

LOBBYING RESTRICTIONS

APPLICATION OF THE IN-OFFICE LOBBYING BAN TO CITY MAYOR

To: Tim Marden, Mayor (Newberry)

SUMMARY:

In-office lobbying ban found in Article II, Section 8(f)(2), Florida Constitution, does not apply when an elected mayor is not principally employed for governmental affairs in his private capacity.

QUESTION:

May an elected mayor advocate for certain policies on behalf of his private employer before the federal government?

This question is answered as follows.

In your ethics inquiry, you indicate that you were recently elected to be the Mayor of Newberry, Florida. You state that during the election, concerns were raised because you had recently registered as a lobbyist of the federal government due to your work at the John Birch Society, your private employer.

Regarding your work in your private capacity, you indicate you are employed as the National Development Officer with the John Birch Society, which is a paid position. You state your primary job duties involve raising money for your employer through soliciting donations, business advertisements, and making arrangements with those who are including the John Birch

Society in their estate plans. You indicate you also work on special projects and advancing the overall mission of your employer.

Separate from these job duties, you indicate you plan to go to Washington, D.C., once every other month to advocate for certain policies on behalf of the John Birch Society. Regarding the scope of your duties as they pertain to these trips, you note that you will be advocating for elected officials to adhere to the Constitution on various legislative matters, which includes advocating for anti-war and anti-central banking policies, as well as advocating for the withdrawal of the United States from the United Nations. Outside of the trips to the Washington, D.C., you state you may also periodically send written correspondence or documentation to follow up on a visit.

You state you are the only registered lobbyist for your employer, but that you only registered as a lobbyist for transparency purposes. Specifically, you noted you did not feel that your interactions with public officials of the federal government rise to the level of a "traditional lobbyist," but, since it was free to register and increased transparency, your CEO agreed to have you register anyway.

Against this backdrop, you ask whether the work you do for your employer would violate the in-office lobbying ban found in Article II, Section 8(f)(2), Florida Constitution. Turning to the language of the in-office lobbying ban, Article II, Section 8(f)(2), Florida Constitution, states:

A public officer shall not lobby for compensation on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency,

or any political subdivision of this state, during his or her term of office.

The in-office lobbying ban prohibits public officers lobbying for compensation on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency, or any political subdivision of the state during their term of office. Therefore, it must be determined whether you are a public officer subject to the ban and whether the conduct you have described in your inquiry amounts to lobbying for compensation.

The term "public officer" for purposes of the in-office lobbying ban is defined in Article II, Section 8(f)(1), Florida Constitution. This provision states:

For purposes of this subsection, the term "public officer" means a statewide elected officer, a member of the legislature, a county commissioner, a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, an elected special district officer in a special district with ad valorem taxing authority, or a person serving as a secretary, an executive director, or other agency head of a department of the executive branch of state government.

You indicate you were recently elected to serve as the Mayor of Newberry, Florida. Given that the term "elected municipal officer" is included in the definition of "public officer" for

purposes of the in-office lobbying ban, as an elected mayor of a municipality, the in-office lobbying ban is applicable to you.

Since you are a public officer subject to the in-office lobbying ban, we must now determine whether the conduct you have described in your inquiry amounts to "lobbying for compensation," as that is the conduct that Article II, Section 8(f)(2), Florida Constitution, prohibits during the course of a public officer's term of office.

The definition of the term "lobby for compensation" is found in Section 112.3121(12)(a)-(b), Florida Statutes. This provision states:

(12)(a) "Lobby for compensation" means being employed or contracting for compensation, for the purpose of lobbying, and includes being principally employed for governmental affairs to lobby on behalf of a person or governmental entity.

(b) The term "lobby for compensation" does not include any of the following:

1. A public officer carrying out the duties of his or her public office.
2. A public or private employee, including an officer of a private business, nonprofit entity, or governmental entity, acting in the normal course of his or her duties, unless he or she is principally employed for governmental affairs.
3. Advice or services to a governmental entity pursuant to a contractual obligation with the governmental entity.

4. Representation of a person on a legal claim cognizable in a court of law, in an administrative proceeding, or in front of an adjudicatory body, including representation during prelitigation offers, demands, and negotiations, but excluding representation on a claim bill pending in the Legislature.
5. Representation of a person in any proceeding on a complaint or other allegation that could lead to discipline or other adverse action against the person.
6. Representation of a person with respect to a subpoena or other legal process.

Relevant to your inquiry, Section 112.3121(12)(b)2., Florida Statutes, excludes from the definition of "lobby for compensation" instances where a public or private employee is acting in the normal course of his or her duties, unless he or she is principally employed for governmental affairs. Because the advocacy you will be engaged in during your trips to Washington, D.C., will be part of the normal course of your private job duties at the John Birch Society, we must determine whether you are "principally employed for governmental affairs" by your employer.

The term "principally employed for governmental affairs" is defined in Section 112.3121(15), Florida Statutes. Section 112.3121(15) states:

"Principally employed for governmental affairs" means that the principal or most significant responsibility of the employee is to oversee the employer's various relationships with governmental

entities or representing the employer in its contacts with governmental entities.

In sum, the term "principally employed for governmental affairs" means that the most significant responsibility of the employee is to oversee the employer's various relationships with governmental entities or to represent the employer in its contacts with governmental entities. Here, you have indicated that your primary responsibility in your employment involves raising money for the organization through various means, including soliciting donations, business advertisements, and the seeking the inclusion of your employer in people's estate plans. Regarding your representation of your employer in its contacts with governmental entities, you state that you will only be going on trips to Washington, D.C., once every other month, or six times per year. Based on these facts, therefore, it does not appear that your employment brings you into the definition of being "principally employed for governmental affairs," as your primary and most significant responsibilities with your employer involve fundraising, not representing your employer in its contacts with governmental entities.

Because you are not "principally employed for governmental affairs" in your private capacity, and because you would be acting in the normal course of your private job duties in taking trips to Washington, D.C., to advocate on behalf of your employer, it does not appear that the activities you will be engaged in as National Development Officer of the John Birch Society constitute "lobbying for compensation" as that term is defined in Section 112.3121(12), Florida Statutes. Therefore, the conduct you have described in your inquiry as it relates to your private employment will not violate the in-office lobbying ban found in Article II, Section 8(f)(2), Florida Constitution.

Your question is answered accordingly.

cc: Tim Marden

LMF/aln/ks

Steverson, Kathryn

From: Naomi, Amelia
Sent: Monday, April 21, 2025 9:21 AM
To: Steverson, Kathryn
Subject: FW: Follow-up Questions RE: Your advisory opinion

From: Tim Marden <TMarden@NewberryFL.Gov>
Sent: Friday, April 18, 2025 7:56 PM
To: Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us>
Subject: Re: Follow-up Questions RE: Your advisory opinion

There are few specific issues but more themes related to those topics. Periodically there are bills filed that may speak to a specific topic. For example there is a piece of legislation related to getting out of the United Nations. I don't recall the specific number but it is called the DEFUND Act.

Tim Marden.

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From: Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us>
Sent: Thursday, April 17, 2025 12:01:31 PM
To: Tim Marden <TMarden@NewberryFL.Gov>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
Subject: RE: Follow-up Questions RE: Your advisory opinion

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Mr. Marden,

I have a few more questions for you:

1. When you lobby, what specific decisions are you trying to influence? For instance, are you trying to influence legislation or something else?
2. I found your lobbyist registration and I noticed you put constitution, economics, trade, and foreign policy as your lobbying issues. Is there anything specific regarding those four topics that you are lobbying on?

Best,
Amelia

From: Tim Marden <TMarden@NewberryFL.Gov>
Sent: Wednesday, April 16, 2025 2:25 PM

To: Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us>

Subject: Re: Follow-up Questions RE: Your advisory opinion

1. Are you the only registered lobbyist for the John Birch Society? Yes, and this was done for transparency purposes. We did not feel what I was going to be doing raises to the level of a traditional lobbyist by any means but since it was free to file and increased transparency our CEO agreed to file anyway.
2. Please describe your general job duties as National Development Officer of the John Birch Society. My primary work to raise money for the organization through donors, businesses advertising on our various media platforms, and those who are including the Society in their estate plans at some level. I do special projects and advance the overall mission too. Going to DC was under what could be best described as "under other assigned duties" if we had a job description.
 1. If possible, could you provide a job description document? We don't have formal job descriptions
3. Please describe your job duties as National Development Officer of the John Birch Society as they pertain to lobbying. They are separate and do not overlap. I am not soliciting donations from anyone in DC nor am I donating to anyone or anything to push an agenda.
4. Aside from physically going to Washington DC, do you also engage in lobbying via written correspondence or other means? Periodically it would be appropriate to follow up on a visit with perhaps written literature or supporting documentation.
5. Can you provide specific examples of topics you plan to lobby on? Our organization believes the United Nations is detrimental to the prosperity of America and we advocate getting the US out of the UN. We are also anti-war and anti-central banking. These are all topics we would hope to influence. We are pro-Constitution and want to educate people about the proper role of government as it has gotten too big, too expensive, and too intrusive in our lives.

What I hope can be clarified is the distinction between advocacy work and communications with elected officials with paid traditional lobbyist duties. There seems to be some need for distinction of letter of the law vs. spirit of the law. We all want to ensure there is not payment as a reward for petitioning elected officials and using ones elected office to engratiate themselves or their company.

I believe as an elected official, for example, it is incumbent to be in communication with elected officials about legislation and voicing how we think legislation may positively or negatively impact citizens. As written the exceptions seems to cover elected officials and executives in the course of their private company duties. Frankly I think all citizens have a duty to make their voices heard to their elected officials on legislation so me doing this as part of my duties seems to go hand in hand. If it rose to the level of money exchange and implied explicitly or implicitly quid pro quo, that is a huge issue.

Thanks for your questions,
Tim Marden

From: Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us>

Sent: Wednesday, April 16, 2025 10:57 AM

To: Tim Marden <TMarden@NewberryFL.Gov>

Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>

Subject: Follow-up Questions RE: Your advisory opinion

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Dear Mr. Marden,

I have a few follow-up questions for you as I begin to draft your opinion. Please provide your answers to the following:

1. Are you the only registered lobbyist for the John Birch Society?
2. Please describe your general job duties as National Development Officer of the John Birch Society
 - a. If possible, could you provide a job description document?
3. Please describe your job duties as National Development Officer of the John Birch Society as they pertain to lobbying
4. Aside from physically going to Washington DC, do you also engage in lobbying via written correspondence or other means?
5. Can you provide specific examples of topics you plan to lobby on?

Best,

Amelia L. Naomi

Attorney

Florida Commission on Ethics

NAOMI.AMELIA@leg.state.fl.us

Telephone: 850-488-7864 | Fax: 850-488-3077

Steverson, Kathryn

From: Stillman, Kerrie
Sent: Friday, April 11, 2025 9:23 AM
To: Steverson, Kathryn; Zuilkowski, Steven
Subject: FW: Lobbyist question

We received the following opinion request. Please acknowledge, log, and assign. Thank you.

From: Tim Marden <TMarden@NewberryFL.Gov>
Sent: Thursday, April 10, 2025 5:28 PM
To: Stillman, Kerrie <STILLMAN.KERRIE@leg.state.fl.us>
Subject: Lobbyist question

Hello Kerrie,

Commissioner Tim Marden here from Newberry Florida.

I was recently elected Mayor and taking office on the 28th. During the election it was brought up that I recently filed as a lobbyist in DC for transparency purposes with my employer, a national organization, The John Birch Society. Our Commissioners/Mayor are part time positions, so we all have full time jobs as well. I am National Development Officer with our private company.

My question is; Does Exception 12 b 2 apply here (shown below)? Or should I recuse myself from doing anything in DC on behalf of my employer?

The scope of my duties in DC would be advocacy; encouraging our elected officials to adhere to the Constitution on matters of various legislation.

I am of course compensated by my company but I am not attempting to secure funds nor given funds to any representative, candidate, or candidate committees. Nor are we soliciting funds, contracts etc. am.

I am not receiving additional compensation to do this. This is falling under "other duties assigned" in my job description and entails me going to DC once every other month when I begin doing this. If I even can do so without running afoul with Article II Section 8.

I understand the legislation is fairly new per Grey Schaffer and there is not much to reference here. This is very much in keeping with my normal course of duties as an elected official and in my scope of work. I appreciate your insight in advance. I am available for any follow up questions.

Thank you so much,

Tim Marden
352-474-1022

For reference:
Article II, Section 8

SECTION 8. Ethics in government.

(2) A public officer shall not lobby for compensation on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency, or any political subdivision of this state, during his or her term of office.

112.3121 Definitions.

(12)(a) “Lobby for compensation” means being employed or contracting for compensation, for the purpose of lobbying, and includes being principally employed for governmental affairs to lobby on behalf of a person or governmental entity.

(b) The term “lobby for compensation” does not include any of the following:

1. A public officer carrying out the duties of his or her public office.
2. A public or private employee, including an officer of a private business, nonprofit entity, or governmental entity, acting in the normal course of his or her duties, unless he or she is principally employed for governmental affairs.