

**NEW YORK
TEMPORARY STATE COMMISSION
ON LOBBYING**

OPINION NO. 51 (03-2)

INTRO

This opinion is rendered in response to a request whereby the requesting party proposed two scenarios. For purposes of this opinion the Commission will consolidate the facts in that the issues at hand are similar in both cases.

FACTS

A law firm is retained to provide legal counsel to a large Retail Corporation. The client is to develop a land site in an area that would require a change in the local zoning law in a municipality with over 50,000 in population. The attorneys also meet with officials from neighboring municipalities to assure them of the integrity of their client's plan, though it seems clear that there will be no need for a zoning change in those locations.

The zoning change procedures require the applicant to follow certain steps (i.e. zoning board applications, meetings, etc., planning local meetings, etc.). Following the conclusion of these administrative steps and upon the recommendations of such board, the municipal council will decide whether or not to introduce legislation to amend the zoning law and to approve or disapprove such law if proposed.

The law firm claims that its activities are limited to legal representation prior to the introduction of any law to the legislative body. Such representation included preparation of applications, public meetings, private meetings and correspondence with public officials.

ISSUE

Are the typical and/or required procedures conducted by attorneys in representing clients seeking to change zoning laws considered to be lobbying under the New York State Lobbying Act?

OPINION

Lobbying in New York is defined under § 1-c(c) of the Lobbying Act in part as follows: "... (ii) any attempt to influence the passage or defeat of any local law, ordinance or regulation by any municipality or subdivision thereof..." This section of the law presumes that there is a proposed local law or ordinance presently on the agenda of the municipality's legislative body.

In the case before us, it seems clear that the actions of the attorneys were all preliminary to the creation of any local legislation required to carry out their client's objectives. Further, the law specifically excludes legal representation at public meetings (see § 1c (c)(3) of the New York State Lobbying Act) or persons attempting to influence adjudicatory proceedings (i.e. Zoning Board of Appeal) or responding to a request for information or comment by a legislative or executive body or officer of a municipal legislative or executive body (see § 1c (c)(4) and (5) of the New York State Lobbying Act).

The activities of the attorneys here would not constitute lobbying. If however, a local law or ordinance is introduced to change the zoning in favor of the client's goals, any activity then carried out by the attorneys to influence the passage or defeat of that legislation would be considered lobbying, if not specifically exempted (see § 1c (c)(1-6) New York State Lobbying Act). Their status as attorneys does not, in and of itself, exclude them from the mandates and restrictions of the Lobbying Act, if in fact, they were involved in lobbying as it is defined by the statute.

As has been stated in prior Opinions, the law also requires the expenditure of at least \$2,000 in compensation and expense combined together with the proscribed activity, in order for any party to be required to register as lobbyist and file all appropriate forms and reports, as well as their clients'.

APPROVED BY COMMISSION: OCTOBER 28, 2003

CONCURRING: STEWART C. WAGNER, CHAIR, 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
Chairman