



## Committee of Seventy

Clean and effective government. Fair elections. Informed citizens.

### Testimony on Regulation No. 9 – City Lobbying Ordinance

Philadelphia Board of Ethics

June 15, 2011

---

I am Ellen Mattleman Kaplan, Vice President and Policy Director of the non-partisan Committee of Seventy.

For many years, the Committee of Seventy has spoken out on the need for Philadelphia to lose its distinction as the largest city in the country without any law regulating lobbyists or their expenditures. In 2007, Seventy issued an Ethics Agenda to all candidates for mayor and City Council asking them to pledge to enact a lobbyist registration and disclosure ordinance. We testified in support of a city lobbying ordinance before the Task Force on Ethics and Campaign Finance Reform – which was created in response to Seventy’s 2007 Ethics Agenda – in 2009. We also urged City Council to pass a proposed lobbying ordinance at its public hearing in 2010.

Seventy sought these reforms not because Seventy believes that lobbying is bad. Instead, we believe that the public has a right to know who is paying to have issues presented to our public officials.

While Seventy has some concerns about the ordinance and Regulation No. 9, we are here to help the Ethics Board ensure that they are fair, reasonable, enforceable and clear – and result in bringing greater transparency and accountability to the way in which business is done in Philadelphia.

It is exceedingly important for the lobbying ordinance to start off on the right foot.



This Board and its staff have worked very hard to get ready for the July 1 implementation date. But this date is only a little more than two weeks away.

Seventy is genuinely troubled by ambiguities in the ordinance and regulation – many of which you will hear today – that we believe will require more than 16 days to resolve.

In addition, Seventy is concerned that the Ethics Board lacks the financial resources to effectively carry out its increased responsibilities for administering and enforcing the lobbying ordinance.

In its May 2010 testimony before City Council on the then-proposed lobbying ordinance, Seventy recommended directing lobbyists' registration fees to the Ethics Board. Pennsylvania's lobbying law specifically establishes a restricted Lobbying Disclosure Fund, into which lobbyists' filing fees are deposited, in order to provide continuing appropriations for carrying out the law's provisions. Council opted not to follow this example – leaving the Board in the untenable position of having no extra appropriations to carry out the city's new ordinance.

Mayor Nutter has proposed maintaining the Board's budget at \$810,000 for the upcoming fiscal year. This already is far below the Board's \$1 million budget during its first two fiscal years of operations. The Board has requested an additional \$130,000 to hire the personnel it needs to implement the lobbying ordinance. To our knowledge, this funding has not been approved. Given the unexpected problems surrounding the School District's deficit, it is difficult to imagine that Mayor Nutter and Council will dip into the general fund to locate more dollars for the Ethics Board at this moment.

The highly technical and legal uncertainties surrounding Regulation No. 9 that are raised by the Philadelphia Bar Association and others, coupled with the absence of funding, leads the Committee of Seventy to conclude, reluctantly, that this Board should delay enforcement of – but not registration pursuant to – this ordinance until January 1, 2012.



Seventy cannot guarantee that the extra time will result in additional dollars, although Seventy will continue to advocate for this and urge others to do so as well. However, a six month grace period would give the Board time to refine this regulation and assure that everyone to whom the ordinance is intended to apply is adequately informed about, and receives training on, its provisions as interpreted by the Board's regulations and advisory opinions.

As impatient as the Committee of Seventy has been for this ordinance to take effect, we would not want to risk the premature enforcement of a regulatory system that is likely to be misunderstood and, even inadvertently, violated.

\*

In taking all of today's comments into account, we urge the Board to make its regulation simple and direct and to use actual examples to the greatest extent possible. This regulation is new not only to Philadelphia, but also to many individuals and organizations that are not covered by or conversant with Pennsylvania's lobbying law. It would be exceedingly helpful to prospective registrants if Regulation No. 9 included a comprehensive list of real-life examples that illustrate precisely what behavior is reportable, and what conduct falls outside the lobbying ordinance.

This approach worked very well with Regulation No. 8 on political activity. It also would potentially relieve the Board of what we fear will be an onslaught of requests for legal advice after July 1.

Our testimony today will highlight questions that we believe are likely to be asked by individuals and groups that, like the Committee of Seventy, are not professional lobbying outfits. Although some of these questions pertain to the responsibilities of lawyers to comply with the lobbying ordinance, we will defer to the Philadelphia Bar Association on lawyer-related issues.

\*



## REGULATION NO. 9 SHOULD BRING GREATER CLARITY TO CONDUCT THAT IS REPORTABLE UNDER THE LOBBYING ORDINANCE

Lobbying laws are typically intended to shed light on the conduct of outsiders who deal with government officials and employees for specific clients or constituencies who hope to benefit directly and demonstrably from the lobbying effort.

Yet not every interaction with government needs to be, or should be, illuminated. In Seventy's view, these include many routine, everyday encounters between individuals and government employees.

On any given day, thousands of individuals and organizations interact regularly with government employees on all levels – from elected officials and their staffs to employees of city agencies, departments, and commissions. Many, if not most, of these interactions are intended to seek factual information or to resolve specific problems. Other exchanges go further, perhaps within the same conversation or in follow-up communications.

In reviewing Regulation No. 9, Seventy is unsure about where the line is drawn between unreportable conduct and reportable lobbying. Here are some general fact patterns to illustrate our concerns:

- Your family accountant, whom you pay to handle all your financial issues, calls the Water Revenue Bureau to seek review of a notice to shut off your water and sewer service for unpaid bills. You receive a written notice that your request is denied. The accountant seeks an appeal by the Tax Review Board. And, at the same time, your accountant engages in settlement discussions with the Board's staff. After those settlement discussions are unsuccessful, the matter goes to a hearing before the Tax Review Board, where your accountant argues on your behalf. *At what point in this scenario does unreportable conduct end and reportable lobbying begin?*
- An architect serves on a joint committee of the American Institute of Architects' Philadelphia chapter and the city's Department of Licenses and Inspections that works to improve the process and submissions for approval of building permits. At a



committee meeting, the architect asks an L&I representative for advice on how to fast track the permit process for a client. When it turns out that fast tracking is difficult, the architect asks the city employee for actual assistance on behalf of his/her client. *At what point in this scenario does unreportable conduct end and reportable lobbying begin?*

- A treasurer of a campaign political committee calls the Board of Ethics after receiving notice that civil penalties are being imposed for failure to file a timely electronic campaign finance report. The treasurer calls the Ethics Board to explain that a hardship caused the delay and to ask for additional time to comply without incurring additional \$250 daily penalties. *At what point in this scenario does unreportable conduct end and reportable lobbying begin?*
- A non-profit group invites the city's Finance Director to a meeting to explain the administration's opposition to a tax proposal introduced in City Council. After a 15-minute informational statement, there is a give-and-take discussion during which members of the group recommend specific ideas for breaking the impasse with Council. The group follows up the meeting with a formal letter to the mayor, Finance Director and City Council members. *At what point in this scenario does unreportable conduct end and reportable lobbying begin?*
- A public relations consultant provides strategic advice to clients on how to mount an effective grass roots campaign on a particular administrative or legislative issue. The consultant counsels the clients, places ads in newspapers, speaks with representatives of the media and editorial boards to get his clients' side of the story heard, and arranges meetings with elected officials. *At what point in this scenario does unreportable conduct end and reportable lobbying begin?*
- A paid social worker contacts the Department of Human Services to complain about the placement of a foster child. The social worker does not get the answer he seeks and calls the head of the Community Oversight Board, which was created by Mayor Nutter to monitor reforms at DHS, to advocate for removal of the child. *At what point in this scenario does unreportable conduct end and reportable lobbying begin?*

In offering these examples, we found ourselves continually asking: what does the public need to know? While this may not be the only yardstick for measuring what conduct should be reportable – and what should not – we believe this question lies at the heart of what requirements should be included in the regulation of lobbying in Philadelphia.



We do not believe that the purpose of the lobbying ordinance is to capture every interaction with government officials that could potentially result in legislative or administrative action. The upshot of this would result in a law that is so overbroad that compliance would be difficult and enforcement nearly impossible. It also would have the unintended consequence of underscoring why it is so tough to do business in Philadelphia.

We urge the Ethics Board to bring clarity to the question of when unreportable conduct ends and reportable lobbying begins.

\*

### **REGULATION NO. 9 SHOULD RESOLVE THE OBLIGATIONS OF VOLUNTEER BOARD MEMBERS**

Many organizations to which the lobbying ordinance is likely to apply have volunteer members sitting on their Boards of Directors. Although these individuals do not receive economic consideration for participating in the non-profit's activities, including advocating on behalf of the organization, they might engage in certain activities from time to time that could – as Seventy reads Regulation No. 9 – arguably require registration and disclosure.

Let's say, for example, that an unpaid Board member of a non-profit organization secures the assistance of her accounting firm to provide the organization with a pro bono economic analysis of a proposal introduced in City Council. The individual performing the analysis could charge a paying client \$350 an hour for the project, which takes 20 hours to complete. Although the accounting firm is not charging the non-profit for its services, the firm is required to assign a dollar value to the services for the organization's IRS 990 form.

While, as we have said, we will leave law-related issues to the Philadelphia Bar Association, similar questions arise when law firms agree to take on a pro bono case or to write an amicus brief on behalf of a non-profit Board on which one of its attorneys sit.



Individuals presumably join Boards because they have a personal interest in the organization's work. Other individuals serve on Boards because their professional work coincides with the interests of the organization (for example, trade associations). In some instances, their participation on the Board may even be part of their job description. Although these individuals are not salaried employees of the trade associations, they may participate as part of a delegation of association members in visiting legislators or coordinating letter-writing campaigns to promote policies that are advantageous to the trade association's members, as well as to the individual's own company. The company may provide in-kind services to the association as part of this effort and incur personnel and office expenses, which are included in Regulation No. 9's definition of "direct communication."

Under these various scenarios, what are the obligations under the lobbying ordinance, if any, of these volunteer Board members to the non-profit organization or trade association, or to their own firm or company?

In Seventy's reading of Regulation No. 9, the obligation of unpaid volunteer Board members is another area that requires clarification.

\*

## **REGULATION NO. 9 SHOULD ADDRESS CONDUCT BY CITY EMPLOYEES**

Lobbying laws usually are not intended to regulate the conduct of individuals who work *inside* government.

Regulation No. 9 specifically exempts city officials acting in their official capacity. By implication, this means that city officials who are not acting in their official capacity would be covered by the lobbying law.

We strongly suspect, however, that city officials will insist that they are always "on the job" and, therefore, do not have to register as lobbyists or report their expenses (other than as



otherwise required by the city's ethics rules). However, we can easily see how this is not always the case.

For example, all city employees are permitted to hold second jobs. In Seventy's view, Regulation No. 9 should recognize that city employees may indeed be subject to the registration and disclosure requirements of the lobbying law as part of their non-city employment.

\*

Let me be clear: The Committee of Seventy strongly supports the city's new lobbying ordinance. We believe Philadelphians deserve to know who is influencing government officials who make important legislative and administrative decisions and how much they are spending to exert that influence.

What we do not want is for the lobbying law and regulation to become a trap for the unwary.

If, after hearing testimony on Regulation No. 9, the Board of Ethics determines that the lobbying law also requires clarification, we urge you to recommend amendments to City Council. The Board and Council have worked successfully over the last year on several ethics and campaign finance laws. We are confident that this model bodes well for regulating lobbying as well.

A fair, reasonable, enforceable and clear lobbying law and regulation will go a long way towards building public confidence in government.

The Committee of Seventy stands ready to assist in any way we can.