



BOARD OF ETHICS CITY OF CHICAGO

May 11, 2020

CASE No. 20009.A. HYPOTHETICAL SITUATIONS—NONPROFIT LOBBYING

At its meeting today, the Board of Ethics approved the responses to the following questions as its advisory opinion in this matter. These questions are themselves based on actual questions raised to the Board and its legal staff.

1. Where is the line between a nonprofit organization asking for information and lobbying? For instance, a group might call a City department and ask, "Have you ever looked into raising the alcohol tax?" or "Do you have a position on an alcohol tax?" but doesn't push the department to take a specific action or position. [Merely asking what a City Department's position is, without any advocacy, is not lobbying, nor is asking whether the department has taken a position on an issue. But if individuals paid by nonprofits state: "We understand your position, and think you should change it" – or words to that effect -- that may well constitute lobbying, unless it's accompanied by a white paper going through both sides of an issue and possibly coming down on one side or other.]
2. What if a City department asks an organization to publicly endorse a City proposal, rather than waiting for the organization to initiate an ask? Does it make a difference if the organization asks generally how it can help, and then the City department responds with specific asks? [If a City department is asking, then the organization's endorsement is not lobbying by whoever drafts or publishes that endorsement. And if the organization is merely asking how it can help, without urging the department to take, support, or oppose any particular proposal, then its paid employees or agents are not lobbying.]
3. What if a City department asks a nonprofit organization to help on an initiative that might, but will not necessarily, lead to the organization receiving City funding? For instance, suppose a City department recently advocated for and the City Council passed a budget initiative that will distribute millions of additional dollars to service providers, but there was no certainty as to who would get funded. Many nonprofit groups pushed for this initiative on the City department's behalf. [As described, this is not lobbying by paid personnel from the nonprofit organization. But if the nonprofit organization's support, as drafted and disseminated by one of its paid agents or employees, explicitly pushes for the nonprofit itself to receive City funding, then that would constitute lobbying.]
4. Does it matter whether the item for which the nonprofit organization is advocating (regardless whether a City department provides explicit guidance on this advocacy) is listed as a priority/strategy under the department's plan or a similar City-branded plan such as Invest South/West? [No, that does matter.] For instance, what if a nonprofit organization lists "Codify the Complete Streets policy" as an objective under an official City initiative, and then paid individuals from the nonprofit start advocating for it? [It depends on what the advocacy states: if it urges that the organization should receive funding, it is lobbying, but if it is merely in support of the City initiative generally, it is not lobbying.]

5. A City department writes a fact sheet with the City logo, which also includes the names of supporting nonprofit groups, and posts it on the department's website, and publishes it on the department's social media sites. [This is not lobbying.]
6. The City department distributes that same fact sheet directly to aldermen. [If it is the City department's fact sheet, and the department forwards it to aldermen, it is not lobbying, even though it has the names of supporting nonprofit organizations.]
7. The nonprofit organization then posts that same fact sheet publicly via its own social media pages, website, etc. [That is not lobbying.]
8. The nonprofit organization posts that same fact sheet in a way that isn't publicly available, such as its own internal email listserve. [That is not lobbying.]
9. The nonprofit organization posts that same fact sheet in a non-public setting like an email listserve but posts a copy of this email publicly. [That is not lobbying.]
10. The nonprofit organization distributes that same fact sheet directly to aldermen via email or in-person meetings. [That is not lobbying as long as there are no accompanying written or oral communications by the organization's paid employees or agents specifically advocating for the organization.]
11. The nonprofit organization's paid employees or agents speak with aldermen directly, without materials written by the City department, but at the department's request. [Here again it depends what is said by these employees or agents: if they advocate that organization should receive funding or resources, it's lobbying, but if it is advocacy in support of the department's initiative generally, it is not lobbying.]
12. A City department holds conference calls and group meetings with various nonprofit organizations, divides up who will be doing what, and asks paid employees from some of them to use City-prepared or nonprofit-prepared materials in direct contacts with aldermen. [Again it depends what is said by the organization's paid employees or agents: if they advocate that that organization itself should receive funding or resources, it's lobbying, but if it is advocating in support of the, say, CDPH initiative generally, it is not lobbying.]
13. What if a City department asks nonprofit organizations to identify other stakeholders and asks them to contact aldermen? For instance, the City department requests: "It would be great if you, employees of nonprofit A, could reach out to other nonprofits in Alderman McCartney's ward and ask them to contact him." Do these second-level groups need to register and report? [Again, it depends what these second-level organizations say: if their people are advocating that their specific nonprofit receive funding or resources, it's lobbying, but if it is advocating in support of the department's initiative generally, it is not lobbying.]
14. Under federal lobbying guidelines, nonprofits are allowed "educate" on the benefits of a policy without being required to register as lobbyists. For instance, a nonprofit could urge: "Cigar taxes are good for health, and here's why," as long as there is no direct ask for a policy to be introduced or passed. Say a UIC researcher approaches a City department to discuss pharmacy deserts, but without having a definite solution; the researcher wishes to talk it through with City officials to see what plausible solutions exist, including ideas of their own. [On those facts, that is not lobbying. These actions constitute: (1) providing technical advice or assistance and/or (2) examining or discussing "broad social, economic and similar," problems and thus fall into the exception from lobbying in 2-156-210(e)(2) and (3) of the Ordinance.]
15. If an organization gives a grant to another organization to do lobbying in Chicago (and one of more of the grantee's staff registers as a lobbyist), will the grantor need to be listed on the grantee's lobbyists' disclosure report, and/or will the grantor need to file a registration under the City's regulations? The grantor is not giving the grant to the grantee for the grantee to lobby on its, the grantor's, behalf, but rather giving a general grant, some of which the grantee may use for lobbying. [No: the grantor and its staff have not engaged in lobbying merely by giving a grant to another organization and some grant proceeds are used for that other organization to

lobby on that other organization's behalf. If they grantee's staff meet the criteria for being required to register as lobbyists (as defined), then *they* will need to register, but the Governmental Ethics Ordinance does not call for them to disclose who funds them, *unless* they are lobbying on the *grantor's* behalf, thereby making the grantor a lobbying *client*. If that is the case, then the grantor would be listed as a client in the lobbying registration(s) of the grantee's personnel. But, unlike some other lobbying laws, Chicago's does not have client registration, though lobbyists must disclose who their lobbying clients are and how much they are being to lobby per calendar quarter on those clients' behalf.]

RELIANCE: The Board's determinations and advice are based solely on the application of the Ordinance to the particular facts presented. This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

[signed] _____
William F. Conlon, Chair