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BALTIMORE CITY BOARD OF ETHICS

Baltimore City Board of Ethics Ethics Opinion 21-006 (November 18, 2021)

The Baltimore City Board of Ethics (“Board”) is issuing this advisory opinion to highlight aspects of the Baltimore City Public Ethics Law’s (“Ethics Law”) lobbying provisions.¹ Specifically, this opinion will clarify activities that constitute “legislative lobbying” through the lens of a recent ethics complaint.

Under Section 8-7, a person² must register with the Ethics Board for “legislative lobbying” if they meet a two-part test.³ First, the person must communicate with a City official or employee “for the purpose of influencing any legislative action.” § 8-7(1). The term “legislative action” means “any official action or nonaction relating to: (i) any bill, resolution, nomination, appointment, report, or other matter within the jurisdiction of the City Council; or (ii) any bill or resolution presented to the Mayor for approval or veto.” § 8-1(d)(1). Legislative action includes introduction, sponsorship, consideration and debate, amendment, passage or defeat, and approval or veto. § 8-1(d)(2).

Second, the person must meet at least one of three threshold criteria “in furtherance of or in connection with all such communications.” § 8-7(2). Specifically, the person must either expend \$100 or more for gifts, incur at least \$500 in expenses, or earn at least \$2,500 in compensation. § 8-7(2).

In addition to legislative lobbying, the Ethics Law requires registration as a lobbyist for “executive lobbying” and “grass roots” lobbying. §§ 8-8 and 8-9. Executive lobbying encompasses communications with a public servant for the purpose of influencing any “executive action,” a term that means any official action or nonaction that does not constitute legislative action. §§ 8-8(a)(1) and 8-1(c). “Grass roots lobbying” encompasses soliciting others to communicate with a public servant for the purpose of influencing any legislative or executive action. § 8-9. As with legislative lobbying, a person must meet certain expenditure and/or compensation thresholds before registration is required as either an executive lobbyist or grass roots lobbyist. *See* §§ 8-8 and 8-9.

¹ The Ethics Law is contained in Article 8 of the City Code. The Ethics Law’s lobbying provisions are contained in Subtitle 8. Unless otherwise indicated, all citations are to the Ethics Law

² The term “person” means: “(1) an individual; (2) a partnership, firm, association, corporation, or other entity of any kind; (3) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind; or (4) . . . a governmental entity or any instrumentality or unit of a governmental entity.” § 2-22.

³ A list of current and past registered City lobbyists can be found on the Ethics Board’s website here: <https://ethics.baltimorecity.gov/lobbying>.

Background

The respondent in a recent ethics complaint (“Respondent”) works for a communications company (“Company 1”). The Respondent had been contacted by the officer (“Officer”) of another company (“Company 2”) requesting Company 1’s assistance in Company 2’s mission to garner support for a City Council action (“Action”). Company 1 and Company 2 entered into a contract for a flat fee greater than \$2,500 in which Company 1 agreed to execute communication services in support of Company 2’s desired legislative outcome. Company 1’s services were to include identifying immediate and secondary outreach and relationship needs with stakeholders and decision-makers, facilitating introductions, and facilitating and supporting relationships with respected and engaged organizations that have influence with local legislative bodies.

Based on information gathered during the Board’s preliminary investigation, the Respondent had directly facilitated introductions between the Officer and certain Councilmembers. According to the Respondent, after making the introductions, it was the Officer who actually met with the Councilmembers and asked them to support the Action. Once the Officer had garnered the Councilmembers’ support for the Action, the Officer would inform the Respondent and the Respondent would then “engage” with the Councilmembers and strategize how they could best publicize their support, including by providing them with talking points.

The Respondent claimed to be aware of the Ethics Law’s lobbying registration requirements but did not believe Company 1’s communications work for Company 2 qualified as lobbying. The Respondent emphasized the fact that they were not the one who directly asked legislators to support the Action. Instead, the Respondent was “responsible for taking people that [Company 2] identified as [Action] supporters and helping them amplify their support.” According to the Respondent, although the Officer had asked the Respondent to contact legislators directly to ascertain their support for the Action, the Respondent declined.

Analysis

The plain language of the Ethics Law defines legislative lobbying broadly: communicating with a public servant “for the purpose of influencing any legislative action” is enough to trigger registration if one of the compensation or expense thresholds is reached. § 8-7(2). In the complaint before the Board, it was clear the Respondent/Company 1 met the compensation threshold of at least \$2,500 because the contract was for more than that amount, which Company 2 paid up front. *See* § 8-7(2)(iii). For the same reason, Company 1 met the \$500 or more expense threshold. *See* § 8-7(2)(ii). It was also clear from the relevant materials reviewed by the Board that both the Respondent and the Officer had directly communicated with various public servants on behalf of Company 2, including some Councilmembers and their staff.

The remaining question, then, was whether the Respondent and Officer’s communications with these various public servants were “for the purpose of influencing any legislative action.” *See* § 8-7(1). The Officer had directly asked Councilmembers to support the Action, so the Officer’s communications clearly were for the purpose of influencing legislative action. As for the Respondent, although they did not believe their communications crossed the line into lobbying—because the Respondent was not the one who directly asked Councilmembers to support the Action—the Ethics Law’s definition of legislative lobbying does not draw so fine a line. By accepting the Officer/Company 2 as a client, the Respondent/Company 1

agreed to execute communication services in support of Company 2's desired legislative outcome, *i.e.*, the Action. In other words, the Respondent's communications with public servants on behalf of the Officer/Company 2 were for no other purpose than to influence legislative action. Accordingly, the Board determined that, under these circumstances, both the Respondent and Officer had engaged in activity that required registration with the Board as legislative lobbyists.

The Board is authorized to take a variety of enforcement measures against a person who violates the Ethics Law's lobbying provisions, including requiring registration and/or additional information on lobbying activities, imposing late fees and/or fines, and prohibiting the person from engaging in lobbying activity for up to three years. *See* §§ 3-23 and 9-5. Additionally, a person who knowingly violates the Ethics Law's lobbying provisions or fails to comply with an administration sanction imposed by the Board is guilty of a criminal misdemeanor and, on conviction, is subject to a fine or imprisonment. § 9-22.

The Board will continue to take the timely registration of lobbyists seriously. Only through timely registration is the public adequately informed of lobbying activities in the City.

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