



# Palm Beach County Commission on Ethics

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May 4, 2012

Ms. Darlene Schaukowitch  
Cotleur & Hearing  
1934 Commerce Lane, Suite 1  
Jupiter, FL 33458

Re: RQO 12-025  
Lobbyist Registration Ordinance

Dear Ms. Schaukowitch,

The Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting held on May 3, 2012.

YOU ASKED two questions in your email dated March 27<sup>th</sup>, 2012. First, whether landscape architecture firm staff members who meet with Palm Beach County staff members for the purpose asking technical questions related to a project are "lobbying" for the purpose of the lobbyist registration ordinance. Second, when the Vice President of your organization is a registered lobbyist for a principal and he attends a meeting as a lobbyist, and is assisted by several staff members including engineers, for the purpose of assisting him or answering technical questions, must accompanying staff members or traffic engineers also register as lobbyists.

IN SUM, a lobbyist is *any person who is employed and receives payment, or who contracts for economic consideration for the purpose of lobbying on behalf of a principal. Lobbying is defined as seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of an official or employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory board or governing body.*

Whether or not a particular individual is captured within these definitions is determined by the specific facts and circumstances of the contact between that individual and public employees and officials. Purely ministerial or administrative functions, as may be provided by an assistant to a lobbyist, may not rise to the level of lobbying. However, where an engineer, employed by a firm contracted by a principal to lobby government, directly negotiates or otherwise actively participates in a discretionary matter, including matters regarding technical requirements, he or she would likely fall within these definitions.

The FACTS as we understand them are as follows:

Cotleur and Hearing (CH) provide professional services in landscape architecture, residential landscape design, land planning and environmental consulting. Don Hearing, vice-president of CH, is a registered lobbyist for Palm Beach County. While Mr. Hearing is a lobbyist, members of CH staff are planners,

landscape architects, environmental consultants and are engaged in property maintenance and management. Staff members are assigned to work on particular projects based upon their professional expertise. Meanwhile, Mr. Hearing may be lobbying the county in conjunction with these projects. You are seeking clarification as to whether, when Mr. Hearing meets with county staff for the purpose of lobbying, CH staff who attend the meeting in order to answer technical questions are required to register as lobbyists. Up and until this point the CH general staff member would have worked on the project in his professional capacity and without contact with public employees or officials. Similarly, should CH's client hire another professional, such as a traffic engineer to meet with staff or elected officials alongside Mr. Hearing, would the traffic engineer be considered a lobbyist and required to register under the code of ethics.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Section 2-353 of the lobbyist registration ordinance requires all lobbyists, prior to lobbying, to register by electronic submission via the "Central Lobbyist Registration Site" or by paper submission. Whether or not a person appearing before a public official or employee must register as a lobbyist depends upon whether they are a lobbyist as defined by the ordinance. Section 2-352 contains the definitions of lobbyist and lobbying.

*Lobbying* shall mean seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of any county commissioner, any member of a local municipal governing body, any mayor or chief executive officer that is not a member of a local municipal governing body, any advisory board member, or any employee with respect to the passage defeat or modification of any item which may foreseeably be presented for consideration to the advisory board, the board of county commissioners, or the local municipal governing body lobbied as applicable.

*Lobbyist* shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with the government or representing the employer in its contacts with government.

If a member of CH staff, who does not otherwise lobby the county, meets with county staff for the purpose of gathering information for a project, asking technical questions only and not providing information to county staff other than what is needed to meet technical requirements for required approvals, under these facts a CH staff member is not engaged in lobbying and is not required to register as a lobbyist. Lobbying is defined as seeking to influence a decision of a public employee or official on an issue which foreseeably will come before a board or commission for advice or approval. When information flows from county staff to a CH employee developing a project, the exchange of information is one sided. Input is provided by county staff, not by CH staff. Accordingly, a CH employee cannot be described as "seeking to influence" county staff in this exchange and is not engaged in lobbying. However, once there is an exchange or negotiation as to the manner, substance or interpretation of a matter, technical or otherwise, the exchange ceases to be merely an extraction of information. Such an interchange inherently involves input on the part of the CH staffer, and that constitutes lobbying under the code.

The exclusionary language contained within the definition of lobbyist, limiting the scope of the definition to employees *whose principal responsibility to the employer is overseeing the employer's relationships with government*, applies to lobbying by an employee directly on behalf of their employer and not under these facts where their employer, CH, is retained by an outside principal for the purpose of lobbying.

Whether or not a member of CH staff or a contracted professional who accompanies a CH registered lobbyist to a meeting with a public employee or elected official must register as a lobbyist involves the same analysis. A lobbyist is a person who receives compensation for the purpose of lobbying on behalf of a principal.

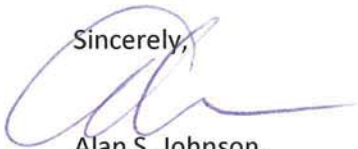
Therefore, under the facts and circumstances you describe, if a staff member of your firm accompanies Mr. Hearing and performs a purely ministerial function such as the taking of notes, he or she is not engaging in lobbying. Likewise, if a traffic engineer or landscape designer is present to assist Mr. Hearing in his presentation, but does not otherwise engage directly in the negotiation or other lobbying activity that Mr. Hearing performs, they too would not be participating in lobbying activity. Akin to the analysis whereby professionals meet directly with staff to establish criteria, submit required information, or otherwise comply with established process, where their presence is only to extract relevant information or assist Mr. Hearing with information relevant to his ability to communicate with the public employee or official, and they do not attempt to influence a decision, they are not engaged in lobbying. Once your staff member engages in the process of influencing a public decision by participating in a negotiation or other exchange, they are lobbying on behalf of CH's principal and must therefore be registered as required by the code.

IN SUMMARY, based on the information you provided, CH staff who are not engaged in lobbying activities and merely seek to extract information may meet with county staff in order to obtain that information without registering as a lobbyist. Any attempt to engage in negotiation, or otherwise influence the process will likely change the relationship to one of lobbying and will require registration. The same analysis applies to professional staff, including contracted engineering professionals, who accompany a registered lobbyist, where they directly participate in seeking to influence a decision.

This opinion construes the Palm Beach County Code of Ethics and Lobbyist Registration Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson,  
Executive Director

ASJ/mcr/gal