

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



Office of Government Ethics

VIA EMAIL

October 18, 2019

Scott Goldstein
Executive Director
EmpowerEd
5417 Illinois Ave. NW
Washington, DC 20011

Dear Mr. Goldstein:

This responds to your request of September 19, 2019, for a formal advisory opinion on whether EmpowerEd as an organization needs to register with the Office of Government Ethics (OGE) as a lobbying entity and whether you, personally, should also register as a lobbyist with OGE. Based on the information provided in your letter, as well as a review of the organization's website (<https://www.weareempowered.org/>) and the Lobbying Activity Report it recently submitted for the 3rd quarter of Calendar Year 2019, I can provide the following advice.

Your request stated that EmpowerEd is a 501(c)(3) tax exempt organization under the Internal Revenue Code as of December 7, 2017. You are listed as the organization's Executive Director, for which services you receive a stipend. Your organization's primary mission is to "elevate the voice" of District teachers and education leaders. While the majority of your work can be described as outreach to, and organizing amongst teachers, your letter indicated that you "maintain contact with elected officials," that the contacts "occasionally involve legislation, and that you sometimes communicate with elected officials on behalf of your stakeholders.

Under the Ethics Act, "lobbying" is 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. The phrase "administrative decision" includes an action to make any contract, grant, reprogramming or procurement of goods and services, issue a Mayor's Order, or cause a rulemaking proceeding to be undertaken. This includes activity before the Council and the State Board of Education.

Accordingly, because EmpowerEd does more than merely coordinate meetings between educators and elected officials, but also meets with and occasionally engages officials on legislation, EmpowerEd is a lobbying entity or firm as defined under § 1-1161.01(32)(A) and must register as such with the OGE. As the organization's Executive Director who performs such activities on EmpowerEd's behalf, you do not need to register as a lobbyist with BEGA separately or file a separate registration fee. You should be identified as a lobbyist performing lobbying activities on behalf of EmpowerEd within that organization's Registrant Profile in BEGA's Lobbying Registration and Reporting (LRR)

e-filing system. Should your organization ever employ additional staff that will meet with executive and legislative branch officials in the District of Columbia to influence legislative actions and administrative decisions, those individuals should also be added to EmpowerEd's Registrant Profile as additional lobbyists performing lobbying activities on its behalf.

As a 501(c)(3) tax exempt organization, EmpowerED should qualify for the reduced lobbying registration fee of \$50 per year.

EmpowerEd does not qualify for an exemption from the lobbying registration requirements pursuant to D.C. Official Code § 1-1162.28(a)(4), which exempts certain entities¹ "whose activities *do not consist of lobbying*, the result of which shall inure to the financial gain or benefit of the entity." (emphasis added) As your letter states, EmpowerEd does engage in lobbying activity, and the communications disclosed in the organization's Activity Report for the 3rd Quarter of Calendar Year 2019 clearly demonstrate that these activities mandate registration with BEGA as a lobbying entity.

Please note that even though EmpowerEd is not entitled to the exemption from registration set forth in D.C. Official Code §1-1162.28(a)(4), the organization is only required to file a Lobbyist Registration Report under the Ethics Act and pay the applicable fee, if it:

- a) Receives compensation in an amount of \$250 or more in any 3-consecutive-calendar month period for lobbying;
- b) Receives compensation from more than one source in an aggregate amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying; or
- c) Expends funds in an amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying.²

If you have questions about whether you are required to file a Lobbyist Registration Report, please contact our office.

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 § 1-1162.19), which empowers me to provide such guidance. As a result, no enforcement action for a violation of the District's Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

You are also 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 your identity will not be disclosed unless you consent to such disclosure in writing. We encourage individuals to so consent in the interest of greater government transparency. Please, then, let me know your wishes about disclosure.

Pursuant to section 219(c)(1) of the Ethics Act (D.C. Official Code § 1-1162.19 (c)(1)), you may appeal this determination to the Ethics Board. If you wish to do so, please send a written appeal to: Board of Ethics and Government Accountability, Attn: Rochelle

¹ These entities are defined as "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, . . . and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes." D.C. Official Code § 47.1802.01(4)(A). Under the definition, "no part of the net earnings of the entity inures to the benefit of any private shareholder or individual." D.C. Official Code § 47.1802.01(4)(B).

² See D.C. Official Code §1-1162.27(a)

Ford, Esq., 441 4th Street, N.W. Suite 830 South, Washington, D.C. 20001, or email to bega@dc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent Wolfingbarger", written over a horizontal line.

Brent Wolfingbarger
Director of Government Ethics
Board of Ethics and Government Accountability