

Diaz-Greco, Gilma M. (COE)

From: Jean Olin <jeanolin.munilaw@gmail.com>
Sent: Friday, February 07, 2014 5:11 PM
To: Centorino, Joseph (COE)
Cc: Diaz-Greco, Gilma M. (COE)
Subject: Re: INQ - Jean Olin, Special Counsel to City of Miami Beach (Section 2-11.1(2))

Thanks for clarifying--
have a good weekend.
Jean

On Feb 7, 2014, at 2:21 PM, Centorino, Joseph (COE) wrote:

> Jean,
>
> Mere passive submission of an application without some affirmative act, e.g., a letter, conversation, email, appearance, or other action intended to influence the ultimate decision, would not constitute lobbying. One may engage in routine administrative actions, such as submitting an application, without it being considered lobbying.
>
> A member of a board could not lobby that board on a matter involving that member's financial interest without being in violation of the conflict provision in section 2-11.1(n), as well as a possible Sunshine Law violation.
>
> Joe
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> -----Original Message-----
> From: Jean Olin [mailto:jeanolin.munilaw@gmail.com]
> Sent: Thursday, February 06, 2014 5:41 PM
> To: Centorino, Joseph (COE)
> Cc: Diaz-Greco, Gilma M. (COE)
> Subject: Re: INQ - Jean Olin, Special Counsel to City of Miami Beach
> (Section 2-11.1(2))
>
> This County Code section is baffling to me-- if section prohibits a board member from directly or indirectly making "personal appearances" before the board, is that board member (directly or indirectly) permitted to lobby the members of his board outside of a meeting of his board?
> Jean
> -----
> On Feb 6, 2014, at 4:42 PM, Jean Olin wrote:
>
>> Joe,
>>
>> sorry but one additional question per below- under County ethics
>> code, is it "lobbying" to merely submit an application but not make a personal appearance or otherwise have no personal contact with City personnel?
>> The code section below prohibits making a "personal appearance before a board"--if no personal appearance, is it not "lobbying"?
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>> Thank you,
>> Jean

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>> On Feb 6, 2014, at 4:14 PM, Jean Olin wrote:

>>

>>> Thank you Joe for such a quick, thorough response.

>>> Jean

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>>> On Feb 6, 2014, at 4:06 PM, Centorino, Joseph (COE) wrote:

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>>>> Jean,

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>>>> You have inquired concerning whether, under Section 2-11.1(m)(2) of the Miami-Dade County Ethics Code, an architect who serves without compensation on an architectural board, may receive compensation for work on plans submitted to that board, where the proper disclosure of the representation is made and the member properly disqualifies himself/herself from speaking, voting or otherwise participating on the application.

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>>>> Section 2-11.1(m)(2) contains a specific exemption for "an architect serving without compensation on the Miami-Dade County Board of Energy Regulation or on any architectural board, whose sole function is to pass on the aesthetics of plans submitted, from submitting plans on behalf of a client so long as such member makes known his representation of the applicant and disqualifies himself from speaking or voting or otherwise participating on such application."

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>>>> The purpose of the provision in question is to provide public architectural boards with access to professional expertise of architects, who would be otherwise disqualified from membership on boards requiring such expertise. The use of the word client in the provision, in the absence of other qualifying language, would generally include paying clients. The purpose of the section would not be served and the provision would make no sense if the exception applied only to unpaid work that the architect was involved in. Therefore, I have concluded that it is permissible for such an architect to receive payment for services on an application coming before such a board on which he/she serves. However, I would also note that the provision would not only disqualify the member from speaking, voting or otherwise participating as a board member, but also from speaking or otherwise participating before the board as a representative of the client.

>>>>

>>>> Sincerely,

>>>>

>>>> Joseph M. Centorino

>>>> Executive Director and General Counsel Miami-Dade Commission on

>>>> Ethics and Public Trust

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>>>> From: Jean Olin [mailto:jeanolin.munilaw@gmail.com]

>>>> Sent: Thursday, February 06, 2014 2:07 PM

>>>> To: Centorino, Joseph (COE)

>>>> Subject: County Code 2-11.1(m)(2)

>>>>

>>>> Dear Joe,

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>>>> Good afternoon.

>>>> I have a brief question about the County ethics code re: section 2-11.1(m) (2), in which board members are prohibited from appearing, directly or indirectly, before the board they serve on:

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>>>> "No person included in the terms defined in subsections (b)(2), (3) and (4) [autonomous personnel, quasi-judicial personnel, and advisory personnel] shall appear before the County board or agency on which he or she serves, either directly or through an associate, and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Nor shall such person receive compensation, directly or indirectly or in any form, for services rendered to a third party, who

has applied for or is seeking some benefit from the County board or agency on which such person serves, in connection with the particular benefit by the third party. Nor shall such person appear in any court or before any administrative tribunal as counsel or legal advisor to a third party who seeks legal relief from the County board or agency on which such person serves through the suit in question. However, this section shall not prohibit an architect serving without compensation on the Miami-Dade County Board of Energy Regulation or on any architectural Board, whose sole function is to pass on the aesthetics of plans submitted, from submitting plans on behalf of a client so long as such member makes known his or her representation of the applicant and disqualifies himself or herself from speaking or voting or otherwise participating on such application."

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>>>> The last line above sets forth a limited exception for architects, allowing them to submit plans on behalf of clients, under the terms of the code language--so, this language is a limited exception from the prohibition on board members from appearing before their board.

>>>> Here's my question--does this limited exception also extend to the proscription on board members' receiving compensation from the (prohibited) appearance, per the second sentence of the code section? Since architects would be permitted to appear on behalf of a client under these limited circumstances, my thinking is that the exception for lobbying by architects would subsume the compensation issue so long as the subject board member discloses the representation and abstains from any participation in the matter.

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>>>> Thank you,

>>>> Jean

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