

-----Original Message-----

From: May, Michael

Sent: Thursday, April 04, 2013 9:23

To: Rhodes-Conway, Satya

Cc: Brist, Steven; Michael Jacob

Subject: RE: Post-Employment/Appointment Restrictions MGO Sec. 3.35(5)(i) & (j)

Thank you Satya. This is sufficient to start the process of seeking an advisory opinion from the Ethics Board. ACA Brist will take it from here and advise you of when a meeting is scheduled. You may wish to provide us with an email address effective after April 16.

Mike

MPMay

City Attorney

Madison, Wisconsin

-----Original Message-----

From: Rhodes-Conway, Satya

Sent: Wednesday, April 03, 2013 11:16 PM

To: May, Michael

Cc: Brist, Steven; Michael Jacob

Subject: RE: Post-Employment/Appointment Restrictions MGO Sec. 3.35(5)(i) & (j)

Thank you, Mike.

Steve and MJ (who I believe is still chairing Ethics):

Please see the exchange below. I completely understand and support (and think the ordinance is clear on) the prohibition on representing others, especially for personal gain/pay.

What I do not understand is under what circumstances I, as a soon-to-be-former alder, may appear before any City body representing myself only. For example: May I appear, if necessary, before the ZBA regarding property I own, even if the improvements proposed would benefit me financially (increase my property value)? May I participate in the upcoming planning process for my neighborhood, and appear before that steering committee, any bodies that review the plan, and the Council, regarding the plan for my neighborhood (not an academic question, by the way)? May I testify before, or answer questions from, the Food Policy Council or the Council, or members thereof, regarding two ordinances I am currently sponsoring and have been intimately involved in crafting, so as to not deprive the body of the history around them? May I testify about the Union Corners development, which will certainly affect my neighborhood, or the resurfacing of North St, which is two blocks from my house? May I contact my alder about issues of concern to me? All of these are things I would be likely to do in the next year if allowed to. All of them will likely be moot after a year has passed, so if I cannot testify in the next year I will lose the opportunity to do so, which seems wrong to me.

I would like to request an opinion from the Ethics Board on this matter. I look forward to the discussion, as I think these are important issues and questions, and that it is important to both preserve the "time out" period and not allow a revolving door for lobbyists to develop, and that it is important for former elected officials to retain the ability to participate as citizens in the city process. Please let me know if I need to anything more formal to request an opinion. I look forward to hearing from you regarding scheduling a meeting of the Board.

Best,  
Satya

---

From: May, Michael  
Sent: Wednesday, April 03, 2013 2:05 PM  
To: Rhodes-Conway,Satya  
Cc: Brist, Steven  
Subject: RE: Post-Employment/Appointment Restrictions MGO Sec. 3.35(5)(i) & (j)

Satya:

Well, that is the \$65,000 question. Or maybe the 65th time it has come up.

I've attached to this email the text of an email that I sent to former alders Schumacher and Compton back in 2011. My reading of the Code, and I want to be consistent, is that you may only appear before a committee on your own behalf "in relation to a non-commercial undertaking" for the 12 months after you leave office. I interpret this as something like requesting a variance so you can add a porch on your house. I do not interpret the Code as allowing continuing advocacy on policy issues just by saying you are appearing "on your own behalf." I think this is particularly important as to committees that you served on, that is, even if you are just there giving your opinion on some policy issue, I think you are barred for the 12 month period.

Now, despite the fact that this is and remains my opinion, the Code is ambiguous. Sub. (i)2 and (i)6 below are difficult to parse together. I reach the conclusion I do because, if (i)2 means you can appear before any city committee as long as you say you are representing yourself, then (i)6 is not needed. Lawyers don't like it when parts of the law are superfluous. On the other hand, if you read sub 2's language about "on behalf of any person or entity" to include appearing on your own behalf (you are a "person" after all), then sub 6 becomes essential.

The problem with my interpretation is that we normally don't say "on behalf of any person" when you mean on your own behalf.

I stick to my opinion because I think it also serves the purposes of the Ethics Code in that it requires alders to take a 12 month break from

continuing advocacy on policy issues "on my own behalf", and I think that is the overarching purpose of this section of the Code.

Satya, I would love it if you requested an advisory opinion from the Ethics Board on this so that we had some guidance in the future. If the Board agrees with my interpretation, than we can rely on it. If they disagree, I'm fine with it because I'm more concerned with an answer than with my interpretation.

I've copied ACA Brist since he now staffs the Ethics Board.

Mike

MPMay

City Attorney

Madison, Wisconsin

-----Original Message-----

From: Rhodes-Conway, Satya

Sent: Wednesday, April 03, 2013 10:39 AM

To: May, Michael

Subject: FW: Post-Employment/Appointment Restrictions MGO Sec. 3.35(5)(i) & (j)

Just to be 100% clear: I can appear before any city body if I am expressing my personal opinion and not representing anyone else?

SRC

---

From: Veldran, Lisa

Sent: Wednesday, April 03, 2013 8:44 AM

To: Maniaci, Bridget; Solomon, Brian; Rhodes-Conway, Satya; Bruer, Tim; Johnson, Jill

Cc: May, Michael

Subject: Post-Employment/Appointment Restrictions MGO Sec. 3.35(5)(i) & (j)

The following is an excerpt from the Ethics Code found in the Madison General Ordinances that will apply to outgoing alders (see below). If you have any questions please feel free to contact City Attorney Michael May.

Lisa Veldran, Administrative Assistant

Madison Common Council Office

210 Martin Luther King, Jr. Boulevard

Room 417

Madison WI 53703

608.266.4074 Office

608.267-8669 Fax

[lveldran@cityofmadison.com](mailto:lveldran@cityofmadison.com)<<mailto:lveldran@cityofmadison.com>>

[www.cityofmadison.com/council](http://www.cityofmadison.com/council)<<http://www.cityofmadison.com/council>>

MGO 3.35(5)(i) and (j)

(i) Post-Employment/Appointment Restrictions.

1. No former Mayor, for 12 months following the date on which she or he leaves office may appear, with or without compensation, on behalf of any person or entity, before any City entity or confer or negotiate with any incumbent on any matter which may reasonably be expected to come before any City entity for official action.
2. No former alderperson, for 12 months following the date on which she or he leaves office may appear, with or without compensation, on behalf of any person or entity, before any board, committee or commission or before the Common Council or negotiate with any incumbent on any matter which may reasonably be expected to come before such board, committee or commission or the Common Council for official action.
3. No former permanent City employee, for 12 months following the date on which she or he leaves City employment, may appear, with or without compensation, on behalf of any person or entity, before any City entity for or with which they formerly worked or negotiate with any current employee of such entity on any matter which may reasonably be expected to come before such City entity for official action. This provision does not apply to former employees or former elected officials seeking employment by the City.
4. No former member of a City board, committee or commission, for 12 months following the date on which her or his membership ends, may appear, with or without compensation, on behalf of any person or entity, before the board, committee or commission of which she or he was a member or negotiate with any incumbent on any matter which may reasonably be expected to come before such board, committee or commission for official action.
5. No former incumbent, for 12 months following the termination of her or his incumbency, may appear, with or without compensation, on behalf of any person or entity, with regard to any matter which was under the former incumbent's responsibility within 12 months prior to the termination of her or his incumbency or in which the former incumbent participated personally and substantially within 12 months of the termination of her or his incumbency before any City entity or negotiate with any incumbent in connection with any judicial or quasi-judicial proceeding, application, contract, claim, charge or matter which may give rise to a judicial or quasi-judicial proceeding.
6. Nothing in this subdivision shall prohibit a former incumbent from representing herself or himself before any City entity in relation to a non-commercial personal undertaking at any time.

(j) Inquiries Permitted.

This subsection does not prohibit an elected official from making inquiries for information on behalf of a person or organization if she or he receives no compensation therefore beyond the City salary and other compensation or reimbursement to which the elected official is entitled by law.