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CONFIDENTIAL

[REDACTED]



Re: Lobbyist Registration
Case No. 89022.A

Dear [REDACTED]

This is in response to your inquiry of January 24, 1989 regarding the lobbyist registration requirements of the Governmental Ethics Ordinance (Chapter 26.2 of the Municipal Code of Chicago). You indicated that you were uncertain of the application of the provisions in question to the following hypothetical situation: An attorney has undertaken representation of a client who is seeking a zoning change. This will require the attorney to appear (1) before the Zoning Committee of the City Council to advocate a change in the Zoning Ordinance and (2) in a proceeding before the Zoning Board of Appeals. His compensation for handling this entire matter will exceed \$5,000.

Appearing before the Zoning Committee to advocate an amendment to the Zoning Ordinance is lobbying for purposes of the Ethics Ordinance. If the attorney's compensation for this and other lobbying-related activities exceeds \$5,000 in the preceding or current calendar year, he is required to register and file semi-annual reports with the Board of Ethics. On the other hand, a person who appears before the Zoning Board of Appeals in a quasi-judicial proceeding is not acting as a lobbyist. Therefore, the attorney would not include compensation or expenditures attributable to this appearance in determining his aggregate lobbying-related compensation and expenditures.¹

¹Should the attorney receive a lump sum payment for his services (in which no distinction is made between payment for lobbying and non-lobbying activities), he will have to make a "good faith" estimate of the amount of compensation and expenditures attributable to his lobbying-related activities. When pro-rating his fee, he should consider the hours spent in discussions with City officials, as well as all preparatory activities such as research and consultations that are directly related to influencing City actions.

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ANALYSIS: Section 26.2-21 of the Ethics Ordinance requires all lobbyists whose lobbying-related compensation or expenditures aggregate \$5,000 or more in the preceding or current calendar year to register and file semi-annual reports with the Board of Ethics.

As defined in Section 26.2-1(p) 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 an employee of another includes undertaking to influence any legislative or administrative action (emphasis added).

"Legislative action" and "administrative action" are defined in Sections 26.2-1(o) and 26.2-1(a), respectively:

"Legislative action" means 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.

"Administrative action" means 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.

Zoning Committee: Section 26.2-1(o) clearly includes changes of the Zoning Ordinance within its definition of "legislative action." Therefore, attempts to influence such action via the Zoning Committee are lobbying for purposes of the Ethics Ordinance. In this regard, please note that under the Ordinance, "lobbying" involves not only personal appearances, but any attempt to influence the governmental action in question, whether this is done in person or not.


Zoning Board of Appeals: For purposes of the Ethics Ordinance, "lobbying" does not include attempts to influence a governmental decision in the context of the established procedures of a judicial or quasi-judicial proceeding (See Section 26.2-1(a), above).

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In discussions with the staff, you also asked what effect the public nature of an appearance before the City would have on lobbyist registration. The Ethics Ordinance does not establish this as a criterion for determining whether someone is engaged in lobbying activity or not, but instead focuses upon the nature of the governmental activity sought to be influenced and the City agency which is involved. Therefore, as a general matter, whether an attempt to influence governmental action takes place in a public forum or not will not be determinative on the question of whether an individual is acting as a lobbyist.

Should you have any further questions, please contact the Board of Ethics at 744-9660.

Sincerely,


S. Brandzel
Chairman

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