



BOARD OF ETHICS  
CITY OF CHICAGO

FINAL DETERMINATION OF LOBBYING VIOLATIONS  
CASE NO. 17005.LOB

This matter involves further action following the Board's determinations, made at its Special Meeting on January 25, 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 November 20, 2015, and then failing to register as a lobbyist on behalf of his lobbying client until April 13, 2016; (ii) failed to disclose this lobbying activity on any quarterly activity report as required; and (iii) that the client, the company that retained or employed this individual, thereby violated the §2-156-305 of the Ordinance.

On February 14, 2017, the Board received a written response from the company on its own behalf and on behalf of the individual. In that response, both parties admit and do not dispute the allegations in the Board's Notice of Probable Cause, sent January 25, or contest the fine to which the company is subject. Instead, they argue that the fine to which the unregistered lobbyist should be subject should be at most \$1,000.

The Board, having fully considered this written response, has VOTED 4-0 (Zaid Abdul-Aleem, recusing; Nancy Andrade, Dr. Daisy L. Lezama, absent) to determine that the individual and the company that retained him violated §§2-156-245 and -305, respectively, and, accordingly, hereby imposes a fine of \$90,000 with respect to the individual, and \$2,000 with respect to the company, pursuant to §2-156-465(b)(3) of the Ordinance, and, pursuant to §2-156-465(b)(3), hereby names the lobbyist as David Plouffe. The Board recites the following:

1. The evidence before the Board is clear: Mr. Plouffe lobbied City officials via email on November 20, 2015, explicitly on behalf of the company, never reported that lobbying activity, and did not register as a lobbyist with the Board of Ethics with that company as his client until April 13, 2016 – leaving a total of 95 business days between the date of lobbying and the date of registration. Section 2-156-230 requires every person required to register as a lobbyist to register "no later than January 20<sup>th</sup> of each year, or within five (5) business days of engaging in any activity which requires such person to register."

2. Pursuant to §2-156-245, entitled "Failure to Register," the Board has determined that Mr. Plouffe was required to have registered with the Board as a lobbyist on behalf of the company no later than November 30, 2015. The violation is based *not* on whether he engaged in any further lobbying activity without being registered at any time after November 20, 2015, or November 30, 2015 and prior to April 13, 2016, *but in already having lobbied on November 20, 2015, and then failing to register*. The Ordinance provides that the Board shall impose the same fine whether the individual had lobbied every day until registering, or even, as here (based on the information available to the Board) where the lobbyist lobbied only once, on November 20, 2015. The calculation of the fine is clear from the wording of §2-156-465(b)(3), entitled "Failure to register or file reports by lobbyists":

"Any lobbyist who violates section 2-156-245 ... shall be fined \$1,000 for each such violation. Each day that a violation continues shall constitute a separate and distinct offense to which a separate fine shall apply."

The violation, therefore, consists not in lobbying on November 20, 2015—that could easily have been followed up by a registration on or before November 30, 2015, as the Ordinance explicitly grants a lobbyist five days to *then* register — *but in failing and then continuing to fail to register for and disclose the prior lobbying*. The title of the

section Mr. Plouffe violated is "Failure to Register." The violation is the failure to register in the first place; how many times one lobbies while unregistered is irrelevant to the violation or to the calculation of the fine. In other words, this kind of violation is not cured by stopping one's lobbying activity; rather, it is cured only by registering as a lobbyist for the particular client. This did not occur until April 13, 2016.

3. Mr. Plouffe and company argue that this leads to an absurd result by having the Board punish those, like him, to the same degree it would punish a person who actually had engaged in lobbying every day during this period. The Board rejects this argument. Under that interpretation, a person could engage in unregistered lobbying activity as many times as he or she wishes, and simply avoid registration with the knowledge that, once he or she is discovered or "caught," if ever, there would be no fine, or at most a \$1,000 fine, assuming they would then register once notified by the Board of Ethics of their prior failure to do so. There would be no deterrent effect as to unregistered lobbying at all. While it is true, as this lobbyist and company assert in their response, that this could lead to "massive fines for a single instance of unregistered lobbying," that is precisely what the Ordinance says, and how it promotes transparency. At the core of Chicago's lobbying laws, and at the core of all such laws, is the prompt and public disclosure of lobbying activity.

4. Mr. Plouffe and the company also argue that this Board itself has already interpreted the Ordinance such that it cannot impose a fine for this kind of violation until seven (7) days after notifying the lobbyist of his or her failure to register. They then cite the Board's Executive Director's determinations in February 2016 that several lobbyists violated the Ordinance for late filing and were fined accordingly. This argument is misplaced. Both the Ordinance and this Board make a distinction between a lobbyist who is already registered but who misses the annual January 20<sup>th</sup> deadline to re-register or terminate, and a person who lobbies but fails to register in the first place, as is the case here. In the former cases - which are distinguishable from the present case - the Ordinance enables the Board's Executive Director to allow lobbyists *who were registered for the prior year* to present a credible reason why they were late in the current year in re-registering or terminating (for example, due to illness). If they are unable to cite a valid reason, the Board's Executive Director has the statutory authority, per §2-156-505, to find the lobbyist in violation of the Ordinance and impose fines, but those fines can be imposed only after seven (7) days after notifying the lobbyist of the violation. Thus, in those circumstances, a lobbyist may be in violation of the Ordinance for failing to *re-register or terminate his or her prior year's registration* before the close of business on January 20, but, if that lobbyist then registers on January 23 without providing a valid reason for the delay, there is a violation but no fine. By contrast, the violation in this case arises from a failure to register in the first place.

5. For these reasons, the Board has determined that Mr. Plouffe violated §2-156-245, and, per §2-156-465(b)(3), is hereby fined \$90,000, and the company that retained him violated §2-156-305, and thus, per §2-156-465(b)(3), is hereby fined \$2,000 for this violation (as it engaged in only one act of hiring or retaining Mr. Plouffe).

It is so ordered.



William F. Conlon, Chair  
February 15, 2017

Steven I. Berlin, Executive Director

Zaid Abdul-Aleem  
Nancy C. Andrade  
Stephen W. Beard  
Mary Trout Carr  
Frances Grossman  
Dr. Daisy S. Lezama