

**NEW YORK
TEMPORARY STATE COMMISSION
ON LOBBYING**

OPINION NO. 50 (03-1)

FACTS

An organization (the "Landowner") owns a parcel of vacant property surrounded by privately owned residential parcels. The Landowner is seeking a change in the zoning classification of the subject property. This process requires the Landowner to submit an application to the City Planning Commission (the "CPC") for approval. The city has a population in excess of 50,000.

If the CPC approves the requested zone change, it does not become effective unless and until the change to the zoning ordinance is approved by the Common Council. If the CPC disapproves the requested zone change, dissenting members of the CPC (if any) may submit a minority report to the Common Council, in which case the Common Council may choose to amend the zoning ordinance despite the CPC's disapproval.

ISSUE

1. Prior to submitting the application for a zone change to the CPC, an attorney, affiliated with the law firm representing Landowner in the application, met with a member of the Common Council, an assistant corporation counsel, and a city zoning officer as a courtesy, to inform them that the Landowner would be submitting the application.

A. Does the attorney's participation in this meeting fall within the definition of "lobbying" under the Act, even though the application had not yet been submitted?

B. The attorney's law firm earned a fee of less than \$250 for this meeting and, at the time of the meeting, did not anticipate any further related earnings in this matter. Must the firm comply with registration and reporting requirements for this \$250 if the firm has exceeded the \$2,000 threshold under Section 1-e (a)(1)(i) of the Act, lobbying on behalf of other clients?

C. Since the application was not yet submitted at the time the attorney met with the member of the Common Council, if the attorney's meeting constitutes "lobbying," when must the firm register as a lobbyist for the Landowner, and when must the firm report the fee earned for this meeting?

D. If the answer to the previous question depends upon when the application was submitted so that the scenario can then be characterized as involving "pending legislation," once the application is made, how far back in time must the attorney and/or the firm review to identify any possible lobbying activity?

2. Prior to submitting the application for a zone change to the CPC, an employee of Landowner also contacted a member of the Common Council, as a courtesy, to inform the Council that the Landowner would be submitting the application.

A. Does the employee's phone call constitute "lobbying" under the Act?

B. Do the answers to questions 1(B) through 1(D) above change based upon the fact that the individual contacting the Common Council was an employee of Landowner rather than the attorney representing Landowner? If so, please explain.

3. Shortly after submitting the application for a zone change, an attorney from the firm discussed the application with a staff person working for the CPC to verify that all necessary documentation was included. Does this communication fall within the definition of "lobbying" under the Act?

4. After the application had been heard by the CPC, but before the CPC had ruled on the application, this same attorney attended a meeting with three members of the Common Council, representatives of the Landowner, residents of the adjacent neighborhood, an attorney representing a group of neighborhood residents, the city's planning officer, and an assistant corporation counsel. The purpose of the meeting was to discuss whether a zone change was the proper vehicle for the Landowner to complete its proposed project on the subject land. Does this meeting with Common Council constitute "lobbying" within the Act? With respect to this question, please address whether the answer is different for (a) the Landowner, (b) the neighbors, (c) the incorporated body of neighbors, and (d) the attorney representing the incorporated group of neighbors.

OPINION

The foregoing factual pattern does not present any new or unique issues. The answer to the organization's questions are as follows:

1. A. No. The Lobbying Act does not cover these applications at this time. Therefore any activity associated with such an application "only" is not covered by the Act. (See New York Lobbying Act, Section 1-c (c)(ii).)

B. No. Registrations in this case are not required. Not because of the fee (if lobbying, a registered lobbyist must register for representing new clients, no matter how small the fee, if any), but because the matter at hand, an application to the CPC for a possible zoning change, is not included in the present definition of lobbying. (See New York Lobbying Act, Section 1-c (c)(ii).)

C. & D. The firm must register and report all related compensation and expenses if, at any time, legislative action is pending relevant to their initial application, regardless of fees and expenses if, the firm is already a registered lobbyist, and if not, upon the expenditure of \$2,000 of compensation or expenses by the client to the firm regarding this matter. These fees and expenses can precede the pending legislation for up to a three-year "look back," as is implied in the Act. (See New York Lobbying Act, Section 1-e (b) and NYTSL Advisory Opinion No. 38 (84-1) and Advisory Opinion No. 16 (78-16).)

2. A. Yes. But, if the client is not expending \$2,000 in its efforts to lobby, it need not register itself or its employee as a lobbyist (unless already registered as a lobbyist). The expenses for the employee's actions may be reportable as an expense paid by the client/employee when making any required Client Semi-Annual Report. In any case, no such compensation or expense need be reported if no legislation ever becomes "pending." (See New York State Lobbying Act, Section 1-e (a)(1).)

B. No.

3. See answers 1 A-D above.

4. Unless and until legislation becomes pending before the Common Council, nothing is covered under the Lobbying Act. If legislation becomes pending, then the activity described would not be covered if it were a "public meeting." (See NYTSL Advisory Opinion No. 23 (79-3).) This can be assured if the Common Council or any of its members joins in a request to the public and others to participate. Comment at public functions by anyone is not deemed to be lobbying under this Act. (See New York Lobbying Act, Section 1-c (c)(5).)

Of course, if the Municipality in question had a population of less than 50,000, all of the above would be moot in that the Lobbying Act would only apply where the population equals or exceeds 50,000. (See Lobbying Act, Section 1-c (k).)

APPROVED BY COMMISSION: APRIL 16, 2003

CONCURRING: STEWART C. WAGNER, CHAIR; HON. RONALD J. AIELLO, VICE CHAIR; ALBERT S. CALLAN, MEMBER; BARTLEY F. LIVOLSI, MEMBER; JOSEPH A. DUNN, MEMBER; PATRICK J. BULGARO, MEMBER.

/S/

STEWART C. WAGNER
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