

Advisory Opinion 2015 - 1

FACTS

New York City's five pension funds ("Pension Funds") invest their monies in various ways. A Pension Fund may directly invest its monies in hedge funds or it may hire an investment management firm to invest its monies on behalf of such Pension Fund. In either instance, on behalf of the Pension Funds, the Comptroller enters into a limited partnership agreement or contract with the hedge fund or investment management firm. Pursuant to such agreement or contract, the hedge fund or investment management firm is paid investment or management fees or expenses, the payment of which involves the disbursement of public monies.

An investment management firm ("Firm") manages a hedge fund ("Fund") and provides investment management services to its clients. The Firm hosts a dinner program at a private club for the Comptroller's office staff and the Pension Funds' staff and trustees. During the event, an employee of the Firm makes a presentation about emerging markets investments, the investment services the Firm provides and the possibility of investing in the Firm's Fund. After the presentation, the Firm's employees engage in casual conversation with the Comptroller's staff and the Pension Funds' staff and trustees about the possibility of the City hiring the Firm to manage the investments of the Pension Funds in addition to the possibility of the Pension Funds investing in the Firm's Fund.

ISSUES

Whether the conduct of the Firm's employees, as described above, are deemed "lobbying" or a "lobbying activity" pursuant to the New York City Administrative Code ("Administrative Code") §3-211(c) *et seq.*?

OPINION

The Administrative Code provides that persons who *attempt to influence* any determination made by an elected City official or an officer or employee of the City "with respect to the . . . solicitation, award or administration of a grant, loan, or agreement involving the disbursement of *public monies*" are engaged in lobbying. *See* Ad. Code §3-211(c)(1)(iii) (emphasis added). As a result, any communications between the Firm's employees and the Comptroller's staff and the Pension Funds' staff and trustees about the possibility of the Pension Funds investing in its Fund or the Firm providing investment management services constitutes lobbying. The purpose of these communications is to influence investment decisions of the Comptroller's staff and the Pension Funds' staff and trustees. These communications would constitute lobbying because both investing in the Firm's Fund as well as hiring the Firm to manage the Pension Funds' investments could ultimately involve the disbursement of public monies to the Firm. The circumstances in which the communications take place (either during a presentation by or in casual conversation with the Firm's employees) do not affect this analysis.

It should be noted that if the Firm is a registered lobbyist, this event may violate the gift prohibition contained in Administrative Code §3-225 and the Rules of the City of New York. *See* 53 RCNY §1-16 *et seq.* Section 3-225 prohibits a person who is required to be listed on a statement of registration from giving a gift to any public servant. *See* Ad. Code §3-225. In

addition, public servants are prohibited from accepting valuable gifts from any person or firm that is or intends to become engaged in business dealings with the City. *See* New York City Charter §2604(b)(5), 53 RCNY §1-01. Therefore, under the facts presented, if the Firm has registered as a lobbyist, hosting this dinner program might violate the prohibition in section 3-225. Similarly, it could be a violation of Charter §2604(b)(5) for the Comptroller's staff and the Pension Fund's staff and trustees to accept the dinner being offered at this program. The gift prohibition is enforced by the Conflicts of Interest Board ("COIB"), whose opinion on this matter should be solicited.

CONCLUSION

It is the determination of the City Clerk that, under the facts presented, the Firm's employees are engaged in "lobbying" or a "lobbying activity" pursuant to Administrative Code §3-211(c)(1)(iii), by attempting to influence the investment decisions of the Comptroller's staff and the Pension Funds' staff and trustees with respect to investing in the Fund and retaining the Firm to engage in investment services because such investment or engagement will ultimately involve the disbursement of public monies.

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