From: Susman, Thomas
Sent: Friday, October 18, 2013 11:38 AM
To: Hughes, Traci (BEGA)
Subject: Lobbyists' service on Boards and Commissions

Traci,

I know the time for filing comments has passed, but I just had time last evening to look at the Invitation for Public Comment and thought I'd offer a few comments. While these are personal and do not represent the views of the Open Government Coalition or the American Bar Association, they are born of over 30 years' experience in a law firm as a registered lobbyist (both in DC and at the federal level), 5 years running an association governmental affairs office, and extensive involvement in teaching and writing on the subject of lobbying (including the ABA's LOBBYING MANUAL and a law review article on lobbyists' ethics).

I think there are three problems with using the status of lobbying registration as a disqualification for service on a DC board or commission: First, it deprives boards of potential service by qualified, dedicated, and experienced persons who can contribute and whose presence will present no threat of bias or inside influence. Second, it drives those who lobby to take every precaution against triggering the registration requirements so that they won't be disqualified, thus diminishing transparency in the lobbying arena. (It was likely no coincidence that after the Obama administration restrictions went into effect, over 2,000 federally registered lobbyists ceased or terminated registration.) And third, it offers a false sense of security to those who wish to prevent insider influence, since, for example, a business person who spends all her time in the real estate business could go on a zoning board, while a lawyer who only lobbies part of the time for the medical industry could not.

What is the problem this proposal is trying to address? Simple: conflicts of interest, both actual and potential. (I am unimpressed by the argument that the public will feel safer and more comfortable without lobbyists on boards; that's a problem with public education, not lobbyists.) So why don't we develop statutory language that addresses the problem rather than using "lobbyist" as a surrogate term for "undesirable."

What is undesirable is anyone who serves on a commission or board that has a financial interest in any industry or entity subject to regulation by that

board. It does not need to be direct or substantial, but you could consider qualifiers. (Direct might be useful to allow someone who takes taxis in DC to serve on the Hack Commission; otherwise, one might argue that keeping rates low financially benefits her. I guess substantial would take care of this too.) That way, public-spirited persons who are paid to lobby for the restaurant industry should have no problem serving on the Cosmetology Board. But the owner of a Georgetown Hair Styling Salon, though he may not even know what a lobbyist is, should not. And the lobbyists for the homeless or veterans or children's rights should have fewer restrictions, since they have no financial interest issue, though there still might be an appearance problem that would cause hesitation on the appointing authority as a practical matter.

I realize that this means the line is not bright. Government regulation isn't supposed to be that easy. I would love to see DC develop new and stronger lobbying laws, keep lobbyists from fundraising for candidates, and require much greater disclosure by lobbyists. But depriving lobbyists of the ability to serve their city solely because they comply with the lobbyist registration laws in carrying out their constitutionally guaranteed right to petition government is just a bad idea.

I'd be more than happy to provide additional comments or come in and chat on this issue if you'd like.

Tom

Thomas M. Susman
Director, Governmental Affairs Office
American Bar Association