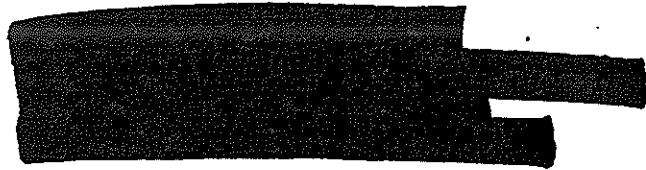


MEH



March 22, 1988

City of Chicago
Eugene Sawyer, Acting Mayor



Board of Ethics
Harriet McCullough
Executive Director

Case Number 87101.A

Sol Brandzel
Chair
Mary Milano
Vice Chair
Rev. Don Benedict
Margaret Carter
Angeles Eames
Rev. A. Patterson Jackson
Marlene Rankin

CONFIDENTIAL

Dear [Redacted]

Suite 1320
205 West Randolph Street
Chicago, Illinois 60606
(312) 744-9660

The Board of Ethics has reviewed your request for an advisory opinion to determine whether the services provided by [Redacted] constitute lobbying under the Governmental Ethics Ordinance (Chapter 26.2 of the Municipal Code of Chicago).

In your letter dated November 6, 1987, you indicated that [Redacted] is a fire protection, engineering and building code consulting firm. You have also indicated that your firm represents clients before several City agencies in addition to advising clients on how to comply with the City of Chicago Building Code. In the following discussion, the Board of Ethics will analyze several types of services which your firm provides in order to determine whether such activities constitute "lobbying" as contemplated by the Ethics Ordinance.

Section 26.2-21 of the Governmental Ethics Ordinance states that:

"Each lobbyist whose lobbying-related compensation or expenditures aggregate \$5,000 or more in the preceding or current calendar year shall register and file reports with the Board of Ethics..." (emphasis added)

As defined by Section 26.2-1(o) of the Ordinance a "lobbyist" is 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



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an employee of another includes undertaking to influence any legislative or administrative action.

Thus, any person who accepts compensation to influence either legislative action or administrative action engages in "lobbying" activities for purposes of the Ethics Ordinance.

To provide you with a better understanding of what actions constitute "lobbying" in regards to your firm, we will analyze the hypotheticals which you presented in your letter of November 6, 1987.

1. Is An Employee of [REDACTED] "Lobbying" When He Submits Amendments to the Building Code on Behalf of the Firm?

You have indicated that employees of [REDACTED] occasionally sponsor proposed changes to the Building Code "to add clarification or update references to current standards". For example, if the Code made references to obsolete editions of engineering manuals, [REDACTED] would submit a Code change to the City to reference the current edition of that manual. In such instances, your firm sponsors these changes in the public interest, and does not represent any specific project or client.

As previously stated, a person engages in "lobbying" activities whenever he or she accepts compensation to influence legislative or administrative action. Section 26.2-1(n) 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."

Assuming that employees of [REDACTED] receive compensation from the firm to submit changes to the Building Code, such action will constitute "lobbying", since it is an attempt to influence legislative action (i.e. amendment of an

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ordinance). Thus, an employee who receives compensation from [REDACTED] for such activities must:

1. Include the estimated amount of compensation he receives from [REDACTED] when determining whether he must register as a lobbyist,^{1/}
2. Report [REDACTED] as one of the principals from which he expects to receive compensation for lobbyist activities in Section B of the Lobbyist Registration Form (Form 23); and
3. Include the estimated expenditures made by [REDACTED] in regards to such endeavors in Section C of the Lobbyist Disclosure Report (Form 25).

2. Is An Employee of [REDACTED] "Lobbying" When He Requests Information from City Departments?

In your letter of November 6, 1987, you also indicate that your firm engages in discussions with the Department of [REDACTED] and the Bureau of [REDACTED] to review technical requirements of the Building Code [REDACTED]. You stated that "these discussions are necessary to verify the application of code requirements to a specific project so that the drawings and specifications (and the building) will comply with the Code."

Discussions with City officials and employees such as those described above will not be classified as "lobbying" unless you advocate a particular position on behalf of your client. For example, if you attempt to convince the Department [REDACTED] that the requirements pertaining to [REDACTED] are not applicable to your client's project, such action will constitute "lobbying". However, merely requesting information or a status report from a City agency does not involve an attempt to influence that agency's decision. Thus, such action does not constitute "lobbying" under the Ethics Ordinance.

^{1/} Each lobbyist whose lobbying-related compensation or expenditures aggregate \$5,000 or more in the preceding or current calendar year must register and file reports with the Board of Ethics. (Section 26.2-21).

EXECUTIVE DEPARTMENTS

The following City departments are classified as "executive departments" for purposes of Section 26.2-1(a) of the Ethics Ordinance:

1. Department on Aging and Disability
2. Department of Aviation
3. Department of Consumer Services
4. Department of Cultural Affairs
5. Department of Economic Development
6. Department of Finance
7. Department of Fire
8. Department of General Services
9. Department of Health
10. Department of Housing
11. Department of Human Services
12. Department of Inspectional Services
13. Department of Investigations
14. Department of Law
15. Department of Management Information Services
16. Department of Neighborhoods
17. Department of Personnel
18. Department of Planning, City
and Community Development
19. Department of Police
20. Department of Public Works
21. Department of Purchases, Contracts and Supplies
22. Department of Revenue
23. Department of Sewers
24. Department of Streets and Sanitation
25. Department of Water
26. Department of Zoning

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You should note that the Ethics Ordinance defines a "lobbyist" as any person who attempts to influence legislative as well as administrative actions.

Section 26.2-1(a) defines "administrative action" as:

"a decision on, or proposal, consideration, enactment or making of any rule, regulation, or other official non-ministerial action or non-action by any executive department, or by any official or employee of an executive department, or any matter which is within the official jurisdiction of the executive branch." (emphasis added)

The term "executive department" refers to governmental agencies specifically designated as an "executive department" in the Municipal Code of Chicago.^{2/} Thus, any attempt to influence the decision of an employee of an executive department such as the Department of [REDACTED] will constitute "lobbying".

3. Is An Employee of [REDACTED] "Lobbying" When He Appears Before the Building Code Compliance Board and the Building Board of Appeals on Behalf of a Client?

You have stated that on occasion your firm represents clients before the Building Board of Appeals. Your letter states that this work usually involves (1) advising your client on how to comply with the Code to eliminate problems identified in a Building Code Deficiency Notice; and (2) appearing at the Building Code Compliance Board hearings to inform the Board of your client's plans for compliance.

It is our understanding that the assistance you provide to your clients in preparing for these proceedings involve persuading City officials and employees to adopt alternative interpretations of what constitutes "compliance" with the Code. As stated in Section 2 above, any attempt to influence the decisions of an employee of an executive department, will be classified as "lobbying" for purposes of the Governmental Ethics Ordinance.

^{2/} See the attached list of Executive Departments.

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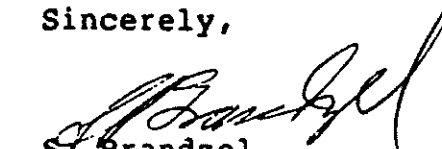
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Therefore, any attempt to influence the employees of the Building Code Compliance Board, a subdivision of the Department of Inspectional Services (an executive department), will constitute "lobbying". Accordingly, such action must be reported to the Board of Ethics.

The Building Board of Appeals, on the other hand, is an independent commission created pursuant to Chapter 41.2 of the Municipal Code of Chicago. This agency is not an "executive department" and therefore attempts to influence the decisions of its members will not be classified as "lobbying".

We hope that the analysis we have provided addresses your concerns regarding the Lobbyist Registration and Disclosure provisions of the Ethics Ordinance. If you have any further questions, please do not hesitate to contact the Board at 744-9660.

Sincerely,


S. Brandzel
Chairman

JS/jh/ 