

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY



Office of Government Ethics

February 13, 2013

VIA EMAIL TO:

xx. xxxx xxxxxxxxx
xxxx x xxxxxxxxx
xx xxxxx xxxxx xx xxxxxxxx
xxxx.xxxx@dc.gov

Dear xx. xxxxxxx:

This responds to your February 4, 2013, email in which you seek guidance concerning whether you may permissibly lobby the D.C. Council on a xxx-xxxxxxx xxxxxxx matter while serving as the xxxx xxxxxx to the D.C. xxxx xxxx xx xxxxxxx.

You state that you hold a private sector job as a xxxxx xxxxx xxxxx and, as such, you have been invited to submit a proposal to lobby the D.C. Council on a xxxxxx-xxxxxx matter, provide the D.C. Council with an analysis of current D.C. law on xxxxx issues, introduce the company to Councilmembers and appropriate individuals at the D.C. xxxxx xx xxxx, and provide ongoing counsel on D.C. policies that will xxxxx xxxxx projects. You have requested advice on whether you are permitted to perform these services while serving as x xxxx of the D.C. xxxxx xxxxx xx xxxxx.

Lobbyist activities in the District are governed by the Ethics Act and overseen by this Office.¹

To answer your question, we must first look to the definitions of “lobbying” and “lobbyist.” Lobbying is defined as, “communicating directly with any official in the legislative or executive branch of the District government with the purpose of influencing any legislative action or an administrative decision.”² D.C. Official Code § 1-1161.01(32)(A). A lobbyist is “any person who engages in lobbying.” D.C. Official Code § 1-1161.01(33)(A). I conclude, based upon your identification of your private sector job as a xxx xxxxx xxxxxx, as well as your description of the

¹ Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 (2012 Supp.)).

² There are six exceptions to this definition, including: (i) The appearance or presentation of written testimony by a person on his or her own behalf, or representation by an attorney on behalf of any such person in a rulemaking (which includes a formal public hearing), rate-making, or adjudicatory hearing before an executive agency or the Tax Assessor; (ii) Information supplied in response to written inquiries by an executive agency, the Council, or any public official; (iii) Inquiries concerning only the status of specific actions by an executive agency or the Council; (iv) Testimony given before the Council or a committee of the Council, during which a public record is made of such proceedings or testimony submitted for inclusion in such a public record; (v) A communication made through the instrumentality of a newspaper, television, or radio of general circulation, or a publication whose primary audience is the organization's membership; and (vi) Communications by a bona fide political party. None of these, however, apply to the situation you describe in your letter. D.C. Official Code § 1-1161.01(32)(B)(i-vi).

activities in which you seek permission to engage, that you are, in fact, a lobbyist and the proposed activity would constitute lobbying.

We then must look to the restrictions on those who are permitted to lobby. D.C. Official Code § 1-1162.31(f) states, “No public official shall be employed as a lobbyist while acting as a public official except as provided in § 1-1162.28.”³ The question is whether your service as x xxxx of the xxxxx xxxx xx xxxxx is included in that definition. Indeed, not only is it included, but expressly so. D.C. Official Code § xxxxxxxxxxxxxxxxx provides that x xxxxx of the xxxxx xxxx xx xxxxxx is a public official. Therefore, during your tenure as xxxx xxxx to the D.C. xxxxxxxx xxx xxxxx, you are not permitted to be a lobbyist and/or engage in lobbying. The fact that your proposed activities are xxxx xxxx xxxx has no bearing on this restriction. As a public official you are prohibited from engaging in lobbying the District government. There is no discretion in this regard, and no provision for waiver.

Please be advised that this advice is provided to you pursuant to section 219 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012, D.C. Law 19-124, D.C. Official Code § 1-1161.01 *et seq.*, which empowers me to provide such guidance. If you disagree with my conclusions, you may appeal this Advisory Opinion to the three-member Board of Ethics and Government Accountability for their consideration, D.C. Official Code § 1-1162.19(c). If you wish to do so, please let me know within 10 business days from the date of this letter so I may provide you with instructions.

Finally, you are advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that identifying information will not be disclosed unless and until you consent to such disclosure in writing, should you wish to do so.

Please let me know if you have any questions or wish to discuss this matter further. You may contact either General Counsel Stacie Pittell at 202-481-3411, or me at the same number.

Sincerely,

_____/s/
DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

³ There are four exceptions, including: (1) A public official, or an employee of the United States acting in his or her official capacity; (2) A publisher or working member of the press, radio, or television who, in the ordinary course of business, disseminates news or editorial comment to the general public; (3) A candidate, member, or member-elect of an Advisory Neighborhood Commission; or (4) An entity specified in § 47-1802.01(4), whose activities do not consist of lobbying, the result of which shall inure to the financial gain or benefit of the entity (Entities specified in § 47-1802.01(4) are: Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes. D.C. Official Code § 47.1802.01(4)(A)). None of these, however, apply to the situation you describe in your letter. D.C. Official Code § 1-1162.28 (a)(1-4).