

Louisiana Board of Ethics

**LaSalle Building - First Floor
617 North 3rd Street
Baton Rouge, Louisiana**

November 19, 2009

Note: Meetings begin on November 19, 2009 and continue to November 20, 2009.

Executive Session

Discussion in Executive Session of the pending litigation in connection with the public hearing to explore charges issued against the former Legislative Fiscal Officer. (*Docket No. 05-192*)

General Supplemental Agenda

LaBelle Room

November 20, 2009

Begins at 9:00 a.m.

G40. Docket No. 08-1104

Public hearing to explore charges issued to Pat Sheila Brewer-Felix in the October 4, 2008 election who failed to file the 30-P report by September 15, 2008 and/or failed to file the 10-P report by September 24, 2008.

G41. Docket No. 07-464

Consideration of a consent opinion regarding the contractual relationship between the wife of the Mayor of the Town of St. Joseph and a program run by the Town of St. Joseph.

G42. Docket No. 07-692

Consideration of EAB opinion regarding Walter Boasso, a candidate for Governor in the October 20, 2007 election, failing to disclose itemized expenditures.

G43. Docket No. 07-711

Consideration of a proposed consent opinion concerning the Director of the Office of Community Development, City of Opelousas receiving a loan.

G44. Docket No. 09-954

Consideration of a request for an advisory opinion regarding whether a member of the St. Charles Council, employed by a developer, may introduce and vote on ordinances which affect all individuals and businesses wishing to develop property.

G45. Docket No. 09-1012

Consideration of a request for an advisory opinion regarding employees of the Baton Rouge Area Chamber employed as researchers.

G46. Docket No. 09-1047

Consideration of a request for an advisory opinion regarding whether employees of the Office of Community Development- Disaster Recovery Unit Hazard Mitigation Program(OCD) may terminate employment with OCD and accept employment with a private contractor who has entered into an agreement with OCD.

G47. Consideration of proposed job descriptions and job specifications for Deputy General Counsel and Deputy Ethics Administrator.

General Item

Ethics Board Docket No. BD 2008-1104 11/20/2009

RE:

Public hearing to explore charges issued to Pat Sheila Brewer-Felix in the October 4, 2008 election who failed to file the 30-P report by September 15, 2008 and/or failed to file the 10-P report by September 24, 2008.

Relevant Statutory Provisions, Advisory Opinions:

18:1505.4, 42:1157

Comments:

Proceed with the hearing against Pat Sheila Brewer Felix. (AMA)

Recommendations:

Issue Order.



STATE OF LOUISIANA
 DEPARTMENT OF STATE CIVIL SERVICE
LOUISIANA BOARD OF ETHICS
 P. O. BOX 4368
 BATON ROUGE, LA 70821
 (225) 763-8777
 FAX: (225) 763-8780
 1-800-842-6630
 www.ethics.state.la.us

December 15, 2008

Pat Sheila Brewer-Felix
 1720 Vintage Drive Apt 8
 New Orleans, LA 70122

Re: Ethics Board Docket No. 2008-1104

Dear Ms. Brewer-Felix:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CERTIFIED MAIL

7005 1390 0003
 NO. 2245 8064

RETURN RECEIPT REQUESTED

The Louisiana Board of Ethics, at its December 11, 2008 meeting, considered a staff report regarding your failure to file a required campaign finance disclosure report in connection with the October 4, 2008 election.

The Board, by a majority vote of its membership, ordered that a public hearing be conducted for the purpose of exploring the following:

CHARGE I

That Pat Sheila Brewer-Felix, a candidate for Orleans Parish School Board, District 3 in the October 4, 2008 election, may have violated Section 1505.1B of the Campaign Finance Disclosure Act ("CFDA") (La. R.S. 18:1505.1B) by failing to file the campaign finance disclosure report required by the provisions of Section 1495.4B(3) of the CFDA (La. R.S. 18:1495.4B(3)) to be filed by September 15, 2008 and covering the reporting period beginning with the date of the first contribution/expenditures through August 25, 2008, and is therefore subject to civil penalties of \$60 a day until the report is filed, not to exceed \$2,000.

CHARGE II

That Pat Sheila Brewer-Felix, a candidate for Orleans Parish School Board, District 3 in the October 4, 2008 election, may have violated Section 1505.1B of the Campaign Finance Disclosure Act ("CFDA") (La. R.S. 18:1505.1B) by failing to file the campaign finance disclosure report required by the provisions of Section 1495.4B(4) of the CFDA (La. R.S. 18:1495.4B(3)) to be filed by September 24, 2008 and covering the reporting period beginning with the date of August 26, 2008 through September 14, 2008, and is therefore subject to civil penalties of \$60 a day until the report is filed, not to exceed \$2,000.

BD 2008-1104 - Pat Sheila Brewer-Felix
Page 2 of 2

The hearing will be held in the LaBelle Room, LaSalle Building, 617 N. Third Street, 1st Floor, Baton Rouge, Louisiana on **March 25, 2009** at 9:00 a.m. This public hearing will be conducted in accordance with the procedural requirements set forth in R.S. 18:1511.4C, provisions of the Administrative Procedure Act and in conformity with the Rules adopted by the Board, a copy of which is enclosed. At the conclusion of this public hearing, the Board may impose **additional** civil sanctions of up to \$10,000 as per R.S. 18:1505.4A(4)(b).

In order to fully cooperate with you in this matter, the designated trial attorney will, upon request, provide you with copies of all documents that may be introduced into evidence and the names and addresses of all witnesses that the designated trial attorney intends to call. If you desire the attendance of any witnesses, the Board, through its Executive Secretary, Deborah Grier, can issue subpoenas for those witnesses. In order to have subpoenas issued you must, at least ten (10) days in advance of the hearing, supply the names and addresses of the persons to be subpoenaed to the attention of the Executive Secretary.

If you need any additional information, please contact Alesia M. Ardoin, the designated trial attorney, or Deborah Grier, the Executive Secretary, at (225) 763-8777 or (800) 842-6630.

Yours truly,

LOUISIANA BOARD OF ETHICS


Frank Simoneaux
For the Board

EB:FS:ama

Enclosure

General Item

**Ethics Board Docket No. BD 2007-692
11/20/2009**

RE:

Consideration of EAB opinion regarding Walter Boasso, a candidate for Governor in the October 20, 2007 election, failing to disclose itemized expenditures.

Relevant Statutory Provisions, Advisory Opinions:

1495.5C

Comments:

(AMA)

Recommendations:



State of Louisiana
Division of Administrative Law

P.O. Box 44033, Baton Rouge, LA 70804-4033
Main Phone (225) 342-1800 www.adminlaw.state.la.us
Administrative Hearings Clerk (225) 342-1811 * Fax (225) 342-1812
Located at 654 Main Street, Baton Rouge, LA 70802

BOBBY JINDAL
Governor

November 5, 2009

ANN WISE
Director

Mr. Cyrus J. Greco
Attorney at Law
P. O. Box 2471
Baton Rouge, LA 70821

RE: NOTICE OF MAILING OF DECISION
IN THE MATTER OF: **Walter Boasso and Walter Boasso Campaign
Committee**
Docket No. **2009-0726-ETHICS-B**
Enforcement Tracking # **2007-692**

Dear Mr. Greco:

Attached is the decision of the Ethics Adjudicatory Board in the above captioned matter. This decision is being mailed on November 5, 2009.

If you have any questions, you may call Ms. Monika Wright, DAL attorney, at (225)219-9981.

Sincerely,

Susan Cowart
Administrative Hearings Clerk

SC/cle

cc: Ms. Alesia Ardoin, Louisiana Board of Ethics
Mr. Harry J. Philips, Jr., Attorney at Law
Mr. Clarence F. Favret, III, Attorney at Law

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**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW**

BOARD OF ETHICS

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DOCKET NO. 2009-0726-ETHICS-B

IN THE MATTER OF

**WALTER BOASSO AND WALTER
BOASSO CAMPAIGN COMMITTEE**

*

AGENCY TRACKING NO. 2007-692

DECISION AND ORDER

The Louisiana Board of Ethics (Board) issued charges against Walter Boasso and the Walter Boasso Campaign Committee (Committee) alleging failure to timely file campaign finance disclosure reports which itemized each media buy purchase. During the hearing, the Board withdrew the charge against Walter Boasso individually, and presented no evidence against him. After the hearing, the Committee filed an *Exception of Prescription and Motion to Dismiss*. Based on the evidence presented, the Ethics Adjudicatory Board denies the Committee's *Exception and Motion*, rules that the Committee violated La. R.S. 18:1495.5(C), and in accordance with La. R.S. 18:1505.4(A) and (B), assesses a monetary penalty of \$230.00.

APPEARANCES

On August 28, 2009, a public hearing was conducted in Baton Rouge, Louisiana, before the Ethics Adjudicatory Board, Panel B, consisting of Administrative Law Judges Charles Perrault, William H. Cooper, III, and Lynn L. Lightfoot.

Appearing at the hearing were:

Walter Boasso and the Walter Boasso Campaign Committee through its counsel, Harry J. Philips, Jr. and Cyrus J. Greco; and Alesia M. Ardoin, counsel for the Board.

Trey Ourso, Clarence Favret and Walter Boasso testified at the hearing.

STATEMENT OF THE CASE

This adjudication is conducted in accordance with the Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*, the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the Division of Administrative Law Act, La. R.S. 49:991, *et seq.*

The Board brought charges against the Committee for a violation of the Campaign Finance Disclosure Act, La. R.S. 18:1495.5(C). The Board alleged the Committee failed to accurately file required campaign finance disclosure forms and failed to itemize expenditures made on the campaign's behalf by its media consultant.

The Board argued the Committee was fully advised of Louisiana's filing requirements under La. R.S. 18:1495.5(C) and La. R.S. 18:1505.1(C), as evidenced by the receipt of finance report documents, but failed to accurately file its 90-P campaign finance report, by not itemizing \$1,191,400.00 in expenditures made on the campaign's behalf by the Shorr Johnson Magnus (SJM) consulting firm. The Board recommended that a fine of \$2,500.00 be assessed against the Committee.

The Committee's counsel argued the charges should be dismissed and no penalty assessed because:

1. The Board commenced this action more than one year after the filing of the Committee's 90-P report;
2. The Board should have charged the Committee under La. R.S. 18:1491.7, not La. R.S. 18:1495.5(C);
3. The Committee did not violate the requirements of La. R.S. 18:1495.5(C);
4. Instruction 13 of the "Candidate Report Forms" conflicts with La. R.S. 18:1495.5(C);
5. The Board's enforcement of the requirement for itemization of expenditures for media

buys is inconsistent.

Post Trial Memoranda were filed by both parties. The Committee filed an *Exception of Prescription* and *Motion to Dismiss*. The Board filed an *Opposition*. The Committee filed a *Response*. The record was closed October 23, 2009.

FINDINGS OF FACT

The parties stipulated to the following facts:

1. On March 16, 2007, Walter Boasso qualified as a candidate for Governor in the October 20, 2007 election.
2. At the time of qualifying, Walter Boasso signed a ledger acknowledging the receipt of a packet of information on the Campaign Finance Disclosure Act, but Mr. Boasso has no independent recollection of having received this information.
3. As a candidate for Governor, Walter Boasso was a "major" level candidate under the Campaign Finance Disclosure Act.
4. Walter Boasso established and designated the Walter Boasso Campaign Committee to maintain the campaign's records and to file his campaign finance reports.
5. On July 23, 2007, the Walter Boasso Campaign Committee timely filed its initial 90-P finance disclosure report in which it disclosed five lump sum media buy expenditures totaling \$1,191,400 to SJM, its media consulting firm.
6. The campaign filed an amended campaign finance disclosure report forty six days late, on September 7, 2007, which itemized the media buys made by SJM, listing each individual station, date and amount paid.

Additional facts were established by the record and through the testimony of the Committee's witnesses:

7. At its June 26, 2008, meeting, the Board concluded an investigation of the representations contained in the finance report filed by the Walter Boasso Campaign Committee during the 2007 gubernatorial race, and ordered that a public hearing be conducted.
8. By letter dated July 28, 2008, the Board notified Walter Boasso and the Committee of the charges.
9. Walter Boasso was not directly involved in the preparation or filing of finance campaign reports.
10. Clarence Favret was treasurer for the Walter Boasso for Governor Campaign Committee, L.L.C. Favret had no knowledge that itemization of each media buy was necessary. He was advised by the media that a complaint had been made to the Board that the Committee had failed to itemize media buys. Favret filed an amended report the next day, September 7, 2007.
11. Trey Ourso acted as a paid political consultant for the Committee during the campaign. In his experience as a political consultant, he had never seen a candidate itemize media buys in a campaign for major office.
12. Itemized media buys are public records and were available for public inspection at the television stations which broadcast the Boasso political ads at issue in this case.
13. Boasso did not gain an advantage by failing to itemize his media buys because other candidates typically send workers to television stations daily to inspect media buy records.
14. The Committee introduced ten redacted campaign finance reports filed by other campaigns. Two reports itemized all media buys with the name of the television station and amount of each buy. The other eight reports listed lump sum payments to the campaign consultants.

STANDARD OF PROOF

The Ethics Adjudicatory Panel assigned to conduct the public hearing of this matter is charged with determining the validity of the charges against the Committee, whether a violation occurred, and what penalties or sanctions, if any, will be imposed.¹ The standard of proof in a hearing under the Louisiana Code of Governmental Ethics is that the evidence must be "clear and convincing."² Clear and convincing evidence is an intermediate standard of proof, which requires more than a preponderance of the evidence, but less than proof beyond a reasonable doubt; the existence of the disputed fact must be much more probable than its nonexistence. *Louisiana State Bar Association v. Edwins*, 329 So.2d 437 (La.1976).

CONCLUSIONS OF LAW

1.

The Board timely commenced the action within one year.

The Board is established as the supervisory committee on Campaign Finance Disclosure matters to administer and enforce the campaign finance reporting laws in this state.³ It is authorized to accept and investigate complaints, and where applicable, order that hearings be held.⁴

La. R.S. 18:1511.11(B), which governs the limitation of actions in Campaign Finance Report matters, provides:

Actions for violation of this Chapter must be commenced before three years have elapsed from the date of the violation or, if the violation is contained in a report, before one year has elapsed from the filing of the relevant report.

¹ La. R.S. 42:1141(C)(4)(d)(ii).

² La. R.S. 42:1141(C)(4)(e).

³ La. R.S. 18:1511.1.

⁴ La. R.S. 18:1511.4(C)(1).

The Board alleges that the Committee failed to accurately file required campaign finance disclosure forms because it did not itemize \$1,191,400.00 in media buy expenditures made on the campaign's behalf by SJM in its initial report. Since the alleged violation is contained in the campaign finance report, the Board had one year from its filing to commence its action against the Committee.

The Committee's 90-P report was filed July 23, 2007. Less than one year later, on June 26, 2008, the Board concluded an investigation of the finance report filed by the Committee, and ordered that a public hearing be conducted. By letter dated July 28, 2008, the Board notified the Committee of the charges.

The Committee argued that the case was prescribed because the Board failed to commence the action within one year of the July 23, 2007, finance report. The Committee contended that the action did not commence until the July 28, 2008 letter, and cited several cases to support its position. We conclude that those cases are not applicable to this matter, as they involved civil actions where a lawsuit had to be filed with a district court. We hold that the Board commenced the action against the Committee within one year, on June 26, 2008, when the Board ordered that a hearing be conducted.

We deny the *Exception of Prescription* and *Motion to Dismiss* filed by the Committee.

2.

The Board properly charged the Committee under La. R.S. 18:1495.5(C).

The Committee's counsel argued that the charges should be dismissed because the Committee should have been charged under La. R.S. 18:1491.7, not La. R.S. 18:1495.5(C).

La. R.S. 18:1491.1 *et seq.* of the Election Campaign Finance Law regulates political committees. La. R.S. 18:1491.3(A) allows a candidate to designate one political committee to be

his principal campaign committee. It also provides: "A principal campaign committee of a candidate shall report, in lieu of the candidate, all information required to be reported by the candidate pursuant to La. R.S. 18:1495.4 and La. R.S. 18:1495.5."

On March 16, 2007, Walter Boasso designated the Committee as his principal campaign committee. The Committee was required to report "[e]xpenditures made by a public relations firm, an advertising agency or agent for a candidate."⁵

We conclude that the Board charged the Committee under the proper statute.

3.

The Committee's July 23, 2007, report violated La. R.S. 18:1495.5(C).

La. R.S. 18:1495.5(C) states: "Expenditures made by a public relations firm...shall be considered expenditures of the candidate and must be reported as required by this Section." La. R.S. 18:1495.5(B)(12) requires that the candidate report "[t]he full name and address of each person to whom an expenditure has been made by the candidate during the reporting period. The amount, purpose, and date of each such expenditure shall be reported...When multiple expenditures have been made to the same person, during the reporting period, the aggregate amount of such expenditures...shall be reported..."

La. R.S. 18:1495.5(C) mandated that the Committee not only report the payments made to its consultant, but also the expenditures made on its behalf by the consultant. The report filed by the Committee on July 23, 2007, failed to itemize each media buy made by SJM.

We conclude the Committee violated La. R.S. 18:1495.5(C), by failing to properly itemize each media buy made by its consultant.

⁵ La. R.S. 18:1495.5(C).

4.

Instruction 13 does not conflict with La. R.S. 18:1495.5(C).

The Committee argues that Instruction 13 of the "Candidate Report Forms" conflicts with the provisions of La. R.S. 18:1495.5(C), because it requires the campaign to report "...the ultimate recipients of any such expenditure..." on Schedule E-1 of its report.

As above, La. R.S. 18:1495.5(C) required the committee to report expenditures made by its media consultant. Although the wording of Instruction 13 differs from that of the statute, we conclude that Instruction 13 does not conflict with the statute.

5.

The Board's inconsistent enforcement is not grounds to dismiss this action.

The Committee argued that the Board's enforcement of La. R.S. 18:1495.5(C) was inconsistent based on ten redacted campaign finance reports from other campaigns it introduced into evidence. Two of the reports itemized all media buys with the name of every television station and the amount of each buy. The other eight reports listed lump sum payments to the campaign consultants. The Committee's initial report filed July 23, 2007, listed five lump sum media buys paid to SJM. The Committee's amended report filed on September 7, 2007, itemized each media buy made by SJM listing individual station, date and amount paid. Trey Ourso, the Committee's political consultant, testified that in his experience, he has never seen a candidate itemize media buys in a campaign for major office because that information is already public record.

The Board cited a number of consent judgments entered into by the Board and political candidates who failed to itemize media buy expenditures made by public relations firms to show that it has brought charges against other candidates who similarly failed to file itemized reports. While we acknowledge that the Board has brought charges against other candidates for similar

report filing violations, we conclude that its enforcement has been inconsistent. That does not, however, absolve the Committee from its violation of the statute.

6.

The Penalty

La. R.S. 18:1505.4(A)(1) provides the penalty for violation of La. R.S. 18: 1505.1(C). It states that any chairman of a political committee "...required to file any reports under this Chapter, who knowingly fails to file or who knowingly fails to timely file any such reports as are required by this Chapter may be assessed a civil penalty as provided in La. R.S. 42:1157 for each day until such report is filed." The maximum penalty is \$2,500.00. La. R.S. 18:1505.4(B) defines knowingly and willfully as "...conduct which could have been avoided through the exercise of due diligence."

The Board argued that the Committee could have discovered the reporting requirements with due diligence by reading the statute and the Candidate Instructions. We agree, but find mitigating circumstances. The Board's enforcement of the reporting requirements has been inconsistent. The Committee did not gain an advantage in failing to disclose the media buys by SJM. Trey Ourso, the Committee's political consultant testified that itemized media buys are public records. Media buys are available for public inspection at the television stations. As soon as the Committee learned of the complaint, it corrected the failure by filing a supplemental report the next day.

The Committee provided the itemization of its media buys forty-six days late. Based on the evidence presented, we assess a penalty of \$5.00 per day for forty six days, totaling \$230.00.

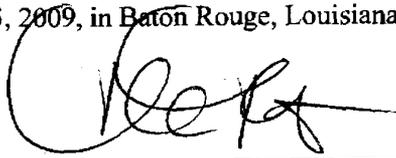
ORDER

For the foregoing reasons:

IT IS ORDERED that the *Exception of Prescription* and *Motion to Dismiss* filed by the Walter Boasso Campaign Committee are denied.

IT IS ORDERED that a penalty of \$230.00 is assessed against the Walter Boasso Campaign Committee for the violation of La. R.S. 18:1495.5(C),

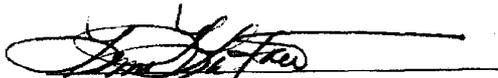
Rendered and signed November 5, 2009, in Baton Rouge, Louisiana.



Charles P. Perrault, Jr.
Presiding Administrative Law Judge



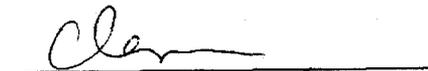
William H. Cooper, III
Administrative Law Judge



Lynn E. Lightfoot
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have served a copy of the attached document(s) on all parties to this proceeding or their counsel of record by regular mail, this 5th day of November, 2009.



Administrative Hearings Clerk

General Item

Ethics Board Docket No. BD 2009-954

11/20/2009

RE:

Consideration of a request for an advisory opinion regarding whether a member of the St. Charles Council, employed by a developer, may introduce and vote on ordinances which affect all individuals and businesses wishing to develop property.

Relevant Statutory Provisions, Advisory Opinions:

1102(15), 1102(21), 1112A, 1112B(5)

Comments:

Facts: Mr. Hogan is an elected member of the St. Charles Parish Council who is employed by RJM Enterprises--a developer.

Issue: May Mr. Hogan, who is employed by RJM Enterprises, introduce and vote on ordinances which equally affect all individuals and development firms that wish to develop property?

Rules: Section 1112A prohibits public servants from participating in a transaction in which he has a personal substantial economic interest of which he may be reasonably expected to know involving the governmental entity. Section 1112B(5) further prohibits a public servant from participating in a transaction involving the governmental entity in which employer has a substantial economic interest. According to Section 1102(15), "participate" means to take part in or to have or share responsibility for action of a governmental entity, though approval, disapproval, decision, recommendation, the rendering of advice, investigation, or the failure to act or perform a duty. A "substantial economic interest" means an economic interest which is of greater benefit to the public servant or other person than to a general class or group of persons according to Section 1102(21).

(DLG)

Recommendations:

Decline to render an advisory opinion absent specific information about the ordinances.

Date

Barbara Jacob-Tucker
St. Charles Parish Council Secretary
P.O. Box 302
Hahnville, LA 70057

RE: Board Docket No. 2009-954

Dear Ms. Jacob-Tucker

The Louisiana Board of Ethics, at its November 19, 2009 meeting, considered your request for an advisory opinion regarding whether Paul Hogan, a member of the St. Charles Parish Council, employed by RJM enterprises, a developer, may introduce and vote on ordinances which equally affect all individuals wishing to develop property and development firms.

The Board declined to render an opinion as to Mr. Hogan's participation in ordinances that concern the development of property absent specific information about the ordinances. Generally Section 1112 of the Code of Governmental Ethics prohibits a public servant from participating in a transaction in which he or his employer has a substantial economic interest involving the governmental entity. A "substantial economic interest" is an economic interest which is of a greater benefit to a public servant or other person than to the general class or group of persons.

The Board issues no opinion as to past conduct or laws other than Code of Governmental Ethics. If you have any questions, please contact me at (225) 219-5600 or (800) 842-6630.

Sincerely,

LOUISIANA BOARD OF ETHICS

Deidra L. Godfrey
For the Board

2009-954

for
copy



BARBARA JACOB-TUCKER
COUNCIL SECRETARY

ST. CHARLES PARISH

OFFICE OF THE COUNCIL SECRETARY

2009 SEP 28 PM 4:21
P.O. BOX 601 MONROE, LOUISIANA 70057

(985) 783-5000 • Fax: (985) 783-2067

www.st-charles.la.us • scpcouncil@st-charles.la.us

September 21, 2009

REVISED

Ms. Kathleen Allen
Louisiana Board of Ethics
2415 Quail Dr., 3rd Floor
Baton Rouge, LA 70808

FAXED
9/21/09

Dear Ms. Allen:

On behalf of one of the St. Charles Parish Councilmembers, I would like to submit the following for an opinion:

- May a Councilmember, which happens to be employed by a developer, introduce and vote on ordinances which affect all individuals wishing to develop a piece of property or development firms equally.

Please do not hesitate to contact me if you need additional information.

Sincerely,

BARBARA JACOB-TUCKER, LCMC, CAA, CMA, CPO
COUNCIL SECRETARY

BJT254/ag

General Item

Ethics Board Docket No. BD 2009-1012 11/20/2009

RE: Consideration of a request for an advisory opinion regarding employees of the Baton Rouge Area Chamber employed as researchers.

Relevant Statutory Provisions, Advisory Opinions: 24:51

Comments:

FACTS:

BRAC employs persons to perform research which may be used to support legislation. Some employees are engaged in research or policy analysis on material which may be used in legislation. The persons may not have direct contact with a legislator and may not make expenditures. BRAC contends that its research staff does not spend 20% of their time communicating with legislators or attending meetings with legislators.

ISSUE:

Are the employees, engaged to perform research, required to register as lobbyists under the Lobbyist Disclosure Act.

LAW:

24:51(4) defines "Lobbying" as the following:

- (a) Any direct act or communication with a legislator, the purpose of which is to aid in influencing the passage or defeat of any legislation.
- (b) Any preparation or research specifically intended, at the time it is performed, for use in or in support of any ongoing or planned direct act or communication with a legislator, the purpose of which is to aid in influencing the passage or defeat of any legislation.
- (c) Conducting or attending a meeting the purpose of which is to discuss direct communication with a legislator to aid in influencing the passage or defeat of any legislation.

"Lobbyist" is defined by 24:51(5)(a) as:

- (i) Any person who is employed or engaged for compensation to act in a representative capacity for the purpose of lobbying if lobbying constitutes one of the principal duties of such employment or engagement.
- (ii) Any person who acts in a representative capacity and makes an expenditure.
- (b) However, "lobbyist" shall not mean any person who does not make any direct act or have any direct communication with a legislator for the purpose of influencing the passage or defeat of any legislation.

"Principal duty" is defined in 24:51(8) as any duty which is expected to account for twenty percent or more of a person's time in fulfilling the terms of his engagement or any duty which is expected to account for twenty percent or more of a person's time in any given year in performing the responsibilities of his employment.

ANALYSIS:

If the employee performing research to be used to support or oppose legislation spends more than 20% of their employment performing the research, then they are a "lobbyist" as that term is defined in the Lobbyist Disclosure Act. If the employee does not make a direct act or communication with a legislator for the purpose of influencing legislation then they are not required to register as a lobbyist.

If the employee who performs research as his principal duties makes an expenditure, then the person is required to register as a lobbyist. (MD)

Recommendations: Adopt the proposed advisory opinion.

Date

Mr. Adam Knapp
Baton Rouge Area Chamber
564 Laurel Street
Baton Rouge, LA 70801

RE: Ethics Board Docket No. 2009-1012

Dear Mr. Knapp:

The Louisiana Board of Ethics, at its November 20, 2009 Board meeting, considered your request for an advisory opinion regarding whether employees of the Baton Rouge Area Chamber (BRAC) are required to register as lobbyists if they are engaged to perform research which may be used to support or oppose legislation. You indicated that some BRAC employees are engaged in research or policy analysis on material which may be used in legislation. You also indicated that these employees may not have direct contact with a legislator and may not make expenditures. You indicated that the BRAC employees engaged in research do not spend 20% or more of their time communicating with legislators or attending meetings with legislators.

The Board concluded and instructed me to inform you that LSA-RS 24:51(4) defines "Lobbying" as (a) any direct act or communication with a legislator, the purpose of which is to aid in influencing the passage or defeat of any legislation, (b) any preparation or research specifically intended, at the time it is performed, for use in or in support of any ongoing or planned direct act or communication with a legislator, the purpose of which is to aid in influencing the passage or defeat of any legislation, and (c) conducting or attending a meeting the purpose of which is to discuss direct communication with a legislator to aid in influencing the passage or defeat of any legislation.

"Lobbyist" is defined by LSA-R.S. 24:51(5)(a) as (i) any person who is employed or engaged for compensation to act in a representative capacity for the purpose of lobbying if lobbying constitutes one of the principal duties of such employment or engagement, or (ii) any person who acts in a representative capacity and makes an expenditure. Section (b) of LSA-R.S. 24:51 indicates that "lobbyist" shall not mean any person who does not make any direct act or have any direct communication with a legislator for the purpose of influencing the passage or defeat of any legislation.

"Principal duty" is defined in LSA-R.S. 24:51(8) as any duty which is expected to account for twenty percent or more of a person's time in fulfilling the terms of his engagement or any duty which is expected to account for twenty percent or more of a person's time in any given year in performing the responsibilities of his employment.

Mr. Adam Knapp

date

Page -2-

Specifically, you posed the following questions to the Board:

1. *Is an employee who is engaged in research or policy analysis required to register as a legislative lobbyist if he/she is doing research on material which may be used in legislation?*
2. *What bearing, if any, does it have on the requirements to register as a legislative lobbyist if the person has little and/or no direct contact with a legislator, or makes no expense? There are multiple permutations to consider*
 - *If research or policy staffer who analyzes speaks to a legislator, are they required to register as a legislative lobbyist?*
 - *if they speak to a legislator but do not do so for the purpose of influence the passage or defeat of legislation, are they required to register?*
 - *if they speak to a legislator in favor or opposition to legislation, but that action is less than 20% of their responsibility, are they required to register?*
 - *is a researcher or policy staffer required to register if they have a reportable expenditure with a legislator?*

The Board concluded, and instructed me to advise you, that, generally, a BRAC employee who performs research, at the time of which it is performed will be used in or in support of any ongoing or planned direct act or communication with a legislator, the purpose of which is to aid in influencing the passage or defeat of any legislation, then the employee is engaged in "lobbying" as term is defined by LSA-R.S. 24:51(4)(b). If the employee is engaged to perform such research for more than 20% of his time in fulfilling the terms of his engagement or duty which is expected to account for twenty percent or more of a person's time in any given year in performing the responsibilities of his employment, then by definition, "lobbying" is one of the principal duties of such an employee.

If the employee does not make any direct act or have any direct communication with a legislator for the purpose of influencing the passage or defeat of any legislation, then the employee engaged to provide research as a "principal duty" of his employment does not have to register as a lobbyist, in accordance with LSA-R.S. 24:51(5)(b).

If the employee engaged to provide research as a "principal duty" of his employment does make any direct act or have any direct communication with a legislator for the purpose of influencing the passage or defeat of any legislation, then such an employee would be required to register as a lobbyist.

If any employee of BRAC acts in a representative capacity on behalf of BRAC, and makes an "expenditure" on a legislator, the employee is required to register as a lobbyist regardless if lobbying constitutes one of the employees principal duties.

Mr. Adam Knapp

date

Page -2-

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Ethics. In addition, if you would like to receive an advisory opinion regarding whether a specific person employed by BRAC needs to register as a lobbyist, please forward the name of the individual to the Board as well as all the pertinent information concerning the persons employment. The Board issues no opinion as to past conduct or laws other than the Code of Governmental Ethics. If you have any questions, please contact me at (225) 219-5600 or (800) 842-6630.

Sincerely,

LOUISIANA BOARD OF ETHICS

Michael Dupree

For the Board



Baton Rouge Area Chamber.

564 Laurel Street
 Baton Rouge, LA 70801
 P 225.381.7125
 F 225.336.4306
 BRAC.ORG

September 29, 2009

Kathleen Allen
 Louisiana Board of Ethics
 617 North Third Street
 LaSalle Building, Suite 10-36
 Baton Rouge, LA 70802

Dear Ms. Allen:

The Baton Rouge Area Chamber (BRAC) is requesting an advisory opinion from the Louisiana Board of Ethics to clarify the requirements for registering employees engaged in research as lobbyists. Specifically, we would like to know:

- Is an employee who is engaged in research or policy analysis required to register as a legislative lobbyist if he/she is doing research on material which may be used in legislation?
- What bearing, if any, does it have on the requirements to register as a legislative lobbyist if the person has little and/or no direct contact with a legislator, or makes no expense? There are multiple permutations to consider:
 - If a research or policy staffer who analyzes issues speaks to a legislator, are they required to register as a legislative lobbyist?
 - If they speak to a legislator but do not do so for the purpose of influencing the passage or defeat of legislation, are they required to register?
 - If they speak to a legislator in favor or opposition to legislation, but that action is less than 20% of their responsibility, are they required to register?
 - Is a researcher or policy staffer required to register if they have a reportable expenditure with a legislator?

As as defined in R.S. 24:51, BRAC's interpretation is that "lobbying" does not constitute a principal duty of BRAC's product development, public policy, and research staff member's employment. That is to say, no one on staff spends 416 hours/year (20%), or more, of their time:

- (a) directly acting or communicating with legislators in an effort to influence legislation or,
- (b) conducting or attending meetings for the purpose of discussing communications with legislators intended to influence legislation.

2009-1012

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 INFORMATION

Several BRAC staff members spend more than 20 percent of their time engaged in research, the outcome of which is often intended to inform the discussion of state or local policymakers. However, much of BRAC's research is not specifically intended (when performed) to be used for communicating with legislators in an attempt to influence legislation. BRAC engages regularly in research on issues that are of interest to the Baton Rouge area as it relates to the competitiveness of our economy. Occasional commentaries issued by BRAC, which may support or oppose a particular legislative action, are uncommon and do not take up 20 percent or more of any staff person's time.

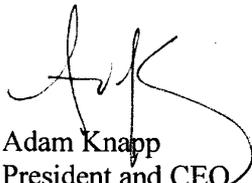
The section of the law which suggests such a person would not have to register as a lobbyist is provided below.

R.S. 24:51(b)

However, "lobbyist" shall not mean any person who does not make any direct act or have any direct communication with a legislator for the purpose of influencing the passage or defeat of any legislation.

Thank you for your consideration.

Sincerely,



Adam Knapp
President and CEO
Baton Rouge Area Chamber

General Item

Ethics Board Docket No. BD 2009-1047 11/20/2009

RE: Consideration of a request for an advisory opinion regarding whether employees of the Office of Community Development- Disaster Recovery Unit Hazard Mitigation Program(OCD) may terminate employment with OCD and accept employment with a private contractor who has entered into an agreement with OCD.

Relevant Statutory Provisions, Advisory Opinions: 1121B

Comments:

FACTS:

OCD- Disaster Recovery Unit's Hazard Mitigation Program (OCD) provides mitigation assistance to homeowners who were adversely impacted by Hurricanes Rita and Katrina. The program helps homeowners offset the expenses of protecting their homes from future storms and flooding. To more effectively handle the unprecedented numbers of program applicant, OCD, through the Request For Proposal (RFP) process would like to hire a contractor to assist with the project's work load. The contractor will work with the applicants to guide them through the grant process, verifying homeownership, reviewing invoices, cancelled checks, and other documentation to ensure that the application is completed in compliance with the hazard mitigation program's criteria. Following this determination, the contractor will submit eligible packets to OCD for review and transmittal.

During the fall of 2008, OCD hired temporary unclassified employees to serve as Mitigation Analysts. These analysts have been performing the same duties and functions that will be transferred to the contractor. The Mitigation analysts had no input on the development of the Hazard Mitigation program, the RFP for the contractor, or the selection process for the contractor. To the knowledge of OCD none of the Mitigation analysts have worked or have a past connection to the selected contractor. Moreover, although the mitigation analysts review the applicants information for program eligibility they do not have decision-making authority.

LAW:

Section 1121B prohibits a former public servant for the two year period following the termination of his public service from assisting another person for compensation in a transaction, or in an appearance in connection with a transaction, in which the former public servant participated at any time during his public service and involving his former agency.

ANALYSIS:

Section 1121B of the Code would prohibit the mitigation analysts, for two years following public service, from assisting a private employer in transactions involving the OCD and in which the mitigation analysts participated while publicly employed. Therefore, as long as those former mitigation analysts are not working with or on applications in which they reviewed or participated as an employee of OCD, there is no violation of the Code if those mitigation analysts accept employment with a contractor who enters into a contract with OCD. (APB)

Recommendations: Adopt proposed advisory opinion.

Date

William Haywood
Hazard Mitigation Manager
Office OF community Development
P.O. Box 5098
Baton Rouge, LA 70821

RE: Ethics Board Docket No. 2009-1047

Dear Mr. Haywood:

The Louisiana Board of Ethics, at its November 20, 2009 Board meeting, considered your request for an advisory opinion regarding whether former employees of the Office of Community Development- Disaster Recovery Unit Hazard Mitigation Program (OCD) may accept employment with a private contractor who has an agreement with OCD. OCD provides mitigation assistance to homeowners who were adversely impacted by Hurricanes Rita and Katrina. The program helps homeowners offset the expenses of protecting their homes from future storms and flooding. To more effectively handle the unprecedented number of program applicants, OCD, through the Request For Proposal (RFP) process, would like to hire a contractor to assist with the project's work load. The contractor will work with the applicants to guide them through the grant process, verifying home-ownership, reviewing invoices, cancelled checks, and other documentation to ensure that the application is completed in compliance with the Hazard Mitigation Program's criteria. Following this determination, the contractor will submit eligible packets to OCD for review and transmittal.

During the fall of 2008, OCD hired temporary unclassified employees to serve as Mitigation Analysts. These analysts have been performing the same duties and functions that will be transferred to the contractor. The mitigation analysts had no input on the development of the Hazard Mitigation program, the RFP for the contractor, or the selection process for the contractor. To the knowledge of OCD, none of the mitigation analysts have worked or have a past connection to the selected contractor. Moreover, although the mitigation analysts review the applicants' information for program eligibility, they do not have decision-making authority.

The Board concluded, and instructed me to advise you, that the Code of Governmental Ethics would not prohibit the employment of former employees of OCD by a contractor who contracts to do work with OCD. Section 1121B of the Code prohibits a former public servant for the two year period following the termination of his public service from assisting another person for compensation in a transaction, or in an appearance in connection with a transaction, in which the former public servant participated at any time during his public service and involving his former agency. As long as those former mitigation analysts, who accept employment with the proposed contractor, are not

working with or on applications in which they reviewed or participated as an employee of OCD, there is no violation of the Code if those mitigation analysts accept employment with a contractor who enters into a contract with OCD.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Ethics. The Board issues no opinion as to past conduct or laws other than the Code of Governmental Ethics. If you have any questions, please contact me at (225) 219-5600 or (800) 842-6630.

Sincerely,
LOUISIANA BOARD OF ETHICS

Aneatra P. Boykin
For the Board

DRAFT



BOBBY JINDAL
GOVERNOR

ANGELE DAVIS
COMMISSIONER OF ADMINISTRATION

State of Louisiana
Division of Administration
Office of Community Development
Disaster Recovery Unit

October 9, 2009

Ms. Kathleen Allen
Ethics Administrator
Louisiana Board of Ethics
Post Office Box 4368
Baton Rouge, Louisiana 70821

2009 OCT 15 PM 4: 26

ADMINISTRATION
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Dear Ms. Allen:

The Louisiana Office of Community Development-Disaster Recovery Unit Hazard Mitigation Grant Program (OCD-DRU HMGP) is requesting an advisory opinion from the Louisiana Board of Ethics as to whether or not current OCD-DRU HMGP employees may terminate state employment and begin work for a contractor that has been hired by OCD-DRU HMGP.

OCD-DRU HMGP administers and provides project management on a \$750 million federal grant program that provides mitigation assistance to homeowners who were adversely impacted by Hurricanes Katrina and Rita. This is a reimbursable grant to help homeowners offset the expenses of protecting their homes from future storms and flooding. The federal grant dollars are from FEMA, and the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) is the grantee. OCD-DRU HMGP is the sub-grantee responsible for the daily operations. Final decisions are made by FEMA and GOHSEP.

To more effectively handle the unprecedented numbers of program applicants, OCD-DRU HMGP was granted permission to implement the Request for Proposal (RFP) process to acquire a contractor to assist with the project work load. The contractor will work with the applicants to guide them through the grant process, verifying homeowner and property ownership, reviewing invoices, cancelled checks and other documentation to ensure that the mitigation activity is completed in compliance with hazard mitigation program criteria. Following this determination, the contractor will submit eligible payment packets to OCD-DRU HMGP for review and transmittal through the grant payment process. Once final payment has been made, close-out of the applicant file occurs.

During the fall of 2008, OCD-DRU HMGP hired temporary unclassified employees who serve as Mitigation Analysts (MA). These MAs have been performing the same duties and functions that will be transferred to the contractor. However, the MAs had no input into the development or evolution of the OCD-DRU HMGP program, the development of the RFP or the selection process for the contractor. To our knowledge, none of the OCD-DRU HMGP MAs have worked or have had a past connection to the selected contractor. Moreover, the MAs do not have decision-making authority even though they do review the applicant information for program eligibility. If an applicant is determined ineligible, it is determined in accordance with program policy and guidelines as set forth by FEMA, OCD-DRU and GOHSEP. The major duties of the MAs involve working directly with the homeowner.

Ethics, page 2

OCD-DRU HMGP is requesting an advisory opinion from the Ethics Administration that responds to the question of can the current OCD-DRU HMGP Mitigation Analysts end state service and start work with the hired contractor. This question arises from the following part of the General Prohibitions within the Code of Ethics (R.S. 42:1111-1121):

L. 1121 – Post Employment

“To take part in or to have or share responsibility for action of a governmental entity or a proceeding, personally, as a public servant of the governmental entity, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or the failure to act or perform a duty. Therefore, actual “hands on” involvement is not the only means by which a public employee may be considered to have “participated” in a certain transaction.” The section continues to provide questions to consider in relation to this matter, including:

Did you make any recommendations as to the matter?

None of the OCD-DRU HMGP MAs made recommendations as to the management of the grant or the processes that were put into place. The MAs worked with the applicants and processed appropriate documents in accordance with HMGP policy and guidelines.

Did your department have any supervision over the matter?

OCD-DRU HMGP does supervise and provide oversight of the program. However, none of the MAs had supervisory duties.

Who had ultimate responsibility for the matter?

None of the MAs had ultimate responsibility for the program. OCD-DRU HMGP management and GOHSEP management maintain ultimate responsibility for the decisions made regarding the OCD-DRU HMGP program.

OCD-DRU HMGP does not believe the MAs would be in conflict of interest or in violation of the Code of Ethics. However, to ensure the public confidence in the integrity of government, and the OCD-DRU HMGP program specifically, I am requesting the advisory opinion.

I realize that the next opportunity for this issue to be presented to the Louisiana Board of Ethics is at its meeting scheduled on Friday, November 20, 2009. Time is of the essence in this matter and I respectfully request an Emergency Opinion so that the OCD-DRU HMGP program can move forward without fear of the program or its employees violating the Louisiana Code of Governmental Ethics. In the interim, I would be happy to provide further information, if deemed necessary. Additionally, I would like to request that this be placed on the agenda and addressed at the aforementioned November meeting, regardless of whether the decision is made to render an advisory opinion.

Your consideration in this matter is greatly appreciated.

Sincerely,



William Haygood
Hazard Mitigation Manager
Office of Community Development

**Deputy General Counsel
and
Deputy Ethics
Administraton**

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**Job Description and
Specifics**
