

Exhibit 1

OFFICE OF THE GENERAL COUNSEL
COUNCIL OF THE DISTRICT OF COLUMBIA

1350 Pennsylvania Avenue NW, Suite 4, Washington, DC 20004 • (202) 724-8026

MEMORANDUM

To: Councilmember Jack Evans
From: Ellen A. Efros, General Counsel *EAE*
Date: April 13, 2016
Re: Recusal obligations regarding letter requesting
the repeal of D.C. Official Code § 36-304.01(b)

You requested an opinion regarding whether you must recuse yourself, due to your employment at the law firm of Manatt, Phelps & Phillips, LLP (“Manatt”), from signing a letter requesting the repeal of a provision of the New Columbia Statehood Initiative and Omnibus Boards and Commissions Reform Amendment Act of 2014. The provision in question provides that “[n]o retail service station which is operated as a full service retail service station . . . may be discontinued, nor may be structurally altered, modified, or otherwise converted . . . into a nonfull service facility or into any other use.” D.C. Official Code § 36-304.01(b) (“proposed repeal”). You stated that you do not personally represent interested parties affected by the proposed repeal; however, such clients are represented by partners at Manatt.

Rule I of the Council’s Code of Official Conduct, modeled on D.C. Official Code § 1-1162.23 and 18 U.S.C. § 208, provides that:

No employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a . . . particular matter, or attempt to influence the outcome of a particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee’s financial

interests or the financial interests of a person closely affiliated with the employee.

Rule I's definition of "person closely affiliated with the employee" includes an organization in which a person serves as an employee. Rule I(e)(1) and (5). Thus, if a Council employee has outside employment with an organization, the financial interests of the organization are imputed to the employee as if the interests were his own. Accordingly, an employee may not personally and substantially participate¹ in a particular matter before the Council that is likely to have a direct and predictable effect² on the financial interests of the employee's outside employer.

Signing a letter advocating for the proposed repeal would constitute personal and substantial participation in the matter. Because Manatt will receive legal fees for its representation of interested parties affected by the proposed repeal, the matter would have a direct and predictable effect on Manatt's financial interests.

The question then is whether the proposed repeal is a "particular matter." Rule I(e)(4) provides that the term "[p]articular matter" is limited to meaning a deliberation, a decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of

¹ To participate "personally" means to participate directly. 5 C.F.R. § 2640.103(a)(2). To participate "substantially" means that the employee's involvement is of significance to the matter. *Id.*

² "Direct and predictable effect" means there is:

- (A) A close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest; and
- (B) A real, as opposed to a speculative possibility, that the matter will affect the financial interest.

Rule I(e)(2).

persons.” Legislation that focuses on a particular industry or profession is considered a “particular matter.” See OGE Advisory Opinion 06 x 9 (October 4, 2006) (“Examples provided in OGE rules include a regulation applicable only to meat packing companies or a regulation prescribing safety standards for trucks on interstate highways.”). Because the proposed repeal focuses on a discrete and identifiable class of persons (full service retail service stations), it constitutes a “particular matter.” Accordingly, you must recuse yourself from signing the letter.

Although I have advised you on the conflict of interest provisions, because the ultimate interpreter of the local conflict of interest laws for public officials is the Board of Ethics and Government Accountability, you may wish to request an advisory opinion pursuant to section 219 of the Government Ethics Act of 2011 to determine whether “a specific transaction or activity inquired of would constitute a violation of a provision of the Code of Conduct.”³ If you seek an advisory opinion and rely in good faith upon that advisory opinion, you will receive “safe harbor” from enforcement actions. Should you wish to seek an advisory opinion, I would be happy to assist you with that request.⁴

As always, I am available if you have any questions.

³ D.C. Official Code § 1-1162.19(a).

⁴ In addition, this opinion is limited to the applicability of federal and District ethics laws and regulations. As an attorney, you may be subject to additional restrictions under the D.C. Bar’s (or other licensing jurisdiction’s) Rules of Professional Conduct.