

Frigo, Victoria (COE)

From: Frigo, Victoria (COE)
Sent: Tuesday, April 13, 2010 2:16 PM
To: 'spinmaster@att.net'
Cc: 'Olin, Jean'; 'robertparcher@miamibeachfl.gov'
Subject: RE: INQ 10-66 Zabloutny

Mr. Zabloutny,

In response to your question about the facts substantiating your ethics opinion, my intention was to put you on notice that the facts in your situation represent a close call. Depending on your current and future activities, the presumption that you are speaking before your government in your individual capacity could change. These facts could be substantiated through an Ethics Commission investigation.

Your position with Club Madonna as a marketing manager makes clear that you are an agent of Club Madonna— and lends credence to the possibility that you may be acting as a lobbyist. Therefore, it would be reasonable for the Miami Beach City Clerk to require you to register as a lobbyist.

Sincerely,

[Victoria Frigo, Staff Attorney](#)

[Miami-Dade County Commission on Ethics](#)
Direct Phone: 305 350-0601
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miamidade.gov 

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From: Carl Zabloutny [mailto:spinmaster@att.net]
Sent: Monday, April 12, 2010 6:15 PM
To: Frigo, Victoria (COE)
Subject: RE: INQ 10-66 Zabloutny

Thank you very much for your incredibly quick, yet comprehensive explanation of the issues involved in my particular case. I just need one clarification, please. In your letter you state “Based on the facts you presented, which have not been substantiated by the Ethics Commission, it appears that you are not required to register as a lobbyist when you are expressing your personal views and are not advocating on behalf of your employer as part of your employment duties.”

What needs to be done to have the “facts” substantiated by the Ethics Commission? Do you need a letter from my employer stating that my efforts on behalf of Club Madonna and the sale of alcohol or any other city issue involving Club Madonna or not are not within the scope of my regular employment duties, but I am free to express my personal opinions -- for or against –

any issue before the commission? And that should I voice an opinion in favor or against an issue to commissioners, the mayor, or at a public hearing that I am doing so as an individual and in no way being compensated or reimbursed, whether directly, indirectly, or contingently, to express support of or opposition to any item? And that I, Carl Zablonty, have agreed to let everyone know that I am speaking my personal opinion as a long-term resident and not on behalf of Club Madonna in any official capacity?

I just want your opinion to hold as much weight as possible and for me to be clear what I can or cannot do. If my employer writes a letter stating what I am doing or not doing on behalf of Club Madonna, then I am in breach of my employment contract or he is in breach of my employment contract if I or he does otherwise.

Sincerely,

Carl Zablonty

From: Frigo, Victoria (COE) [mailto:FRIGOV@miamidade.gov]
Sent: Monday, April 12, 2010 4:33 PM
To: spinmaster@att.net
Cc: Olin, Jean
Subject: INQ 10-66 Zablonty

Mr. Zablonty:

In an email to our office on April 12, 2010, you asked if you are considered a lobbyist when you speak to the City of Miami Beach Mayor, Commissioners, and their staffs as a concerned citizen in favor of selling alcohol at Club Madonna. You stated that you have been employed by Club Madonna as the marketing manager for approximately one month.

Based on your managerial position with Club Madonna, you are advised to proceed cautiously in advocating on this issue. Depending on the facts as they develop, your advocacy *as an agent* of your employer and/or your encouragement of other employees to advocate could trigger, at a minimum, lobbyist registration requirements, or possible charges of ethics violations.

Generally, the Miami-Dade County Code at Sec. 2-11.1 (s)(1)(b) defines "lobbyist" to include those employees of principals "whose normal scope of employment includes lobbying activities." The County Code at Sec. 2-11.1 (s)(3)(b) excludes as "lobbyists" any person speaking in his "individual capacity for the purpose of self-representation without compensation or reimbursement, whether direct, indirect, or contingent, to express support of or opposition to any item..." Similarly, the Miami Beach Code at Sec. 2-483 (b) does not require an individual to register as a lobbyist if he is speaking in his individual capacity.

Your duties with Club Madonna include marketing, public relations, and media placement, but you stated that you have not been authorized by Club Madonna to contact local government officials or government employees to advocate on behalf of Club Madonna as part of your employment duties. Thus far, none of your duties have involved government relationships of any kind.

Based on the facts you presented, which have not been substantiated by the Ethics Commission, it appears that you are not required to register as a lobbyist when you are expressing your personal views and are not advocating on behalf of your employer as part of your employment duties.

Please be advised, however, that your *managerial* position with Club Madonna suggests that you *might* be authorized to speak on behalf of your employer under common law principles of agency. No formalized contract is necessary to create a customary employer-agency relationship. Rather, authority

may be assumed to have been given to an agent when he performs any act reasonably necessary within the express authority given to him. Therefore, according to the custom of the trade, a marketing manager might reasonably be assumed to lobby on behalf of his employer, in addition to other public relations duties.

In order to clarify that you are not required to register as a lobbyist and to avoid possible charges of ethics violations, you agreed that you will announce before your appearances that you are advocating in your individual capacity for the purpose of self-representation. Furthermore, you will clarify with your employer that you shall not receive compensation or reimbursement *directly, indirectly, or contingently*, when supporting or opposing any item before government.

You also mentioned that you would like to encourage other employees of Club Madonna to advocate on this same issue. If employees freely choose to appear in their individual capacities for the purpose of self-expression and not as part of their duties to their employer, they may advocate without registering as lobbyists. However, encouraging employees to advocate in order to keep their jobs could be seen as requiring employees to lobby as part of their employment duties.

To repeat, your individual advocacy and your encouragement of other employees to advocate could trigger, at a minimum, lobbyist registration requirements, or possible charges of ethics violations if the facts show that you are in effect serving as a lobbyist for your employer.

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