

From: Carla Miller
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To: BEGA General Mailbox
Subject: PUBLIC COMMENT (Lobbyists serving on Boards and Commissions)
To: BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY, D.C.

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The Board's "Invitation for Comment" requests public comment on four options on lobbyists serving on D.C. Boards and Commissions. (yes you can; no you can't; you can within certain time periods; you can with restrictions.)

It certainly is important to address the question of whether the appointment of lobbyists to Boards tends to "perpetuate the culture of special interest access"^[i]. This ties in with the research of the Safra Center Lab on "institutional corruption" which involves systemic and structural dependencies and influences within an organization.^[ii] Obviously, efforts should be made to construct the process so as to avoid even more entrenched connections which can have an impact on the efficiency of the District in meeting its goals, and more importantly, on public trust.

I would offer a concrete example in support of the position that lobbyists should be able to serve their community in this capacity, with certain safeguards in place.

When I first started serving as Ethics Director for the city of Jacksonville, Florida, the Mayor appointed a lobbyist/attorney to the Ethics Commission. This was not prohibited in our Code. He was confirmed; I was concerned. How would this work out? A lobbyist in our midst? Since he was on the registered lobbyist list, instant assumptions were made by people in the community without even looking at who his clients were or which city entities he lobbied. But the fears did not pan out; he became the most active member on the Commission, led the successful charge for independence for our Commission and Chaired it for two terms. He had one business interest that necessitated his registration as a lobbyist. If the Code had excluded him from serving, it would have been a huge loss for the City.

That's why I don't think that a blanket exclusion of lobbyists from this type of public service is the best way to go. Perhaps, some would argue, even the general possibility that a person could be suspected of divided interests, even if no basis in reality, is enough to keep them off of Boards. Is the mere title of "lobbyist" enough to exclude someone? Not all lobbyists represent big corporations or powerful interests. There are many smaller interests, including non-profits, that lobby.

One of the options proposed in the "invitation" is the development of parameters for lobbyist participation: "Relevant criteria might include whether the board or commission serves an advisory role, adopts rules, conducts enforcement actions, authorizes grants, engages in significant contracting, employs full-time ...members, or engages in quasi-judicial activities". If I had to pick one of the 4 options, this would be it. The problem is that this would necessitate complex code provisions to cover all of the potential situations with the 174 Boards and Commissions in your district. The Code could set out pages of detailed rules and still not handle the range of problems that could come up in the future. There are always good and appropriate exceptions to the rules.

I would suggest coming up with general guidelines, and related education, for Boards and Commissions. Prior to final appointment, give the lobbyist the duty to disclose his clients and other relevant data to the Board he/she is seeking to be a part of; then, grant that Board the power to waive a general prohibition on lobbyists serving on Boards in the District. Only the Board the lobbyist is appointed to can give a waiver after considering facts pertaining to conflicts, appearances and public trust issues. The Board is the entity most familiar with the intricacies of its activities and potential conflicts. This procedure and any related hearings should be fully noticed and open to the public. Then, the Code should give citizens the right to appeal any such waiver to the Ethics Board for a final, non-appealable decision.

^[i] Referenced in the "Invitation", [Presidential Memorandum on Lobbying](#).

^[ii] See Lab Working Papers and related tools at www.ethics.harvard.edu/lab