

**From:** Berlin, Steve

**Sent:** Wednesday, March 23, 2016 4:17 PM

**To:** [REDACTED]

**Subject:** legal counsel/CONFIDENTIAL/Case No. 16013.Q

**CONFIDENTIAL**

Dear [REDACTED]

This afternoon, you and I discussed whether I see any potential problems or appearance of impropriety issues due to the fact that [P] [REDACTED], a partner in the law firm of [FIRM] [REDACTED], provides *pro bono* legal services to the City's Council's [REDACTED] Caucus [REDACTED]. The Caucus is not a City agency, though its members are, of course, City [elected officials] [REDACTED]. [P] [REDACTED] is now, and has been for years, a lobbyist registered with the Board of Ethics. Our records show that [P] currently has 14 lobbying clients. Moreover, 4 other persons in [FIRM] [REDACTED] including 3 attorneys, are also registered lobbyists with the Board of Ethics, on behalf of 37 clients. The firm does not perform any legal work for you or for the [REDACTED] Ward, but you said you do not know whether the firm performs legal work for any other members of the Caucus individually or for their wards.

There is no provision in the City's Governmental Ethics Ordinance that prohibits the Caucus—which, we have previously recognized in advisory opinions, is not a City agency—from accepting *pro bono* legal services from [FIRM] [REDACTED] or from paying for those services. And there is no provision in the Ordinance that would prohibit [P] [REDACTED] or any of the other attorneys in the [FIRM] [REDACTED] regardless whether they are registered lobbyists, from providing services to the Caucus. Nor is there any prohibition in the Ordinance that would prohibit the [FIRM] [REDACTED] from providing legal services to other members of the Caucus individually (though, if such services were provided *pro bono* or at reduced rates to Caucus members individually, they would be considered gifts to City officials or employees, and would need to be limited to \$50 in such services per year per recipient, or, if appropriate, need to be disclosed as gifts to the City, if the services pertain to official City business).

However, as we discussed, it is my opinion that an appearance of impropriety is created by the Caucus using the services of an attorney or law firm that may from time to time lobby before its members either individually or as a body. The appearance would be that: i) the [FIRM] [REDACTED] [REDACTED] has special access to Caucus members by virtue of appearing at Caucus meetings and advising members of the body on Caucus matters, and that that access could be perceived to be of unfair benefit to his lobbying clients and his practice (especially in comparison with other lobbyists, who do not enjoy such access to Caucus members); and ii) that Caucus members will be more apt to make City decisions in his clients' favor, and this is exacerbated by the fact that his firm is providing services to the Caucus *pro bono*.

The only provision in the Ordinance that might apply is contained in the aspirational, non-enforceable Code of Conduct, §2-156-005(a)(5). It provides that all City officials and employees shall "act impartially in the performance of their duties, so that no private organization or individual is given preferential treatment." This provision, even read in its strictest sense, would not prohibit Caucus members from making official City decisions on matters in which the [FIRM] [REDACTED] [REDACTED] has lobbied them (that is, require Caucus members to recuse themselves from such decisions), but could easily lend credence to a charge or perception that the [FIRM] [REDACTED] [REDACTED] and its clients are being given preferential treatment by Caucus members when such lobbying occurs.

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This perception would be somewhat mitigated if the Caucus paid for legal services from the [FIRM] ██████████ at its standard rate, but would be removed altogether if the Caucus receives legal advice from an attorney or firm that has no other client matters pending before its individual members.

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