

Heavy Penalties Assessed against Unregistered Lobbyist in Chicago

\$90,000 FOR ONE EMAIL

March 2017

2017 is shaping up to be an expensive year if you are an unregistered lobbyist in Chicago. In mid-February, the Chicago Board of Ethics assessed an eye-popping \$92,000 in fines against David Plouffe and Uber for Mr. Plouffe's failure to register as a lobbyist for nearly five months after first communicating with City officials by email.

Then, at its Feb. 24 meeting, the Board voted to issue notices to four additional individuals, finding probable cause to conclude that they engaged in lobbying and similarly failed to register. It also issued a notice to one registered lobbyist who failed to disclose reportable lobbying activity on a quarterly report. Each of these individuals has until March 13 to rebut the Board's findings. If they are unable to do so, the individuals will be subject to fines for failing to comply with the city's lobbying ordinance.

Chicago's Governmental Ethics Ordinance covers any person who acts to influence legislative or administrative action as part of his or her job duties, regardless of whether the person is formally designated as a lobbyist by his or her employer. An individual must register as a lobbyist within five business days following the first lobbying communication. The structure of the ordinance makes Chicago a "zero threshold" jurisdiction, meaning that an individual who makes even a single phone call—or writes a single email—to attempt to influence covered government action must register and report as a lobbyist.

Authors

Carol A. Laham
Partner
202.719.7301
claham@wiley.law

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The penalty for failing to register is steep: \$1,000 for each violation, with “each day that a violation continues [constituting] a separate and distinct offense.” Thus, the fine for failing to register is \$1,000 per day, starting on the sixth day after the first communication. This fine is assessed against the individual lobbyist, who bears the responsibility to register in Chicago. The lobbyist’s employer is also subject to a fine of up to \$2,000, for employing a lobbyist who then fails to register.

The Board of Ethics’ recent enforcement activity makes clear that it takes the registration requirement and the penalties seriously and will not treat violators with leniency. In the case of David Plouffe, the Board found that he triggered registration by sending a single email on November 20, 2015, but did not register until April 13, 2016. This left “a total of 95 business days between the date of lobbying and the date of registration.” Chicago Bd. of Ethics, Final Determination of Lobbying Violations, Case No. 17005.LOB. The Board thus fined him \$90,000 (\$1,000 per day for each day after the five-day registration window expired, as directed by the ordinance). The Board noted it would have imposed the same fine whether Mr. Plouffe had lobbied every day until registering on April 13, or whether the November 20 email was his only communication. “[H]ow many times one lobbies while unregistered is irrelevant to the violation or to the calculation of the fine.” *Id.* Any penalties to be assessed against the five individuals who received notices from the Board are likely to be determined at the Board’s next meeting on March 15.

The penalties in Chicago serve as a timely reminder of the potential consequences of ignoring state and local lobbying laws. Many localities across the country now have lobbying ordinances, which vary widely in their requirements, registration windows, and penalties for violations. We regularly advise clients on compliance with these lobbying laws and are available to discuss any concerns about your organization’s activities.