



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

John P. Markovs
County Attorney

LOBBYING BY GROUPS

Edward B. Lattner

I. General Observations

- A. Individuals - may take any action unless prohibited by law.
- B. Group (BCC) - has no power to act except for those powers **specifically delegated** to the group by an organic document (*e.g.*, constitution, charter, statute, resolution, executive order, etc.). A group must look to its enabling law to determine the scope of its mission.
- C. The enabling law controls a group's authority to educate, advise, or lobby. If the authority exists, the enabling law must be consulted to determine who is a permissible object of the group's actions. The Council? The General Assembly? Congress?

II. Educating, Advising, and Lobbying

- A. **In General.** Groups can engage in the activities identified below only if **specifically authorized** by their enabling law, and in the specific manner (and to the specific audience) identified in that law.
- B. **Education** is intended to develop knowledge through a systematic study of a matter. Unlike lobbying, education contains no specific intent to persuade a decisionmaker to undertake a certain course of action.
- C. **Advising** (AKA **opinion, recommendation, review, or comment**), in addition to educating, contains an element of sharing with the decisionmaker an opinion or recommendation. Providing advice falls between the functions of education and lobbying. Lobbying generally involves an activity (often sustained) whose goal is to achieve a specific result. By contrast, engaging in an advisory function respects the right of the decisionmaker to arrive at a different conclusion. (Advice given once) Advising on legislation is not lobbying.
- D. **Lobbying/Advocacy** is engaging in conduct that is intended to influence a decisionmaker to take a course of action that is desired by the lobbyist.
 - 1. The Office of Intergovernmental Relations has been assigned the

responsibility to “provide coordination or liaison and, as appropriate, respond to legislation, regulations, or other policy issues involving nearby counties or states, municipalities within the County, regional agencies, the District of Columbia, and the federal government.”

- E. The enabling law for most groups authorizes them to educate or advise (usually the County Executive and/or Council) on a particular subject(s). Very few groups have an enabling law that permits them to engage in lobbying/advocacy.
 - 1. For some groups, their enabling statute provides that they can engage in advocacy at the State or federal levels only if that activity is **approved** by the Office of Intergovernmental Relations. *See, e.g.,* Bill 37-15.
 - a. If approved, the group’s lobbying/advocacy is limited to matters within the group’s statutory duties.
 - b. If approved, the group must still coordinate their lobbying efforts with OIR.
 - c. Very few groups have independent statutory authority to lobby. Even those few groups that do have that authority must still **coordinate** their lobbying efforts with OIR. Lack of coordination damages the County’s credibility.

III. **Individual Action Permitted**

- A. Although any rule that restricts the freedom of a group to proselytize may appear suspect, remember that a group is a creature of County government.
- B. Individual members of a group retain their first amendment rights to free speech and to petition their government **in their personal capacity**.
 - 1. When engaged in personal political activity, group members should exercise caution in identifying their association with a County group.
 - 2. County ethics law prohibits an individual from using the prestige of his or her office for private gain or the gain of another.
 - 3. Committee members engaging in private political activity should disclose that they are not speaking on behalf of a County committee.
 - 4. Ethics Regulation (COMCOR 19A.14.01.02.3) Teaching, Speaking and Writing - When teaching, speaking, or writing in a personal capacity, the employee may refer to the employee’s official title or position as one of

several biographical details when such information is given to identify the employee provided that his title or position is given no more prominence than other significant biographical details. An employee may not focus on Montgomery County policies and practices in a compensated teaching, speaking or writing activity or divulge the specifics of experience as a public employee for private gain.

Last saved: 10/6/2023 12:10:00 PM