

## CONFIDENTIAL

May 3, 2012

[Jane Doe]  
[The Institute]  
[123 Main]  
[Suite 456]  
[Hometown IL]

**Re: Advisory Opinion  
Case No. 12018.A**

Dear [Ms Doe]:

On [a date], we received your written request for an advisory opinion , in which you requested that we “confirm [that] a paid staff person from [The Institute] [“TI”], a nonprofit entity, who acts as a spokesperson for the [The Associates] [“TA”] is not a ‘lobbyist’.” After carefully considering the facts in your request and the applicable law in the City’s Governmental Ethics Ordinance (“Ordinance”), the Board has determined that a paid staff person from the [The Institute] who acts as a spokesperson for [The Associates] *would* be a lobbyist and subject to registration as a City lobbyist under the Ordinance.

**FACTS:**

You are legal counsel for [TI]. Your letter states (as confirmed by its web site) that [TI] “works through partnerships to promote [various] [initiatives for] systems that maximize [the] quality of life of the people of Illinois.”<sup>[1]</sup> [TI] is a[n] IRS 501(c)(3) organization. You also wrote (confirmed by its web site) that [TA] is a statewide coalition comprised of a broad range of stakeholders working for a state-level response to the [systems initiative obstructions].\*\*\*[TA] was launched and is coordinated by the [TI].”<sup>[2]</sup> (emphasis in original). You stated that [TA] “is a [systems] advocacy project...” In addition, you stated that the project was “convened<sup>1</sup> by [TI].”

The “members” that comprise [TA] are “organizations,” and, you wrote, “some members are for-profit entities.” Moreover, you stated that [TA] is “not its own, stand-alone organization. It does not have organizing papers on file with the Secretary of State.”

You also wrote that “[m]embers of [TA] would like to weigh in on the topic” of “the possibility of

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<sup>1</sup>[3]“To call together; to cause to assemble.” Black’s Law Dictionary (“BLACK’S”) 8<sup>th</sup> Ed., West Publishing Company: 2004, St. Paul, page 355.

[tax initiatives affecting] Chicago's [systems obstructions]." You cited Chicago City Council, Resolution xxxx-yyy ([date certain]). And, your request refers to "[TI] staff members who lobby on behalf of - or act as spokespersons for - [TA]."

**LAW:**

Article 3 of the Ordinance, entitled "Lobbyist Regulation," and associated definitions of terms in § 2-156-010, contain the provisions of the law relevant to your request. They are:

§ 2-156-010 (p), which defines lobbyist, states:

"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 ... 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. The term "lobbyist" shall not include any volunteer, employee, officer or director of a not-for-profit entity who seeks to influence legislative or administrative action solely on behalf of that entity. Provided further, that if (1) any person is paid or otherwise compensated to influence legislative or administrative action on behalf of a not-for-profit entity; and (2) such not-for-profit entity lobbies on behalf of for-profit entities or individuals engaged in a for-profit enterprise, such person shall be deemed to be a lobbyist within the meaning of this chapter.<sup>2</sup>

§ 2-156-210, entitled "Person Required to Register," states in relevant part:

"Each lobbyist shall register and file reports with the Board of Ethics as provided in this Article."

§ 2-156-220, entitled "Persons or Entities not Required to Register," states in relevant part:

This Article is not intended and shall not be construed to apply to the following:

(a) Persons who own, publish, or are employed by a newspaper or...other news media which, in the ordinary course of business, disseminates to the general public news...which directly urge the passage or defeat of, action upon, any legislative or administrative matter.

(b) Officials and employees of the City of Chicago, or any other unit of government, who appear in their official capacities before any City agency for the purpose of explaining the effect of any legislative or administrative matter pending before such body.

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<sup>2</sup>[4]This paragraph's final two sentences were modified or added (as applicable) pursuant to an amendment passed by City Council July 2011 and made effective September 2011.

(c) Persons who participate in drafting Municipal Code...

(d) Persons who testify before the City Council, a committee or other subdivision of the City Council, or any City agency...This exemption (d) shall apply only to the extent that such persons appear in the foregoing capacity...

§ 2-156-230, entitled "Information Required of Registrants," states in relevant part:

No later than January 20<sup>th</sup> of each year, or within five business days of engaging in any activity which requires such person to register, every person required to register shall file with the Board of Ethics a certified statement on a form prescribed by the Board containing the following information ...

(d) The registration statement required under this section shall be accompanied by a written statement certifying that all information contained herein is true and correct, and a registration fee of \$350.00 per person identified as a lobbyist in the registration statement. Provided, however, that the Board shall consider and may grant a waiver of the registration [and client] fees required under this subsection (d) for a specific lobbyist, upon written request and in a format and accompanied by such proof as may be specified by the Board, based on the following: The lobbyist is a person paid to lobby by a non-profit entity with for-profit members and either (i) the person's primary lobbying responsibilities are to foster small business initiatives primarily within a single official community area or neighborhood within the meaning of Section 1-14-01, or (ii) the non-profit entity has been approved or is pending approval by the city council to be a special service area provider for the City.<sup>3</sup>

**ANALYSIS AND CONCLUSION:**

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<sup>3</sup>[5]This waiver would not be available to [TI] based upon the facts herein.

According to information you presented, [TA] is a non-stand alone voluntary affiliation of members.

The members of the [TA] called together by [TI] are interested in [systems] issues including, among other things, [systems obstructions]. [TI] staff has or will lobby the City on behalf of [TA]. The key provision of the law that we will apply in these facts is § 2-156-010(p) cited above, particularly this language: “the term “‘lobbyist’ shall not include any volunteer, employee, officer or director of a not-for-profit entity who seeks to influence legislative or administrative action solely on behalf of that entity. *Provided further, that if (1) any person is paid or otherwise compensated to influence legislative or administrative action on behalf of a not-for-profit entity; and (2) such not-for-profit entity lobbies on behalf of for-profit entities or individuals engaged in a for-profit enterprise, such person shall be deemed to be a lobbyist within the meaning of this chapter.*” This italicized language was added in September 2011. We have not yet had an opportunity to interpret it. In doing so, we will apply the “plain-meaning rule” of statutory construction, which we believe is appropriate because this statute is new, has yet to be interpreted and its language appears clear on its face.<sup>4</sup> The obvious first step is to review the words, mindful that they are presumed to have their common, ordinary meanings.<sup>5</sup>

The parsed relevant words are defined as follows:

“Engage” means: “To employ or involve oneself; to take part in; to embark on.” BLACK’S p. 570

“Enterprise” means: “A project or undertaking. *Sizemore v. Hall*, 148 Kan. 233, 80 P.2d 1092, 1095.” BLACK’S Rev’d 4<sup>th</sup>, page 625;

“Entity” means: “A real being; existence. *Department of Banking v. Hedges*, 136 Neb. 382, 286 N.W. 277, 281.” BLACK’S Rev’d 4<sup>th</sup>, page 626;

“For-profit” means: “Established or operated with the intention of making a profit: *a for-profit corporation.*” The American Heritage Dictionary of the English language, Fourth Editions copyright 2000 by Houghton Mifflin Company (updated in 2009);

“For-profit corporation” means: “A corporation organized for the purpose of making a profit; a business corporation. – Also termed corporation for profit; moneyed corporation.” BLACK’S, 367.

“Individual” means: “As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership,

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<sup>4</sup>[6]The “plain meaning” rule states that if a provision in a statute or document appears to be unambiguous on its face, its meaning must be determined from the writing itself without resort to any extrinsic evidence. BLACK’S page 1188; *and see*, “[a]ny question of statutory interpretation begins with looking at the plain language of the statute to discover its original intent.” Cornell University Law School, Legal Information Institute, [http://law.cornell.edu/wex/statutory\\_construction](http://law.cornell.edu/wex/statutory_construction), visited March 26, 2012. There appears to be general consensus that the plain meaning rule “aptly characterizes interpretational priorities,” as the trend away from its use has reversed. CRS Report for Congress, “Statutory Interpretation: General Principles and Recent Trends.” Updated August 31, 2008. Yule, K. (Legislative Attorney, American Law Division). Congressional Research Service (Prepared for Members and Committees of Congress) (“CRS”), pages CRS-39, 41. <http://www.fas.org/sgp/crs/misc/97-589.pdf>, visited March 26, 2012. Further, “The Supreme Court often recites the ‘plain meaning rule,’ that, if the language of the statute is clear, there is no need to look outside the statute to its legislative history in order to ascertain the statute’s meaning.” CRS page CRS-2.

<sup>5</sup>[7]Words that are not terms of art or statutorily defined are customarily given their ordinary meanings, often derived from dictionaries. CRS-6.

corporation or association; but it said that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons.” *State v. Bell Telephone Co.*, 36 Ohio St. 310, 38 Am.Rep. 583.” BLACK’S Rev’d 4<sup>th</sup>, page 913;

“Or” means: “else; otherwise; a disjunctive particle marking, or seeming to mark, an *alternative*. It often connects a series of words or propositions, presenting a choice of any; as he may study law, *or* medicine, *or* divinity, *or* enter into business.” Webster’s new Twentieth Century Dictionary of the English Language, Unabridged, The World Publishing Company: 1951, new York, page 1174 (some emphasis supplied, some in original);

“Proviso” means: A proviso is sometimes misused to introduce independent pieces of legislation. *Cox v. Hart*, 260 U.S. 427 (1922). “Its proper use, however is *to qualify what is affirmed in the body of the act, section, or paragraph preceding it, or to except something from the act, but not to enlarge the enacting clause.*” BLACK’S Rev’d 4<sup>th</sup>, page 1390 (emphasis supplied).

First, applying these definitions and principles, we note first that the definition of lobbyist is “any person who, on behalf of any person other than himself...undertakes to influence any [City action]” (*see also* Board Case No. 05040.A, explaining broad lobbyist definition). There are three possibilities when considering whether a person is a lobbyist, required to register: (i) the person may be deemed not a lobbyist because he or she qualifies for one of the explicit exceptions in § 2-156-010(p) (e.g., responding to a City request for proposals or qualification); (ii) the person may be deemed not a lobbyist because he or she qualifies for one of the exceptions in § 2-156-220 (e.g., “participating in drafting Municipal Code provisions); or (iii) the person does not qualify for any of these exceptions, and must register with the City as a City lobbyist. The Ordinance presumes that any person who undertakes to influence City action on behalf of another is a lobbyist; the next question is whether the person qualifies for one of these exceptions.

Second, we note that the Ordinance excepts from the definition of “lobbyist” “any volunteer, employee, officer or director of a not-for-profit entity who seeks to influence legislative or administrative action solely on behalf of that entity.” Section 2-156-010 (p). But this exception has a proviso: “Provided further, that if (1) any person is paid or otherwise compensated to influence legislative or administrative action on behalf of a not-for-profit entity; and (2) such not-for-profit entity lobbies on behalf of for-profit entities or individuals engaged in a for-profit enterprise, such person shall be deemed to be a lobbyist within the meaning of this chapter.” Section 2-156-010 (p). This proviso is an exception to an exception, such that, if a person is subject to it, he or she *is* a lobbyist. Accordingly, if: (i) the person is paid; *and* (ii) the person lobbies on behalf of a not-for-profit entity which lobbies on behalf of *either* for-profit entities *or* individuals engaged in a for-profit enterprise, then he or she is a lobbyist.[emphasis added]

Your letter states that the person will be paid for his activities with respect to communicating with City employees and officials about [systems obstruction] on behalf of [TI] and [TA]. Thus, the only question before us is whether the facts demonstrate that the person would “lobby” on behalf of a nonprofit that, in turn, lobbies on behalf of for-profits. If so, then the person is a lobbyist, required to register with the Board.

Given the grammar of this clause, its meaning is clear: there are two *alternative* categories of

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for-profits stated: (i) “for-profit entities”; and (ii) “individuals engaged in a for-profit enterprise.” Section 2-156-010 (p). If the not-for-profit on behalf of whom a person lobbies *itself* lobbies for *either* (or both) for-profit entities or individuals engaged in for-profit enterprises, then the person must register as a lobbyist. In sum, the plain-meaning of element (ii) is clear as drafted: a person who, for pay, attempts to act on behalf of a not-for-profit company undertaking to influence City action on behalf of *either* “for-profit entities” or “individuals engaged in a for-profit enterprise” will be deemed a lobbyist attempting to influence City action and must register as a lobbyist with the City of Chicago.

Conclusion. At bottom, this case is clear: a paid staff member of [TI] would “lobby” the City in connection with a City Council resolution. The lobbying is to be performed on behalf of members of [TA]. [TA] itself is a project of [TI], and is not a separate entity from [TI]. Some of those members who are part of [TI]’s project are for-profit entities. Accordingly, the Board concludes that this staff member would be a lobbyist under the Ordinance and required to register as a lobbyist with the City of Chicago.

**DETERMINATION:**

After carefully considering the facts you presented, and the applicable sections of the City’s Governmental Ethics Ordinance, the Board determines that a paid staff person from the [TI] who acts as a spokesperson for [TA] would be a lobbyist and subject to registration as a City lobbyist under the Ordinance.

Our determination does not necessarily dispose of all issues relevant to this situation, but is based solely on the application of the City’s Governmental Ethics Ordinance to the facts stated in this advisory opinion. 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 that determination. Additionally, should the facts presented change, you should contact the Board for further review of the matter.

**RELIANCE:**

This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this 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.

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Miguel A. Ruiz

Chair