered lobbyist. Staff responded that his request would need to be presented to the Board. He said he would write a letter for the Board's consideration. It is attached as Exhibit 3.

[K] wishes to "continue" his activities before the City, and the Board must decide how to proceed. This is a case of first impression. The question is not whether he may again be a registered lobbyist, but how to arrive at that result, consistent with the Board's previous determination and the requirements of the Ordinance. The relevant section of the Ordinance provides:

If a registrant fails to file a report as required herein, the Board of Ethics shall, within 15 days of the due date, notify the registrant by certified mail of his failure to file by the required date. The registrant shall thereafter file his report within 10 days of the issuance of the notice. Any registrant who fails to file within the 10 days **shall be required to pay a penalty** of \$1000 for each day thereafter until the date of filing. Failure to file within the 10 days shall constitute a violation of this chapter...

The Board of Ethics **shall not accept** a lobbyist registration statement from any person who owes a fine pursuant to this section until the fine has been paid in full. The registration of any person who fails to file a timely report for three or more reporting periods may be suspended by the Board for a 1 year period. (Emphasis added.)

After lengthy discussion, Staff has arrived at the belief that the most appropriate alternatives for the Board to consider are to: (i) simply reinstate his registration; or (ii) require him to re-register, pay a new registration fee, and a fine calculated by the formula in the §2-156-270 of the Ordinance (that is, \$1,000.00 per day until the date of filing, which would come to 14 business days, or \$14,000.00); or (iii) determine an appropriate fine for his circumstances without charging him a new registration fee.

Staff recommends the Board adopt option (iii) for several reasons.

Reinstatement. There is no authority provided in the Ordinance for the Board to simply *reinstate* [K]'s registration, thus option (i) can't be supported.

Second annual registration fee. Staff also discussed whether to require him to pay a second annual registration fee, as in option (ii). The Ordinance provides that lobbyist registration is on an annual, calendar year basis. §2-156-230. The registration and client fees of \$350 per lobbyist, plus \$75 for each client after the first, accompany this annual registration. §2-156-230(d). [K] paid his 2010 fees when he registered during the January 2010 registration season. The Ordinance does not provide the Board with the authority to charge a lobbyist a second registration fee in the same calendar year, and the Board has never done this. Lobbyists who voluntarily terminate their registrations but who then wish to re-register during that same calendar year must re-register, but the Board has not charged them a second registration fee in the same calendar year. In this case, the fact that the Board terminated [K] should not cause a different result.

This leaves option (iii).

Assess an Appropriate Fine. The Ordinance states that a person may not register if he owes a fine to the Board. §§2-156-245 and 2-156-270. The Board, then, must determine whether [K] owes a fine to the Board, and if he does, the appropriate amount. The language of this section is clear that, in order for him to (re)-register, that is, in order for the Board to accept his lobbyist registration, he must pay his fine in full.

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[xxx], 2010

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Given his circumstances, Staff recommends that a fine of “zero” is in order, and that the Board assess it. Our recommendation is based on the following factors:

(i) his [Date 6], 20[] communication with staff and [Date 7], 20[] letter to the Board show his good faith and credible reasons for his failure to file his activity report on time;

(ii) the Board does not have the authority to reduce the \$1,000 per day fine in §2-156-270, and this would result in a fine of \$14,000, which is too severe;

(iii) [K] did file and bring himself into compliance;

(iv) Although the Board may not grant “exceptions” in the case of Ordinance violations, and in essence reverse or ignore a violation, the Board does have the authority, as recognized in the *Homestead Cases*, see, e.g., Case No. 90040.A at page 5 (“The Board concluded that it would be a great loss to everyone concerned, should [the City employee] not be permitted [because of a prohibited financial interest in city business] to continue in the [Housing Department’s Urban Homestead] Program...and, in coming to our decision on this matter, we considered not just the letter of the Ordinance but the principles of equity, good conscience and justice.”) and their progeny, to fashion an equitable remedy for any violation—including assessing a fine of zero dollars—and the particular circumstances of this case are, in Board’s staff judgment, appropriate for the Board to fashion such a remedy; and

(v) Staff has considered the possibility that the Board will appear “soft” on fine assessment, but on balance, we believe that the Board has first and foremost always attempted, in a delinquent lobbyist matter, to obtain the required filings from the lobbyist. In this case, the Board has achieved that objective, and a \$14,000 fine would serve no useful purpose in this case. Importantly, staff’s recommendation would not in any way hamper the Board’s authority or ability to assess the full \$1,000 per day fine where appropriate in the future, and gives the Board maximum flexibility to consider each case on its merits and facts.

For these reasons, staff recommends that the Board direct it to advise [K.] that it has determined that, in the interests of equity and good conscience, it is not appropriate to assess him a fine in this matter, and that he may re-register without paying any additional registration fees (unless, of course, he has new clients—he would then be required to pay \$75 for each new client) and “continue” his activities in lobbying the City.

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CONFIDENTIAL

Certified and Regular Mail

August 20, 2010

Re: Case No. 10041.36.LOB

Dear Mr. [REDACTED] :

Under Section 2-156-270 of the City of Chicago's Governmental Ethics Ordinance, if a lobbyist fails to file an activity report as required, "...the Board of Ethics shall, within 15 days of the due date, notify the registrant by certified mail of his failure to file...The registrant shall thereafter file his report within 10 days of the issuance of the notice. Any registrant who fails to file within the 10 days shall be required to pay a penalty of \$1,000 for each day thereafter until the date of filing." As of December 31, 2009, you were registered with the Board of Ethics as a lobbyist and thereafter re-registered during the January 2010 re-registration "season." As such, you were required, by July 20, 2010, under Section 2-156-250, to file an activity report for the previous six calendar months. As of the Board's August 18, 2010 meeting, you had failed to file a 2010 Lobbyist Activity Report for the period January 1, 2010 through June 30, 2010.

Pursuant to Ordinance, the Board sent an August 4, 2010 certified (and email and regular) mail notice to you of your failure to comply with the Ordinance's lobbyist filing requirements. Separately, on August 10, 2010, the Board sent by regular mail and email its non-statutory notice advising that your case would be presented to the Board at its next meeting, or as rescheduled, pursuant to its standard procedure of providing a FINAL NOTICE by email and regular mail to lobbyists (who had not cured their non-filing status) stating (i) their names would be presented to the Board to determine a lobbyist filing violation; (ii) the date of the Board meeting; (iii) filings required by law must be received by that date; and (iv) an adverse Board determination would result in the appropriate penalty being assessed the day after the Board meeting. Board staff also communicated with you by telephone.

7009 0080

NEIGHBORHOODS



K r
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Based upon the above, at its meeting, the Board: (i) concluded that you, the lobbyist, had violated Ordinance §§2-156-250 in failing to timely file, as a registered lobbyist, your activity report as required by law; (ii) based upon proper notice having been sent to you, determined that a sanction under Ordinance § 2-156-270 be imposed upon you as follows: (a) payment to the Board of Ethics in the amount of \$1,000.00 per day until the activity report is properly filed, payments to begin accruing 7 business days from the Board's determination of a violation; (b) **termination effective as of the date of the Board meeting (August 18, 2010) of your registration with this agency**; (c) immediate notice to: (I) your employer, if any, as appropriate; and, if appropriate, each of your clients stating that, under the law, the lobbyist is a registered lobbyist; who has not filed an activity report with the Board of Ethics; who is in violation of the Governmental Ethics Ordinance; and, accordingly, whose client may be subject to sanction under that same Ordinance, respecting registration termination arising out of non-filing of activity reports; and (II) each City Department or agency of which the Board has actual or constructive knowledge that you had or intended to lobby of the Board's determination; and (d) the enforcement of the fine be held in abeyance until such time, if any, that you attempt to register as a lobbyist with the City, at which time the Board shall consider the assessment of the fine, or part thereof, as a condition to registration under §2-156-270; and (iii) direct Board staff to give notice to you of the Board's determination. You are herewith so notified.

Sincerely,



Richard J. Superfine
Legal Counsel

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September 21, 2010



To: Rich Superfine
Board of Ethics

Fr:

RE: **LOBBYIST ACTIVITIES REPORT**

Mr. Superfine;

I want to take this opportunity to thank you and members of the staff for all of the assistance you have given over the years since my retirement in 2004.

This year was a little difficult and different for me due to a number of issues:

1. My email address has changed, because someone hijacked my yahoo email account and locked me out. Therefore, I did not get your notice to file until I received your letter.
2. The month of Ramadan (our holy month) began on July 11th lasting until August 10th, this year. Ramadan is the ninth lunar month on the Islamic calendar and requires fasting from dawn until sunset; this year's hours were longer from 3:30a.m. - 8:30p.m. This activity is greater for me because I am an assistant Imam of my mosque with the responsibility of providing food preparation for those who are fasting.
3. I had to continue to work on projects and programs I am responsible for during this time and could not concentrate on the internet program to file my report until I finished the Zoning Board of Appeals presentation packages for the September 17th hearing date.

I am requesting any due consideration I can, to continue my activities in the City of Chicago. My family depends on my providing for them and being able to meet all of my financial obligations. Thank you.

Respectfullv

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attachment