

AK

February 13, 1991

C O N F I D E N T I A L

[REDACTED]

**RE: Lobbying, No. 91033.A
ADVISORY OPINION**

Dear [REDACTED]:

You contacted this office to asked that the Board of Ethics determine whether an attorney who represents an individual or an entity in a protest to a tax assessment, before the Department of Revenue's administrative hearing officer, is considered lobbying under the Governmental Ethics Ordinance, and therefore subject to the Ordinance's registration and reporting requirements. The Board determines that such activity is not lobbying under the Ordinance.

FACTS: You explained, and [REDACTED] of the Department of Revenue confirmed, that the Department of Revenue conducts an audit and issues an assessment for business taxes (e.g. transaction, sales, hotel, vehicle leases, etc taxes). If the individual or entity assessed disagrees with the assessment, the individual or entity may file a protest, submitting documents and legal arguments to support the position that the assessment is inaccurate. The protest proceeding is quasi-judicial, with a administrative hearing officer conducting the proceeding. After the administrative hearing, the hearing officer makes a recommendation to the Director of the Department, who issues the final assessment. This final decision may be appealed to the Circuit Court. Approximately 95% of all protests are settled.

LAW: The Governmental Ethics Ordinance defines a lobbyist as "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." Administrative action is defined as "any decision on, or any proposal, consideration, enactment or making of any rule,

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regulation, or any 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." Legislative action is defined 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."

ANALYSIS: Under a literal reading of the word lobbying, an attorney representing a person in an assessment protest could be considered lobbying. However, the assessment protest is a quasi-judicial proceeding. The Board ruled in a past case that "attempts to influence a governmental decision in the context of the established procedures of a judicial or quasi-judicial proceeding" does not constitute lobbying. Case No. 89022.A. In that case, the attorney represented another person before the Zoning Board of Appeals. The Board determined that such representation in a quasi-judicial setting does not constitute lobbying. In the same regard, it is the Board's determination that representation before the Department of Revenue in an assessment protest is not considered lobbying.

CONCLUSION: The Board determines that an attorney representing an individual or entity in a tax assessment protest, an administrative process in a quasi-judicial setting, does not constitute lobbying.

Our determination and recommendations are based upon the facts as stated in this letter. If these facts are incorrect or incomplete, please notify us immediately, as any change may alter our decision. We appreciate your effort to comply with the ethical standards imposed by the Governmental Ethics Ordinance. If you have any further questions, please feel free to contact us.

Very truly yours,


Albert F. Harold
Chairman

cc: Kelly Welsh
Corporation Counsel

AFH:mh

NOTICE OF RECONSIDERATION AND RELIANCE

Reconsideration: This advisory opinion is based upon the facts which are outlined in this letter. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances which are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this letter.

Reliance: This advisory opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.