CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, C.C.B.
266-4511

OPINION 2001-01

January 12, 2001

MEMORANDUM

TO: Scott Herrick. Counsel for Board of Police and Fire Commissioners

FROM: Eunice Gibson, City Attorney

RE: **Sec. 2.40, Madison General Ordinances, (MGO) entitled "Lobbying Regulated"**

You have asked my opinion regarding the application of the lobbying ordinance to the PFC. Specifically, your questions are as follows:

"1. Does the ordinance apply to the PFC
   a.. in the course of Board activities related to appointments?
   b. in the course of disciplinary proceedings?
2. If the ordinance applies to the PFC
   a. is a labor organization which compensates a representative who communicates with commissioners subject to registration as a principal?
   b. is a labor organization which does not compensate a representative who communicates with commissioners not subject to registration as a principal?
   c.. is the PFC obliged to obtain a Registration Statement on the occasion of each appearance by any individual who is not a city employee?
   d. is the PFC obliged to obtain a Registration Statement pertinent to written communications?"

To be exact, the ordinance does not apply to the PFC at all and, with one minor exception, the PFC does not have any responsibility for the enforcement of the lobbying ordinance. However, the lobbying ordinance may apply to persons who speak to the PFC at its meetings, contact PFC members outside of meetings about PFC business, or communicate with police and fire department "officials" about staff recommendations.

Sec. 2.40 (2)(e) MGO provides, in relevant part:

"Lobbying means the practice of attempting to influence legislative or administrative action by oral, written or electronic communication with any City official, . . ."

Sec. 2.40(2)(d) MGO provides, in relevant part:

"Legislative action means the development, drafting, introduction, consideration, modification, adoption, rejection, review, enactment or defeat of any ordinance, resolution, amendment, report, nomination or other matter by the Common Council or by any board, committee or commission or committee or subcommittee thereof, . . ."

Sec. 2.40(2)(a) MGO provides, in relevant part:

"Administrative action means the proposal, drafting, development, consideration, or issuance of staff recommendations, whether those recommendations are required by ordinance, or requested by the Mayor or by a board, committee, commission or the Common Council . . ."

Sec. 2.40(2)(i), MGO, provides:

"(i) 'Official' includes elected officials, members of boards, committees and commissions, department, division, and unit heads, assistants to the Mayor, and commissioned police officers holding the rank of lieutenant or above and commissioned fire department officers holding the rank of captain or above."

Sec. 2.40(2)(h) MGO provides, in relevant part:

"(h) 'Lobbyist' means an individual who is employed by a principal, or contracts for or receives economic consideration, other than reimbursement for actual expenses, from a principal and whose duties include lobbying on behalf of the principal, regardless of whether the individual's duties on behalf of a principal are or are not limited exclusively to lobbying. A public official acting in an official capacity on behalf of his/her governmental unit is not acting as a lobbyist."

The foregoing definitions provide the answers to your questions. The members of the PFC are City officials within the meaning of Sec. 2.40(2)(i) MGO. So are certain police and fire department staff members.

In answer to your first question, I believe that some Board activities in connection with appointments would constitute "legislative action" within the meaning of the lobbying ordinance.

For example, Sec. 62.13(3), Wis. Stats., provides that the Board is to appoint the chief of police and the chief of the fire department. This action meets the definition of "legislative action" because it constitutes " . . . nomination . . . by any board . . ." The applicants are not lobbyists, however. It is certainly conceivable that a person or persons might "lobby" the Board for the selection of one candidate or another, but such persons are not "lobbyists" unless they are employed by a principal and receive consideration from a principal. See the definition of "lobbyist" at Sec. 2.40(2)(h), MGO.

The same is true of the Board's approval of the subordinates appointed by the chiefs under Sec. 62.13 (4), Wis. Stats.

Under Sec. 62.13(4)(c), Wis. Stats., the Board must adopt " . . . rules calculated to secure the best service . . ." and ". . .may provide . . . competitive examinations . . ." The adoption of such rules and such examinations does constitute "legislative action" and persons who appear before the Board at meetings or call or e-mail individual Board members to persuade them to adopt one criterion or another are "lobbyists" if they are employed and paid by a principal and if they are not public officials acting in their official capacity, or otherwise exempt. See Sec. 2.40(2)(h) MGO.

To the extent that the Board receives staff recommendations on appointments or on examinations, these recommendations constitute "administrative action." See Sec. 2.40(2)(a), MGO. If a person is employed by a principal to influence such recommendations through communications to "officials" (See Sec. 2.40(2)(i), MGO), that person is attempting to influence "administrative action" and is a "lobbyist" under Sec. 2.40(2)(h), MGO.

In answer to your second question, I believe that disciplinary proceedings are quasi-judicial proceedings and are not legislative or administrative action. Therefore, the lobbying ordinance has no application to persons who participate in disciplinary proceedings.

Your next questions relate to the obligations of labor organizations and to obligations of the Board itself.

A labor organization is not excluded from the coverage of the lobbying ordinance. This is also true of the State of Wisconsin lobbying statute, which is the model for this ordinance. Thus, if a labor organization compensates an individual who communicates with Board members about legislative action, then that organization is a principal and the individual is a lobbyist. Likewise, if a labor organization compensates an individual who communicates with police and fire department staff members who are "officials" with regard to staff recommendations, then that organization is a principal and the individual is a lobbyist. This is true whether the individual is compensated directly for the lobbying communication, as a contract lobbyist would be, or whether the individual has other duties for which he/she is compensated by the principal and lobbying the Board or the staff is a part of those duties. If the individual is not compensated at all, then the

organization is not a principal and the individual is not a lobbyist.

In answer to your last question, the Board has only one responsibility for enforcement of the lobbying ordinance. Under Sec. 2.40(6)(d), MGO, persons who speak before boards and commissions are required to fill out a form and the Board should supply its speakers with forms. The form can be obtained from the City Clerk. The Board's secretary should retain the forms or forward them to the City Clerk for safekeeping. Other than that, the Board does not bear any responsibility for the lobbying ordinance compliance of the persons who appear before it. That is the individual's responsibility and that of his/her principal, if any.

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Eunice Gibson
City Attorney

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CAPTION: The lobbying ordinance may apply to persons who appear before the PFC or communicate with PFC members and police and fire staff who are officials within the meaning of the ordinance. The lobbying ordinance does not apply to disciplinary proceedings.

cc: Mayor Bauman
City Clerk