

Advisory Opinion
Mr. Smith, Lobbying
Case No. 05040.A
September 14, 20__

You are registered with the Board of Ethics as a lobbyist. On July 18, 20__, you asked the Board for an advisory opinion, addressing whether, under the Governmental Ethics Ordinance, your interactions (as described below) with certain City officials, in connection with City pension fund investments, in fact, requires registration as a lobbyist.

After careful consideration of the facts presented and the relevant law, the Board determines that you are not required to register as a lobbyist with the City of Chicago in connection with your communications with Mr. Jones, Comptroller of the City of Chicago, or Ms. Green, Treasurer of the City of Chicago, in their roles as *ex officio* members of the Boards of four pension funds (or their successors in that capacity), namely, the “Laborers’ & Retirement Board Employees’ Annuity & Benefit Fund of Chicago;” the “Municipal Employees’ Annuity & Benefit Fund of Chicago;” the “Firemen’s Annuity & Benefit Fund of Chicago;” and the “Policemen’s Annuity & Benefit Fund of Chicago” to persuade Mr. Jones and Ms. Geen to consider the purchase of your client’s investment products on behalf of those pension funds.

FACTS: Background. You are the principal of the registered broker/dealers Q*** Equity Investment Group Ltd. (“Q Equity”) and Q*** Equity Investment Advisors Ltd. (“Q Advisors”). You are the president, chairman and sole shareholder of Q Equity and Q Advisors. Q Equity was established in 1983. It has a broker/dealer license pursuant to requirements of the Federal Securities Exchange Commission and Illinois law. As such, it may offer securities to the public. Securities in your industry include investments of all types whether in the form of stocks, bonds, limited liability companies, partnerships, real estate or any other investment “vehicle” in many different investment sectors. In addition, since 1976, you have been registered, federally and with the State of Illinois, as an investment advisor, and you operate that service through Q Advisors.

Through Q Equity, you “call on” entities in the institutional markets, including four City pension plans namely, the “Laborers’ & Retirement Board Employees’ Annuity & Benefit Fund of Chicago” (“Laborers’ Fund”); the “Municipal Employees’ Annuity & Benefit Fund of Chicago” (“Municipal Fund”); the “Firemen’s Annuity & Benefit Fund of Chicago” (“Firemen’s Fund”); and the “Policemen’s Annuity & Benefit Fund of Chicago” (“Policemen’s Fund”) (collectively “The Four Pension Plans”).

Your purpose in making these calls is to persuade Mr. Jones and Ms. Green - each are City employees and members of the Boards for The Four Pension Plans - to consider the purchase of your investment products on behalf of The Four Pension Plans. You offer a product (recently modified) on behalf of your client, The C** Group Inc. ("C"). The product is an investment management service provided by C** Institutional Advisors, Inc., one of C's subsidiaries. (In the past, and in the same capacity, you have represented similar clients, including H Associates LP. ("H"). In connection with your activity involving The Four Pension Plans, besides C, you represented H; however, you no longer represent H.)

In brief, the product you offered on behalf of C to The Four Pension Plans was an investment vehicle in the form of a limited liability company ("LLC"). Through the LLC, known in the industry as a fund-of-funds, C (through its subsidiary) owned and managed - on behalf of institutional investors - certain real estate holdings, *e.g.*, retail, restaurants, hospitality, retirement. An institutional investor would invest cash in the LLC; the LLC was managed by C. Typically, C paid the investor a quarterly distribution. Over a specific period of time, C would pay the investor a "total return," which consisted of the quarterly distribution plus appreciation on the invested cash.

On August 17, 20__, you provided Board staff with a copy of Q Equity's written agreement with C (administered through C's general partner) dated October 1, 20__ ("Agreement"). As contemplated in the Agreement, if Q Equity successfully solicits an investor or "funding source," resulting in a sale of the investment product, and attendant management services by C, to that funding source, then that investor must pay a management fee to C. As a result of Q Equity's successful efforts, from the management fee paid to C, C would, accordingly, pay Q Equity a fee - based upon a percentage of the fee paid to C - for the sale of the product and management services to the investor. Schedule A-2 to the Agreement lists potential investors for Q Equity to solicit, which includes three of The Four Pension Plans.¹

¹Since 20__, Q Equity has registered with the Board of Ethics in connection with the lobbying of the Laborers' Fund, Municipal Fund, Firemen's Fund and Policemen's Fund respecting money management marketing services provided by various clients, including C and H. On January 20, 20__, Q Equity registered with the Board of Ethics by filing its 20__ documents, naming you as the individual lobbyist, and C and H as your clients. (Effective January 17, 20__, Q Equity had amended its 20__ registration, terminating Ms. A and Ms. B as registered lobbyists who, previously, had been associated with you and Q Equity.) Later in the year, on July 18, 20__, Q Equity amended its current (20__) registration, deleting H as a client.

In your 20__ registration, you indicated that you expected to lobby the Laborers' Fund and the Municipal Fund on behalf of H, and The Four Pension Plans on behalf of C on matters relating to "money management marketing services." Subsequently, on your lobbyist activity report(s) filed with the Board on July 19, 20__, you indicated that you had not performed any lobbying activities for either C or H for the period January 1, 20__ through June 30, 20__.

The Four Pension Plans.

Laborers' and Retirement Board Employees' Annuity and Benefit Fund

In summary, the [City's] Laborers' and Retirement Board Employees' Annuity and Benefit Fund ("Fund") was established by the State of Illinois pursuant to statute 40 ILCS §5/11-101 ("Statute") for the benefit of the City's laborers and retirement board employees, and their beneficiaries. An eight member board administers the provisions of the Statute, including the Fund. §11-181. The statute requires that (i) one board member be the [City] comptroller (currently Mr. Jones is the sitting member) or his/her qualified nominee; and (ii) one board member be the City Treasurer (currently Ms. Geen is the sitting member) or his/her qualified nominee. *Id.*

The Board has, among others, the following rights and obligations: (i) to invest the reserves, §11-190; (ii) to submit a report to the City Council in July of each year containing details about the Fund for the previous calendar year, §11-195; (iii) to appoint employees, §11-197; (iv) to make rules. §11-198; and (v) to hold un-invested Funds in a bank. §11-199. The City treasurer is the *ex officio* custodian of the Fund. §11-212. Board members may not receive compensation on account of any investment made by the Board. §11-225.

Policemen's Annuity and Benefit Fund

In summary, the [City's] Policemen's Annuity and Benefit Fund ("Fund") was established by the State of Illinois pursuant to statute 40 ILCS §5/5-101 ("Statute") for the benefit of the City's policemen and their families. An eight member board administers the provisions of the Statute, including the Fund. §5-178. The statute requires that (i) four board member be appointed by the Mayor; and (ii) contemplates mayoral appointees sitting *ex officio*. *Id.* (The four current mayoral appointees are: Mr. Jones, City Comptroller; Ms. Green, City Treasurer; D L, City's Chief Financial Officer, in February 20__ replacing R L of G S & Company, who had resigned; and R R, Chicago citizen.)

The Board has, among others, the following rights and obligations: (i) to invest money, §5-187; (ii) to submit a report to the City Council in June of each year containing details about the Fund for the previous calendar year, §5-192; (iii) to appoint employees, §5-194; and (iv) to make rules. §5-195. The City Treasurer is the custodian of the Fund and holds Fund moneys in a bank approved by the Board and that provides an adequate bond. §5-210. Board members may not receive compensation on account of any investment made by the Board. §5-221.

Firemen's Annuity and Benefit Fund

In summary, the [City's] Firemen's Annuity and Benefit Fund ("Fund") was established by the State of Illinois pursuant to statute 40 ILCS §5/6-101 ("Statute") for the benefit of the City's fire fighters

and their families. An eight member board administers the provisions of the Statute, including the Fund. §6-174. The statute requires that (i) one board member be the [City] comptroller (currently Mr. Jones is the sitting member); and (ii) one board member be the City Treasurer (currently Ms. Green is the sitting member). *Id.*

The Board has, among others, the following rights and obligations: (i) to invest the moneys of the Fund, §6-183; (ii) to submit a report to the City Council in June of each year containing details about the Fund for the previous calendar year, §6-188; (iii) to appoint employees, §6-190; (iv) to make rules. §6-191; and (v) to hold un-invested Funds in a bank. §6-192. The City treasurer is the *ex officio* custodian of the Fund. §6-207. Board members may not receive compensation on account of any investment made by the Board. §6-215.

Municipal Employees', Officers', and Officials Annuity and Benefit Fund

In summary, the [City's] Municipal Employees', Officers', and Officials' Annuity and Benefit Fund ("Fund") was established by the State of Illinois pursuant to statute 40 ILCS §5/8-101 ("Statute") for the benefit of the City's employees, officers and officials and their beneficiaries. A five member board administers the provisions of the Statute, including the Fund. §8-192. The statute requires that (i) one board member be the [City] comptroller (currently Mr. Jones is the sitting member); and (ii) one board member be the City Treasurer (currently Ms. Green is the sitting member). *Id.*

The Board has, among others, the following rights and obligations: (i) to invest the reserves, §8-201; (ii) to submit a report to the City Council in June of each year containing details about the Fund for the previous calendar year, §8-206; (iii) to appoint employees, §8-208; (iv) to make rules. §8-209; and (v) to hold un-invested Funds in a bank. §8-210. The City treasurer is the *ex officio* custodian of the Fund. §8-223. Board members may not receive compensation on account of any investment made by the Board. §8-246.

"Calling on" City Employees.

You stated that, roughly over the past two years, you have twice "called on" Mr. Jones, City Comptroller, as an *ex officio* member of The Four Pension Plans, and have twice called on Ms. Green, City Treasurer (who had a Deputy with her), as an *ex officio* member of the Four Pension Plans in order to persuade them - as members of The Four Pension Plans' Boards - to consider, on behalf of The Four Pension Plans, the purchase of an investment by The Four Pension Plans in the LLC. You stated that you called on them because you had researched what members were on the Boards of all of The Four Pension Plans; met them in their respective City offices; were able to see them as you had made appointments to see them; and you have never approached any of the other Board members of The Four Pension Plans.

When you called on Mr. Jones and Ms. Green, you made a presentation about the LLC, its location, its managers, its history and performance and other related information. You used flip charts and brochures. At the end of each meeting with Mr. Jones and Ms. Green, you were advised by each about the respective Board procedure for The Four Pension Plans to determine whether to purchase your client's investment product. You were advised that it is solely upon recommendation by the independent consultants of each Board that a Board for any of The Four Pension Plans will interview the principals (usually the managers) of an entity desiring investment funds from any of The Four Pension Plans. Only after such an interview will a Board consider an investment. Accordingly, you were advised to communicate with the then-independent contractor consultants of each of the respective Four Pension Plans, which you did; these consultants were not members of The Four Pension Plans, nor employees or officials of the City. You also spoke to the Executive Directors retained by The Four Pension Plans who, also, were not City employees or officials. You stated that neither any members of the LLC or yourself ever were interviewed by any of the Boards for any of The Four Pension Plans. Consequently, you never made a "sale" based upon "calling on" Ms. Green or Mr. Jones.

LAW

Section 2-156-210 of the City's Governmental Ordinance, entitled "Persons Required to Register," states:

Each lobbyist shall register and file reports with the Board of Ethics as provided in this Article. This section shall extend to any person who undertakes to influence any legislative or administrative action as any part of his duties as an employee of another, regardless of whether such person is formally designated as a lobbyist by his employer.

Section 2-156-010(p) of the Ordinance defines "Lobbyist" as follows:

"Lobbyist" 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, including but not limited to:

(1) a bond inducement ordinance; (2) a zoning matter; (3) a concession agreement; (4) the creation of a tax increment financing district; (5) the establishment of a Class 6(b) Cook County property tax classification; (6) the introduction, passage or other action to be taken on an ordinance, resolution, motion, order, appointment or other matter before the City Council; (7) the preparation of contract specifications; (8) the solicitation, award or administration of a contract; (9) the award or administration of a grant, loan, or other agreement involving the disbursement of public monies; or (10) any

other determination made by an elected or appointed City official or employee of the City with respect to the procurement of goods, services or construction; provided, however, that a person shall not be deemed to have undertaken to influence any legislative or administrative action solely by submitting for a City permit or license or by responding to a City request for proposals for qualifications.

The term “lobbyist” shall include, but not be limited to, any attorney, accountant, or consultant engaged in the above-described activities; provided, however, that an attorney shall not be considered a lobbyist while representing clients in a formal adversarial hearing; and provided further that the term “lobbyist” shall not include a person who, on an unpaid basis, seeks to influence legislative or administrative action on behalf of an entity that is not engaged in a profit-seeking enterprise; further provided that an employee, officer or director of a non-for-profit entity who seeks to influence legislative or administrative action on behalf of such an entity shall not be considered a lobbyist for purposes of this chapter.

ISSUE

Does your “calling upon” the City Comptroller and the City Treasurer, in their capacities as members of the four Boards administering the four City pension funds, in an attempt to persuade them to consider the purchase of investment products from one or more of your clients, constitute “lobbying” within the meaning of the City’s Governmental Ethics Ordinance and, thus, require you to register as a lobbyist with the Board of Ethics?

ANALYSIS

Currently, you are - through Q Equity - a registered lobbyist with the City. You called upon Mr. Jones and Ms. Green, each City employees, and at their City offices, over the past two years in an attempt to persuade them to consider investing in your client, C’s, LLC, an investment product, as they are each *ex officio* members of the Boards of The Four Pension Plans. The Four Pension Plans administer City employee pension funds, and invest those funds. You desired The Four Pension Plans to so invest because, upon such investment, you would earn from C a portion of the fee if one or more of The Four Pension Plans should pay C the requisite fee as part of the investment in the LLC.

You did not call upon Mr. Jones or Ms. Green in their capacities as City employees. You did not solicit City funds to be invested in the LLC. You solicited investment of the funds controlled by The

Four Pension Plans and administered by their Boards. Upon each such Board sat Mr. Jones and Ms. Green. By State statute, each sat on these Boards solely because of their City positions. The result of your calling upon Mr. Jones and Ms. Green is that you were advised to communicate with the independent consultants of each Board. The reason is that it was the consultants that determined whether the incipient investment procedure should go forward. You never made a “sale.”

You were not communicating with these City employees *qua* Comptroller or Treasurer, and were not requesting City action. You were requesting investment consideration by members of Boards of The Four Pension Plans who happened to be City employees, as required by the enabling statutes for The Four Pension Plans.

Under the Governmental Ethics Ordinance, Section 2-156-210 you must register as a lobbyist if, under the facts, you are deemed a lobbyist under the Ordinance. Under Section 2-156-010(p) of the Ordinance, a lobbyist is defined as one who on behalf of another attempts to “influence any legislative or administrative action...” As the Section is part of the City’s Governmental Ethics Ordinance, the only “action” that may be taken by an employee or official of the City - and acting on behalf of the City - is City action. *Cf. Case No. 89124.A* (“...lobbying occurs when you attempt to influence the actions of the City of Chicago or its agencies.”).

The acts on behalf of The Four Pension Plans by Mr. Jones and Ms. Green are not City action. Neither Mr. Jones nor Ms. Green are authorized by the State enabling statutes to take any City action as members of the Boards of The Four Pension Plans. In their respective capacity of Board members, they may only act on behalf of The Four Pension Plans.

In addition, The Four Pension Plans are not City agencies. Albeit under different fact situations, this Board has held that The Four Pension Plans, namely, the Laborers’ Fund; Municipal Fund; Policemen’s Fund; and Fireman’s Fund are not City agencies. *Case No. 93007.A* (unpaid representation before Firemen’s Fund by City employee - who participated in State-required process of limited City contributions and cost offsets paid to Firemen’s Fund - not covered by Governmental Ethics Ordinance); *Case No. 87100.E p. 1* (trustee of the Policemen’s Fund need not file Statement of Financial Interests with the City as required by Governmental Ethics Ordinance [now §2-156-150] for members of Boards of City agencies because Policemen’s Fund not a City agency “[t]hus the Board of Ethics does not have jurisdiction over this [Policemen’s Fund] agency.”); and *Case No. 89010.A p. 2 fn. 2 and 3* (investment management firm with contracts with Laborers’ Fund and Municipal Fund not City contracts [subjecting company to campaign finance limitations] because of statutory “separateness from the City and the sovereignty of Pension Funds,” thus subject contract not entered into by the City).

The legal conclusion in *Case No. 87100.E, supra*, is most apposite to your situation. In your case, and that of the Board trustee, the Governmental Ethics Ordinance required, or requires, certain

filings with the Board of Ethics. For the trustee, the filing was a Statement of Financial Interests. §2-156-150. For you, it is (putatively) a lobbyist registration. §2-156-210. In the trustee's case, the Board determined that "this agency [Policemen's Fund] is not a division of City government. Thus, the Board of Ethics does not have jurisdiction over this agency." 87100.E p. 1. The Board came to this legal conclusion because the Board found the Policemen's Fund "is a state chartered agency." 87100.E p. 1. Similarly, all The Four Pension Plans (including the Policemen's Fund) are "state chartered agencies," see 93007.A; 89010.A; and 87100.E, and, accordingly, not City agencies because of their "separateness from the City..." Case No. 89010.A p. 2 fn. 2 and 3. As a result the "Board of Ethics does not have jurisdiction over [The Four Pension Plans]." 87100.E p. 1. Accordingly, you are not prohibited by §2-156-010(p) from communicating with Mr. Jones and Ms. Green in an attempt to persuade them to consider having The Four Pension Plans invest in C's LLC. See 93007.A p.2.

Therefore, action by Board members of The Four Pension Plans are not subject to the Governmental Ethics Ordinance, nor does activity by you before the Boards of The Four Pension Plans trigger the City's lobbyist registration requirements.

In sum, your activities in connection with The Four Pension Plans *viz a viz* Mr. Jones and Ms. Green are not activities that fall under the definition of a lobbyist in Section 2-156-010(p) as you did not attempt to influence a City employee to *take City action*. See *Governmental Ethics Ordinance Section 2-156-010(p)*. Accordingly, you are not required to register as a lobbyist. See *Governmental Ethics Ordinance Section 2-156-210*.

DETERMINATION

After careful consideration of the facts presented and the relevant law, the Board determines that you are not required to register as a lobbyist with the City of Chicago in connection with your communications with Mr. Jones, Comptroller of the City of Chicago, or Ms. Green, Treasurer of the City of Chicago, in their roles as *ex officio* members of the Boards of four pension funds (or their successors in that capacity), namely, the "Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago;" the "Municipal Employees' Annuity & Benefit Fund of Chicago;" the "Firemen's Annuity & Benefit Fund of Chicago;" and the "Policemen's Annuity & Benefit Fund of Chicago" to persuade Mr. Jones and Ms. Green to consider the purchase of your client's investment products on behalf of those pension funds.

Our determinations do not necessarily dispose of all issues relevant to this situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. Other City rules or policies, or other laws, may also apply. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter those conclusions. Additionally, should the facts presented change, you should contact the Board for further review of the matter.

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RELIANCE: This opinion may be relied upon by (i) any person involved in the specific transaction or activity with respect to which this opinion is rendered; and (ii) 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.

On behalf of the Board, we express our sincere appreciation of your willingness to abide by the standards embodied in the Ordinance. Please contact us with any questions.

Darryl L. DePriest
Chair