



Office of the Integrity Commissioner
The Honourable J. David Wake, Commissioner

Bureau du commissaire à l'intégrité
L'Honorable J. David Wake, Commissaire

CONFIDENTIAL

March 26, 2018

Hunter Domino
Leonard Domino & Associates
39 Delaware Avenue
Toronto, ON M6H 2S8

Sent via email: Hunter@LeonardDomino.com

Dear Mr. Domino:

Re: Advisory Opinion – Volunteering on an election campaign

Thank you for your email of March 19, 2018 in which you have requested guidance about whether it would be appropriate for you to volunteer to work on an election campaign.

Further to this request, I have issued an advisory opinion in this letter pursuant to section 15 of the *Lobbyists Registration Act, 1998* (the “**Act**”). Please be advised that it is intended solely to provide information and is not intended to be a substitute for the advice of counsel. The advisory opinion is not a binding statement of how the legislation will be interpreted or applied in a particular circumstance. Final interpretation of the law is the responsibility of the courts.

Facts

Your March 19 email reads in part as follows:

I have two questions regarding volunteering on an election campaign.

1. Should I be asked to be a campaign manger [sic]. With this type [sic] interaction with the candidate, what lobbying restrictions would apply if the candidate is elected or if they become a cabinet minister?
2. Should I be asked to door-knock and reach out to my neighbors. With this type of interaction with the candidate, what lobbying restrictions would apply?

Would the restrictions change in either of the two scenarios, if was [sic] I was an in-house lobbyist?

You are currently a registered consultant lobbyist in Ontario and hold an active registration to lobby on behalf of The Ontario Association of Consultants, Counsellors, Psychometrists

and Psychotherapists (the “OACCPP”). The targets of your lobbying activities include the Ministries of Finance and Health and Long-Term Care and the Offices of the Ministers of Health and Finance. You did not specify which election candidate has asked you to volunteer on their campaign.

Legislation

The definition of “lobby” as it pertains to consultant lobbyists can be found in subsection 1(1) of the Act. In Ontario, lobbying occurs when an individual or group of individuals is paid to communicate with public office holders in an attempt to influence certain government activities. For consultant lobbyists only, lobbying is also defined as arranging a meeting between a public office holder and any other person. Given its length, I have reproduced the definition of “lobby” at Appendix “A” of this letter.

Of relevance to the issue that you have raised, the Act contains a provision at section 3.4 that prohibits lobbyists from placing public office holders¹ in a conflict of interest. For consultant lobbyists, the prohibition is found at subsection 3.4(1) which states:

3.4(1) No consultant lobbyist shall, in the course of lobbying a public office holder, knowingly place the public office holder in a position of real or potential conflict of interest as described in subsections (3) and (4).

The definition of conflict of interest provides that a public office holder is in a position of conflict of interest if he or she engages in an activity that is prohibited by section 2, 3 or 4 or subsection 6(1) of the *Members’ Integrity Act, 1994* (the “MIA”). Those sections of the MIA provide that a public office holder is in a position of conflict of interest if he or she:

- makes or participates in a decision in the exercise of his or her duties for which he or she knows or reasonably should know that in making the decision there is an opportunity to further the MPP’s private interest or improperly to further another person’s private interest,
- uses confidential information to further the MPP’s private interest or improperly to further another person’s private interest,
- uses his or her office to seek to influence a decision to be made by another person so as to further the MPP’s private interest or improperly to further another person’s private interest,
- receives a fee, gift or personal benefit that is connected with the performance of his or her duties, other than compensation authorized by law, gifts received as an incident of protocol, customs or social obligations, or other gift or benefit approved by the Commissioner.

Opinion

In determining whether you can engage in the political activities you have suggested, you need to consider your pre-election lobbying activities and those which you may undertake post-election.

The opinion applies regardless of whether you are a consultant lobbyist or an in-house lobbyist.

¹ The term “public office holder” includes Members of Provincial Parliament, ministers, staff who work in ministers’ offices and ministry employees.

1. Pre-Election

You need to determine whether you are lobbying a public office holder with whom, or for whom, you would work while engaged in the political activities. If your political activities (either as a campaign manager or door-knocker) would result in you working **closely** with a public office holder whom you are lobbying, then I am of the opinion that you are prohibited by section 3.4 from accepting the position(s). In other words, you cannot work closely with individuals whom you are also lobbying.

The reason for that is that your involvement in the political activities may create a sense of obligation for the public office holder, either because of his or her interactions with you or the value added of the service you would be providing. This may then result in the public office holder being in a position where he or she feels obligated, in the course of making a decision, to prefer the interests of the clients you represent as a consultant lobbyist. This is a potential conflict of interest for the public office holder under section 2 of the MIA.

However, if you cease lobbying the public office holders with whom you would be working during the pre-election period, then it is my opinion that you may accept the position. For clarity, once you begin your political work with public office holders, whether when the writ period begins or before, it is my opinion that to remain in compliance with the Act, you would need to cease lobbying those public office holders immediately.

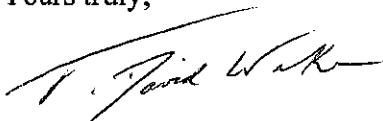
You would need to submit notices of change to remove any of these individuals as lobbying targets from your lobbying registrations. I also suggest that, when you are lobbying the office in which one of the public office holders whom you are restricted from lobbying works, you take steps to identify that restriction on your registration(s). You may contact my Office directly for instructions on how to do this.

2. Post-Election

If you accept the position, you will need to ensure that you remain in compliance with section 3.4 of the Act following the election. It is my opinion you would be prohibited by section 3.4 of the Act from lobbying any of the individuals with whom you have worked closely (during the course of your political activities) following the election. The length of time which you would be prohibited from doing so will depend on your role during the campaign. At this time, it is my opinion that you should seek my advice following the election and **before** engaging in any lobbying activities in order to ensure your compliance with the Act.

I trust that the above is helpful. Please contact this Office if you have questions or concerns.

Yours truly,



The Honourable J. David Wake
Integrity Commissioner

Appendix "A"

"lobby" means,

- (a) in relation to a **consultant lobbyist** referred to in section 4 and an in-house lobbyist referred to in section 5 or 6, to communicate with a public office holder in **an attempt to influence**,
- (i) the development of any legislative proposal by the Government of Ontario or by a member of the Legislative Assembly,
 - (ii) the introduction of any bill or resolution in the Legislative Assembly or the passage, defeat or amendment of any bill or resolution that is before the Legislative Assembly,
 - (iii) the making or amendment of any regulation as defined in Part III (Regulations) of the *Legislation Act, 2006*,
 - (iv) the development or amendment of any policy or program of the Government of Ontario or the termination of any program of the Government of Ontario,
 - (v) a decision by the Executive Council to transfer from the Crown for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the Crown or to the public,
 - (vi) a decision by the Executive Council, a committee of the Executive Council or a minister of the Crown to have the private sector instead of the Crown provide goods or services to the Crown,
 - (vii) the awarding of any grant, contribution or other financial benefit by or on behalf of the Crown, and
- (b) in relation to a consultant lobbyist referred to in section 4 only,
- (i) to communicate with a public office holder in an attempt to influence the awarding of any contract by or on behalf of the Crown, or
 - (ii) to **arrange a meeting** between a public office holder and any other person;

[Emphasis added]