

**ADVISORY OPINION
CASE NO. 98056.A
Lobbying**

To: { }
Attorney at Law

Date: December 16 , 1998

In a November 5, 1998 letter to the Board, you presented an issue concerning the unpaid president of a trade association who, on behalf of the association and its members, wishes to make unsolicited, public comment before the Finance Committee of City Council on a pending ordinance. You requested an advisory opinion on whether this president, or the trade association itself, must register as a lobbyist. Under the facts presented, the Board has determined that the president of the trade association, but not the association itself, is acting as a lobbyist. If the president's lobbying-related compensation or expenditures total \$1,000 or more in the preceding or current calendar year, he must register as a lobbyist and file semi-annual reports of lobbying activities with the Board. A summary of the facts and relevant law follow, along with the Board's analysis.

FACTS, RELEVANT LAW AND ANALYSIS: Your client is a trade association that wishes to have its president appear before the Finance Committee of City Council and make unsolicited, public comment on a proposed ordinance. Section 2-156-010(p) of the Governmental Ethics Ordinance defines a lobbyist as:

. . . any person (i) who for compensation or on behalf of any person other than himself undertakes to influence any legislative or administrative action; or (ii) any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

Section 2-156-010(o) of the Ordinance defines "legislative action" as:

. . . the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto or other official action or non-action on any ordinance, resolution, motion, order, appointment, application or other matter pending or proposed in the City Council or any committee or subcommittee thereof.

You have said that the president of the association is "unpaid" and "is not an employee" of the association. However, in making the proposed comments, he

would clearly be undertaking to influence legislative action on behalf of a person other than himself, i.e., the association. Section 2-156-010(o) explicitly includes debate on an ordinance in the definition of "legislative action." Thus, under the facts presented, the president of the trade association is acting as a lobbyist.

Next, the Board considers the issue of whether the president of the trade association must register with the Board as a lobbyist. Section 2-156-210 of the Ordinance provides:

each lobbyist whose lobbying-related compensation or expenditures total \$1,000.00 or more in the preceding or current calendar year shall register and file reports with the Board of Ethics.

Section 2-156-010(f) defines "compensation" as:

money, thing of value or other pecuniary benefit received or to be received in return for, or as reimbursement for, services rendered or to be rendered.

Section 2-156-010(k) defines "expenditure" as:

a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

The fact that the president of the association is "unpaid" is not dispositive of whether he must register. Under the Ordinance, compensation is not limited to money; rather, it includes any thing of value or other pecuniary benefit received or to be received in return for, or as reimbursement for, services. Furthermore, although your letter does not indicate whether you anticipate that the president of the trade association will incur expenditures, e.g. payment of transportation and lodging costs, in relation to his lobbying activities, that, too, must be considered. In conclusion, if either the compensation received or the expenditures made by the association's president in the preceding or current calendar year total \$1,000 or more, the president must register as a lobbyist and file semi-annual reports of lobbying activities with the Board.

Finally, the Board concludes that the trade association itself is not acting as a lobbyist under the facts presented. In situations where a company hires a lobbyist in an effort to influence legislative or administrative action, it has not been the Board's practice to require the company itself to register as a lobbyist, even though the company could be said to be acting on behalf of its shareholders; the disclosure intended by the Ordinance is made when the lobbyist identifies the company as a client in the lobbyist's own registration. In the present situation as well, the Board does not believe that any purpose would be served by requiring the trade association to register as a lobbyist, or that the association is in fact acting as a lobbyist on behalf of its members, under the intent of the Ordinance.

DETERMINATIONS: The Board determines that the unpaid president of a trade association is acting as a lobbyist when, on behalf of the association, he appears before City Council and makes

Case No. 98056.A
December 16, 1998
Page 3

unsolicited, public comment on a pending ordinance. The Board also determines that the trade association itself, under the facts presented, is not acting as a lobbyist. If the president's lobbying-related compensation or expenditures total \$1,000 or more in the preceding or current calendar year, he must register as a lobbyist and file semi-annual reports of lobbying activities with the Board.

Our determinations are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determination.

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