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SURPRISE! YOU MAY BE A LOBBYIST

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By: Dawn M. Meyers

Imagine you are a project manager for a developer whose next project is contingent upon obtaining a rezoning. Your boss sends you over to meet with a key member of the planning and zoning board prior to the vote to explain the project and convince her to vote for the rezoning.

Imagine you are a manufacturer who supplies goods to a client who is seeking the award of a lucrative county contract. Your client asks you to join him and other members of his team in a meeting with a county commissioner to explain how his service (which includes your product) is superior to the competition.

Imagine you are a lawyer representing a client who has enjoyed a long-term contractual relationship with a municipality, and who now seeks your assistance in getting the renewal terms negotiated and approved.

Could you imagine that in each of these scenarios you may be considered a lobbyist, subject to all of the registration and other regulatory requirements imposed by the individual governmental entity at issue?

Take, for example, the applicable and fairly common definitions found in the Broward County Code (which covers the 17th most populous county in the United States). According to Broward County, a "lobbyist" includes anyone who is retained *with or without compensation*, or an employee whose principal job is, to lobby. The Code goes on to define "lobbying" to mean "communication, by any means, from a lobbyist to a covered individual regarding any item that will foreseeably be decided by a final decision-making authority, which communication seeks to influence, convince, or persuade the covered individual to support or oppose the item." "Covered individuals" include the County Commissioners, any member of a final decision-making body of the County, a member of a procurement committee, and even certain employees of the County with final procurement authority and heads of County departments and divisions who make final recommendations to a final decision-making authority.

As you can see, the lobbyist net is cast widely. So how do you protect yourself and your clients?

First, and most importantly, familiarize yourself with the jurisdiction's lobbyist definitions and requirements *before* you engage in any such activity. While Broward County's definitions are fairly common, each jurisdiction is different in various aspects of their ordinances, and you must understand them thoroughly so as not to run afoul of them.

Next, register properly and timely. Most ordinances require lobbyists to register, many require the registration to occur prior to the lobbying activity as well as the payment of a registration fee. You may wish to discuss this process with your client ahead of time. Some clients may be unaware of this requirement, and may be sensitive to the public disclosure of your arrangement. And while the registration fees are typically not high, you may wish to alert your client to those costs as well.

The applicable code may also impose other regulatory requirements. For example, annual statements disclosing lobbying expenditures, contingent fees and other perhaps proprietary or confidential information may be required. Many jurisdictions also require lobbyists to log each visit with a "covered individual," and in some instances those logs are also public records. Failure to abide by such regulatory mandates could subject the lobbyist to certain penalties, including fines.

Finally, it is important to understand the ramifications of not properly registering as a lobbyist. In the case of Broward County, a failure to register could subject the lobbyist to a public warning, reprimand, or suspension, or even a prohibition from appearing before the decision-making body for a period of time. And the potential for penalties is not limited to just the lobbyist. For example, in Broward County, a lobbyist's employer is required to certify that its lobbyists are properly registered in order to have its competitive bid deemed responsive. If that later is determined to be untrue, the employer is at risk of having the awarded contract terminated.

By familiarizing yourself with your local jurisdictions' lobbying ordinances, and complying with them, you can avoid a very unpleasant, and potentially public and costly, surprise.

If you have questions about this topic, please contact the author, Dawn Meyers, on the firm's Government and Regulatory Team.

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Dawn M. Meyers

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