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EMUS

ADVISORY OPINION  
CASE NO. 95036.A  
LOBBYING

To: [REDACTED]

Date: November 30, 1995

In a letter of [REDACTED], you requested an Advisory Opinion about whether a particular consulting firm is a lobbyist under the Lobbyist Registration provisions of the Governmental Ethics Ordinance. You said the consulting firm consults for businesses and individuals in the area of City financial incentives for development projects.

"Lobbyist" is defined in § 2-156-010 of the Governmental Ethics Ordinance as, in relevant part:

...any person (i) who for compensation or on behalf of any person other than himself undertakes to influence any legislative or administrative action...

"Legislative action," under § 2-156-010(o), is:

the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto or other official action or non-action on any ordinance, resolution, motion, order, appointment, application or other matter pending or proposed in the City Council or any committee or subcommittee thereof.

"Administrative action," defined in § 2-156-010(a) means:

any decision on or proposal, consideration, enactment or making of any rule, regulation, or other official non-ministerial action or non-action by any executive department, or by any official or employee of an executive department, or any matter which is within the official jurisdiction of the executive branch.

An "executive department," for purposes of the Ordinance, is any department in the executive branch of City government. Under these



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provisions, the firm is a "lobbyist" if it undertakes to influence either legislative or administrative action, as defined, on behalf of the clients for whom it consults.

The firm, you said, has three principals. Its clients are individuals and businesses interested in development. You explained that the firm's consultation for its clients covers a broad range of financial incentives for development, but is primarily focused on tax increment financing ("TIF"), which involves various incentives for development in designated areas; and industrial development bonds ("IDB"), tax-exempt government bonds that finance commercial investments in land and equipment, with the project itself assuming the financial obligations.

An area is designated as a "TIF" district by an ordinance passed by the City Council. Industrial development bonds are established through a bond ordinance passed by City Council. Both therefore involve legislative action.

As you and others have explained the process, described below, proposals for TIF designation or issuance of IDBs are initially directed to administrative officials who approve the requests, and often negotiate details, before the requests reach the City Council; thus the approval process for both subjects entails official, non-ministerial action by administrative employees, that is, "administrative action" under the Ordinance.

To obtain from the City Council TIF designation or approval of IDB funding for a proposed development, a developer needs to demonstrate the financial viability of the project. For TIF designation, the developer also needs to demonstrate the eligibility of the site for TIF assistance. You explained that the consulting firm prepares eligibility studies and "pro formas" (anticipated balance sheets) for the projects of its clients, in order to demonstrate to the City that the projects meet any relevant state requirements, and that the rate of return on the projects will render the requested City financing feasible. These documents, initially directed to officials in the responsible departments, such as the Department of Planning and Development, are presented with the intent of bringing about City action favorable to the consulting firm's clients.

You also explained that the firm on occasion meets with various City officials, including officials from the Department of Planning and Development; the Law Department and the Comptroller's Office, "to clarify and amplify on information which has been requested previously by the City". You also mentioned that consultants may meet with the Office of the

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Mayor, and with the Mayor himself. As you explained it to us, these various meetings involve negotiations to establish eligibility, need for City financial assistance, and whether or under what conditions the proposed projects would be in the City's best interests, from both a financial and a policy point of view. You said, for example, that meetings with employees from Planning and Development and the Comptroller's Office tend to involve negotiation of finances, while the consultant would make policy arguments to the Mayor's office. These meetings involve efforts to persuade officials in the City's administrative branch to take action that the client desires -- that is, to conclude that a project should receive the City financial assistance requested, and to do what is necessary to move the matter forward toward City Council approval. In a previous case, Case no. 87101, the Board stated that discussion with City officials is lobbying if it involves advancing a particular position on behalf of a client, rather than simply requests for information or status reports. In the discussions described, the role of the consulting firm is to advance the client-developer's position; under Case no. 87101, therefore, the consulting firm in engaging in those discussions is engaged in lobbying.

**CONCLUSION:** In attempting to persuade City officials that a client's project should receive TIF or IDB assistance from the City, the firm is attempting ultimately to influence legislative action on behalf of the client. Moreover, the firm's persuasive efforts on behalf of the clients are first directed toward obtaining favorable administrative action, so that the matter will reach the City's legislative branch. Because the facts, as they have been presented, indicate that the firm undertakes to influence both City legislative action and City administrative action on behalf of others, it is the Board's determination that the firm is a lobbyist as defined by the Ethics Ordinance.

As you told staff, you understand that if the firm is a lobbyist under the Ordinance, it is required to register if its lobbying-related expenditures or compensation total \$5,000 or more in the preceding or current year.

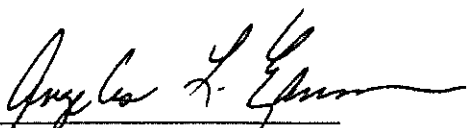
Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board, as any change in the facts may alter our opinion.

**RELIANCE:** This opinion may be relied upon by (1) any person involved in the specific transactions or activities with

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respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

  
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Angeles L. Eames  
Vice Chair

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