

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

.....
**December 13, 2023
Blazing Star Room
Centennial Office Building**
.....

MINUTES

The meeting was called to order by Chair Soule.

Members present: Asp, Flynn, Leppik, Soule, Swanson

Members absent: Rashid

Others present: Sigurdson, Engelhardt, Johnson, Olson, staff; Hartshorn, counsel

MINUTES (November 1, 2023)

The following motion was made:

Member Flynn's motion: To approve the November 1, 2023, minutes as drafted.

Vote on motion: Unanimously passed.

CHAIR'S REPORT

2024 meeting schedule

The next Board meeting is scheduled for 9:30 a.m. on Wednesday, January 3, 2024.

EXECUTIVE DIRECTOR'S REPORT

Mr. Sigurdson stated that notices will soon be mailed to officials required to file an annual statement of economic interest in January 2024. Mr. Sigurdson explained that the statements filed in January will reflect changes made by the legislature in 2023. Mr. Sigurdson said that notices will soon be mailed to treasurers required to file year-end campaign finance reports in January 2024. Mr. Sigurdson stated that so far over 600 filers have migrated to the Board's new reporting system, Campaign Finance Reporter Online (CFRO), but that is only about half of those that need to begin using the new system. Mr. Sigurdson stated that notices will soon be mailed to lobbyists required to file a report in January 2024. Mr. Sigurdson explained that although there were many legislative changes to the lobbying program, those changes will not impact the lobbying reports due in January 2024.

Mr. Sigurdson said that he will present some changes to the Board's annual budget at the next Board meeting. Mr. Sigurdson said those changes will account for costs related to the lawsuit filed by the Minnesota Chamber of Commerce.

Mr. Sigurdson stated he, Ms. Engelhardt, and Mr. Olson recently attended the annual Council on Governmental Ethics Laws (COGEL) conference in Kansas City, Missouri. Mr. Sigurdson explained that the conference included 44 breakout sessions and it is really the only conference that provides information regarding the programs administered by the Board.

Mr. Sigurdson noted that in 2024 the Board will need to elect a new chair and vice chair and provided an overview the process that has been utilized by the Board in the past.

In response to a question from Member Flynn regarding the COGEL conference, Mr. Sigurdson stated that one of the topics discussed at the conference was the rise of artificial intelligence in producing campaign advertising.

ENFORCEMENT REPORT

A. Discussion Items

1. Balance adjustment request—Marla Vagts Campaign (#17728)

Ms. Engelhardt stated that Board staff worked extensively with the Vagts committee to address a cash balance discrepancy. Ms. Engelhardt said that the treasurer discovered several expenditures totaling \$1,303.52 that were not reported in 2014 and 2015, prior to when she began serving as treasurer. Ms. Engelhardt explained that the committee filed amended year-end reports for 2014, 2015, and 2022. Ms. Engelhardt stated that the Vagts committee is requesting a downward adjustment of \$638.64 to its reported 2022 ending cash balance to address the discrepancy that remains, changing the balance from \$1,106.01 to \$467.36. Ms. Engelhardt said that the Vagts committee will then file a 2023 year-end termination report to close the committee.

The following motion was made:

Member Leppik's motion: To approve the requested balance adjustment.

Vote on motion: Unanimously passed.

2. Balance adjustment request—Friends of Mark Bishofsky (#18729)

Ms. Engelhardt stated that the Bishofsky committee, in preparing to file a termination report, discovered a balance discrepancy. Ms. Engelhardt said that Mr. Bishofsky spent a significant amount of time trying to fix the issue while keeping in touch with the Board. Ms. Engelhardt explained that the Bishofsky committee filed an amended 2022 year-end report with an ending cash balance of \$322.15 and the

balance in the committee's bank account at the end of 2022 was \$593.50, a difference of \$271.35. Ms. Engelhardt stated that the Bishofsky Committee is requesting an upward balance adjustment from \$322.15 to \$593.50. Ms. Engelhardt explained that the Bishofsky committee will then file a termination report to close the committee.

The following motion was made:

Member Flynn's motion: To approve the requested balance adjustment.

Vote on motion: Unanimously passed.

B. Waiver Requests

Entity	Late Fee/ Civil Penalty	Report Due	Factors and Recommended Action	Board Member's Motion	Motion	Vote on Motion
1. Susan Landwehr Marshall (Board of Dietetic and Nutrition Practice)	\$100 LFF \$1,000 CP	2022 EIS	Report due 1/30/23 and filed 10/25/23. CFB sent multiple letters to an old address where she had not lived in years. Ms. Landwehr-Marshall had provided her current and correct address to the Governor when she applied to be on the board; however Board staff used the wrong address by accident. When the letters sent to her old address bounced back, CFB contacted the agency and the agency stated the address CFB had on file was incorrect. CFB sent the letter to the correct address and Ms. Landwehr-Marshall filed her EIS promptly. RECOMMENDED ACTION: Waive	Leppik	Approve staff recommendation for requests 1-3	Unanimously approved

<p>2. Scott Wallner (Board of School Administrators)</p>	<p>\$100 LFF \$1,000 CP</p>	<p>2022 EIS</p>	<p>Report due 1/30/23 and filed 10/21/23. Mr. Wallner retired from his position on 9/15/22. CFB sent letters to his previous work and email addresses that were not forwarded to him. CFB also e-mailed BOSA on 1/26/23 stating Mr. Wallner's EIS had not been filed and asked for Mr. Wallner's contact info - BOSA did not respond. CFB found the correct address and Mr. Wallner received a letter at his home address on 10/19/23 alerting him of the fees, and he promptly sent his EIS to CFB. Mr. Wallner states he will pay the \$100 LFF but would like the \$1,000 CP waived. RECOMMENDED ACTION: Waive</p>	<p>Leppik</p>	<p>Approve staff recommendation for requests 1-3</p>	<p>Unanimously approved</p>
<p>3. Scott Mismash (DEED)</p>	<p>\$100 LFF \$1,000 CP</p>	<p>2022 EIS</p>	<p>Report due 1/30/23 and filed 11/02/23. DEED appointment ended 8/1/22 and DEED did not forward correspondence from CFB to Mr. Mismash. Mr. Mismash received a letter on 10/19/23 at his home address stating EIS was due and promptly filed his statement. RECOMMENDED ACTION: Waive</p>	<p>Leppik</p>	<p>Approve staff recommendation for requests 1-3</p>	<p>Unanimously approved</p>

<p>4. Representative Aisha Gomez</p>	<p>\$100 LFF \$1,000 CP</p>	<p>2022 EIS</p>	<p>Report due 1/30/23 and filed 10/25/23. Rep. Gomez's treasurer informed her correspondence from CFB was being sent to an incorrect address. Ms. Gomez changed her address with CFB in 2019 and has now again updated her address with the board with her treasurer's address. Rep. Gomez states she was informed by her staff that they were contacted regarding the missing statement, but it slipped her mind due to the amount of pressure she was under during the legislative session. Rep. Gomez was Chair of the Tax committee. During the session Rep. Gomez also lost someone very close to her. Gomez states she has limited income and asks that the fee be reduced. RECOMMENDED ACTION: No recommendation</p>	<p>Flynn</p>	<p>Waive CP only</p>	<p>Unanimously approved</p>
<p>5. Gertrude Matemba - Mutasa (DHS)</p>	<p>\$100 LFF \$1,000 CP</p>	<p>2022 EIS</p>	<p>Report due 1/30/23 and filed 11/15/23. Ms. Matemba-Mutasa received multiple letters from CFB, but she assumed they were sent to her by mistake. Ms. Matemba-Mutasa was unaware that her financial transactions were subject to campaign rules, as she had only worked for the state for three months in 2022. Ms. Matemba is no longer a public official and previously filed her statements on time. RECOMMENDED ACTION: Do not waive</p>	<p>Swanson</p>	<p>Waive LFF, reduce CP to \$250</p>	<p>Unanimously approved</p>

C. Informational Items

1. Payment of civil penalty for excess special source contributions

Committee for Jess Hanson for House, \$165

2. Payment of late filing fee for 2023 pre-general report of receipts and expenditures

AFSCME Council 5 PEOPLE Fund, \$125

3. Payment of late filing fee for 2023 pre-general report of receipts and expenditures

International Union of Operating Engineers, \$1,000
Joint Council 32 DRIVE, \$100
North Central States Carpenters PAC, \$100

4. Payment of late filing fee for 2022 year-end report of receipts and expenditures

Friends for Ethan (Cha), \$250

5. Payment of late filing fee for 2022 pre-general large contribution notice

Friends for Ethan (Cha), \$250

6. Payment of late filing fee for 2022 pre-primary large contribution notice

North Central States Carpenters PAC, \$1,000

7. Payment of late filing fee for lobbyist disbursement report due June 15, 2023

Jonathan Bohn, \$25
Elizabeth Emerson, \$50 (\$25 x 2)
Sherry Munyon, \$25
Troy Olsen, \$25

8. Payment of late filing fee for 2022 annual EIS

Jay Hedtke, \$5

9. Payment of late filing fee for Original EIS

Destry Hell, \$100
Richard Menholt, \$10
Pete Thelemann, \$45

ADVISORY OPINIONS

Mr. Sigurdson provided members with an overview of the advisory opinion process set forth in Minnesota Statutes section 10A.02, subdivision 12. Chair Soule, Vice Chair Asp, and Member Swanson discussed the interplay between issuing advisory opinions and promulgating administrative rules. In response to questions from Vice Chair Asp and Member Swanson, Mr. Sigurdson said that issuance of an advisory opinion addressing the lobbying program changes could be delayed until the

Board meeting scheduled for January 3, 2024, and in his opinion such a delay would have minimal impact because the relevant legislative changes take effect on January 1, 2024.

A. Advisory Opinion 456

Mr. Sigurdson presented members with a memorandum that is attached to and made a part of these minutes. Mr. Sigurdson stated that request for this opinion was received from Patricia Beety, General Counsel for the League of Minnesota Cities, on behalf of the League of Minnesota Cities, the Association of Metropolitan Municipalities, the Minnesota Association of Small Cities, the Coalition of Greater Minnesota Cities, and the Municipal Legislative Commission (the Membership Organizations).

Mr. Sigurdson explained that the Membership Organizations lobby at the legislature on behalf of, and at the direction of the member cities, report back to the member cities on the progress of lobbying efforts, and may suggest that the member cities sign a letter or contact local legislators to support lobbying efforts. Mr. Sigurdson said that the request asks if the Membership Organizations are lobbying the member cities when the organizations report on the legislative session or suggest that the cities indicate support for the lobbying that is being done on behalf of the membership.

Mr. Sigurdson stated that the opinion as drafted concludes that the Membership Organizations are not lobbying political subdivisions when the organizations provide legislative status reports to member cities or suggest that the member cities show support for lobbying done at the direction of the member cities. Mr. Sigurdson explained that if such activities were deemed lobbying of the political subdivisions, lobbyists registered on behalf of the Member Organizations would be required to file reports listing each member city as a subject of lobbying, and in the case of the League of Minnesota Cities that list would include over 800 members. Mr. Sigurdson said that the opinion as drafted concludes that that is not a result that was intended by the legislature. Mr. Sigurdson stated that the opinion as drafted notes that the activities described within the request do consist of lobbying, but that lobbying would be directed at the legislature rather than the member cities.

Chair Soule pointed out a typo within the second sentence in the last paragraph of the draft opinion and suggested that the phrase “do no constitute” be changed to “do not constitute.” Member Swanson suggested adding the word “of” after “letter in support” within paragraph 6 of the Facts section. Member Swanson suggested replacing “is lobbying” with “would be considered lobbying” and replacing “will” with “would be required to” within the fifth sentence in the first paragraph on page 4. Member Swanson also suggested adding a paragraph citing the statutory language regarding the application of principles in an advisory opinion more broadly than to the requestor, and stating that the Board may address the subject of the opinion during the current rulemaking process.

The following motion was made:

Member Swanson’s motion: To issue the opinion as drafted, with the changes suggested by Chair Soule and Member Swanson.

Daniel Lightfoot from the League of Minnesota Cities briefly appeared before the Board, spoke in favor of the advisory opinion as drafted, and said that the League of Minnesota Cities has other concerns regarding lobbying, some of which may be addressed by Advisory Opinion 457.

Vote on motion: Unanimously passed.

B. Advisory Opinion 457

Mr. Sigurdson presented members with a memorandum that is attached to and made a part of these minutes. Bryan Lake appeared before the Board on behalf of the Minnesota State Bar Association. Mr. Lake said that there are a lot of attorneys who deal with local governments who have questions regarding whether their work will be considered lobbying under the legislative changes that will take effect on January 1, 2024. Mr. Lake stated that a substantial delay in issuing an advisory opinion would put them in a difficult position, but issuing an opinion at the Board's January meeting would be less of a problem.

Mr. Sigurdson explained that there are two types of local officials, elected officials and nonelected officials, and whether an individual is a nonelected local official is dependent on whether they have the authority to make or recommend major decisions regarding the expenditure or investment of public money. Mr. Sigurdson said that as drafted, Advisory Opinion 457 notes that the term "major decisions" is not defined in Chapter 10A, and states that in addition to considering whether an individual is a nonelected local official, whether the action sought involves a major decision regarding the expenditure or investment of public money must be considered, because if that is not the case and the official in question is a nonelected local official, communications seeking that action are not lobbying. Mr. Sigurdson stated that as drafted, Advisory Opinion 457 assumes that the attorneys in question will be compensated for their representation and will each be compensated more than \$3,000 per calendar year.

Mr. Sigurdson said that Advisory Opinion 457 addresses 27 different scenarios. Mr. Sigurdson stated that revisions were made to the portions of the draft opinion addressing questions 4, 5, and 14. Mr. Sigurdson explained that those changes were made in response to an email from an attorney who deals with planning commissions on a regular basis, pointing out that the opinion should consider whether the action sought from a nonelected local official involves a major decision regarding the expenditure or investment of public money.

Member Swanson said that there is a typo on page 3 within the first sentence in the second paragraph, and the phrase "positions within political subdivision" should be changed to "positions within political subdivisions." Member Swanson also suggested that as with Advisory Opinion 456, a paragraph be added citing the statutory language regarding the application of principles in an advisory opinion more broadly than to the requestor, and stating that the Board may address the subject of the opinion during the current rulemaking process.

Vice Chair Asp suggested using the phrase “appointed to or employed in a public position” when discussing who is a nonelected local official on page 2 of the draft opinion, because that phrase is used within the statutory definition of “local official.” Vice Chair Asp asked whether what constitutes a major decision regarding public money will be different depending on the political subdivision making the decision. Mr. Sigurdson answered the question in the affirmative, explaining that what is a major decision by a political subdivision with a smaller budget may not be a major decision by a political subdivision with a larger budget. Vice Chair Asp asked how an attorney seeking a particular action would know whether the action sought would constitute a major decision by the political subdivision in question. Mr. Sigurdson said that a goal to be accomplished by the current rulemaking process is to provide guidance regarding the definition of the phrase “major decisions regarding the expenditure or investment of public money,” and that as drafted Advisory Opinion 457 only addresses the specific questions posed while assuming that actions described in the request involving the expenditure of public money would be major decisions by the political subdivisions involved.

Chair Soule suggested that Vice Chair Asp raise the specific issues he has with the draft opinion with Board staff and then have Board staff bring a draft opinion back to the Board in January. Vice Chair Asp spoke in favor of that approach. Mr. Sigurdson stated he is nearly done drafting proposed rule language for the Board to consider regarding the lobbying program. Member Swanson spoke in favor of adopting an advisory opinion now rather than waiting until January.

The following motion was made:

Member Asp’s motion: To lay the matter over.

Vote on motion: Unanimously passed.

C. Requests for Advisory Opinions 458 and 459

Mr. Sigurdson presented members with a memorandum that is attached to and made a part of these minutes.

After discussion the following motion was made:

Member Leppik’s motion: To lay these matters over.

Vote on motion: Unanimously passed.

RULEMAKING UPDATE

Mr. Olson presented members with a memorandum that is attached to and made a part of these minutes. Mr. Olson stated that Board staff continues working on draft language for the lobbying program, which will be available soon. Mr. Sigurdson said that the draft rule language prepared thus

far by Board staff has been provided to the leadership of the relevant legislative committees as well as members of the public subscribed to the Board's rulemaking email list.

LEGAL REPORT

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn said that it may take some time to draft a complaint for the Mariani matter. Mr. Hartshorn stated that a court order and default judgment have been issued in the Thompson matter. Ms. Engelhardt stated that Trace has entered into a payment plan to pay the balance owed, and Mr. Hartshorn said that he will file the affidavit needed to dismiss the legal action in that matter.

EXECUTIVE SESSION

Chair Soule recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, Chair Soule reported into regular session the Findings, Conclusions, and Order issued in the Matter of the Complaint of Matthew T. Werden regarding the Dippel (Tom) for Senate committee and Action for Liberty.

Mr. Sigurdson stated that Member Leppik is not seeking reappointment to the Board, and thanked her for her years of service on the Board.

There being no other business, the meeting was adjourned by the chair.

Respectfully submitted,



Jeff Sigurdson
Executive Director

Attachments:

Memorandum regarding Advisory Opinion 456
Request for Advisory Opinion 456
Advisory Opinion 456 draft
Public version of memorandum regarding Advisory Opinion 457
Public version of Advisory Opinion 457 draft
Memorandum regarding rulemaking
Draft potentially controversial rule language, excluding lobbying language
Legal report



MINNESOTA CAMPAIGN FINANCE BOARD

Date: December 6, 2023

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Advisory Opinion 456 – Communication between a membership organization and members of the organization is not lobbying.

The request for this advisory opinion was received from Patricia Beety, General Counsel for the League of Minnesota Cities, on behalf of the League of Minnesota Cities, the Association of Metropolitan Municipalities, the Minnesota Association of Small Cities, the Coalition of Greater Minnesota Cities, and the Municipal Legislative Commission, (the Membership Organizations) on November 3, 2023. Ms. Beety signed a release making her request and the resulting opinion public data.

The request provides that the Membership Organizations lobby at the legislature on behalf of, and at the direction of the member cities. The Membership Organizations report back to the member cities on the progress of the lobbying effort, and may suggest that the member cities sign a letter or contact local legislators to support the lobbying effort. In order for a city official to sign a letter, or contact a legislator, on behalf of the city, the city council must take a vote to authorize that action. The request asks if the Membership Organizations are lobbying the member cities when the organizations report on the legislative session or suggest that the cities indicate support for the lobbying that is being done on behalf of the membership.

The opinion as drafted concludes that the Membership Organizations are not lobbying political subdivisions when the organizations provide legislative status reports to member cities or suggest that the member cities show support for lobbying done at the direction of the member cities. That conclusion is explained in the draft opinion.

Attachments:

Advisory opinion request

Draft advisory opinion



November 3, 2023

Jeff Sigurdson, Executive Director
Minnesota Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar St,
St Paul, MN 55155

DELIVERED BY EMAIL to jeff.sigurdson@state.mn.us

Dear Mr. Sigurdson:

On behalf of the League of Minnesota Cities, Metro Cities, the Minnesota Association of Small Cities, the Coalition of Greater Minnesota Cities, and the Municipal Legislative Commission, I am requesting an advisory opinion from the Campaign Finance and Public Disclosure Board. We seek clarification on the applicability of recent changes to the Campaign Finance statutes to municipal member organizations regarding the actions of municipal member organizations taken in support of our member cities

As you are aware, under 2023 Minn. Laws Ch. 62, Art. 5, a person is considered a “lobbyist” if they are compensated to attempt to influence official action of any Minnesota city by communicating with council members or senior staff (local officials) of that city. An “official action” for cities is essentially any action that requires a vote or approval by one or more council members, but also recommendations by city staff and other advisors regarding expenditures and investments of city funds. It is not clear whether there was any discussion prior to enactment of this law regarding how this may apply to actions by city member organizations on behalf of its member cities, but we believe it was not intended to capture our efforts to assist our members.

Each of our member organizations adopts legislative policies for the sole purpose of encouraging positive state support for local government. While we have different processes, the policies are exclusively determined and prioritized by formal committees of city officials who take time out of their day to tell us what is important to the functions of local government. These policies range from the general (support for local control, opposition to unfunded mandates,) to more specific outcomes (traffic enforcement cameras, statewide pension levels that encourage police and fire recruitment), but they are never the policies of a particular city. Cities that wish to pursue their own city-specific Legislative policies must use their own lobbyists. With these policies as “marching orders,” our organizations represent city government at the Legislature and leave cities to do what they do best—serve the public.

Because we are responsive and eager to help our members, we routinely reach out to local officials to alert them of some effort at the legislature that aligns or conflicts with the adopted legislative policies. We may notify all officials of all members or, if only a subset of cities would be affected, we only notify the subset. We may encourage cities to sign a letter in support or opposition to the action, or we may recommend city officials reach out to their legislative representatives. Since it takes a vote of council for a city official to either sign a letter or reach out to a Legislative representative, we are arguably influencing official actions of the cities.¹ While it may make sense to see registration and report by individuals who lobby a city to make a decision in the individual's interest, it doesn't make much sense for membership organizations to report actions taken in support of policies directed by members themselves.

To be clear, we are not seeking guidance on registration or reporting related to efforts to lobby the State Legislature. Our organizations believe good government includes a healthy balance between transparency and expediency of action. We already comply with registration and reporting requirements with respect to all actions taken to influence the Legislature. However, we cannot believe there was any intention by the Legislature for member organizations that represent cities to report communications with cities that are taken in service to the cities and their expectations of membership.

We are happy to supply as much or as little information on policy development and our practices of interacting with our members as may be useful to you. In hopes it is helpful, I am enclosing a link to the League's most recent "City Policies" document.

Sincerely yours,



Patricia Beety
General Counsel
League of Minnesota Cities

Encl: <https://www.lmc.org/advocacy/legislative-policies/current-legislative-policies-priorities/>

¹ For the League, our attempts to influence city decisions doesn't end there. While we promote the importance of decision making at the local level, we also provide robust services to our members that help individual cities with guidance on a myriad of issues. This includes a Research department staffed with local government experts who develop written informational materials and answer individual member inquires. League staff also administer the largest municipal insurance pool in the state, so much of our effort is put into loss control and risk management to protect the public funds in the pool. Like the schools, in the 1980s we founded a local government investment pool which is governed by a document which can only be amended by a majority of favorable votes by participating cities. We have encouraged such amendments. We have also provided invaluable resources for state agencies intending to influence city actions. For example, when a city's regulatory compliance falls short, we have proven to be good partners with the state to pass along an agency's message. Just recently, we were instrumental to the efforts of the Attorney General's Office in encouraging cities to join the state in national opioid settlements to maximize funds coming into Minnesota and its communities. All of these efforts have impacted or resulted in official action by cities.

State of Minnesota
Campaign Finance and Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information
provided by the requester

Issued to: Patricia Beety
General Counsel
League of Minnesota Cities
145 University Avenue West
St. Paul, MN 55103

RE: Lobbyist Registration and Reporting

ADVISORY OPINION 456

SUMMARY

A membership organization for political subdivisions that communicates with its members about lobbying efforts made on behalf of those members, and suggests that members take action to support those lobbying efforts, is not lobbying its own members.

FACTS

On behalf of the League of Minnesota Cities, the Association of Metropolitan Municipalities, the Minnesota Association of Small Cities, the Coalition of Greater Minnesota Cities, and the Municipal Legislative Commission, (Membership Organizations) you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts which were provided to the Board in a written request, and through Board records.

1. Each of the five Membership Organizations that request this opinion have lobbyists registered with the Board, and are lobbyist principals. As of the date of this opinion the Coalition of Greater Minnesota Cities is represented by fourteen lobbyists, the League of Minnesota Cities is represented by twelve lobbyists, the Association of Metropolitan Municipalities is represented by five lobbyists, the Municipal Legislative Commission is represented by one lobbyist, and the Minnesota Association of Small Cities is represented by one lobbyist.
2. Cities in Minnesota pay dues to belong to one or more of the Membership Organizations. In return, the Membership Organizations provide services and take actions on behalf of the cities. This includes lobbying the legislature and, in some cases, lobbying the Metropolitan Council and state agencies.

3. Each Member Organization adopts legislative policies that are then brought to the legislature to encourage actions that will support local government. The legislative policies that the Membership Organizations' lobbyists support are exclusively determined and prioritized by formal committees made up of local officials from member cities. The Membership Organizations do not have legislative goals independent of their members; only policy recommendations formally developed by their members are supported by lobbyists registered for the Membership Organizations. The policies range from general to more specific, but are never policies to benefit a single city.
4. A city that wishes to pursue legislative policy specific to that city must hire its own lobbyist.
5. The Membership Organizations report back to the cities on the legislative session, and in particular the lobbying efforts as directed by the members. This includes identifying and explaining legislation that would support or conflict with the legislative goals established by the Membership Organizations.
6. As part of lobbying efforts the Membership Organizations may suggest that cities sign a letter in support or opposition to a given legislative action, or suggest that cities contact their legislative delegation to ask for support of legislation, or to voice opposition to legislation, that aligns or conflicts with the legislative goals established by the member cities of the Membership Organizations.
7. A city council must vote to authorize a city official to either sign a letter on behalf of the city, or reach out to a legislator on behalf of a city. Therefore, the city council is taking an "official action of a political subdivision"¹ when it authorizes communication in the city's name to support or oppose legislative action.

Issue One

Is a Membership Organization lobbying its member cities when it reports on the status of legislation and lobbying made on behalf of the membership, and recommends actions by the member cities that will support that lobbying effort?

Opinion One

No. The member cities pay dues and fees to the Membership Organizations, in part, as payment for lobbying the legislature on issues selected by the cities. The Membership Organizations are, in effect, lobbying the legislature as paid agents of the member cities

¹ Effective January 1, 2024, Minnesota Statutes section 10A.01, subdivision 26b, will provide that "[o]fficial action of a political subdivision' means any action that requires a vote or approval by one or more elected local officials while acting in their official capacity; or an action by an appointed or employed local official to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money."

of each organization. As described, the legislative status reports are an update on the progress and obstacles faced by the Membership Organizations' lobbyists while working on the issues that were selected by the member cities. Chapter 10A does not restrict communication between a lobbyist and the lobbyist's client, or require that the communication between a lobbyist and the client be reported as lobbying, even if the client is a political subdivision of the state.

Minnesota Rules 4511.0100, subpart 3, defines the term lobbying to mean "attempting to influence legislative action, administrative action, or the official action of a metropolitan governmental unit² by communicating with or urging others to communicate with public officials or local officials in metropolitan governmental units. Any activity that directly supports this communication is considered a part of lobbying." The vote required by a city council in order for a city official to sign a letter of support for a legislative action, or contact a legislator, on behalf of the city is an official action by the city. If the Membership Organizations were asking the cities to take an official action in support of an issue or agenda brought to the cities by the Membership Organizations independent of their member cities, that would be lobbying of political subdivisions as provided in Chapter 10A. However, under the facts of this advisory opinion, the cities are not being asked to support the legislative agenda of the Membership Organizations, because the Membership Organizations do not have their own legislative agenda. The legislative agenda of each Membership Organization was created by its member cities, and lobbying effort to support the issues included in that agenda is being paid for by the member cities.

The question for the Board is whether lobbying of political subdivisions includes this situation in which an entity is reporting to a political subdivision the result of lobbying made on the political subdivision's behalf, or recommends actions by the political subdivision that will support that lobbying effort. When attempting to ascertain legislative intent courts are guided by Minnesota Statutes section 645.17, which states, in relevant part, that "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable." Here, the Board concludes that the legislature intends for there to be meaningful disclosure to the public of lobbying by individuals and associations to influence the official actions of political subdivisions, but did not intend to include providing information on work requested and paid for by the political subdivision as lobbying of that political subdivision.

Further, if the Board was to conclude that the actions described in this opinion request is lobbying of political subdivisions then, as a consequence, the Membership Organization's lobbyists would need to file reports that list each member city as a subject of lobbying, and each issue that the Membership Organization lobbied on at the legislature as a lobbying subject for each city.

² The Board intends to replace the term "metropolitan governmental unit" with the term "political subdivision" within its administrative rules in order to reflect changes to Minnesota Statutes section 10A.01, subdivision 21, and other lobbying provisions, which will take effect on January 1, 2024.

Each of the Member Organizations that requested this opinion already have lobbyists registered with the Board. Under the lobbyist reporting requirements that will be in effect as of January 1, 2024, lobbyists will disclose separately each issue on which they attempted to influence legislative action, and then separately each political subdivision where the lobbyist attempted to influence an official action. The League of Minnesota Cities currently has eight hundred and thirty-eight cities as members. Lobbyists for the League of Minnesota Cities will report the subjects they are lobbying on at the legislature on behalf of the member cities. If communicating with member cities about the legislative session as described is lobbying of political subdivisions, then the lobbyists will also list each of the eight hundred and thirty-eight cities separately, and for each city list the same lobbying subjects that were already disclosed as legislative lobbying. This would distort the disclosure provided in lobbyist reports by making it appear that the League of Minnesota Cities is lobbying the cities on those subjects, when actually the League of Minnesota Cities is lobbying on those subjects at the legislature at the direction of the member cities. The Board concludes that classifying requests by the Membership Organizations to member cities to express support for lobbying would have the consequence of distorting the reported lobbying by the Membership Organizations, and is not the intent of the legislature.

Although the activities contemplated in the request do not constitute lobbying of political subdivisions, encouraging member cities to communicate with members of the legislature, who are public officials, is legislative lobbying. For that reason, the conclusion that the contemplated activities do not constitute lobbying of political subdivisions does not impact which individuals are required to register as lobbyists under Minnesota Statutes section 10A.03. The Membership Organizations will need to track the cost of communicating with member cities to encourage support for a legislative effort as a cost to be reported on the Annual Report of the Lobbyist Principal.

Issued: December 13, 2023

George Soule, Chair
Campaign Finance and Public Disclosure Board



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: December 6, 2023

To: Interested Members of the Public

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Advisory Opinion 457

This advisory opinion request was received on November 17, 2023. The requester is an association whose members may be affected by recent changes to the statutes regulating lobbyist registration and reporting. The association does not wish to make their request public. Therefore, the draft opinion that is provided to the public does not identify the requestor. The Board will only discuss the public version of the draft opinion during regular session.

Attachments:

Public version of draft advisory opinion 457

State of Minnesota
Campaign Finance and Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Lobbyist Registration and Reporting

ADVISORY OPINION 457

SUMMARY

Attorneys who represent clients by communicating with public or local officials are engaged in lobbying if that communication is intended to influence the official action of a political subdivision. Whether an action is an official action of a political subdivision is dependent upon whether the action must be approved by one or more public or local officials. Routine administrative tasks that need not be approved by a specific official or body of officials is not an official action.

FACTS

This advisory opinion from the Campaign Finance and Public Disclosure Board is based on the following facts, which were provided to the Board in a written request.

1. Some members of an association are unsure if the new definition of “official action of a political subdivision” may require the members who have interacted with political subdivisions in a way traditionally considered the practice of law may now need to register and report as a lobbyist.
2. The association requests that the Board provide general guidance on how attorneys can ensure that they are in compliance with lobbyist registration and reporting requirements, and provide advice on specific situations provided in the advisory opinion request.

INTRODUCTION

The determination of whether communication with government employees or officials is lobbying, and whether registration and reporting as a lobbyist is required for that communication, is determined by a number of factors. Although the requestor expresses specific concern over the definition of “official action of a political subdivision” the scenarios provided in the request require the Board to consider all of the following factors when providing the opinions within this advisory opinion. The factors are described in

terms of how they relate to attempting to influence the official action of a political subdivision. Because the request concerns statutory language that will be amended effective January 1, 2024, all references to statutory text within this opinion concern the language that will be in effect on that date, unless otherwise noted.

Purpose of the communication – Lobbying occurs when the communication is for the purpose of attempting to influence the official action of a political subdivision. The communication may be directly with public or local officials, but also occurs indirectly by asking other individuals to contact public or local officials to request an official action.¹ Communication that is a request for information is, by itself, not an attempt to influence an official action, and is therefore not lobbying.²

Who are public and local officials – The definition of public official is specific, and includes county commissioners, members of a watershed management organization, and supervisors of a soil and water conservation district.³ The list of local officials is less definitive. Local officials include all individuals who hold an elective position in a political subdivision, and individuals who are appointed or employed by a political subdivision to a position in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money. The term “major decision” is not defined in Chapter 10A, and may be applied differently by the various political subdivisions. In the opinions below the Board provides that negligible expenditures of public funds are clearly not a “major decision,” but the Board recognizes that providing greater clarity on what constitutes a major decision through administrative rule or statutory update would be beneficial to individuals who are trying to comply with lobbyist registration and reporting requirements.

Official action of a political subdivision – As noted by the requestor, the definition of “official action of a political subdivision” is new. The definition is provided in Minnesota Statutes section 10A.01, subdivision 26b:

“Official action of a political subdivision” means any action that requires a vote or approval by one or more elected local officials while acting in their official capacity; or an action by an appointed or employed local official to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.

¹ Minn. Stat. § 10A.01, subd. 21, (a) 1 (i). See also [Minn. R. 4511.0100, subp. 3](#). The Board intends to replace the term “metropolitan governmental unit” with the term “political subdivision” within its administrative rules in order to reflect changes to various statutes that will take effect on January 1, 2024.

² See [Findings and Order in the Matter of the Complaint by Karl Bremer regarding The Conach Group and Mike Campbell \(Aug. 16, 2011\)](#). The Board notes that in certain circumstances Minnesota Statutes section 10A.01, subdivision 21, provides that consulting or providing advice for a lobbying effort, or attempting to influence the official action of a political subdivision for more than 50 hours in any month while employed as a local official or employee of a political subdivision, may also make an individual a lobbyist, but those conditions do not apply to the scenarios provided in the opinion request.

³ [Minn. Stat. § 10A.01, subd. 35](#).

Although the definition is new, it reflects the preexisting definition of who is a local official. The definition can be read as having two parts. The first part of the definition applies only to elected local officials. Any matter before an elected public official that requires a vote of members of the governing body of the political subdivision, or any subcommittee of the governing body of the political subdivision, is an official action of the political subdivision. Further, any action that requires “the approval” of the elected local official is an official action of the political subdivision. In the Board’s view, routine administrative tasks that are done through the office of a local elected official, and do not require the elected official to personally approve the action, are not official actions. An action that requires the elected public official to personally use their discretion to approve or not approve an action is an official action of the political subdivision.

The second part of the definition applies only to individuals who are local officials because they hold appointed positions or are employed in positions within political subdivision with the authority to make major decisions regarding expenditures or investments of public money. An action by a non-elected local official that does not relate to a major expenditure or investment of public funds is not an official action of a political subdivision. Therefore, attempting to influence the action of a non-elected local official that does not require a major expenditure or investment of public funds is not lobbying of a political subdivision.

Compensation – An individual who is not compensated for attempting to influence legislative action, administrative action, or the official action of a political subdivision is not required to register or report as a lobbyist unless the individual spends more than \$3,000 of their own money in a calendar year in support of those attempts (not including the cost of travel expenses or membership dues related to that effort).

An individual who is compensated for attempting to influence legislative action, administrative action, or the official action of a political subdivision is required to register and report as a lobbyist only when the compensation exceeds \$3,000 from all sources in a calendar year. It is important to note that registration and reporting as a lobbyist for a client may be required even if the compensation from that client is less than \$3,000 if other compensation for lobbying in aggregate exceeds \$3,000.

The scenarios provided in this advisory opinion do not indicate if an individual is being compensated for representing an individual or association, or what is the individual’s aggregate compensation for the year from lobbying. For all of the opinions provided in this request the Board assumes that the individual is being compensated for representing the individual or association, and that the lobbying compensation received from all sources within the calendar year exceeds \$3,000.

An individual who is determining if they must register and report as a lobbyist must consider all of these factors, and not just the definition of official action of a political subdivision.

ISSUE

Do the following situations constitute lobbying?

1. Conveying proposed amendments to a comprehensive plan or zoning ordinance to city officials, even if the city requested comments from the local bar association.

Opinion: The proposed amendments to a comprehensive plan or zoning ordinance are an attempt to influence an official action of elected officials of the city, and therefore conveying the amendments is lobbying. The fact that a city either generally or specifically requested comments on the plan or ordinances does not change the purpose of the proposed amendments provided in response to the request. Although the scenario does not indicate that the individual or local bar association was paid by the city to provide testimony on the plan or ordinances, the Board notes that the definition of lobbyist specifically excludes an individual who is “a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony”⁴.

2. Conveying objections to an interim ordinance prohibiting some or all development of land for a one-year period, taking the position on behalf of a real estate developer that the moratorium was adopted to impede a single project.

Opinion: The Board assumes that the objections of the real estate developer are an attempt to modify or repeal the ordinance, and that action on the ordinance will require a vote of elected local officials. Communicating the objections to the political subdivision on behalf of the real estate developer is lobbying of a political subdivision.

3. Contacting the county auditor on behalf of a property owner to request a single parcel identification number for adjoining parcels.

Opinion: For the purpose of this opinion the Board assumes that the county auditor is either elected to their office, or is an appointed local official. The Board also assumes that assigning a single parcel identification number for adjoining parcels is a discretionary decision for the county auditor, and not an administrative task which is automatically performed upon the completion of required forms and/or the payment of a fee. Requesting a discretionary action by the county auditor under those circumstances is lobbying.

4. Representing a real estate developer before a city or county planning commission, seeking approval of a subdivision plat.

⁴ [Minn. Stat. § 10A.01, subd. 21 \(b\) \(8\)](#).

Opinion: The Board assumes that the planning commission is either composed of public or local officials, or if the planning commission members are not public or local officials, they are being asked to recommend the subdivision plat to the city council or county board. The request to approve the subdivision plat is either direct lobbying of public or local officials, or the request is lobbying because asking or urging others to communicate with public or local officials to approve the subdivision plat is also lobbying.

5. Representing a group of neighbors at a city planning commission meeting who object to the issuance of a short-term rental license.

Opinion: Similar to question four, the Board assumes that the city planning commission is either composed of local officials, or is composed of individuals who are not local officials but who are being asked to recommend that local officials deny or revoke the short-term rental license. In either case the request to deny or revoke the short-term rental license is asking for an official action of a political subdivision, and is therefore lobbying.

6. Representing a real estate developer at a city council meeting seeking a variance in connection with a planned unit development.

Opinion: Yes, representing the real estate developer is lobbying. The city council members are all elected local officials, and any vote on the variance is an official action of a political subdivision.

7. Representing a group of neighbors at a town board meeting who object to the grant of a conditional use permit for the operation of a gravel pit.

Opinion: Town board members are elected officials of a political subdivision and are thereby local officials. Asking the town board to deny or revoke the conditional use permit is lobbying to influence an official action of a political subdivision.

8. Meeting with members of the city parking commission to discuss the construction of a new city parking ramp.

Opinion: The Board again assumes that the city parking commission either includes individuals that are elected local officials, or that the commission is composed of individuals who will make recommendations on an official action regarding the parking ramp that will be made by the city council or a single local official. The Board further assumes that the discussion of the construction of the parking ramp is done for a purpose, and that purpose is to influencing official decisions regarding the parking ramp. With those assumptions in place, the discussion of the parking ramp with the city

parking commission is lobbying.

9. Representing a group of local tennis players at a meeting of the parks and recreation commission, requesting that the city build new tennis courts.

Opinion: The Board assumes that if a decision to build the tennis courts is made by the parks and recreation commission, that the expenditure needed to build the courts will represent a major decision on an expenditure of public funds. Therefore, the members of the commission are local officials, and the request is lobbying of those local officials. If the approval of the tennis courts will require a vote of the city council, the request is still lobbying because the commission members are being asked to recommend the construction of the courts to elected local officials, which is lobbying of a political subdivision.

10. Representing a group of downtown business owners before the city heritage preservation commission, requesting that the commission recommend acquisition by the city of a downtown historic theatre.

Opinion: Using the same assumptions about the authority of the members of the city heritage preservation commission to make expenditures or recommendations as described for the membership of the commission in question nine, the request for the commission to recommend that the city acquire the theater is lobbying.

11. Representing a local business at a meeting of the civil rights commission, to promote economic development in the form of economic assistance to LBTQIA+ businesses located in the city.

Opinion: Using the same assumptions about the authority of members of the civil rights commission to make expenditures or recommendations as described for the membership of the commission in question nine, the request for economic assistance is lobbying.

12. Representing a real estate developer before a local zoning authority, seeking a rezoning to allow a residential group home.

Opinion: Using the same assumptions about the members of the local zoning authority as described for the membership of the planning commission in question five, the request for rezoning to allow a residential group home is lobbying.

13. Negotiating a development contract with City or County planning staff on behalf of a real estate developer that requires the expenditure of public money on public infrastructure.

Opinion: The Board assumes that expenditure of public funds needed for the

infrastructure represents a major decision regarding the use of public funds. If the city or county planning staff are local officials, then the negotiations on the contract is lobbying. If the planning staff are not local officials, then the negotiations do not constitute lobbying. However, lobbying would occur if at the end of the negotiations the planning staff is urged to ask the city council or county board to approve the contract with the developer.

14. Meeting with the county planning director to review a proposed preliminary plat for development of multifamily housing that will receive a grant from HUD.

Opinion: The Board assumes that the county planning director is a local official. If the meeting is only for the purpose of collecting information on the specifics of the proposed preliminary plat, then the meeting is not lobbying. If the meeting is for the purpose of influencing the planning director on the content or approval of the preliminary plat, then the meeting is lobbying.

15. Speaking with the county surveyor about his objections to a proposed preliminary plat if a component of the project includes a business subsidy.

Opinion: County surveyor is typically not an elected position, and for the purposes of this opinion, the Board assumes that the county surveyor is not elected. The Board further assumes that the business subsidy represents a major decision on the use of public funds. If the purpose of the meeting is only to gather information on the surveyor's objections to the proposed preliminary plat, then the meeting is not lobbying. If the purpose of the meeting is to change the surveyor's position on the preliminary plat, and to have the surveyor convey that change in position and encourage public or local officials to approve the plat, then the meeting is lobbying.

16. Participating in a meeting, on behalf of a real estate developer, with a county commissioner and other county officials to discuss a new development project that will require a zoning change.

Opinion: All county commissioners are public officials. Regardless of the positions held by the other county officials, meeting with a public official regarding a decision that will require a vote of elected officials of a political subdivision is lobbying.

17. Speaking on behalf of a group of neighbor residents at a planning commission or city council meeting, objecting to a zoning change in their district.

Opinion: The city council members are local officials. The Board assumes that at least some of the planning commission members are elected local officials, or that the commission members are being asked to encourage the city council to make or deny a requested zoning change. Therefore, in either case, appearing at a meeting to ask for or object to a change in zoning is lobbying.

18. Meeting with the city engineer to negotiate street improvements on behalf of local residents who object to their street assessment.

Opinion: A city employee who has the authority to make significant decisions regarding the expenditure of public money is a local official. Based on the description of the action requested, and the authority the city engineer apparently has to decide how much the city spends on street repairs, the Board assumes that the city engineer is a local official and that the decision on the street improvements is a major decision regarding the expenditure of public funds. Based on those assumptions, the meeting is lobbying.

19. Speaking at a town board meeting on behalf of an apple grower who objects to a petition for a cartway through his apple orchard.

Opinion: Members of the town board are elected local officials. If an official action of the town board is needed to approve the requested cartway, then appearing at the town board meeting is lobbying.

20. Contacting the county surveyor to review and discuss the county surveyors' recommended changes to a proposed subdivision plat if the development agreement requires the county to expend any public money on infrastructure for the project.

Opinion: If the meeting with the surveyor is solely for the purpose of gathering information on surveyor's recommendations, then the discussion is not lobbying. If the surveyor is being asked to change the recommendations, and then urge the county board to accept the recommendations, then the discussion is lobbying. If the surveyor is being asked to change the recommendations and the surveyor is elected and is thereby a local official, then the discussion is lobbying.

21. Representing a group of parents of elementary school age children before the school board who object to the closure and razing of their neighborhood elementary school.

Opinion: School districts are political subdivisions, and members of the school board are elected local officials. Asking the school board to reverse a decision regarding the closing of the school is lobbying.

22. Representing rural property owners who lack access to the internet at a town meeting, advocating for the installation of broadband throughout the township.

Opinion: Members of the town board are elected local officials. The Board assumes that it will take an official action of the town board to install broadband, therefore advocating for that official action is lobbying.

23. Representing a resort owner in connection with the appeal of an alleged zoning violation.

Opinion: The answer in this instance is dependent upon whom the appeal is made to, and the content of the appeal. If the appeal is made to a county or municipal zoning board and the membership of the board includes elected officials, then the appeal is lobbying because accepting the appeal will require a vote by the elected officials. If the zoning board members are not elected officials, and are not being asked to communicate with public or local officials in support of the appeal, then the appeal is not lobbying. The Board understands that disputes over alleged zoning violations may result in court action. Representing a client in court on a zoning dispute is not lobbying.

24. Asking a city police department or county attorney for U visa certification.

Opinion: The Board has limited knowledge of the U visa certification process. It is the Board's understanding that a U visa certification is a statutorily required form that confirms the helpfulness of a witness who was the victim of a serious crime. A county attorney is a public official. If issuing the U visa certification is an administrative act provided to any individual who has qualified for the certification, and does not involve a discretionary decision by the county attorney, then requesting the certification from the county attorney is not lobbying. Conversely, if issuing the certification is a discretionary official action by the county attorney, then the request is lobbying. The Board assumes that issuing the certification is not a major decision regarding an expenditure of public funds, therefore the request does not require an official action by a political subdivision even if the individual in the police department who issues the certification is a local official. As a result, a request made to a city police department is not lobbying.

25. Asking a non-federal official for a character letter for noncitizen client.

Opinion: If the official contacted is appointed or employed by the state, then the request is not lobbying. The Board assumes that the letter does not involve a major decision on the use of public funds, and that a vote of elected officials is not required to authorize the official to sign the letter. With those assumptions in place, requesting the letter is not lobbying.

26. Asking state and other local officials to contact federal officials on behalf of an immigration client.

Opinion: If the officials contacted are employed by the state, then the request is not lobbying. A request to a local official would be lobbying only if an official action by the elected officials of the political subdivision is required before the letter can be provided.

27. Participating in the Minneapolis or Saint Paul immigration forums.

Opinion: Participating in the forums will be lobbying if the participation is intended to influence an official action of Minneapolis or St. Paul, and the individual participating in the forum either communicates with a local or public official in attendance at the forum, or urges other individuals at the forum to communicate with public or local officials to influence an official action.

Issued: December 13, 2023

George Soule, Chair
Campaign Finance and Public Disclosure Board

DRAFT



MINNESOTA CAMPAIGN FINANCE BOARD

Date: December 6, 2023

To: Board members
Nathan Hartshorn, counsel

From: Andrew Olson, Legal/Management Analyst

Telephone: 651-539-1190

Subject: Rulemaking update

Attached to this memorandum is draft rule language regarding rulemaking topics that have been deemed potentially controversial by Board staff, excluding rulemaking topics pertaining to the lobbying program. Potential rule language regarding the lobbying program is still being drafted and Board staff intends to provide it to the Board's rulemaking committee and members of the public in the very near future.

The attached document includes comments identifying the rule topics being addressed and the rule topic numbers correspond to the numbers listed within the Board's request for comments.¹ Board staff anticipates that this batch of draft rule language, as well as the batch of draft language for rules deemed technical or not controversial, will be considered by the Board's rulemaking committee at a future date that has yet to be determined. The Board does not need to take any action at this time regarding administrative rulemaking.

Campaign Finance Topic 2 – noncampaign disbursements for operation of a legislative caucus

The draft language defines the terms "legislative caucus," "legislative caucus leader," and "legislative party unit." The draft language includes provisions describing when a legislative caucus leader may classify expenses incurred in carrying out their leadership responsibilities as noncampaign disbursements, and when office holders more generally may classify the cost of signage outside their official office and the cost of office supplies as noncampaign disbursements. This language is intended to codify Advisory Opinion 450.²

Campaign Finance Topic 3 – application of prohibition on corporate contributions to underlying sources of funding of a contributor that is an unregistered association

The draft language includes a provision stating that a campaign finance filer that is prohibited from accepting corporate contributions must consider an association's sources of funding in

¹ cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket/

² [Advisory Opinion 450 \(Feb. 6, 2019\)](#).

determining whether a contribution may be accepted from that association. This language is intended to codify Advisory Opinion 447.³

Campaign Finance Topic 4 – contribution processors not treated as contributors

The draft language includes a provision describing how a vendor may process or otherwise facilitate the accumulation of contributions without thereby making a contribution to the recipient. This language is intended to codify Advisory Opinions 319, 369, and 434.⁴

Campaign Finance Topic 5 – whether a contributor’s payment of a contribution processing fee is an in-kind contribution to the recipient

The draft language includes two versions of a provision addressing a situation in which a contributor, when making a contribution electronically, elects to pay a processing fee that would otherwise be paid by the recipient. Version 1 states that payment of the fee is an in-kind contribution, and if the fee is greater than \$20, the recipient must report that as an in-kind contribution received. Version 2 states that payment of the fee is not an in-kind contribution, which is consistent with the conclusion reached by the Board in Advisory Opinion 434.⁵

Campaign Finance Topic 7 – criteria to consider when a violation results from a coordinated expenditure

The draft language includes a provision stating that if a violation occurs as the result of a coordinated expenditure, knowledge of the circumstances that caused the expenditure to be a coordinated expenditure is not necessary to find that a violation occurred. The provision also details the factors the Board must consider when determining any penalty to be imposed for such a violation, including steps taken to prevent a coordinated expenditure from occurring, steps taken to mitigate the impact of the violation or to prevent future violations, and the factors listed in Minnesota Statutes section 14.045, subdivision 3.⁶

Campaign Finance Topic 8 – circumstances under which an equipment purchase by a principal campaign committee is a campaign expenditure or a noncampaign disbursement

The draft language includes a provision describing when the cost of equipment purchased by a principal campaign committee must be classified as a campaign expenditure, and when it may be classified as a noncampaign disbursement. This language is broadly intended to codify Advisory Opinions 89, 127, 209, 211, and 228.⁷

³ [Advisory Opinion 447 \(June 6, 2018\)](#).

⁴ [Advisory Opinion 319 \(Dec. 14, 1999\)](#); [Advisory Opinion 369 \(Sept. 13, 2005\)](#); [Advisory Opinion 434 \(May 7, 2013\)](#).

⁵ [Advisory Opinion 434 \(May 7, 2013\)](#).

⁶ [Minn. Stat. § 14.045, subd. 3](#).

⁷ [Advisory Opinion 228 \(Jan. 26, 1996\)](#); [Advisory Opinion 211 \(Oct. 4, 1995\)](#); [Advisory Opinion 209 \(Oct. 4, 1995\)](#); [Advisory Opinion 127 \(Nov. 12, 1992\)](#); [Advisory Opinion 89 \(May 22, 1984\)](#).

Campaign Finance Topic 11 – definition of the term “nomination”

The draft language generally defines the term “nomination” to mean “the placement of a candidate or a local candidate’s name on a general election or special general election ballot.” The definition of the term is important particularly because that term is used in Chapter 10A to define the terms “campaign expenditure,” “candidate,” and “local candidate.” That definition is consistent with how the term is generally used within Minnesota Statutes Chapters 200 through 212, which pertain to elections. However, the definition would not apply in two instances in which the term nomination has a different meaning, including within Minnesota Statutes section 10A.09, which uses the term to refer to the appointment of a public official, and within Minnesota Statutes section 10A.201, which uses the term to refer to a political party’s nomination of a candidate.

Campaign Finance Topic 15 – disclaimer requirements for electronic campaign material

The draft language includes a new rule that would define the terms “broadcast media” and “social media platform,” and establish the circumstances under which the disclaimer requirement is satisfied by including within electronic campaign material a link to an online page that includes the required disclaimer.

Audits and Investigations Topic 2 – general audit procedures

The draft language includes a provision stating that in conducting an audit, the Board may require testimony, written statements, and the production of records that a filer is required to maintain, and may issue subpoenas as needed to obtain records or testimony. The draft language also includes a provision that lists the factors the Board must consider in determining whether to conduct an audit, states that the Board may conduct partial audits, and states that the Board may conduct audits of respondents selected on a randomized basis.

Audits and Investigations Topic 3 – affidavit of contributions audit procedures

The draft language includes a provision establishing when the executive director must request the information necessary to audit a principal campaign committee’s affidavit of contributions in order to ensure that the candidate is eligible to receive a public subsidy payment.

Audits and Investigations Topic 5 – procedures related to probable cause

The draft language includes a provision stating that “[p]robable cause exists if a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation.” The draft language also includes a provision providing that when concluding an investigation, the Board’s “determination of any disputed facts must be based upon a preponderance of the evidence.”

Attachments:

Draft language for rules deemed potentially controversial, excluding lobbying language

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CHAPTER 4503, CAMPAIGN FINANCE ACTIVITIES

4503.0100 DEFINITIONS.

...

Subp. 8. Legislative caucus. “Legislative caucus” means an organization whose members consist solely of legislators belonging to the same house of the legislature and the same political party, and is not limited to a majority or minority caucus described in Minnesota Statutes, Chapter 3, but does not include a legislative party unit.

Subp. 9. Legislative caucus leader. “Legislative caucus leader” means a legislator elected or appointed by a legislative caucus to lead that caucus, and is not limited to leaders designated pursuant to Minnesota Statutes, section 3.099.

Subp. 10. Legislative party unit. “Legislative party unit” means a political party unit established by the party organization within a house of the legislature.

Subp. 11. Nomination. Except as used in Minnesota Statutes, sections 10A.09 and 10A.201, “nomination” means the placement of a candidate or a local candidate’s name on a general election or special general election ballot.

...

4503.0500 CONTRIBUTIONS.

...

Subp. 7. Contribution processors and professional fundraisers. A vendor may solicit, process, collect, or otherwise facilitate the accumulation of contributions made to a principal campaign committee, political party unit, political committee, or political fund, and may temporarily retain or control any contributions collected, without thereby making a contribution to the intended recipient of the contributions, if the vendor is paid the fair market value of the services provided. Contributions collected must be transmitted to the intended recipient, minus any fees withheld by the vendor. A vendor that is paid the fair market value of any goods or services provided is not a political committee or a political fund by virtue of providing those goods or services. A vendor that determines which principal campaign committee, party unit, political committee, or political fund receives the contributions collected is a political committee or political fund as provided in Minnesota Statutes, section 10A.01, even if the recipient pays the vendor the fair market value for the services provided to collect the contributions.

Subp. 8. [Repealed, L 2017 1Sp4 art 3 s 18] Underlying source funding. A principal campaign committee, party unit, or political committee or fund that is not an independent expenditure or ballot question political committee or fund, must consider an association’s sources of funding in determining whether a contribution may be accepted from an association

that is not registered with the board as a principal campaign committee, a party unit, a political committee, or the supporting association of a political fund. A contribution from an unregistered association is prohibited if any of that association's sources of funding would be prohibited from making the contribution directly under Minnesota Statutes, section 211B.15, subdivision 2. Types of unregistered associations that are prohibited from making a contribution to a principal campaign committee, a party unit, or a political committee or fund that is not an independent expenditure or ballot question political committee or fund, include, but are not limited to:

A. a political committee under the Federal Election Campaign Act of 1971, as amended, including a separate segregated fund, that has received funding or administrative support from a corporation that is not exempt under Minnesota Statutes section 211B.15, subdivision 15;

B. a political organization under section 527 of the Internal Revenue Code, as amended, including an association that may be regulated by or operate within a state other than Minnesota, that has received funding or administrative support from a corporation that is not exempt under Minnesota Statutes section 211B.15, subdivision 15; and

C. an association that is not a political organization under section 527 of the Internal Revenue Code, as amended, including an association not operated primarily for the purpose of influencing elections, that has received funding or administrative support from a corporation that is not exempt under Minnesota Statutes section 211B.15, subdivision 15.

Subp. 9. [Repealed, L 2005 c 156 art 6 s 68]

4503.0800 DONATIONS IN KIND AND APPROVED EXPENDITURES.

[Version 1 – Would nullify [Advisory Opinion 434](#)]

Subpart 1. [Repealed, L 2005 c 156 art 6 s 68] **Contributor payment of processing fee.** If a contributor pays a processing fee when making a contribution and the fee would otherwise have been billed to the recipient of the contribution or withheld from the amount transmitted to the recipient, the amount of the fee is a donation in kind to the recipient of the contribution. If the donation in kind exceeds the amount specified in Minnesota Statutes, section 10A.13, subdivision 1, the recipient's treasurer must keep an account of the contribution and must include the contribution within campaign reports as required by Minnesota Statutes, section 10A.20.

[Version 2 – Would codify [Advisory Opinion 434](#)]

Subpart 1. [Repealed, L 2005 c 156 art 6 s 68] **Contributor payment of processing fee.** If a contributor pays a processing fee when making a contribution, equal to the fair market value of the services provided, the amount of the fee is not donation in kind to the recipient of the contribution.

...

4503.0900 NONCAMPAIGN DISBURSEMENTS.

...

Subp. 2. [Repealed, 21-SR-1779] Expenses incurred by leaders of a legislative caucus. Expenses incurred by a legislative caucus leader in carrying out their leadership responsibilities may be paid by their principal campaign committee and classified as a noncampaign disbursement for expenses incurred by leaders of a legislative caucus. These expenses must be incurred for the operation of the caucus and include, but are not limited to, expenses related to operating a website, social media accounts, a telephone system, similar means of communication, travel expenses, and legal expenses.

Subp. 3. Signage and supplies for office holders. Expenses incurred by an office holder for signage outside their official office and for basic office supplies purchased to aid the office holder in performing the tasks of their office may be paid by their principal campaign committee and classified as a noncampaign disbursement for expenses for serving in public office. These expenses may include signage, stationary, or other means of communication that identify the office holder as a member of a legislative caucus.

Subp. 4. Equipment purchases. The cost of durable equipment purchased by a principal campaign committee, including but not limited to computers, cell phones, and other electronic devices, must be classified as a campaign expenditure unless the equipment is purchased to replace equipment that was lost, stolen, or damaged to such a degree that it no longer serves its intended purpose, or the equipment will be used solely:

A. by a member of the legislature or a constitutional officer in the executive branch to provide services for constituents during the period from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held;

B. by a winning candidate to provide services to residents in the district in accordance with subpart 1;

C. for campaigning by a person with a disability in accordance with subpart 1;

D. for running a transition office in accordance with subpart 1; or

E. as home security hardware.

4503.1700 VIOLATIONS RESULTING FROM COORDINATED EXPENDITURES.

[Repealed, L 2017-1Sp4 art 3 s 18] A principal campaign committee is responsible for a violation of a contribution limit or prohibition resulting from a coordinated expenditure, and the

spender is also responsible if it thereby violated a contribution limit or prohibition for which the contributor may be penalized by the board. A principal campaign committee's or spender's knowledge of the circumstances that resulted in an expenditure being a coordinated expenditure, including the use of a common vendor or subcontractor, is not necessary for the board to determine that a violation occurred as a result of a coordinated expenditure. When determining any penalty to be imposed for a violation resulting from a coordinated expenditure, the board must consider:

A. any steps taken prior to the violation to determine whether the candidate engaged in fundraising for the spender;

B. any steps taken prior to the violation to determine whether the candidate served as an officer of the spender;

C. any steps taken prior to the violation to determine whether a vendor or subcontractor provided or may provide services that may result in a coordinated expenditure;

D. any steps taken prior to the violation to determine whether a vendor or subcontractor that provides consulting services has satisfied the conditions in Minnesota Statutes, section 10A.176, subdivision 4;

E. any steps taken prior to the violation to determine whether a spender received nonpublic information regarding a candidate's campaign plans, strategy, or needs;

F. any steps taken prior to the violation to determine whether a spender provided nonpublic information to a candidate regarding an expenditure;

G. any steps taken prior to the violation to ensure that the candidate did not participate in making the expenditure;

H. any additional steps taken prior to the violation to ensure that the expenditure was not coordinated with the candidate;

I. any steps taken after the violation to mitigate its impact, including ceasing to disseminate a communication that is a coordinated expenditure;

J. any steps taken after the violation to prevent an additional violation; and

K. the factors listed in Minnesota Statutes, section 14.045.

4503.1800 DISCLAIMERS.

[Repealed, L 2017 1Sp4 art 3 s 18]Subpart 1. **Additional definitions.** The following definitions apply to this chapter and Minnesota Statutes, section 211B.04:

A. "Broadcast media" means a television station, radio station, cable television system, or satellite system.

B. "Social media platform" means a website or application that allows multiple users to create, share, and view user-generated content, excluding a website controlled primarily by the association or individual that caused the communication to be prepared or disseminated.

Subp. 2. **Material linked to a disclaimer.** Minnesota Statutes, section 211B.04, does not apply to the following communications that link directly to an online page that includes a disclaimer in the form required by that section, if the communication is made by or on behalf of a candidate, principal campaign committee, political committee, political fund, political party unit, or person who has made an electioneering communication, as those terms are defined in Minnesota Statutes, Chapter 10A:

A. text, images, video, or audio, disseminated via a social media platform;

B. a text or multimedia message disseminated only to telephone numbers;

C. text, images, video, or audio, disseminated using an application accessed primarily via mobile phone, excluding email messages, telephone calls, and voicemail messages; and

D. paid electronic advertisements disseminated via the internet by a third-party, including but not limited to online banner advertisements and advertisements appearing within the electronic version of a newspaper, periodical, or magazine.

The link must be conspicuous and when selected must result in the display of an online page that prominently includes the required disclaimer.

CHAPTER 4525, HEARINGS, AUDITS, AND INVESTIGATIONS

4525.0100 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to this chapter and Minnesota Statutes, chapter 10A. The definitions in chapter 4501 and in Minnesota Statutes, chapter 10A, apply to this chapter.

Subp. 1a. ~~[Repealed, 20-SR-2504]~~

Subp. 2. ~~[Repealed, 20-SR-2504]~~

Subp. 2a. **Complaint.** "Complaint" means a written statement, including any attachments, that:

A. alleges that the subject named in the complaint has violated Minnesota Statutes, chapter 10A, or another law under the board's jurisdiction; and

B. complies with the requirements in part 4525.0200, subpart 2.

Subp. 3b. **Complainant.** "Complainant" means the filer of a complaint.

Subp. 4b. **Contested case.** "Contested case" means a proceeding conducted under Minnesota Statutes, chapter 14, in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a board hearing. "Contested case" includes a proceeding pursuant to a request for exemption from campaign reporting requirements under Minnesota Statutes, section 10A.20, subdivisions 8 and 10; a hearing ordered by the board under part 4525.0900, subpart 2, concerning a complaint, investigation, or audit; and any other hearing which may be ordered by the board under parts 4525.0100 to 4525.1000 or which may be required by law.

"Contested case" does not include a board investigation or audit conducted under Minnesota Statutes, section 10A.022, subdivisions 1 and 2.

Subp. 4. ~~[Repealed, 20-SR-2504]~~

Subp. 5. ~~[Repealed, 39-SR-757]~~ **Preponderance of the evidence.** "Preponderance of the evidence" means, in light of the record as a whole, the evidence leads the board to believe that a fact is more likely to be true than not true.

Subp. 6. ~~[Repealed, 39-SR-757]~~

Subp. 7. ~~[Repealed, 20-SR-2504]~~

~~Subp. 8. Respondent.~~ "Respondent" means the subject of a complaint, an investigation, or an audit.

4525.0210 DETERMINATIONS PRIOR TO AND DURING FORMAL INVESTIGATION.

Subpart 1. [~~Repealed, L 2017-1Sp4 art 3 s 18~~]

~~Subp. 2. Making the prima facie determination.~~ In determining whether a complaint states a prima facie violation, any evidence outside the complaint and its attachments may not be considered. Arguments of the respondent, which are not themselves evidence, must be considered.

If a finding is made that a complaint does not state a prima facie violation, the complaint must be dismissed without prejudice. The dismissal must be ordered by the board member making the determination or by the full board if the full board makes the determination. The determination must be in writing and must indicate why the complaint does not state a prima facie violation.

If a finding is made that a complaint states a prima facie violation, the board chair must schedule the complaint for a probable cause determination.

Subp. ~~2~~3. **Action after prima facie violation determination.** The executive director must promptly notify the complainant and the respondent of the prima facie determination. The notice must include a copy of the prima facie determination.

If a determination is made that a complaint states a prima facie violation, the notice also must include the date of the meeting at which the board will make a probable cause determination regarding the complaint and a statement that the complainant and the respondent have the opportunity to be heard before the board makes the probable cause determination.

Subp. 3. Making the probable cause determination. In determining whether there is probable cause to believe a violation occurred, any evidence obtained by or known to the board may be considered. Arguments of the respondent and complainant must be considered. Probable cause exists if a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation.

Subp. 4. **Action after probable cause not found.** If the board finds that probable cause does not exist to believe that a violation has occurred, the board must order that the complaint be dismissed without prejudice. The order must be in writing and must indicate why probable cause does not exist to believe that a violation has occurred.

The executive director must promptly notify the complainant and the respondent of the board's determination. The notice must include a copy of the order dismissing the complaint for lack of probable cause.

Subp. 5. **Action after probable cause found.** If the board finds that probable cause exists to believe that a violation has occurred, the board then must determine whether the alleged violation warrants a formal investigation.

When making this determination, the board must consider the type of possible violation; the magnitude of the violation if it is a financial violation; the extent of knowledge or intent of the violator; the benefit of formal findings, conclusions, and orders compared to informal resolution of the matter; the availability of board resources; whether the violation has been remedied; and any other similar factor necessary to decide whether the alleged violation warrants a formal investigation.

If the board orders a formal investigation, the order must be in writing and must describe the basis for the board's determination, the possible violations to be investigated, the scope of the investigation, and the discovery methods available for use by the board in the investigation.

The executive director must promptly notify the complainant and the respondent of the board's determination.

The notice to the respondent also must:

- A. include a copy of the probable cause order;
- B. explain how the investigation is expected to proceed and what discovery methods are expected to be used;
- C. explain the respondent's rights at each stage of the investigation, including the right to provide a written response and the right to counsel; and
- D. state that the respondent will be given an opportunity to be heard by the board prior to the board's determination as to whether any violation occurred.

At the conclusion of the investigation the board must determine whether a violation occurred. The board's determination of any disputed facts must be based upon a preponderance of the evidence.

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4525.0550 FORMAL AUDITS.

Subpart 1. Formal audit. The purpose of a formal audit is to ensure that all information included in the report or statement being audited is accurately reported. The fact that the board is conducting a formal audit does not imply that the subject of the audit has violated any law. When conducting an audit, the board may require testimony under oath, permit written statements to be given under oath, and to issue subpoenas and cause them to be served. When conducting an audit the board may require the production of any records required to be retained under Minnesota Statutes, section 10A.025.

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Subp. 4. Audits of affidavits of contributions. The board may audit the affidavit of contributions filed by a candidate or the candidate's treasurer to determine whether the candidate is eligible to receive a public subsidy payment. The executive director must contact

the principal campaign committee of a candidate and request the information necessary to audit any affidavit of contributions that was not filed by electronic filing system, if the committee has accepted contributions from individuals totaling less than twice the amount required to qualify for a public subsidy payment.

Subp. 5. Audits of other campaign finance filings. The board may audit any campaign finance report or statement that is filed or required to be filed with the Board under Minnesota Statutes, Chapter 10A or Chapter 211B. The board may conduct a partial audit, including auditing a campaign finance report to determine whether a beginning or ending balance reconciles with the filer's financial records. In determining whether to undertake an audit, the board must consider the availability of board resources, the possible benefit to the public, and the magnitude of any reporting failures or violations that may be discovered as a result of the audit. The board may conduct audits in which respondents are selected on a randomized basis designed to capture a sample of respondents that meet certain criteria. The board may conduct audits in which all respondents meet certain criteria. When undertaking an audit with respondents selected on a randomized basis, the board must, to the extent possible, seek to prevent the audit from affecting respondents differently based on their political party affiliation, or if the respondents are candidates, based on their incumbency status.

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
December 2023
ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Personally Served	Default Hearing Date	Date Judgment Entered	Case Status
Mariani, Carlos	Neighbors for Mariani	2022 year-end report Late filing of 2018 year-end report Late filing of 2020 pre-primary report Late filing of 2018 pre-primary report 2018 pre-general report 2020 pre-general 24- hour large contribution notice 2022 annual statement of economic interest Late filing of 2018 annual statement of economic interest Late filing of 2018 candidate statement of economic interest	\$1,000 LFF \$1,000 CP \$525 LFF \$1,000 LFF \$1,000 CP \$1,000 LFF \$100 CP \$1,000 LFF \$1,000 CP \$1,000 LFF \$1,000 LFF \$100 CP \$95 LFF	11/22/23				

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Personally Served	Default Hearing Date	Date Judgment Entered	Case Status
Thompson, John	John Thompson for 67A	Civil Penalty and late filing fee for the committee's 2022 year-end report	\$1,000 LFF \$1,000 CP	3/10/23	7/5/23	11/9/23		Default granted from the bench
	Trace, LLC Contacts: Ashley Moore, Patrick Hynes	2021 Annual Report of Lobbyist Principal, due 3/15/22	\$1,000 LFF \$1,000 CP	12/6/22	4/21/23	(11/13/23, but cancelled)		Settlement in principle reached

CLOSED FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status