



BOARD OF ETHICS
CITY OF CHICAGO

**FINAL DETERMINATION OF LOBBYING VIOLATION
CASE NO. 17011.08.LOB**

This matter involves further action following the Board's determination, made at its meeting of April 19, 2017, that there is probable cause for the Board to conclude that: (i) an individual violated §2-156-245 of the Governmental Ethics Ordinance (the "Ordinance") by engaging in lobbying (as defined in §2-156-010(p) of the Ordinance) on April 28, 2015, but failed to register as a lobbyist. The subject was notified of that determination. On May 1, 2017, the Board received a written response from the subject. The Board then afforded the subject the opportunity to meet to present any supplemental information or arguments, and that meeting was held on May 31, 2017.

At its meeting of June 13, 2017, the Board, having fully considered all of the information presented by the subject, VOTED 5-0 (William F. Conlon, recusing and Mary T. Carr, absent) to determine that the subject violated §2-156-245 of the Ordinance by failing to register as a lobbyist within five (5) days of engaging in lobbying activity. Further, pursuant to §2-156-465(b)(3), the Board then named the lobbyist as James Abrams.

On July 17, Mr. Abrams submitted a written request for the Board to reconsider its determinations, with supporting materials. At its meeting of July 19, the Board considered this written request for reconsideration, but voted, 4-0 (Nancy C. Andrade, absent; William F. Conlon and Zaid Abdul-Aleem, recusing) to reaffirm its June 13 determination, and to impose a fine of \$2,500.

The Board recites the following:

1. The evidence before the Board is that Mr. Abrams emailed the Mayor on April 28, 2015 as follows, forwarding an email he had received earlier that day:

To the Mayor: "Note below is from one of my dearest friends in the world ... He ... has a manufacturing business on [location]. Whatever you decide, you decide but I'd appreciate very much if you would hear him out (or Forrest)."

To Mr. Abrams: "We have been working diligently with our Alderman (James Cappleman - 46th Ward) in trying to gain a small manufacturer's exemption to the new Chicago minimum wage ordinance and/or seeking a determination from the BACP (Business Affairs and Consumer Protection) Commissioner that "compensation" as defined in the Ordinance includes health insurance, pension ... we simply cannot pass on our cost increases to our customers ... puts [our company] and other small manufactures [sic] at a competitive disadvantage. However, things are moving slowly

and I was hoping to personally meet with Mayor Emmanuel [sic] or his new Chief of Staff, Forrest Claypool. I want to do everything I can to ensure that we stay in the City. So – and thanks for listening – can you facilitate a meeting with the Mayor or Chief of Staff so that we can make our case?”

2. The Board has considered the arguments put forth in the materials presented in support of the subject’s July 17 request to reconsider the determination, specifically that: (i) he was not “retained” or “employed” by another person to engage in this activity; and (ii) merely asking for a meeting does not constitute lobbying as defined in the Ordinance; and (iii) requiring persons to register as lobbyists and pay a registration fee in order to request meetings with elected officials on behalf of friends violates the First Amendment.

3. The Board rejects both arguments, for the following reasons:

(i) as the Ordinance defines the term “lobbyist” in §2-156-010(p), it means “any person who, on behalf of any person other than himself, *or* as any part of his duties as an employee of another, undertakes to influence any legislative or administrative action ...” [emphasis added]. The requestor here was emailing the Mayor on behalf of another. The Ordinance’s requirement that only persons who were compensated or expended more than a set amount per year was removed, effective May 17, 2000; and

(ii), (iii) while the Board recognizes that the subject did not attempt to summarize or argue on behalf of the individual who sent him the email, by forwarding the email stream as a whole in this manner, including the wording of the forwarded email, which contained a position and an argument, the subject was not merely requesting a meeting, but was attempting to influence “administrative action” as that term is defined in §2-156-010(a) of the Ordinance, even though the subject did not take himself take a position on that forwarded position and argument. *See Calzone v. Hagan*, 2017 WL 810291 (W.D. Mo., March 1, 2017), where the U.S. District court recognized in its order that the Supreme Court’s 1954 decision in *U.S. v. Harriss* (347 U.S. 612), does *not* stand for the proposition that the First Amendment only permits paid lobbyists to be regulated, and went on to state that it:

“finds there is a clear and strong governmental interest in lobbying transparency – in allowing the public to know who is seeking to influence legislators on behalf of someone else and who might be making expenditures for lobbyists. Standing alone, transparency is a sufficient compelling interest to justify the minimal burdens of registration. Transparency is part of the foundation of a democracy, particularly when it comes to how governmental officials are being influenced and by whom ... [plaintiff] does not explain why it is unconstitutional to require transparency for persons who are paid to lobby but not for those who lobby without pay. Both are attempting to influence legislators for third parties and the public has a right to know who is behind these efforts.”

4. **The Board again makes clear that its determination is not intended to question the subject’s integrity, character or motivations. It represents, rather, the Board’s careful examination of all the facts and arguments presented to it, and the Board’s conclusion that those facts show that the subject engaged in “lobbying” as defined in the Ordinance, but did not register as a lobbyist as required by the Ordinance.**



Stephen W. Beard, Chair Pro-Tem

Steven I. Berlin, Executive Director

William F. Conlon, Chair
Zaid Abdul-Aleem
Nancy C. Andrade
Mary Trout Carr
Frances Grossman
Dr. Daisy S. Lezama