

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

.....
January 3, 2024
Blazing Star Room
Centennial Office Building
.....

MINUTES

The meeting was called to order by Chair Soule.

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

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

MINUTES (December 13, 2023)

The following motion was made:

Member Leppik's motion: To approve the December 13, 2023, minutes as drafted.

Vote on motion: Unanimously passed. Rashid abstained.

VERBAL REPORT OF THE NOMINATION COMMITTEE

Members Leppik and Soule moved to nominate Member Asp as chair and Member Rashid as vice chair for 2024.

The following motion was made:

Chair Soule's motion: To approve the nominations.

Vote on motion: Unanimously approved.

CHAIR'S REPORT

2024 meeting schedule

The next Board meeting is scheduled for 9:30 a.m. on Wednesday, February 7, 2024.

EXECUTIVE DIRECTOR'S REPORT

1. Mr. Sigurdson requested Board approval of a modification to the Board's budget for fiscal year 2024. Mr. Sigurdson stated that the litigation costs related to the Dept. of Commerce case have reached a total of \$62,000. Of that amount \$50,000 will be used for payments to an expert witness for the state, and \$12,000 in court reporter costs for depositions. Mr. Sigurdson also stated that the Board cannot refuse to pay these costs, and that the costs were not anticipated when the budget was approved by the Board in July of last year. Mr. Sigurdson requested that funding for the litigation costs be taken out of the website and IT budgets.

The following motion was made:

Member Flynn: To approve the budget modification.

Vote on motion: Unanimously approved.

2. Mr. Sigurdson stated that at the 2023 legislative session, all technical and policy recommendations made to the legislature for all three CFB programs were adopted. Mr. Sigurdson stated the Board does not have any outstanding policy recommendations. However, Mr. Sigurdson stated there are some technical problems regarding the reporting of electioneering communications that would be best addressed through a brief bill offered by the Board. Mr. Sigurdson will present the Board with draft language at the February meeting. Lastly, Mr. Sigurdson stated the rulemaking committee may determine that a draft rule deals with an issue that beyond the scope of administrative rules, and is better dealt with by the legislature. If that is the case, the Board may also want to contact the legislature regarding those issues.

ENFORCEMENT REPORT

A. Discussion Items

1. Balance adjustment request—Goggin (Michael) for Senate (#17869)

Ms. Engelhardt explained the Goggin committee wants to terminate; however, in preparing the termination report for 2023, Mr. Goggin discovered a cash balance discrepancy. The candidate spent significant time attempting to resolve the issue but was unable to find the discrepancy. The 2022 ending cash balance according to the 2022 year-end report was \$2,716.17; however, the 2022 ending cash balance according to the 2022 bank statement was \$4,692.10, a difference of \$1,975.93. The Goggin committee is requesting an upward adjustment to \$4,692.10. If approved the Goggin committee will then disperse the remaining funds and file a termination report to close the committee.

The following motion was made:

Member Soule'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 the 44th Senate District DFL (Old) requested a downward balance adjustment from \$2,791.46 to \$0 at the August Board meeting. The treasurer of the 44th Senate District DFL (Old), Kevin Hanstad, took over as treasurer in 2017 and did not believe that he had the time or skills to work on discovering the issues that caused the balance discrepancy. In August, the Board requested that Board staff review the bank records and report information to see if the source of the issues could be found. Mr. Hanstad provided bank statements to the Board for 2018 to 2022. Ms. Engelhardt stated that their 2022 bank statements show the committee had a \$0 cash balance when it closed in May of 2022. The 2018 beginning bank balance was \$7,129.54, while the 2018 report shows a beginning balance of \$6,885.60, a difference of \$243.94. Mr. Hanstad’s installation of the CFR software did not allow him access to 2019 and 2020, so he was not able to provide those records to Board staff. Mr. Hanstad did provide access to 2021 and 2022 CFR records; however, the bank records show that by 2020, the ending bank balance was \$1,329.87 while the reported 2020 ending cash balance was \$4,867.59, a difference of \$3,537.78. Board staff concluded that the balance discrepancies occurred in years that are not accessible via the CFR software, and therefore, Board staff will not have the needed information to conduct an audit. Ms. Engelhardt stated Board staff is requesting that the Board grant a downward adjustment to its reported 2022 ending cash balance, changing the 2022 ending cash balance from \$2,791.46 to \$0 for the party unit to amend its 2022 year-end report to a termination report.

The following motion was made:

Chair Asp’s motion: To approve the requested balance adjustment.

Vote on motion: Unanimously passed.

B. Waiver Requests

| # | Committee/ Entity | Late Fee/ Civil Penalty | Report Due | Factors | Prior Waivers | Action |
|---|--|----------------------------|-----------------|--|------------------|---------|
| 1 | Douglas Eisenmenger (Martin SWCD) | \$55 LFF | Original EIS | EIS due 10/17/2023 and filed 11/17/2023. Mr. Eisenmenger is a farmer and stated he was not able to file his statement on time because the harvest went late this year. He also had a major surgery on 11/13/2023. | No. | Waived. |

The following motion was made:

Member Flynn's motion: To approve the waiver request.

Vote on motion: Unanimously passed.

C. Informational Items

1. Payment of civil penalty for excess individual contributions

Neighbors for Zaynab Mohamed, \$1,000

2. Payment of late filing fee for September 2023 report of receipts and expenditures

Firefighters Association of Minneapolis Political Fund, \$800
Minnesota AFL-CIO, \$75

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

All of Mpls, \$50

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

65th Senate District DFL, \$1,000

5. Payment of late filing fee for 2022 annual EIS

Representative Aisha Gomez, \$100

6. Payment of late filing fee for Original EIS

Paul Reese, \$70
Kelly Kirkpatrick, \$70
Benjamin Brutlag, \$5

ADVISORY OPINIONS

A. Advisory Opinion 457

The organization that brought this forward did not make their request and the resulting opinion public data. The opinion request was laid over at the December meeting. The request was made by members of an organization who have previously provided legal representation for clients before political subdivisions. They are concerned that the same representation will now require registration as a

lobbyist. They are seeking general guidance on when registration as a lobbyist is required. The request also asks the Board to guide them as to whether twenty-seven specific scenarios create a situation where registration as a lobbyist is required.

After the draft opinion was released to the public before the December Board meeting, staff received suggestions from the public. One expressed concern that three of the responses in the opinion did not adequately consider whether a planning commission or zoning board could be made up of non-elected officials and have final authority to decide issues that do not require a major decision regarding an expenditure of public money. Staff agrees with this concern and has modified opinions 4, 5, and 14 to better reflect the variables that will determine if the described activity in those opinions is lobbying for an official action of a political subdivision. Additionally, changes to the opinion suggested by Members Swanson and Asp at the December meeting have been incorporated into the new drafts.

The following motion was made:

Member Soule's motion: To issue the opinion as drafted, with the typographical changes suggested by Member Swanson.

Vote on motion: Unanimously passed.

B. Advisory Opinion 458

Mr. Sigurdson stated the requestor has not made the opinion request public data. The request includes thirteen general scenarios and forty-one specific questions based on the scenarios. The questions mainly seek to determine the circumstances under which communication between a corporation's CEO and public or local officials would require the CEO to register as a lobbyist. The opinions provided in response to these questions are based on existing statutes and are consistent with Board findings and prior advisory opinions on lobbying. Mr. Sigurdson stated that he believed that the proposed administrative rules would have a minimal impact on this advisory opinion as the scenarios focus more on legislative action than the official action of a political subdivision.

Chair Asp praised the Board staff for their work on the draft opinion. Member Flynn acknowledged the complexity of the questions, which she attributed to the size of the Minnesota government. Member Swanson asked a question regarding "legislative action" and the statute surrounding it. Additionally, Member Swanson pointed out technical and typographical errors in issues 3, 6, 7, and 8, which were addressed. Ms. Engelhardt asked for clarification on the language to be used, and Mr. Olson offered suggestions. Member Rashid also contributed his suggestions during the discussion.

The following motion was made:

Chair Asp's motion: To issue the opinion as drafted, with the changes suggested by Member Swanson and subsequent discussion of the Board.

Vote on motion: Unanimously passed.

C. Advisory Opinion 460

Mr. Sigurdson stated that Kirk Schneidawind, Executive Director for the Minnesota School Boards Association (MSBA) requested an advisory opinion on December 14, 2023. The request sought clarification on the registration of school district employees as lobbyists in situations where they communicate with public or local officials, to influence official actions. The opinion provides that, Minnesota Statutes section 10A.01, subdivision 21, defines the term “lobbyist” and outlines some exclusions for individuals who are not lobbyists due to their job position. The opinion concludes that school district employees are required to register as lobbyists if they receive over \$3,000 in compensation for lobbying and spend more than 50 hours in any month trying to influence official actions.

After discussion, the following motion was made:

Chair Asp’s motion: To issue the opinion as drafted.

Vote on motion: Unanimously passed.

LAYOVER OF OPINIONS 459 AND 461

Mr. Sigurdson gave an update to the Board regarding Opinions 459 and 461. Mr. Sigurdson mentioned that Mr. Olson would do the research for Opinion 459, and that Opinion 461 pertains to lobbying and collective bargaining of a union contract.

Member Swanson expressed his concern regarding the request for Opinion 459. He stated that it seems the requestor is asking the Board to agree or disagree with their statements, and he didn't think that this request was valid enough to warrant an advisory opinion. Member Swanson went through the advisory opinion statute and compared it to the request, concluding that it did not meet the requirements for an advisory opinion. Therefore, he suggested that Board staff consult with Mr. Hartshorn about whether or not this opinion can move forward. Member Soule stated that he agrees with Member Swanson's opinion.

The following motion was made:

Chair Asp’s motion: To lay over the opinions until the February meeting.

Vote on motion: Unanimously passed.

Responsive motion: To consult the AG’s office regarding the request for Opinion 459.

RULEMAKING UPDATE

Mr. Olson informed the members about the upcoming rulemaking committee meeting and asked the Board if public comments should be taken during the meeting. Member Swanson sought clarification on the draft rules and asked which version was available to the public. Member Swanson also inquired whether a committee with only three members could create rules without meeting with the public. Mr. Hartshorn clarified that the public must be notified of the meeting. Additionally, Member Swanson asked if two public hearings would be held, and Mr. Sigurdson replied that there would most likely be two hearings based on previous rulemaking efforts by the Board. Member Swanson requested a unified draft of the rules, regardless of whether they were deemed controversial or not, and that information on the purpose of the public hearing be provided to the public.

LEGAL REPORT

During the meeting, Mr. Hartshorn announced that the Trace LLC issue had been resolved and that a summons and complaint for the Mariani matter were forthcoming.

EXECUTIVE SESSION

Chair Asp recessed the regular session of the meeting and called to order the executive session.

Chair Asp recessed the executive session of the meeting. There being no other business, the meeting was adjourned by the chair.

Respectfully submitted,



Jeff Sigurdson
Executive Director

Attachments:

Executive director's report
Memo on Advisory Opinion 457
Memo on Advisory Opinion 458
Memo on Advisory Opinion 460
Layover of Advisory Opinions 459 and 461
Rulemaking Update Memo
Legal Report



MINNESOTA CAMPAIGN FINANCE BOARD

Date: December 27, 2023

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report

Board Operations

Modification to the Operations Budget – Fiscal Year 2024

At the start of each state fiscal year the Board ratifies the budget developed by the executive director using salary projections, rent, and MNIT costs provided by the Small Agency Resource Team (SmART). The state fiscal year runs from July 1 to June 30 of the following year. The Board approved the operations budget at the July 6, 2023, Board meeting.

The executive director is authorized to make small adjustments to the budget's allocations if actual spending is higher or lower than anticipated in a given category. However, when a major adjustment is required I will bring back the budget to keep the Board informed and for review. In this case, the budget needs to be adjusted to reflect the costs related to the litigation of Minnesota Chamber of Commerce v. Choi. Unanticipated court recorder costs will be approximately \$12,000, and the contract cost for an expert witness is approximately \$50,000. The funds for the new budget item, Litigation Costs, are being transferred from the Professional Technical Services category. A copy of the modified budget is attached. Although not required, I would appreciate a Board motion to approve the change in the budget.

Attachment

Modified Fiscal Year 2024 Budget

| Modified Fiscal Year 2024 Operating Budget Detail | | | | |
|--|--|--|---|--|
| Acct Number | Category | | Fiscal Year 2024 Expenditure | |
| 41000 | Full time salaries - benefits | | 1,385,880 | |
| 41030 | Part-time seasonal staff | | 17,209 | |
| 41050 | Overtime | | 10,000 | |
| 41070 | Other Benefits | | 5,000 | |
| 41100 | Space Rental - Office Lease | | 55,000 | |
| 41110 | Printing and advertising | | 6,000 | |
| 41130 | Professional technical services | | 215,761 | |
| 41150 | Computer systems and services | | 50,000 | |
| 41155 | Central Mail | | 15,000 | |
| 41160 | Travel - In state | | 4,150 | |
| 41170 | Travel - Out of state | | 6,000 | |
| 41180 | Employee development | | 23,000 | |
| 41190 | State agency provided tech services | | 25,000 | |

| | | | | |
|--------------|---|--|------------------|--|
| 41196 | Centralized IT (MN.IT) | | 52,000 | |
| | | | | |
| 41300 | Supplies | | 10,000 | |
| | | | | |
| 41400 | Equip. rental (copier) | | 9,000 | |
| | | | | |
| 41500 | Maintenance and repairs | | 2,000 | |
| | | | | |
| 42020 | Attorney General Court Costs | | 5,000 | |
| | | | | |
| 43000 | Other operating costs | | 15,000 | |
| | | | | |
| 47160 | Equipment | | 20,000 | |
| | | | | |
| | Litigation Costs | | 62,000 | |
| | | | | |
| | Operating exp total | | 1,993,000 | |
| | | | | |
| | FY 24 Appropriation | | 1,993,000 | |
| | | | | |
| | Balance | | 0 | |
| | | | | |
| | | | | |



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: December 27, 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 In responding to this request, the Board understands that the attorney’s “representation” of a client involves some action to attempt to influence action by the political subdivision. In situations where that is not the case, for example where an attorney merely observes without communicating for or against an action, the attorney’s actions do not fall within the definition of lobbyist.

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.⁴ Local officials include all individuals who hold an elective position in a political subdivision, and individuals who are appointed to or employed in a public position by a political subdivision 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:

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](#).

⁴ [Minn. Stat. § 10A.01, subd. 22](#).

"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.

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 subdivisions 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. The determination of whether a decision is a major decision regarding the expenditure or investment of public funds is fact-specific, and additional information could change the determination. For the purpose of this opinion, the Board finds that expenditures of public funds on infrastructure projects will qualify as a major decision on the expenditure of public funds.

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”⁵.

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: Counties have the option to make the position of county auditor either elected or appointed. For the purpose of this opinion the Board assumes that the county auditor was ~~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

⁵ [Minn. Stat. § 10A.01, subd. 21 \(b\) \(8\)](#).

completion of required forms and/or the payment of a fee. Requesting a discretionary action by the county auditor under those circumstances is lobbying. If the county auditor was appointed to their position, then the request would not be lobbying because the decision to assigning a single identification number does not require a major expenditure of public funds.

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

Opinion: For the purpose of this opinion the Board assumes that the planning commission has final authority to approve or reject the subdivision plat. The Board further assumes that approval of the subdivision plat will obligate the city or county to pay for public infrastructure costs in support of the subdivision, and therefore at some point the city or county will be required to make a major decision regarding an expenditure of public funds.

If the membership of the planning commission includes elected officials, then the request for approval is lobbying because approval of the subdivision plat will require a vote by one or more elected officials. If the planning commission ~~also~~ has the authority to make a decision regarding a major expenditure of public funds to support the subdivision, then the members of the commission are local officials, and the request for approval of the plat is lobbying. In a scenario where the planning commission membership does not include elected officials, and the commission does not have the authority to make a major decision regarding the expenditure of public funds on the subdivision, then the request for approval of the plat is not lobbying. In a scenario where the planning commission is requested to communicate with the city council or county board in support of the subdivision, the request is 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: For the purpose of this opinion, the Board assumes that issuing or revoking a short-term rental license will not require a major decision regarding the expenditure of public funds, and that the commission has the authority to issue or revoke the license. If the city planning commission includes elected local officials, then the representation is lobbying because elected local officials will vote on the issue. If none of the planning commission members are elected officials, then representing the group is not lobbying because approval or revoking the rental license does not require a major decision on spending public funds. In a scenario where the planning commission is requested to communicate with the city council regarding the rental license, the request is 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: For the purposes of this opinion, the Board assumes that the city parking commission does not include elected officials and that the “meeting” with the commission does not involve urging the commission to advocate a position to the city council. Based on these assumptions, the attempt to influence parking commission members only falls within the definition of “lobbying” if construction of a new city parking ramp is a major decision regarding the expenditure of public funds. As stated earlier, in general the Board finds that public infrastructure projects, such as the parking ramp, will qualify as a major decision on the expenditure of public funds. Accordingly, if the “meeting with members of the city parking commission” is an attempt to influence the commission to act or not act on the construction of the new parking ramp, then the activity is lobbying. 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: Using the same assumptions as used in question 8, the determination as to whether construction of a new tennis courts is a “major decision regarding the expenditure of public funds” is fact-specific and additional

information could change the determination. However, in general, the Board finds that expenditures of public funds on public infrastructure projects, such as park facilities, will qualify as a major decision regarding the expenditure of public funds. Accordingly, requesting that the city build additional tennis courts is lobbying. 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 because the person in that position has authority to make or to recommend major decisions regarding the expenditure of public money. The Board further assumes ~~and~~ that approval of the plat will require a major decision on spending public funds to provide infrastructure for the housing development. 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 because the planning director is a local official and the decision to approve the plat will require a major decision regarding the use of public funds.

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. The Board assumes that meeting with public officials "to discuss a new development project that will require a zoning change" will attempt to influence the approval of the needed zoning change, and is therefore 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 major decisions regarding the expenditure of public money funds falls within the definition of 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: Based on the limited information provided, the Board understands from this request that issuing a U visa certification does not involve a major decision regarding the expenditure of public funds. ~~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 because it does not involve a major decision regarding the expenditure of public funds.~~

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

Opinion: Based on the limited information provided, the Board understands from this request that "non-federal official" is not elected, but is rather an appointed or employed

~~position. Accordingly, the request for a character letter is not lobbying because the decision to issue a letter does not involve an expenditure of public funds. 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. The Board assumes that the local officials referred to are appointed or employed. Accordingly, the request for local officials to contact federal officials is not lobbying because the decision does not involve an expenditure of public funds. 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: ~~Based on the limited information provided the Board assumes that the attorney participating in the forum is not engaged for pay to influence the official action of either Minneapolis or Saint Paul, or any other political subdivision. Merely participating in a forum, without an attempt to influence the official action of a political subdivision, is not lobbying. Accordingly, participation in the forum is not lobbying. 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.~~

Board Note

~~If the Board intends to apply principles of law or policy announced in an advisory opinion more broadly than to the individual or association that requested the opinion, then the Board must adopt the principal or policy in an administrative rule.⁶ The Board notes that it is in the process of adopting and modifying administrative rules regarding lobbying, and that the issue of communications between an association and members of the association may also be addressed in the forthcoming administrative rules.~~

⁶ Minn. Stat. § 10A.02, subd. 12a.

Issued: January 3, 2024

David Asp, Chair
Campaign Finance and Public Disclosure Board

DRAFT

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 to or employed in a public position by a political subdivision 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 subdivisions 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: For the purpose of this opinion the Board assumes that the planning commission has final authority to approve or reject the subdivision plat. If the membership of the planning commission includes elected officials, then the request for approval is lobbying because approval of the subdivision plat will require a vote by the elected officials. If the planning commission also has the authority to make a decision regarding a major expenditure of public funds to support the subdivision, then the members of the commission are local officials, and the request for approval of the plat is lobbying. In a scenario where the planning commission membership does not include elected officials, and the commission does not have the authority to make a major decision regarding the expenditure of public funds on the subdivision, then the request for approval of the plat is not lobbying. In a scenario where the planning commission is requested to communicate with the city council or county board in support of the subdivision, the request is 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: For the purpose of this opinion, the Board assumes that issuing or revoking a short-term rental license will not require a major decision regarding the expenditure of public funds, and that the commission has the authority to issue or revoke the license. If the city planning commission includes elected local officials, then the representation is lobbying because elected local officials will vote on the issue. If none of the planning commission members are elected officials, then representing the group is not lobbying because approval or revoking the rental license does not require a major decision on spending public funds. In a scenario where the planning commission is requested to communicate with the city council regarding the rental license, the request is 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, and that approval of the plat will require a major decision on spending public funds to provide infrastructure for the housing development. 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 because the planning director is a local official and the decision to approve the plat will require a major decision regarding the use of public funds.

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.

Board Note

If the Board intends to apply principles of law or policy announced in an advisory opinion more broadly than to the individual or association that requested the opinion, then the Board must adopt the principal or policy in an administrative rule.⁵ The Board notes that it is in the process of adopting and modifying administrative rules regarding lobbying, and that the issue of communications between an association and members of the association may also be addressed in the forthcoming administrative rules.

Issued: January 3, 2024

David Asp, Chair
Campaign Finance and Public Disclosure Board

⁵ Minn. Stat. § 10A.02, subd. 12a.



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: December 27, 2023

To: Interested Members of the Public

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Advisory Opinion 458

This advisory opinion request was received on November 15, 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 458

**State of Minnesota
Campaign Finance & 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)**

ADVISORY OPINION 458

SUMMARY

Determining if an individual must register as a lobbyist requires an examination of the communication made by the individual, who the communication was made to, if the communication attempts to influence an official action, and the compensation received for making the communication.

Facts

As a representative of a member-based organization (the Organization), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion on lobbying regulations that may impact members of the organization. The request is based on the following facts:

1. The Organization represents the Minnesota business community, and seeks to inform decision makers (and the public) about challenges facing Minnesota, as well as make recommendations to strengthen Minnesota's economy and quality of life.
2. The Organization employs full-time staff and is a lobbyist principal in Minnesota.
3. The Organization's board of directors is comprised of executives from companies who are members of the Organization (Member Companies). Members of the board of directors for the Organization do not receive any compensation from the Organization for board service, but are generally highly-compensated, salaried executives.
4. Some Member Companies retain lobbyists on their own behalf, and are also lobbyist principals separate from the Organization.
5. Representatives from Member Companies, including Organization board members and others, often attend educational events organized by the Organization and join the Organization in speaking out on issues of importance to Minnesota businesses.

The Organization requests the Board's opinion with respect to a series of scenarios involving activities by the Organization, Member Companies and officers of the Member Companies.

INTRODUCTION

The request contains thirteen scenarios that vary in the specifics of communication between an individual, usually the CEO of a company, and public officials, local officials, or government employees. Most of the scenarios then present a series of questions to understand at what point, if any, lobbying occurs, and what registration and reporting requirements may result from the scenario. In developing opinions for the questions asked the Board considered the following statutory provisions which are reviewed here once, rather than for each scenario.

Purpose of the communication – Lobbying occurs when the communication is for the purpose of attempting to influence legislative or administrative action, or the official action of a political subdivision. The communication may be directly with public or local officials, but also may occur indirectly by asking other individuals to contact public or local officials to request an official action.¹ Clearly not all communication with public or local officials is lobbying. The Board has previously concluded that communication for the purpose of issue advocacy alone, without a request for action by a public or local official, will not bring an individual under the definition of a "lobbyist" and will not bring an association under the definition of "principal".² Further, communication that requests information is, by itself, not an attempt to influence an official action, and is therefore not lobbying.³ The Board's opinions rely on the characterization of the communication described in each scenario.

Who are public and local officials – Communication with a government employee for the purpose of supporting a lobbying effort will not require registration as a lobbyist if the government employee is not a public or local official and the government employee is not asked to contact public or local officials to request an official action. The definition of public official is specific, and includes elected state office holders.⁴ The list of local officials is less definitive. Local officials include all individuals who hold an elective position in a political subdivision, but it also includes individuals who are appointed or employed by a political subdivision in 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.

Official action – The scenarios provided in the opinion request may result in a request for an "official action of a political subdivision", or a "legislative action" (official action). The Board notes that actions to influence the adoption, repeal, or amendment of administrative rules are lobbying, and that attempting to influence a decision of the Minnesota Public Utilities Commission in cases

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 of Kurt M. Anderson regarding the Archdiocese of St. Paul and Minneapolis \(Dec. 8, 2011\)](#); [Advisory Opinion 409 \(Aug. 3, 2010\)](#), stating that "Communications that do not urge others to communicate with public officials to influence the action of those officials are not included in the communications that will bring a person into the definition of a lobbyist..."

³ See [Findings and Order in the Matter of the Complaint by Karl Bremer regarding The Conach Group and Mike Campbell \(Aug. 16, 2011\)](#).

⁴ [Minn. Stat. § 10A.01, subd. 35](#).

of rate setting, power plant and powerline siting, and granting of certificates of need may also require registration as a lobbyist. The scenarios in this advisory opinion do not reference administrative lobbying or lobbying the Minnesota Public Utilities Commission.

The definition of official action of a political subdivision 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.

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 a political subdivision with the authority to make major decisions regarding expenditures or investments of public money. An action by a nonelected 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 nonelected local official that does not require a major expenditure or investment of public funds is not lobbying of a political subdivision.

The definition of legislative action is provided in Minnesota Statutes section 10A.01, subdivision 19a:

"Legislative action" means any of the following:

- (1) the development of prospective legislation, including the development of amendment language to prospective legislation;
- (2) the review, modification, adoption, or rejection by a member of the legislature or an employee of the legislature, if applicable, of any (i) bill, (ii) amendment, (iii) resolution, (iv) confirmation considered by the legislature, or (v) report;
- (3) the development of, in conjunction with a constitutional officer, prospective legislation or a request for support or opposition to introduced legislation; and
- (4) the action of the governor in approving or vetoing any act of the legislature or portion of an act of the legislature.

It is important to note that a request for legislative action includes the development of legislation, and may occur without a specific proposal that requires action.⁵ Additionally, the definition is not limited to members of the legislature, and includes requesting that a constitutional office holder develop legislation, or support or oppose introduced legislation.

Compensation – An individual who is not compensated for attempting to influence official actions 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 official actions is required to register and report as a lobbyist only when the compensation exceeds \$3,000 from all sources in a calendar year. An individual who is compensated by their employer in part for attempting to influence official actions, and in part for other duties, can determine the portion of their salary derived from lobbying activities by multiplying their gross salary by the percentage of their work time spent lobbying.

The scenarios provided in this advisory opinion do not indicate the compensation being paid to the individuals for actions that may be lobbying. The request states that CEOs of Member Corporations are highly compensated for their work, therefore the Board assumes that the individuals in the scenarios will in a relatively short amount of time receive compensation that exceeds \$3,000 for the communication described. However, in some of the scenarios the time needed for the communication described would presumably take only a few minutes to complete, and the Board will not assume that the brief communications described in the scenarios, by themselves, will require registration because of the compensation received by the CEO. The Board will also assume that the compensation received for the actions described in the scenarios is the only compensation received by the individual during the calendar year for lobbying.

Principal Reports – A “principal”, which is an association or individual that is represented by a lobbyist or spends money on lobbying without engaging a lobbyist, is required to file an annual report with the Board that discloses totals of certain categories of disbursements made to support the principal’s lobbying in Minnesota.⁶ The annual report discloses the total of disbursements made by the principal for each type of official action that the principal attempted to influence. The disbursement categories include:

- (1) the portion of all direct payments for compensation and benefits paid by the principal to lobbyists in this state for that type of lobbying;

⁵ See [Settlement Agreement in the Matter of the Complaint of Carol Becker regarding the Minneapolis Bicycle Coalition, DBA Our Streets Minneapolis \(Jan. 5, 2023\)](#). In that matter the Board determined that lobbying activity as defined in Chapter 10A does not require reference to specific legislative or administrative proposals.

⁶ [Minn. Stat. § 10A.04, subd. 6.](#)

- (2) the portion of all expenditures for advertising, mailing, research, consulting, surveys, expert testimony, studies, reports, analysis, compilation and dissemination of information, social media and public relations campaigns, and legal counsel used to support that type of lobbying in this state; and
- (3) a reasonable good faith estimate of the portion of all salaries and administrative overhead expenses attributable to activities of the principal for that type of lobbying in this state.

An expenditure by the principal that does not match one of the listed disbursement categories should not be included in the total lobbying disbursements disclosed on the lobbyist principal annual report.

Issue One

The CEO of a Member Company attends a board meeting of the Organization where she receives an update from Organization staff about current legislative proposals. The CEO provides feedback on how various legislative proposals may impact the Member Company's business operations in Minnesota. This feedback helps the Organization shape future messaging to the Legislature on various issues including, but not limited to, proposals to amend prospective legislation. For purposes of this question, please assume that the board members are urging the Organization staff to communicate the Organization's (and Member Company's) position on legislative proposals to members of the Legislature.

- a. Does the CEO's discussion of legislative proposals at Organization board and/or committee meetings trigger lobbyist registration and reporting of the CEO as a lobbyist?

Opinion: Yes, if compensation for the communication exceeds \$3,000. Urging Organization staff to communicate to members of the legislature proposals to amend legislation is lobbying to influence legislative action. However, the CEO is lobbying only in that portion of the meeting where she is urging staff to communicate with legislators. As described the meeting also includes an update on current legislative proposals, and feedback from board members on how the legislation may impact their business operations. Participation in those portions of the meeting is not lobbying. If registration as a lobbyist is required, the CEO would register as a lobbyist representing her Member Company.

- b. If the answer to 1(a) is no, and the CEO's Member Organization is a lobbyist principal, does the value of CEO's attendance at these meetings need to be included in the Organization's calculation of salary and overhead as set forth in 10A.04, subd. 6(c)(3) on the Organization's annual lobbyist principal report?

Opinion: The question refers to the CEO's "Member Organization" and it is not clear whether the requestor is referring to itself (the Organization) or the CEO's employer (Member Company). If the question is referring to the Organization, the answer is no. If the question

is referring to the CEO's Member Company, the cost of her attendance, if required to be reported at all, would be reported by the Member Company.

Issue Two

The CEO of a Member Company attends a legislative breakfast series sponsored by a local law firm. As part of the breakfast series, various members of State Government (Legislators, members of Governors office, etc.) provide perspective on the state of affairs in Minnesota, including current legislative proposals. During the breakfast series, the CEO asks questions about issues that are important to the Member Company and provides feedback on how current legislative proposals will impact the Member Company.

- a. Does the CEO's attendance at the legislative breakfast trigger lobbyist registration and reporting of the CEO as a lobbyist?

Opinion: No. Requesting information on legislative proposals is not lobbying. Providing feedback on how legislative proposals will affect the CEO's company, without more, is not lobbying.

- b. Does the answer to question 2(a) change if the CEO is merely in attendance at the breakfast but does not ask any questions or provide feedback on any proposals?

Opinion: No.

- c. If the answer to question 2(a) is "no" but the Member Company is a lobbyist principal, does the value of the CEO's attendance at the breakfast series need to be included in the Organization's calculation of salary and overhead as set forth in 10A.04, subd. 6(c)(3) on the Organization's annual lobbyist principal report?

Opinion: No. The attendance of the CEO at the breakfast meeting is not lobbying, and the cost of the CEO's attendance does not qualify as a lobbying disbursement.

Issue Three

The CEO of several Member Companies attend a dinner with the Governor where the discussion includes topics that would be covered by the new definition of "legislative action." The CEOs share their thoughts with the Governor about the impact of these initiatives.

- a. Do the CEOs of the Member Companies trigger registration and reporting requirements if they provide feedback to the Governor about how the "legislative action" would impact their Member Company and encourage the Governor to act one way or another with respect to these proposals?

Opinion: Yes, if compensation for the communication exceeds \$3,000. It is important to focus on the communication that occurs when a CEO asks the Governor “to act one way or another” regarding the legislative proposals. Asking the Governor to veto or approve legislation is lobbying of legislative action, and so is asking any constitutional officer to support or oppose introduced legislation. The CEOs should consider only that portion of the event when the legislative proposals are discussed with the Governor when determining if the compensation earned for the time lobbying requires registration as a lobbyist.

- b. Does the answer to question 3(a) change if the CEO provides feedback on how the legislative action will impact the Member Company but the CEO does not expressly ask or encourage the Governor to act in a particular way?

Opinion: Yes. Providing information on an issue is not lobbying if the CEO does not ask the Governor to take legislative action.

- c. Does the answer to question 3(a) change if the CEOs limit their feedback to how the legislative action would impact the business climate in Minnesota or an industry as a whole (without reference to impact on the Member Company)?

Opinion: Yes. Issue advocacy, for example stating the need to improve the business climate in Minnesota, without asking for official action on the issue, is not a communication that requires registration and reporting as a lobbyist. This opinion does not change even if the CEO does reference the impact of the issue on their company.

- d. If, under any of these scenarios, lobbyist registration is not triggered by the CEO’s attendance at this dinner, but the Member Organization is a lobbyist principal, does the value of the CEO’s attendance at the dinner need to be included in the Organization’s annual lobbyist principal report?

Opinion: No. If the CEO’s attendance at the dinner is not lobbying, then the related costs for attendance does not need to be reported as a lobbyist disbursement in any principal report.

Issue Four

The Organization plans a “Day at the Capitol” to introduce Member Companies to the legislative process. During the event, Member Companies meet with various elected officials.

- a. Is the time spent by Organization staff members planning the event and organizing logistics considered “lobbying” if the staff members do not attend the Day at the Capitol or expressly encourage attendees to communicate with elected officials at the event?

Opinion: No. If the Organization’s staff do not meet or communicate with public officials to ask for legislative action, or urge Member Companies to ask for legislative action, then the staff’s efforts are not lobbying. If the “Day at the Capitol” is intended to support the efforts of lobbyists registered

for the Organization, then the cost of the event and staff time organizing the event are lobbying disbursements that should be reported by the Organization on the annual principal report.

- b. Is attendance at the Day at the Capitol event by Member Company's employees considered lobbying by the Member Company if Member Company representatives share their views on current legislative proposals or strategies?

Opinion: Yes. In this opinion the Board assumes that the Member Company's employees are being paid while at the event, and that when the employees are "sharing their views on current legislative proposals or strategies" the communication will include asking the legislators to support or oppose the legislative proposal or strategy. Whether the employees will need to register as a lobbyist is again determined by the compensation earned while lobbying.

- c. Can a Member Company avoid lobbyist registration if the Member Company representative simply listens to information shared at the Day at the Capitol event but does not offer any feedback or make any comments about proposed legislation?

Opinion: Yes. Simply attending the event is not communication that requires registration as a lobbyist.

Issue Five

The CEO of a Member Company travels with the Governor on a trade mission to a foreign country. While traveling, the CEO shares information with (a) the Governor and staff and (b) foreign business leaders about initiatives in the State of Minnesota. The Member Company CEO provides candid feedback on what legislative initiatives are working and which ones need reform.

- a. Is the trade mission trip considered a lobbying activity by the Member Company CEO?

Opinion: Sharing information on initiatives in Minnesota with foreign business leaders, the Governor, and the Governor's staff, without more, is not lobbying. Identifying legislative initiatives that "need reform", may be lobbying if the intent is to influence the Governor to support legislative action on the ineffective legislative initiatives.

- b. Does the answer to question 5(a) change if the Member Company CEO refrains from discussing any current legislative proposals?

Opinion: No. For the purpose of this opinion the Board assumes that "discussing" legislative proposals does not include asking the Governor to support or oppose the proposals. If that assumption is incorrect, then asking the Governor to support or oppose the legislative proposals is communication that asks for legislative action, which is lobbying.

- c. If the Member Company CEO describes a situation and the Governor says "we should change

that” does this discussion constitute efforts to “develop” prospective legislation or is “legislative activity” not triggered until a specific legislative proposal is developed?

Opinion: No. Developing prospective legislation in conjunction with the Governor, or any constitutional officer, requires more than the constitutional officer acknowledging that a problem exists. However, the existence of a specific legislative proposal is not needed before communication with a constitutional officer is a request for legislative action. Communication with the constitutional officer on statutory changes to be included in the prospective legislation, devising strategy to develop support for the prospective legislation, and considering the fiscal impact of the prospective legislation, are examples of communication that are used to develop prospective legislation. Developing prospective legislation with a constitutional officer is lobbying.

Issue Six

A Member Company is contemplating the expansion of operations in Minnesota versus relocating to another state. In connection with this decision, the CEO (and other employees) of the Member Company engage in various conversations with state and local officials.

- a. If the Member Company’s CEO meets with the Governor’s office to discuss options for the Member Company to remain in Minnesota, including potential incentives that would need to be granted by the State of Minnesota, would the CEO’s meeting with the Governor’s staff on this topic be considered lobbying?

Opinion: Yes. The Board assumes that at the meeting the CEO will ask the staff to inform the Governor of the legislative actions needed for the company to remain in Minnesota, and ask for the Governor’s support of those actions. Asking the Governor to support legislative action, including making the request through the Governor’s staff, is lobbying.

- b. If the Member Company’s CEO meets with the Commissioner of the Minnesota Department of Employment and Economic Development (DEED) to discuss the availability of specific financial incentives, and the CEO asks the DEED Commissioner to assemble proposed incentives, does the CEO’s action constitute lobbying?

Opinion: No. A commissioner of a state agency is a public official, but requesting information on the proposed incentives, or asking the commissioner to express support for the incentives, is not requesting support for a legislative action. If the CEO also asks the commissioner to urge the Governor or members of the legislature to support the incentives, then the request would be lobbying.

- c. If the Member Company’s CEO meets with the mayor of the city where the Member Company’s facility is located and discusses the need for local approval of various items in order to incent the Member Company to expand, does this activity constitute lobbying?

Opinion: Yes. The Board assumes that “discusses the need for local approval” includes a request for that local approval. Asking an elected official of a political subdivision for local approval of items needed in order for the company to expand is lobbying for an official action of a political subdivision.

- d. If employees of the Member Company attend a planning commission meeting where a site plan for the Member Company’s expansion is being considered, and the employees speak to the planning commission and encourage approval of the site plan, are these employees required to register as lobbyists (assuming they meet the \$3,000 threshold)?

Opinion: Yes. In this scenario the Board assumes that members of the planning commission are either elected officials, or are local officials because they have the authority to make a recommendation regarding the site plan, and that approval of the site plan and expansion incentives will require a major decision regarding expenditures of public money. If the employees are individually compensated over \$3,000 for attending the commission meeting to speak and encourage approval of the site plan, then the employees will need to register as lobbyists because their actions are lobbying of an official decision of a political subdivision.

- e. If the Member Company asks the outside engineering firm that prepared the site plan to attend the planning commission meeting and answer questions (in order to obtain approval of the site plan), does the outside engineer become a lobbyist if he or she is paid \$3,000 or more for these services?

Opinion: No. The outside engineering firm employee is answering technical questions on site plan, which is not communication urging approval of the site plan. The cost of developing the site plan is a disbursement to support the lobbying effort for approval of an official action of a political subdivision, and should be included as a lobbying disbursement on annual principal report.

- f. In calculating the \$3,000 threshold, is the proper consideration only time spent in front of decision makers or does the Member Company have to include spent preparing for the discussion with the local officials (i.e. development of the site plan, pre-meetings with the City’s planning staff)?

Opinion: Time spent communicating with public or local officials to influence an official action, or time spent urging others to communicate with public or local officials regarding an official action, is the time used to calculate the \$3,000 threshold for compensation for lobbying⁷. The time used to prepare for discussions with local officials, or the development of the site plan, are lobbying disbursements in support of lobbying, but are not considered when determining if an individual has exceeded the \$3,000 threshold for lobbying compensation.

⁷ See [Findings and Order in the Matter of the Complaint by Common Cause Minnesota regarding Dan McGrath and Minnesota Majority](#) (October 12, 2012) An individual whose job duties include both lobbying activities and activities unrelated to lobbying must determine if the compensation they receive for lobbying activities exceeds the \$3,000 threshold for registration.

Issue Seven

Assume the Member Company in question 6 moves forward with an expansion in a Minnesota city.

- a. If the Member Company hires a lawyer (in private practice) to review and negotiate the development agreement proposed by the city in connection with the expansion, and the lawyer is paid more than \$3,000 for this service, is the lawyer required to register as a lobbyist?

Opinion: No. The company lobbied to influence the official action of a political subdivision, namely the decision to approve the site plan and offer a development agreement to supports the company's expansion. The fee paid to a lawyer to get the development agreement into the form of a contract is similar to the engineering cost described in question 6(e); a lobbying disbursement in support of the lobbying effort that should be included on the annual principal report.

- b. If the answer to question seven (a) is yes, and the lawyer regularly represents other clients in real estate matters involving other cities, is the lawyer obligated to register on behalf of each and every additional client for which the lawyer provides real estate services (regardless of money spent) so long as the lawyer is currently a lobbyist?

Opinion: The answer to question seven (a) is no. Even if the facts of the scenario are changed, and the lawyer represented the company in a way that required registration as a lobbyist, the lawyer would need to register as a lobbyist for other clients only if "real estate services" required the lawyer to request public or local officials for an official action of a political subdivision.

- c. If the answer to question seven (a) is yes, does every single future client of the lawyer (real estate or other) who spends more than \$500 on the lawyer's services become a lobbyist principal under 10A.01, subd. 33(a) definition of a "lobbyist principal" which includes anyone who "spends more than \$500 in the aggregate in any calendar year to engage a lobbyist" since this is not specific to engaging a lobbyist for purposes of lobbying?

Opinion: The answer to question seven (a) is no.

- d. If the answer to question seven (a) is yes, at what point can the lawyer terminate his / her lobbyist registration? Assuming the registration for the original Member Company is completed upon the execution of the development agreement, is it acceptable for the lawyer to terminate his / her lobbyist registration at that time? How does this impact any additional lobbyist principal registrations that were triggered during the period in which the lawyer met the lobbyist definition?

Opinion: The answer to question seven (a) is no. An individual should terminate a lobbyist registration when the individual is no longer providing lobbyist services to the principal.

Issue Eight

The Organization helps a Member Company plan a tour of their facility for elected officials to help elected officials understand business operations. During the tour, representatives of Member Company interact with various elected officials.

- a. Does inviting an elected official to a business facility constitute lobbying activity by the Member Company?

Opinion: No. Providing a tour of the company's facility provides information to the elected officials. By itself, the tour is not lobbying.

- b. Is the time spent by Organization staff members planning the tour and organizing logistics considered "lobbying" if the staff members do not attend the tour or expressly encourage attendees to communicate with elected officials at the event?

Opinion: No. The rationale for this opinion is the same as provided in response to question four (a).

- c. Is attendance at the tour by Member Company's employees considered lobbying by the Member Company if Member Company representatives share their views on current legislative proposals or strategies?

Opinion: Yes. The rationale for this opinion is the same as provided in response to question four (b).

Issue Nine

A member of the legislature, directly or through their staff member, contacts a representative of Member Company to present at a legislative hearing.

- a. If the invited representative of a Member Company provides comments on how specific legislation will impact their operations, must the invited representative register as a lobbyist?

Opinion: No. As described the representative of the Member Company is providing information on how legislation will impact the company's operations. If the nature of the testimony changes, and the representative of the Member Company urges legislators to support or oppose the legislation, then the representative will need to calculate the compensation received while providing the testimony in order to determine if they are required to register as a lobbyist.

- b. If the invited representative of a Member Company provides general comments on business climate, must the invited representative register as a lobbyist?

Opinion: No. General comments on a subject that do not include a request for legislators to

take an official action is not lobbying.

- c. If the invited representative of a Member Company provides a general presentation on business operations, must the invited representative register as a lobbyist?

Opinion: No. A general presentation on business operations that does not include a request for legislative action is not lobbying.

- d. If the invited representative of a Member Company provides background information on a topic, such as broadband delivery, must the invited representative register as a lobbyist?

Opinion: No. Providing background information on a topic that does not include a request for a legislative action is not lobbying.

- e. If the invited representative of a Member Company provides a statement of support for a broad concept, such as support for early childhood education, or environmental protection, must the invited representative register as a lobbyist?

Opinion: No. A statement of support for a broad concept, without more, is issue advocacy, and not a request for legislative action, and is not a lobbying communication. Testimony in support of a broad concept may become a request for legislative action if the company representative links the broad concept to the legislature's review, modification, adoption, or rejection of any bill, amendment, resolution, confirmation, or report.

Issue Ten

The Organization is developing a sign-on letter to signal support from Member Companies, and the Organization intends to provide the letter to elected officials. The Organization intends to ask CEOs to sign their name to the letter.

- a. If the sign-on letter references specific legislation, must the CEO signatory register as a lobbyist?

Opinion: No. The Board assumes that even a highly compensated CEO is not compensated more than \$3,000 for the time it takes to sign a letter.

- b. If the sign-on letter references a general topic, such as clean energy, must the CEO signatory register as a lobbyist?

Opinion: No, for the same reason provided in response to question ten (a). A letter referencing only a general topic is not lobbying unless the letter also asks for legislative action of the topic.

- c. Must staff of the Organization who draft the letter and seek signatures register as lobbyists?

Opinion: The compensation received by individual staff members for drafting the letter and collecting signatures will need to be calculated. Drafting correspondence that attempts to influence the official actions of elected officials, urging others to sign the letter, and then providing the letter to elected officials, is a communication that requires registration as a lobbyist if an individual is compensated more than \$3,000 for the communication.

Issue Eleven

An elected official contacts a CEO by telephone to ask a question. Contact is initiated by the elected official.

- a. If the elected official references specific legislation, and the CEO engages in conversation about the legislation, does the conversation constitute a lobbying activity that could trigger a requirement for the CEO to register as a lobbyist?

Opinion: No. The question does not provide, and the Board does not assume, that during the conversation the CEO is trying to influence the elected official to support or oppose the legislation. If the CEO uses the conversation to only provide information on how the legislation would impact the CEO's company, or discuss the specifics of the legislation, then the conversation is not lobbying. If during the conversation the CEO tries to influence the elected official to support or oppose the legislation, then the conversation is lobbying that may require registration if the \$3,000 compensation threshold is exceeded. Whether the phone call was initiated by the CEO or the elected official is irrelevant to the analysis provided in this opinion.

- b. If the elected official references a general topic that has the potential to be legislation in the upcoming session, does the conversation constitute a lobbying activity that could trigger a requirement for the CEO to register as a lobbyist?

Opinion: No, assuming that the CEO does not use the elected official's reference to the topic as an opportunity to appeal for the elected official to develop prospective legislation on the topic. If the CEO does use the conversation to develop prospective legislation, then the conversation is an attempt to influence legislative action that may require registration if the compensation threshold is reached.

Issue Twelve

Facilities staff at a Member Company attends a series of public meetings held by the city's public works department which are held to gather public input regarding the re-design of the street adjacent to the Member Company's main entrance. The Member Company's facilities staff expresses concern about the proposed street design and asks the public works employees to consider modifications of the design they plan to recommend to the city council. The Member Company's CEO discusses the public works' recommended street design with neighboring property owners along the impacted city street and encourages the neighboring property owners to contact their city council members about it. Does this type of communication constitute activity

that would trigger lobbyist registration and reporting requirements for the company's facilities staff and/or CEO?

- a. Do the company's facilities staff need to register as lobbyists?

Opinion: No. Asking public work employees to consider changes to a street design at a public meeting held to gather public feedback on the street design is not the same type of communication as urging others to contact elected local officials to influence an official decision of the political subdivision.

- b. Does the company's CEO need to register as a lobbyist?

Opinion: Yes, if compensation to the CEO for lobbying exceeds \$3,000. City council members are elected local officials. Urging others to contact elected local officials on an issue is lobbying to influence an official action of a political subdivision.

Issue Thirteen

Does a Member Company executive who lives and works in the same city trigger lobbying registration and reporting requirements if she talks to the Mayor on a regular basis about the need for more effective city action to address an issue of city-wide importance (e.g. crime, trash, graffiti removal, homelessness)?

Opinion: If the executive is asking the Mayor to act on the issue (e.g. increasing city spending on the issue, passing an ordinance to address the problem) then the communication is lobbying of an official action of a political subdivision. If the executive is contacting the Mayor on behalf of the Member Company, then registration as a lobbyist is required if compensation for lobbying exceeds \$3,000. If the executive is contacting the Mayor on her own behalf as a resident of the city, then registration is required if the executive spends more than \$3,000 of her own money on the lobbying effort (not including transportation costs or membership fees).

Issued January 3, 2024

David Asp, Chair
Campaign Finance and Public Disclosure Board



MINNESOTA CAMPAIGN FINANCE BOARD

Date: December 27, 2023

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Advisory Opinion 460 – When a nonelected local official or employee of a political subdivision is required to register as a lobbyist.

The request for this advisory opinion was received from Kirk Schneidawind, Executive Director for the Minnesota School Boards Association (MSBA) on December 14, 2023. Mr. Schneidawind signed a release making his request and the resulting opinion public data.

The request provides that some school district employees communicate with public or local officials for the purpose of influencing official actions. The MSBA wishes to clarify when these employees will be required to register as lobbyists. The opinion as drafted provides that Minnesota Statutes section 10A.01, subdivision 21, provides both a definition of lobbyist and a set of exclusions to that definition for individuals who are not lobbyists because of the position they hold. The opinion concludes that school district employees are required to register as a lobbyist if the employee receives compensation of over \$3,000 for lobbying and the employee spends over 50 hours in any month to influence official actions. That conclusion is explained in the draft opinion.

Attachments:

Advisory opinion request

Draft advisory opinion



Where Minnesota School Boards Learn to Lead

December 14, 2023

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

Email: jeff.sigurdson@state.mn.us

Dear Executive Director Sigurdson:

On behalf of the Minnesota School Boards Association (MSBA), I write to request an advisory opinion from the Campaign Finance and Public Disclosure Board. MSBA is a voluntary membership organization that provides training, workshops, guidance, and advocacy for every Minnesota public school district and its board members and for charter schools that are MSBA members. On its members' behalf, MSBA requests clarification on recent state law regarding the actions of MSBA taken in support of its members and of school employees taken in support of their school districts.

MSBA Activity

MSBA's understanding is that Advisory Opinion 456 would apply to MSBA's work with member school districts to inform them of or take action on legislative issues. We welcome a correction if this understanding is not accurate.

School Employee Activity

MSBA seeks clarification regarding the work that some school employees, primarily superintendents, undertake on behalf of their school districts. Minnesota Statutes, section 10A.01, subdivision 21 as amended, states that an individual is a "lobbyist" if one or more conditions is met. If the individual is "engaged for pay or other consideration of more than \$3,000 from all sources in any year" for the purpose of attempting to influence legislative or administrative action or the official action of a political subdivision.

The statute also sets forth a 50-hour threshold as an exclusion to the general rule that school employees, such as school superintendents, are not lobbyists. This 50-hour exclusion may be understood as not modifying the initial requirement that an individual must receive compensation exceeding \$3,000 to come within the definition of "lobbyist."

MSBA requests an advisory opinion that clarifies that the 50-hour threshold is an exclusion that is part of a two-part test for determining whether an individual is a lobbyist under Minnesota Statutes 10A.01.

MINNESOTA SCHOOL BOARDS ASSOCIATION

1900 West Jefferson Avenue, St. Peter, MN 56082-3015 Phone: 507-934-2450 or 800-324-4459
www.mnmsba.org

Thank you for your consideration of this request. MSBA is available to provide additional information or answer questions that may arise.

Sincerely,

A handwritten signature in black ink that reads "Kirk Schneidawind". The signature is written in a cursive, flowing style.

Kirk Schneidawind, Executive Director

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: Kirk Schneidawind
Executive Director
Minnesota School Boards Association
1900 West Jefferson Avenue
St. Peter, MN 56082

RE: Lobbyist Registration and Reporting

ADVISORY OPINION 460

SUMMARY

A nonelected local official or employee of a political subdivision is not a lobbyist unless the individual receives compensation in excess of \$3,000 for lobbying in any year and spends more than 50 hours in any month on lobbying.

FACTS

On behalf of the Minnesota School Boards Association (the MSBA) 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.

1. The MSBA is a voluntary membership organization. Minnesota public school districts, and some charter schools, are members of the organization. The MSBA provides training, guidance, and advocacy for its members. On behalf of its members the MSBA seeks clarification on the actions of school district employees taken in support of their school districts.
2. The MSBA is aware that Minnesota Statutes section 10A.01, subdivision 21, paragraph (a), provides in part that an individual is a lobbyist if the individual is engaged for pay or other consideration of more than \$3,000¹ from all sources in a year for the purpose of attempting to influence legislative action, administrative action, or the official action of a political subdivision (official actions).

¹ The Board notes that Minnesota Statutes section 10A.01, subdivision 21, also provides that an individual who spends more that \$3,000 of personal funds on attempting to influence official actions, not counting travel costs or membership dues, is a lobbyist.

3. The MSBA is also aware that Minnesota Statutes section 10A.01, subdivision 21, paragraph (b), provides a number of exceptions, or exclusions, to the definition of lobbyist for individuals who hold certain positions, or who perform certain activities. Among the exclusions, the statute provides that nonelected local officials and employees of a political subdivision are not lobbyists, unless the official or employee spends more than 50 hours of their time in any month attempting to influence official actions, other than an official action of the political subdivision that employs the official or employee.

Issue One

Is the requirement for a nonelected school district official or employee to register as a lobbyist determined by a two-part test that requires the individual to receive compensation of over \$3,000 for attempting to influence official actions, and also exceed the 50-hour threshold for time used attempting to influence official actions?

Opinion One

Yes, there are two separate conditions that must occur before a nonelected school district official or employee must register as a lobbyist. The compensation threshold used to determine when an individual is a lobbyist is not modified or eliminated by the exclusion of certain individuals and actions from the definition of lobbyist. The exclusions to the definition of lobbyist are only applied if the individual would otherwise be a lobbyist because of compensation received for attempting to influence official actions. The lobbyist registration requirement for a nonelected school district official or employee may be stated as: A nonelected school district official or employee is not a lobbyist unless 1) the individual is compensated over \$3,000 in any year for attempting to influence official actions, and 2) the individual has used over 50 hours of their time in any month to influence official actions.

Issued: January 3, 2024

David Asp, Chair
Campaign Finance and Public Disclosure Board



MINNESOTA CAMPAIGN FINANCE BOARD

Date: December 27, 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 involving lobbying, which are listed below. That language, and previously released draft rule language concerning campaign finance and audits and investigations topics, will soon be considered by the Board's Rulemaking Committee. The first meeting of the Rulemaking Committee has been scheduled for 10:00 a.m. on Monday, January 29, 2024. The meeting will be held in the Blazing Star Room on the ground floor of the Centennial Office Building. The meeting will be open to the public and interested individuals may observe the meeting remotely by Webex. The Board does not need to take any action at this time regarding administrative rulemaking.

Lobbying Topic 1 – clarify that state agencies and local governments are not principals

The draft language defines the term “state agency” and provides that a political subdivision, public higher education system, or state agency is not a lobbyist principal. This language is broadly intended to codify Advisory Opinions 224,¹ 297,² and 441.³

Lobbying Topic 3 – implementation of 2023 legislative changes

The draft language defines the terms “administrative overhead expenses,” “development of prospective legislation,” “employee of a political subdivision,” “pay or consideration for lobbying,” “major decision regarding the expenditure of public money,” and “major decision regarding the investment of public money.” The draft language includes updated definitions of the terms “compensation,” “lobbying,” “lobbyist's disbursements,” and “reporting lobbyist.”

The draft language includes a new subpart within Rule 4511.0200, which would explain in greater detail the point at which an individual must register with the Board as a lobbyist. The draft language includes updated language within Rule 4511.0500, which would explain in

¹ [Advisory Opinion 224 \(Jan. 26, 1996\)](#).

² [Advisory Opinion 297 \(July 24, 1998\)](#).

³ [Advisory Opinion 441 \(Jan. 15, 2016\)](#).

greater detail the information that a designated lobbyist is required to report to the Board. The draft language includes updated language within Rule 4511.0600, which would account for administrative overhead expenses incurred by a principal to support its lobbying efforts.

The draft language includes new language to be codified as Rule 4511.0900, which would apply to reporting by lobbyists representing membership organizations comprised of political subdivisions. That language is intended to codify Advisory Opinion 456.⁴

The draft language includes new language to be codified as Rule 4511.1000, which would help delineate when an attempt to influence an elected local official is lobbying. The draft language includes new language to be codified as Rule 4511.1100, which would help delineate when an attempt to influence a nonelected local official is lobbying, including by defining what a “major decision” is for purposes of the statutory definitions of “local official” and “official action of a political subdivision.”

Lobbying Topic 4 – change cross-reference in Minnesota Rules 4511.0500, subpart 1

The draft language includes an updated cross-reference within Minnesota Rules 4511.0500, subpart 1, to account for the fact that language previously codified within subpart 2 of that rule was moved to Minnesota Statutes section 10A.04, subdivision 9, in 2017.

Attachments:

Draft language for rules involving lobbying

⁴ [Advisory Opinion 456 \(Dec. 13, 2023\)](#).

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CHAPTER 4501, GENERAL PROVISIONS

4501.0100 DEFINITIONS.

...

Subp. 4. **Compensation.** "Compensation" means every kind of payment for labor or personal services. Compensation does not include payments of Social Security, unemployment compensation, workers' compensation, healthcare, retirement, or pension benefits.

...

CHAPTER 4511, LOBBYIST REGISTRATION AND REPORTING

4511.0100 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, also apply to this chapter.

Subp. 1a. [~~Repealed, L 2023 c 62 art 5 s 44~~]

Subp. 2. **Administrative overhead expenses.** "Administrative overhead expenses" means costs incurred by the principal for office space, transportation costs, and website operations, that are used to support lobbying in Minnesota.

Subp. 3. **Development of prospective legislation.** "Development of prospective legislation" means communications that:

A. explain the need for legislation that has not been introduced as a bill;

B. request support for legislation that has not been introduced as a bill;

C. provide language, or comments on language, used in draft legislation that has not been introduced as a bill; or

D. are intended to facilitate the drafting of language, or comments on language, used in draft legislation that has not been introduced as a bill.

Subp. 4. **Employee of a political subdivision.** "Employee of a political subdivision" includes an individual hired or appointed by the political subdivision. An individual is also an employee of a political subdivision if the individual is:

A. hired to provide the political subdivision services as a consultant or independent contractor; or

B. the individual is employed by a business that has contracted with the political subdivision to provide legal counsel, professional services, or policy recommendations to the political subdivision.

Subp. ~~52~~. **Gift.** "Gift" has the meaning given in chapter 4512 and Minnesota Statutes, section 10A.071.

Subp. ~~63~~. **Lobbying.** "Lobbying" means attempting to influence legislative action, administrative action, or the official action of a ~~metropolitan governmental unit~~ political subdivision 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. Payment of an application fee, or processing charge, for a government service, permit, or license is not lobbying or an activity that directly supports lobbying.

Subp. ~~74~~. **Lobbyist's disbursements.** "Lobbyist's disbursements" include ~~all disbursements for lobbying each gift, item, or benefit equal in value to \$5 or more, made by the lobbyist, the lobbyist's employer or employee, or any person or association represented by the lobbyist. but do not include compensation paid to the lobbyist.~~

Subp. ~~8~~. **Pay or consideration for lobbying.** "Pay or consideration for lobbying" means the gross compensation paid to an individual for lobbying.

Subp. ~~95~~. **Original source of funds.** "Original source of funds" means a source of funds, other than the entity for which a lobbyist is registered, paid to the lobbyist, the lobbyist's employer, the entity represented by the lobbyist, or the lobbyist's principal, for lobbying purposes.

Subp. ~~106~~. **Public higher education system.** "Public higher education system" includes the University of Minnesota and the Minnesota State Colleges and Universities governed by Minnesota Statutes, chapter 136F. The board may issue advisory opinions at the request of other entities with respect to whether or not they are also included within this definition.

Subp. ~~117~~. **Reporting lobbyist.** "Reporting lobbyist" means a lobbyist responsible for reporting lobbying ~~disbursements activity~~ of two or more lobbyists representing the same entity. Lobbying ~~disbursements activity~~ made on behalf of an entity may be reported by each individual lobbyist that represents an entity, or by one or more reporting lobbyists, or a combination of individual reports and reports from a reporting lobbyist.

Subp. 12. State agency. "State agency" means the State of Minnesota and any office, officer, department, division, bureau, board, commission, authority, district, or agency of the State of Minnesota.

4511.0200 REGISTRATION.

Subpart 1. **Registration threshold.** An individual must register as a lobbyist with the board upon the earlier of when:

A. the individual receives total pay or consideration from all sources that exceeds \$3,000 in a calendar year, for the purpose of lobbying, or from a business whose primary source of revenue is derived from facilitating government relations or government affairs services if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients. The pay or consideration for lobbying for an individual whose job duties includes both lobbying and functions unrelated to lobbying is determined by multiplying the gross salary or wages of the individual by the percentage of the individual's work time spent lobbying in the calendar year; or

B. the individual spends more than \$3,000 of their own funds in a calendar year for the purpose of influencing legislative action, administrative action, or the official action of a political subdivision by communicating with public or local officials, or urging others to communicate with public or local officials. Membership dues paid by the individual, and expenses for transportation, lodging, and meals used to support lobbying by the individual, are not costs that count towards the \$3,000 expenditure threshold that requires registration.

An individual who is a registered lobbyist need not register for lobbying efforts done on their own behalf unless the individual spends more than \$3,000 of their own funds on lobbying, as provided in paragraph B.

Subpart 42. **Separate registration required for each entity.** A lobbyist who lobbies on behalf of more than one individual, association, political subdivision, or public higher education system shall register separately for each separate entity. Members or affiliates of an association represented by a lobbyist are not separate entities for the purposes of this requirement.

Subp. 23. **Separate registration for each lobbyist.** Multiple lobbyists representing the same individual, association, political subdivision, or higher education system must each register separately. A lobbyist who provides lobbying actions ~~disbursements~~ to the board through a reporting lobbyist must list the name and registration number of the reporting lobbyist on a lobbyist registration. If the reporting lobbyist changes, or if the lobbyist ceases to report through a reporting lobbyist, the lobbyist must amend the registration within ten days.

Subp. 34. **Registration of designated lobbyist.** A designated lobbyist must indicate on the lobbyist registration form that the lobbyist will be reporting disbursements for the entity the lobbyist represents. An entity that employs lobbyists may have only one designated lobbyist. A designated lobbyist who ceases to be responsible for reporting the lobbying disbursements of an entity must amend the lobbyist's registration with the board within ten days.

Subp. 45. **Registration of reporting lobbyist.** A reporting lobbyist must indicate on the lobbyist registration form that the lobbyist will be reporting lobbying actions ~~disbursements~~ for additional lobbyists representing the same entity. The registration must list the name and registration number of each lobbyist that will be included in reports to the board ~~of disbursements~~ made by the reporting lobbyist. Changes to the list of lobbyists represented by a reporting lobbyist must be amended on the reporting lobbyist registration within ten days, or provided to the board at the time of filing a report required by Minnesota Statutes, section 10A.04, subdivision 2.

4511.0300 PRINCIPALS.

Individuals or associations represented by lobbyists are presumed to be principals until they establish that they do not fall within the statutory definition of a principal. A political subdivision, public higher education system, or state agency is not an association under Minnesota Statutes, section 10A.01, and is not a principal.

4511.0400 TERMINATION.

Subpart 1. **Lobbyist termination.** A lobbyist who has ceased lobbying for a particular entity may terminate registration by filing a lobbyist termination form and a lobbyist ~~disbursement~~ report covering the period from the last report filed through the date of termination. If the lobbying ~~disbursements activity~~ of the lobbyist ~~is~~ are reported by a reporting lobbyist, the nonreporting lobbyist may terminate by filing a lobbyist termination form and notifying the reporting lobbyist of all ~~disbursements~~ lobbying activity by the lobbyist during the period from the last report filed through the date of termination.

Subp. 2. **Reporting lobbyist termination.** A reporting lobbyist who has ceased lobbying for a particular entity may terminate registration by filing a lobbyist termination form and a lobbyist ~~disbursement~~ report covering the period from the last report filed through the date of termination. The termination of a reporting lobbyist reverts the reporting responsibility back to each lobbyist listed on the registration of the reporting lobbyist.

Subp. 3. **Designated lobbyist termination.** A designated lobbyist who has ceased lobbying for a particular entity may terminate their registration using the procedure provided in subpart 1. When the designated lobbyist of a lobbying entity terminates, the entity is responsible to assign the responsibility to report the entity's lobbying disbursements to another lobbyist.

4511.0500 LOBBYIST REPORTING REQUIREMENTS.

Subpart 1. Separate reporting required for each entity. A lobbyist must report separately for each entity for which the lobbyist is registered, unless their activity ~~disbursements~~ is reported in the manner provided in Minnesota Statutes, section 10A.04, subdivision 9~~subpart 2.~~

~~Subp. 2. [Repealed, L 2017 1Sp4 art 3 s 18]~~

Subp. ~~2~~**3. Report of officers and directors information** ~~designated lobbyist.~~ With each report of lobbyist activity ~~disbursements~~, a designated lobbyist must report: ~~any change in the name and address of:~~

A. the name and address of each person, if any, by whom the lobbyist is retained or employed or on whose behalf the lobbyist appears; ~~or~~

B. if the lobbyist represents an association, a current list of the names and addresses of each officer and director of the association;

C. each original source of money in excess of \$500 provided to the individual or association that the lobbyist represents; and

D. each gift to a public or local official given by or on behalf of a principal or a lobbyist registered for the principal.

Subp. 34. Limitation on reporting of loans. A lobbyist is not required to report loans to a public official or a local official if:

A. the lobbyist's employer, principal, or association represented which made the loan is a financial institution; and

B. the loan was made in the ordinary course of business on substantially the same terms as those prevailing for comparable transactions with other persons.

~~Subp. 5. **Reporting gifts.** A gift to a public or local official from a principal for which a lobbyist is registered must be reported by the designated reporting lobbyist.~~

4511.0600 REPORTING DISBURSEMENTS.

Subpart 1. **Determination of actual costs required.** To the extent that actual costs of lobbying activities, or administrative overhead expenses incurred by the principal to support lobbying, can be obtained or calculated by reasonable means, those actual costs must be determined, recorded, and used for reporting purposes.

Subp. 2. **Approximation of costs.** If the actual cost of a lobbying activity, or administrative overhead expenses incurred by the principal to support lobbying, cannot be obtained or calculated through reasonable means, those costs must be reasonably approximated.

Subp. 3. **Disbursements allocated between multiple entities.** A disbursement for lobbying purposes that benefits more than one entity for which a lobbyist is separately registered must be allocated between the entities benefited on a reasonable basis and reported based on that allocation.

Subp. 4. **Disbursements which are only partially in support of lobbying.** A disbursement that is partially in support of lobbying and partially for a nonlobbying purpose must be allocated on a reasonable basis between the two purposes and the portion which is for lobbying activities must be reported.

Subp. 5. [Repealed, L 2023 c 62 art 5 s 44]

Subp. 6. **Effect of gift prohibition.** The reporting requirements in this part do not change the scope of the statutory prohibition under Minnesota Statutes, section 10A.071, nor do they create additional exceptions to that prohibition.

4511.0700 REPORTING COMPENSATION PAID TO LOBBYIST.

Subpart 1. **Reporting by lobbyist.** Compensation paid to a lobbyist for lobbying is not reportable by the lobbyist ~~as a lobbyist disbursement.~~

Subp. 2. **Reporting by principal.** Compensation for lobbying paid by a lobbyist principal to a lobbyist or to the employer of a lobbyist must be included when determining the spending level categories for reporting by the lobbyist principal.

4511.0800 ADMINISTRATIVE ACTION.

Subpart 1. **Commencement.** An administrative action to adopt, amend, or repeal rules pursuant to Minnesota Statutes, chapter 14, begins on publication of the notice required under Minnesota Statutes, section 14.101, subdivision 1, or at an earlier time when the official, board, commission, or agency undertaking the rulemaking takes the first formal action required by law to begin the rulemaking process. An administrative action for a purpose other than rulemaking begins when the commission or agency undertaking the action takes the first formal action required by statute to begin the action or as otherwise defined by statute.

Subp. 2. **Advisory committees.** Participation on an administrative rulemaking advisory committee established under Minnesota Statutes, section 14.101, subdivision 2, is not lobbying.

4511.0900 LOBBYIST REPORTING FOR POLITICAL SUBDIVISION MEMBERSHIP ORGANIZATIONS.

Subpart 1. **Required reporting.** An association whose membership consists of political subdivisions within Minnesota, and which is a principal that provides lobbyist representation on issues as directed by its membership, must report:

A. attempts to influence administrative action on behalf of the organization's membership;

B. attempts to influence legislative action on behalf of the organization's membership; and

C. attempts to influence the official action of a political subdivision on behalf of the organization's membership, unless the political subdivision is a member of the association.

Subp. 2. **Communication with membership.** A membership association described in subpart 1 is not lobbying political subdivisions when the association communicates with its membership regarding lobbying efforts made on the members' behalf, or when the association recommends actions by its membership to support a lobbying effort.

4511.1000 LOBBYING OF ELECTED LOCAL OFFICIALS.

Subpart 1. **An action that requires a vote of the governing body.** Attempting to influence the vote of an elected local official while acting in their official capacity is lobbying of that official's political subdivision.

Subp. 2. **Approval by an elected local official.** Attempting to influence a decision of an elected local official that does not require a vote by the elected local official is lobbying if the elected local official has discretion in their official capacity to either authorize or deny a government service or action.

Approval by an elected local official does not include:

A. issuing a government license, permit, or variance that is routinely provided when the applicant has complied with the requirements of existing state code or local ordinances;

B. any action which is performed by the office of the elected local official and which does not require personal approval by an elected local official; or

C. prosecutorial discretion exercised by a county attorney.

4511.1100 LOBBYING OF NONELECTED LOCAL OFFICIALS.

Subpart 1. Major decision regarding the expenditure of public money. Attempting to influence a nonelected local official is lobbying if the nonelected local official may make, recommend, or vote as a member of the political subdivision's governing body a major decision regarding an expenditure or investment of public money. A major decision regarding the expenditure or investment of public money is a decision on:

A. the development and ratification of operating and capital budgets of a political subdivision, including development of the budget request for an office or department within the political subdivision;

B. whether to apply for, or accept, state or federal funding or private grant funding;

C. selecting recipients for government grants from the political subdivision; or

D. expenditures on public infrastructure used to support private housing or business developments.

A major decision regarding the expenditure of public money does not include:

A. the purchase of goods or services with public funds that were allocated in the operating or capital budget of a political subdivision;

B. selecting an offer for services or goods submitted in response to a request for proposal or other procurement process used by the political subdivision; or

C. collective bargaining of a labor contract on behalf of a political subdivision.

Subp. 2. Major decision regarding the investment of public money. Attempting to influence a nonelected local official is lobbying if the nonelected local official is making a major decision regarding the investment of public money. A major decision regarding the investment of public money is the authority to make, recommend, or vote as a member of the political subdivision's governing body on a decision regarding investment options for government employee retirement plans, or investment options or depositories for funds of the political subdivision.

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
JANUARY 2024
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 | \$1,000 LFF \$1,000 CP | 11/22/23 | | | | |
| | | Late filing of 2018 year-end report | \$525 LFF | | | | | |
| | | Late filing of 2020 pre-primary report | \$1,000 LFF \$1,000 CP | | | | | |
| | | Late filing of 2018 pre-primary report | \$1,000 LFF \$100 CP | | | | | |
| | | 2018 pre-general report | \$1,000 LFF \$1,000 CP | | | | | |
| | | 2020 pre-general 24- hour large contribution notice | \$1,000 LFF | | | | | |
| | | 2022 annual statement of economic interest | \$1,000 LFF \$100 CP | | | | | |
| | | Late filing of 2018 annual statement of economic interest | \$1,000 LFF \$100 CP | | | | | |
| | | Late filing of 2018 candidate statement of economic interest | \$95 LFF | | | | | |

CLOSED FILES

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