



**OFFICE OF THE CITY ATTORNEY**  
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**REPORT NO. R05-0145**

APR 19 2005

April 18, 2005

The Honorable Education and  
Neighborhoods Committee  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, CA 90012

**REPORT RE:**

**THE ABILITY OF THE CITY TO RESTRICT LOBBYISTS FROM  
SERVING ON NEIGHBORHOOD COUNCIL BOARDS**

Honorable Members:

In consideration of a motion relative to possible amendments to the City's Lobbying Ordinance and Neighborhood Councils, your Committee inquired about the possibility of drafting an amendment to the City's Lobbying Ordinance to prohibit lobbyists from serving on Neighborhood Council boards. In response to your request, we address your questions as follows:

**QUESTION NO. 1**

May registered lobbyists be prohibited from serving on the boards of Neighborhood Councils for the purposes of clarifying the relationships between Neighborhood Councils and lobbyists?

**ANSWER**

No. Regardless of the purpose of the prohibition, without an amendment to the City's Charter, lobbyists who are stakeholders of a Neighborhood Council may not be prohibited from serving on a Neighborhood Council board by virtue of their status of being a lobbyist.

## DISCUSSION

The City Charter states that the purpose of the system of Neighborhood Councils is to “promote more citizen participation in government and make government more responsive to local needs. . .” Charter § 900.

Participation in a Neighborhood Council includes the ability to “serve as and vote for members of the governing body.”<sup>1</sup> As we have noted before, the Charter clearly envisioned a process that is inclusive. “*Neighborhood councils shall include representatives of the many diverse interests in communities*”; *[n]eighborhood council membership will be open to everyone who lives, works or owns property in the area [stakeholders].*” Charter §§ 900, 906. Article IX of the Charter does not carve out a special exception for lobbyists, or any other category of stakeholder.

We have addressed similar issues of whether certain categories of stakeholders [minors, undocumented aliens, elected City officials] may be barred from running for a Neighborhood Council board position. In only a few specialized and exceptional circumstances have we concluded that certain stakeholders could be barred from serving on a Neighborhood Council board.<sup>2</sup>

While concerns might be raised that a lobbyist might exert undue influence over a Neighborhood Council or act from divided loyalties should he/she be paid to advocate a certain position on a matter, those concerns can be eliminated or mitigated by the selective election process or by diligent compliance with the Political Reform Act as well as the common law conflict of interest rules should a lobbyist become elected to a Neighborhood Council board. Accordingly, in consideration of the purpose of the Citywide system of Neighborhood Councils, which contemplates inclusiveness and participation by all those who are stakeholders in their neighborhood, lobbyists may not be prohibited from serving on a Neighborhood Council board.

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<sup>1</sup> See, Inter-Departmental Correspondence from the CAO and CLA, dated February 25, 1999.

<sup>2</sup> In an advice letter to the General Manager of DONE dated January 26, 2004, we concluded that undocumented aliens who are stakeholders may *not* be barred from running for a board seat. However, in an advice letter to the General Manager of DONE dated March 11, 2002, we concluded that elected City officials *may* be excluded since having a dual role as an elected City official and a Neighborhood Council board member would present a “practical incompatibility of office” problem. Similarly, “because of the degree of maturity and responsibility [needed] to exercise . . . the responsibilities that these [board] positions carry” we concluded that Neighborhood Councils could choose to restrict their board members to those 18 years or older.

## QUESTION NO. 2

May registered lobbyists who serve on the boards of Neighborhood Councils be disqualified from participating on matters for which they have been paid to advocate a position on those matters?

## ANSWER

Yes. The Political Reform Act and the principles of common law conflicts of interest would require the disqualification of the lobbyist/board member under those circumstances.

## DISCUSSION

The financial conflict of interest rules under the Political Reform Act will apply to the lobbyist/board member. The Political Reform Act prohibits a public official from "in any way attempting to use his or her official position to influence a governmental decision" when the official has a financial interest. Government Code § 87100. Payment from any person to a lobbyist to advocate a position on behalf of a person on a matter coming before a Neighborhood Council would be treated as a source of income. If the amount of income received within 12 months prior to the decision in question totals \$500 or more, the lobbyist would be disqualified from participation in the decision if the decision would have a material financial effect on the source of income. 2 Cal. Code of Regulations § 18703.3. The Fair Political Practices Commission has adopted regulations interpreting the term "material financial effect." Under those regulations, a Neighborhood Council board member would be disqualified, *inter alia*, if he or she receives or is promised income to "achieve a goal or purpose which would be achieved, defeated, aided or hindered by the decision." 2 Cal. Code of Regulations § 18705.3(c). Additionally, disqualification would generally be required if the decision will affect the personal finances of the Neighborhood Council board member by at least \$250 in any 12 month period. 2 Cal. Code of Regulations § 18705.5.<sup>3</sup>

Finally, principles of law developed by the courts (the "common-law") will also apply to the lobbyist/board member. Those rules generally "prohibit public officials from placing themselves in a position where their private, personal interests may conflict with their official duties." *Noble v. City of Palo Alto* (1928) 89 Cal. App. 47, 51.

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<sup>3</sup> Government Code § 1090 which prohibits public officials from participating in the making of a contract in which they have a financial interest will also apply to the lobbyist/board member. Depending on the factual circumstances, application of this statute could require disqualification of the lobbyist or the entire board from acting on a matter coming before the Neighborhood Council.

Our office is always available to provide advice and guidance to Neighborhood Council board members regarding these conflict of interest laws.

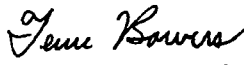
**CONCLUSION**

A stakeholder in a Neighborhood Council who also happens to be a lobbyist has the right to be selected or elected to a Neighborhood Council board seat. Without an amendment to the City Charter, lobbyists who are stakeholders in a Neighborhood Council may not be barred from serving on a Neighborhood Council board. However, should a lobbyist become elected to a Neighborhood Council board, special care must be taken by the lobbyist/board member to avoid conflict of interest difficulties when acting on matters coming before the Neighborhood Council.

If you have any questions about this matter, please contact Assistant City Attorney Gwendolyn Poindexter at (213) 978-8184. Either she or another member of this office will be available when you consider this matter to answer any questions you may have.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By   
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