



CITY OF PHILADELPHIA

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Philadelphia Board of Ethics
Nonpublic Advice of Counsel GC-2012-504

April 23, 2012

Re: Lobbying / Indirect Communications / Comments to Media

An attorney advised that she represented a lobbying firm. The attorney requested a nonpublic advisory regarding the application of the City’s new Lobbying Code to certain communications made by a member of the lobbying firm (“the lobbyist”) to the news media.

The requestor advised that the lobbyist “was asked by a reporter . . . to comment on a story” regarding a certain current issue that has come before the City Council in the past. The requestor attached a copy of the news article.

The requestor advised that the lobbying firm is a registered lobbying firm under the City’s program and that the member in question is a registered lobbyist, and our records confirmed these facts. Although the requestor did not specify any principals that the lobbyist or his firm are representing in this matter, it was obvious from the article which entity was the principal, and that entity is registered with our system as a principal. Moreover, both the lobbyist and his firm have listed the entity on their registrations as a principal that they represent.

The requestor then asked a number of questions concerning application of the Lobbying Chapter of the City Code, some of which involved hypothetical facts and some of which involve policy questions not raised by the factual situation that was presented.

FOR PUBLIC RELEASE

Therefore, this Advice addresses the only question raised by the facts presented, which is whether lobbyist's principal¹ in filing the quarterly expense report for the First Quarter of calendar year 2012,² must include the lobbyist's reported comments, in providing information concerning indirect communications concerning certain matters being lobbied, pursuant to Paragraph 9.15(C) of Regulation 9.

The definition of "indirect communication" (Para. 9.1(U) of Regulation 9, which is a direct quote from the statute, Code Section 20-1201(15)) is the following:

An effort, whether written, oral or by any other medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action, including, but not limited to, letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues, but not including regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.

The news article, in reporting very briefly on the lobbyist's comments, is a combination of quotes, partial quotes, paraphrases, and the reporter's characterization of the views of various parties, also including several public officials. In the 78-line article, the entire discussion of the lobbyist's comments consumed only about ten lines and quoted 49 words of the lobbyist, which were almost exclusively addressed to the likelihood of the issue arising again, rather than any discussion of substance.

On review of the supplied facts, the requestor was advised that the comments of the lobbyist, as reported, did not constitute "An effort . . . to encourage others . . . to take action," particularly not such that it has the foreseeable effect to "directly influence legislative action or administrative action." Accordingly, the news article does not require any relevant principal of the lobbyist, in filing the quarterly expense report for the First Quarter of calendar year 2012, to provide information concerning certain matters being lobbied, pursuant to Paragraph 9.15(C) of Regulation 9.

¹ The requestor did not advise that she was representing, as attorney, any principal. Assuming that their principals make all disclosures, her clients, the lobbyist and his firm, have no direct disclosure obligations. Nevertheless, it is presumed that many principals rely on their lobbyists for details and advice on what must be disclosed, and therefore we are providing this advice.

² The requestor had asked us to assume that the related principal has met the threshold for quarterly expense reporting.

In keeping with the concept that an advisory opinion on the Public Integrity Laws is necessarily limited to the facts presented, my advice is predicated on the facts that I have been provided. We do not conduct an independent inquiry into the facts. Further, we can only issue advice as to future conduct. Accordingly, this Advice does not address anything that may have occurred in the past, except to the extent necessary to advise on future actions, such as disclosures. The requestor was advised that, although previous opinions of this office that interpret statutes are guidance to how this office will likely interpret the same provision in the future, previous opinions do not govern the application of the law to different facts. Opinions on the Public Integrity Laws are particularly fact-specific, and any official or employee wishing to be assured that his or her conduct falls within the permissible scope of the applicable laws is well-advised to seek and rely only on an opinion issued as to his or her specific situation, prior to acting. In that regard, to the extent that this Advice states general principles, and there are particular fact situations that the requestor may be concerned about, she was encouraged to contact us for specific advice on the application of the Lobbying Code to those particular facts.

Since the requestor requested nonpublic advice from the Board of Ethics, we will not make the original letter public, but we will be required to make public this revised version, edited to conceal the requestor's identity, as required by Code Section 20-606(1)(d)(iii).

Evan Meyer
General Counsel

cc: Richard Glazer, Esq., Chair
J. Shane Creamer, Jr., Esq., Executive Director