

Baker Hostetler

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Baker & Hostetler LLP

45 Rockefeller Plaza
New York, NY 10111

T 212.589.4200
F 212.589.4201
www.bakerlaw.com

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John Siegal
direct dial: 212.589.4245
jsiegal@bakerlaw.com

Hon. Frederick A. O. Schwarz, Jr., Esq.
Chair
New York City Campaign Finance Board
40 Rector Street
New York, N.Y. 10006

Re: Advisory Opinion Request

Dear Chairman Schwarz:

This firm represents Eric Gioia for New York, Councilman Eric Gioia's principal committee for the 2009 elections (the "Committee"). On behalf of the Committee, we write to request an Advisory Opinion regarding the rules governing the role of Councilman Gioia's wife, Lisa Hernandez Gioia, and her company, The Esler Group (the "Company"), in the Committee's campaign fundraising and the proper treatment of Ms. Hernandez Gioia's personal services and the Company's facilities and services in the Committee's CFB disclosure statements. As a strong supporter of the City's reformed campaign finance system and the CFB's role as the watchdog of this vital reform, Councilman Gioia has asked us to seek this advance guidance to ensure that his Committee fully complies with the CFB's directives regarding these matters.

Like many spouses of candidates for public office, Ms. Hernandez Gioia wishes to volunteer for her husband's campaign. Her right to do so, and the Committee's right to receive her volunteered services, is clearly provided for in the Campaign Finance Act: Section 3-207(8) of the Act provides that "the term 'contribution' shall not include ... the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee." The Campaign Finance Board, in its Rules, has likewise provided that "'in-kind contribution' does not include personal services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or authorized committee." Rule 1-02. Numerous prior Advisory Opinions have also confirmed this treatment of volunteered services. See e.g., Advisory Opinions 1989-8 (law firm partner's volunteered legal services are not a contribution) and 1989-20 (artist's volunteered work not a contribution). Advisory Opinion 2003-1 is especially pertinent in that it dealt with a lawyer who was the spouse of a candidate and the Board noted that the lawyer could have provided legal services to his wife's campaign entirely as a volunteer (although he apparently did not choose that option). Thus, it appears to be well-settled that Ms.

Hernandez Gioia may volunteer for her husband's campaign and that her work for the Committee will not constitute a contribution.¹

Ms. Hernandez Gioia is a professional fundraising consultant. She is regularly retained by, among others, political campaigns, including campaigns participating in the City's campaign finance program. While there is nothing of which we are aware in the Act, the Rules, or the CFB's Advisory Opinions that would prohibit Ms. Hernandez Gioia from volunteering for her husband's campaign or that would convert her strictly-volunteered services into a contribution, we request an Advisory Opinion from the Board to ensure that Ms. Hernandez Gioia's choice of profession does not effect the application of the well-settled law permitting – indeed, encouraging – volunteerism in the political process.

In addition, we request that the Board include in its Advisory Opinion guidance regarding the treatment of Ms. Hernandez Gioia's Company with respect to her husband's campaign Committee. Ms. Hernandez Gioia conducts her fundraising consulting business through the Company, as its owner and chief executive officer. The Company maintains offices at 420 Lexington Avenue in Manhattan. Councilman Gioia will, from time-to-time, utilize space within the Company's offices to conduct his fundraising activities. To support his fundraising efforts conducted out of the Company's offices, Company employees will on an intermittent basis render services on behalf of the Committee. In addition, Councilman Gioia's Committee will use the Company's address as its address for fundraising purposes. Thus, we seek guidance on how any such facilities and personal services provided to the Committee by the Company will be treated under the governing law and rules.

These issues are addressed in Advisory Opinions 1989-8 and 2003-1, and the situation with the Committee and the Company would not seem to materially differ from the situations addressed in those Advisory Opinions.

For instance, while the value of services given to the Committee by Ms. Hernandez Gioia without compensation would not be a contribution under AO 1989-8, to the extent that she "does not merely provide this ... as an individual, but utilizes support services available at [the Company], the question is raised whether the ... others assisting [her and the Committee] are volunteering their time or are being compensated." *Id.* For the avoidance of doubt, the Committee and the Company will agree that any Company employee assisting Ms. Hernandez Gioia in connection with the Committee is not a volunteer but is instead providing services as part of his or her employment duties to the Company. Accordingly, the Company will bill the Committee and the Committee

¹ We recognize that "[t]he intent of Administrative Code Section 3-702(8) and Rule 1-02 is that once an individual has been compensated for a service, he or she may no longer be considered a volunteer for that service." AO 2003-1. Accordingly, we acknowledge that the requested Advisory Opinion would govern only the situation in which Ms. Hernandez Gioia serves exclusively as a volunteer for her husband's campaign and that it would not apply if she were ever to be compensated by the Committee for any services she provides to the Committee.

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will pay the Company for the fair market value of such personal services as required under, inter alia, AO 2003-1.

We recognize that "because Ms. Hernandez Gioia is the spouse of the candidate, and has a 10% or greater ownership interest in [the Company], expenditures made by the [Committee] for services rendered by [the Company] are not qualified expenditures, and may not be paid for with public funds." AO 2003-1 citing Administrative Code Section 3-704(2)(b).

Finally, we request guidance on the proper method of determining the fair market value of the Company facilities used by Councilman Gioia while he is making telephone calls from the Company office. These will include the use of a desk, telephone, computer, and other basic office accoutrements during the times that he is making calls from the Company's office. In addition, Committee staff will also utilize the Company's offices and facilities on a part-time basis. We recognize that, under Rule 1-04(g), the "fair market value for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time the goods are received." We are uncertain how to apply that guideline to the part-time use by Councilman Gioia and his Committee staff of certain office equipment at the Company's offices, however, because the Company ordinarily makes such facilities available to clients on an as-needed basis without any additional charge over and above the Company's ordinary consulting fees. The only time that the Company ordinarily charges for the use of its office space is when a client's employee works full-time out of the Company's offices. In that event, the Company charges \$1,500 per month for the use of its space, as the Committee will pay, from non-matching funds, if it ever stations a staffer full-time in the Company's offices. As of now, Councilman Gioia will be using the Company's space only occasionally, however, and certainly not on the full-time basis for which the Company charges its clients. Accordingly, we are uncertain how to value the facilities to be used by Councilman Gioia, and would appreciate CFB guidance on this point.

Please let me know if the Board requires any other or further information or clarification in order to render the requested Advisory Opinion.

Respectfully submitted,


John Siegal

cc: Hon. Eric Gioia