

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Friday, February 10, 2017 10:15 AM
To: Sanchez, Rodzandra (COE)
Subject: Stephen Zarzecki, President, Concerned Citizens of Cutler Bay (Lobbying) INQ 17-39

INQ 17-39 Zarzecki

From: Centorino, Joseph (COE)
Sent: Thursday, February 09, 2017 4:09 PM
To: 'Stephen Zarzecki' <stephenz@gate.net>
Cc: Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: INQ 17-39 Stephen Zarzecki, President, Concerned Citizens of Cutler Bay (Lobbying)

Mr Zarzecki,

You have inquired concerning lobbyist registration requirements and related matters in connection with the intent of yourself and others affiliated with the Concerned Citizens of Cutler Bay (CCCB), a non-profit Florida corporation, to appear on behalf of the organization before the Town Council of the Town of Cutler Bay in connection with an upcoming land use matter. You, as President of the organization, will not be receiving compensation for your appearances. It is my assumption that the attorney and traffic engineer retained by the organization will both be paid.

The County Lobbying Ordinance, Section 2-11.1(s)(4) of the County Ethics Code, would require that a representative of a not-for-profit corporation, even if unpaid, register as a lobbyist, but not be required to pay the registration fee. However, as you have pointed out, the Town of Cutler Bay's lobbying ordinance, Section 2-236 of the Cutler Bay Code, does not require registration for any unpaid representatives of organizations who engage in lobbying activity. Although the County lobbyist ordinance is applicable to the municipalities, we have usually deferred to municipal requirements regarding some registration matters. In this case, due to the local ordinance, you would not have to register as a lobbyist since you are unpaid.

The attorney, who I understand will be paid, has been retained for the purpose of representing the organization in quasi-judicial hearings. Section 2-11.1(s)(1)(b) of the County Ethics Code excludes from the definition of lobbyist, "attorneys or other representatives retained or employed solely for the purpose of representing individuals, corporations or other entities during publicly-noticed quasi-judicial proceedings where the law prohibits ex parte communications." The County, which follows the original *Jennings* rule does not permit ex parte communications in quasi-judicial proceedings, whereas the Cutler Bay Code permits such communications in the context of a state statute that requires disclosure of such communications during the public hearing. For the purposes of this section, I do not believe that the Town's adoption of the State disclosure rule should deprive attorneys of this exception, where they are involved in publicly-noticed quasi judicial proceedings that do require public accountability of ex parte communications. Moreover, the Town Code is silent as to the exception for attorneys. Therefore, it is my opinion that the attorney need not register as long as his or her advocacy is limited to the confines of quasi-judicial proceedings. Meetings held by the attorney with Town personnel that involve lobbying outside of those proceedings may require registration.

Regarding the professional traffic engineer retained by the Town, the County Code, in section 2-11.1(s)(1)(b) provides an exception from lobbyist registration for "expert witnesses who provide only scientific, technical or other specialized information or testimony in public meetings..." There is no provision in the Cutler Bay Code on this point. Therefore, applying the County Code, the professional traffic engineer retained by your organization would not need to register as

long as he or she limits the presentation to technical information. If the engineer should get involved in open advocacy for the viewpoints espoused by CCCB and its other spokespersons, or if he or she should meet with Town personnel involved in this matter outside of a public meeting, then lobbyist registration may be required for that individual.

I have reviewed the disclosure requirement contained in Section 2-237 of the Town Code. It does appear to limit the "instant disclosure" requirement" to the applicant for relief where the relief sought is related to a land use application.

I hope this helps clarify the requirements applicable to the representatives of CCCB.

Sincerely,

Joe Centorino

Joseph M. Centorino

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From: Stephen Zarzecki [<mailto:stephenz@gate.net>]
Sent: Thursday, February 02, 2017 2:02 PM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: lobbyist registration

Joe,

The Concerned Citizens of Cutler Bay (CCofCB), a non-profit Florida corporation, is requesting "full party status" in an upcoming quasi-judicial hearing(s) in Cutler Bay regarding a site plan approval. Please verify my understanding of the need for the three individuals(myself, an attorney, and a traffic engineer) who will be standing before the Council representing the CCofCB to register (or not) in the Town as lobbyists.

A. As president of the CCofCB, I will be representing the organization, speaking at the hearings, and talking to the Councilmembers and Town staff before the hearings. I do not receive any compensation (monetary or otherwise), reimbursement, or any other benefit to serve as president or to represent the CCofCB at the hearings.

1. I will not have to register as a lobbyist with the Town, because I am not “paid” (Cutler Bay Code of Ordinances, Article V – Lobbyist Registration Sec. 2-236(a)).
2. I will not have to disclose any conversations with the Councilmembers and/or the Town staff (but to comply with the ex parte ordinance Town officials must disclose such conversations.)

B. The CCofCB has retained an attorney solely for the purpose of representing the organization at the quasi-judicial hearings, However since Cutler Bay has a et parte ordinance, ex parte communications are not prohibited and,

1. Thus the attorney meets the County definition as a lobbyist, and will have to register with the Town as a Lobbyist for the CCofCB. (Miami Dade Code of Ordinances, Chapter 2 Article 1 Sec 2.11.1(1)(b))

C. The CCofCB will retain a professional traffic engineer to provide expert testimony and to present evidence at the hearing

1. This paid expert witness will not have to register as a lobbyist because he is excluded from the definition of a lobbyist (Miami Dade Code of Ordinances, Chapter 2 Article 1 Sec 2.11.1(1)(b))

And, finally, since the hearings are related to a land use application, the CCofCB does not have to comply with the “instant disclosure requirements (whatever those are) (Cutler Bay Code of Ordinances, Article V – Lobbyist Registration, Sec. 2-237)

Thank you in advance for your kind attention to this matter. If you have questions, call my cell phone 305-342-3151

Steve

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