

To: City of Madison Ethics Board
From: Ald. Mark Clear, D19
Re: Request for advisory opinion
Date: June 2, 2014

Summary

I am requesting an advisory opinion from the Ethics Board regarding disclosures or recusals by a city official on matters where the official has a financial interest in a business that has as a client an organization that lobbies the city on the matter.

Background

I am the sole owner of Clear Solutions, LLC. For several years, Clear Solutions has had a contract with Accelerate Madison, Inc., a non profit association of digital technology companies. On May 5, Accelerate Madison was acquired by the Greater Madison Chamber of Commerce, which lobbies periodically on city issues. As of this writing Clear Solutions does not yet have a contract for services with the Chamber, but we expect to have that in place shortly. Clear Solutions will not be providing any services related to the Chamber's public policy or lobbying activities.

Opinion Requested

The issue in question is when and if I should recuse myself from a matter before the council on which the Chamber has lobbied. MGO 3.35(5)(a)(3) refers to "an organization with which she or he is associated," and there is no question that if Clear Solutions had, say, a contract before the city, that recusal would be warranted.

It is not clear, however, whether that requirement extends to a third party, such as clients of an incumbent's business, and even if so, whether phrases like "production of a benefit" would include supporting a position on which said client has lobbied.

An argument in favor of recusal can be made in that an incumbent may be unduly influenced in order to retain or curry favor with a client.

But this argument starts to break down on sheer volume of situations in which this could occur. If no incumbent could ever take action on a matter that might affect a client of the incumbent's business or employer, the number of, say, patients of a hospital employing an incumbent would become absurd.

As a smaller example, Downtown Madison, Inc. has been a longtime client IMS, a business of which I am 50% owner. But because DMI represents a very small portion of the income of that company's business, I have never felt that even disclosure (let alone recusal) has been warranted on matters on which DMI lobbies.

State Statutes (19.44(1)(f)) may offer some guidance here, as candidates for state office must enumerate, as part of their economic interests disclosure, organizations or individuals who paid an incumbent's business more than \$10,000 in a calendar year. (Currently the city statement of economic interests does not require this information.) Such disclosure does not necessarily imply a requirement for recusal, however, and the statutes on recusal mirror the city requirements.

I appreciate the eithics board's consideration of this matter.