

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

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

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

RE: Lobbyist Registration and Reporting

ADVISORY OPINION 456

SUMMARY

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

FACTS

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

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

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

Issue One

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

Opinion One

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

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

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

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

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

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

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

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

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

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.³ 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: December 13, 2023


George W. Soule, Chair
Campaign Finance and Public Disclosure Board

³ Minn. Stat. § 10A.02, subd. 12a.

State of Minnesota
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**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

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

elected or appointed. For the purpose of this opinion the Board assumes that the county auditor was elected to their office. 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. If the county auditor was appointed to their position, then the request would not be lobbying because the decision to assign 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 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.

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.

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 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, 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 neighborhood 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 major decisions regarding the expenditure of public funds falls within the definition of "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 surveyor's 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 the 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. 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. 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 a 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.

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.

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.

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.

Issued: January 3, 2024



David Asp, Chair
Campaign Finance and Public Disclosure Board

⁶ [Minn. Stat. § 10A.02, subd. 12a.](#)

**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, to the extent the CEO receives pay or other compensation of more than \$3,000 for attempting to influence legislative action. 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 CEOs 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, to the extent the CEO receives pay or other compensation of more than \$3,000 for attempting to influence legislative action. 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 the 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 the 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 time 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 lobbying.⁷ The

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.

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.

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 support 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 the 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, to the extent the CEO receives pay or other compensation of more than \$3,000 for attempting to influence the official action of the political subdivision. 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

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 than \$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

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: Meg Luger-Nikolai
Education Minnesota
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St. Paul, MN 55103

Tom Dicklich
MN State Building & Construction Trades Council
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St Paul, MN 55102

Kyle Makarios
Teamsters Joint Council 32
3001 University Ave SE
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Minneapolis, MN 55414

RE: Lobbyist Registration and Reporting

ADVISORY OPINION 461

SUMMARY

The vote of an elected local official to adopt a collective bargaining agreement for union employees of a political subdivision is an official action of a political subdivision. Attempting to influence the vote of an elected official on a collective bargaining agreement is lobbying. Actions by union representatives to enforce the provisions of a collective bargaining agreement after it has been adopted, or to represent union employees in discussions with human resource staff, is not lobbying.

FACTS

On behalf of Education Minnesota, the Minnesota State Building and Construction Trades Council, and Teamsters Joint Council 32 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. Education Minnesota, the Minnesota State Building and Construction Trades Council, and Teamsters Joint Council 32 represent several unions whose members work in the public sector. The local unions have been elected to serve as the exclusive representative in negotiations regarding compensation and fringe benefits.

2. Some local unions employ individuals who work as representatives for the union in contractual relationships with a public employer. Some local unions receive the assistance of an affiliated labor organization, in which case an agent works with the public employer on behalf of the local union.
3. Union representatives and agents often meet with elected officials for a political subdivision. In the case of school districts, the representatives and agents may contact school board members or the superintendent. In the case of cities and townships, the representatives and agents contact city council members or town board supervisors. In larger school districts and cities, the contact may be primarily with staff in a human resources department.
4. In representing employees of the local union, the representatives and agents may be compensated more than \$3,000 for assisting with negotiating and enforcing the provisions of an agreement on compensation and working conditions with a public employer.
5. You state that Minnesota Statutes section 179A.06 provides the right for public employees to negotiate through their union representative terms and conditions of employment and grievance procedures. You describe the terms of and conditions of employment as the circumstances under which an employee will provide service to a public employer.
6. You note that Minnesota Statutes section 10A.01, subdivision 21 (b) (6) excludes from the definition of lobbyist individuals “engaged in selling goods or services to be paid for by public funds.” You further note that in Advisory Opinion 304¹ the Board provides that “...the exception applies to individuals selling goods and services on their own behalf as well as to employees or independent contractors, such as attorneys, acting on behalf of sellers.”

Issue One

Does working as an agent helping employees to collectively bargain the compensation for their services fall under the lobbying exception for individuals selling goods and services that will be paid for with public funds?

Opinion One

No. The Board understands the negotiation of a labor contract to be a complex process that involves many factors and issues. In the Board’s view a union contract is not the type of transaction that may be reasonably seen as the selling of goods or services to a political subdivision.

¹ [Advisory Opinion 304](#), issued October 30, 1998.

Issue Two

Does working as an agent helping employees to enforce the provisions of a collective bargaining agreement setting forth employees' compensation for services to a political subdivision constitute lobbying?

Opinion Two

No. Lobbying of a political subdivision occurs when an individual attempts to influence an official action of the political subdivision. 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 vote of elected local officials to accept the collective bargaining agreement is an official action of a political subdivision, and attempting to influence the vote of the elected official, including negotiating with the elected official on the content of the collective bargaining agreement, is lobbying.

However, in this question, the vote to accept the collective bargaining agreement has already occurred, and the issue is the application of some provision of that agreement. The administration of the collective bargaining agreement, including discussions to ensure that the terms of the contract are followed, do not require local officials to make an "official action of a political subdivision". Therefore, working with local officials to enforce the provisions of the collective bargaining agreement is not lobbying of the political subdivision.

Issue Three

Does advocacy on behalf of public employees to human resources staff for a public entity qualify as attempting to influence official action of a local official?

Opinion Three

No. Similar to the answer provided for issue two, union representation advocating on behalf of a public employee with human resources staff is not an attempt to influence the official action of a political subdivision, and therefore is not lobbying.

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.² The Board notes that it is in the process of adopting and modifying administrative rules regarding lobbying, and that the issue of negotiating a collective bargaining agreement with political subdivisions may be addressed in the forthcoming administrative rules.

Issued: February 7, 2024

/s/ David Asp
David Asp, Chair
Campaign Finance and Public Disclosure Board

² Minn. Stat. § 10A.02, subd. 12a.

**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 462

SUMMARY

A partnership consisting of individuals may make political contributions from the general treasury of the partnership subject to the limitations and disclosure requirements of Chapter 10A.

FACTS

On behalf of a business partnership you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts, which were provided to the Board in a written request and in response to questions from Board staff.

1. A business partnership (the Partnership), composed solely of individuals, is considering various approaches to influence Minnesota elections.
2. The Partnership owns and operates the building used by the Partnership.
3. The Partnership may register a political committee or fund for the purpose of making contributions to candidates, political party units, and other political committees or funds.
4. If the Partnership forms a political committee or fund it may decide to pledge \$500,000 in collateral for a line of credit that would be available for use by the political committee or fund. The line of credit would be established with a bank or credit union. The political committee or fund would be responsible for any interest accrued for using the line of credit.
5. If a political committee or fund is formed, the Partnership may solicit contributions for the entity. Contributors would be directed to send any contribution to the political committee or fund for deposit.
6. If a political committee or fund is formed the Partnership may wish to provide administrative assistance to the committee or fund, similarly to how a corporation may provide limited administrative assistance under Minnesota Statutes section 211B.15, subdivision 17. If office space is needed the political committee or fund would be responsible for rent, and if the office space is acquired from the 501(c)2 organization, the rent will reflect fair market value.

7. The Partnership may forgo forming a political committee or fund, and instead use the Partnership's general treasury funds to make contributions to one or more registered candidate committees, political party units, or political committees or funds.

With this background in mind, you ask the following questions.

Issue One

Is the Partnership able to register a general-purpose political committee or fund, and contribute to the committee or fund from the Partnership's general treasury?

Opinion One

Yes, the Partnership may register a general-purpose political fund. Minnesota Statutes section 211B.15, subdivision 2, prohibits a "corporation" from offering or making a political contribution to a candidate committee, political party unit, general-purpose political committee, or general-purpose political fund.¹ For the purposes of this statute the word corporation is defined to include:

- (1) a corporation organized for profit that does business in this state;
- (2) a nonprofit corporation that carries out activities in this state;² or
- (3) a limited liability company formed under chapter 322C, or under similar laws of another state, that does business in this state.

In Minnesota, a business partnership formed under Chapters 321 or 323A, or similar law in another state, is not a corporation. Therefore, the prohibition on corporate contributions does not apply to a partnership that is made up of individuals. As provided in the facts of this opinion the Partnership consists of individuals, and therefore may contribute either to a political fund that is established by the Partnership, or directly to candidate committees, political party units, political committees, or political funds (registered entities).

The Board notes that under Minnesota law business partnerships are not limited to individuals; a partnership may also include one or more for-profit corporations. Minnesota Statutes section 211B.15 prohibits direct or indirect corporate political contributions, with limited exceptions made for contributions made to independent expenditure committees and funds, and ballot question committees and funds. A for-profit corporation may not circumvent the general prohibition on political contributions by making a contribution through a business partnership.

¹ The prohibition on receiving corporate contributions does not apply to independent expenditure committees and independent expenditure funds. [Minn. Stat. § 211B.15, subd. 3.](#)

² A nonprofit corporation that meets the criteria provided in Minnesota Statutes section 211B.15, subdivision 15, is exempted from the general prohibition on corporate contributions.

For the purposes of Chapter 10A, the Partnership is an “association”. Minnesota Statutes section 10A.01, subdivision 6, defines “association” to mean a group of two or more persons, who are not all members of an immediate family, acting in concert. Associations register with the Board as either a political committee, or a political fund, depending on the nature of the association.

A “political committee” is an association whose major purpose is to influence the nomination or election of a candidate, or to promote or defeat a ballot question (elections).³ A “political fund” is formed by an association that has a major purpose that is not to influence elections. A political fund is the reporting mechanism for the association to report money accumulated or spent to influence elections.⁴ This includes reporting the transfer of money from the general treasury of the association to the fund. The term “general treasury money” is defined to include income from the operation of a business, donations to the association for its general purposes, and membership dues and fees paid to the association.⁵ The Partnership was formed for business purposes, not to influence elections, and wishes to use general treasury money to support political activity. Therefore, the Partnership would register a political fund with the Board.

The facts of this opinion request state that the Partnership is considering whether to register a political fund, or to make contributions directly from the general treasury of the Partnership to registered entities. The Partnership may do either, but there are limitations if the Partnership does not register a political fund. Without a political fund, the Partnership is limited to no more than \$750 in direct contributions to registered entities, or no more than \$750 in approved in-kind contributions on behalf of candidates. Registration of a political fund is required if the \$750 threshold is exceeded in a calendar year, and must occur no later than 14 days after the threshold is exceeded.^{6,7}

In addition, if the Partnership makes direct contributions, including approved in-kind contributions to registered committees, and the value of the contribution exceeds \$200, then the Partnership must provide a disclosure statement with the contribution, as required in Minnesota Statutes section 10A.27, subdivision 13.⁸ An unregistered association, or an officer of the association, is subject to a civil penalty for failure to provide the disclosure statement.

Issue Two

Is the Partnership able to provide collateral for a \$500,000 line of credit for use by the political fund?

³ [Minn. Stat. § 10A.01, subd. 27.](#)

⁴ [Minn. Stat. § 10A.01, subd. 28.](#)

⁵ [Minn. Stat. § 10A.01, subd. 17c.](#)

⁶ [Minn. Stat. § 10A.12, subd. 1.](#)

⁷ [Minn. Stat. § 10A.14, subd. 1.](#)

⁸ An unregistered association that makes a contribution to an independent expenditure committee or fund, or to a ballot question committee or fund, is required to provide the disclosure statement required in Minnesota Statutes section 10A.27, subdivision 15.

Opinion Two

Yes. As provided in opinion one, the Partnership is not a corporation, so it may provide both cash and in-kind contributions to its own political fund. There is no limit on the size of the contributions made to the political fund from the general treasury of the Partnership.

The Board's understanding of a business line of credit is that it allows the borrower to draw funds as needed. There is typically little or no cost for establishing a line of credit, and no interest payments if the line of credit is not used. Providing substantial collateral for a line of credit will lower the interest rate charged for the funds borrowed using the line of credit. If the collateral provided by the Partnership results in the political fund paying a lower interest rate than what would be charged without the collateral, then the difference between the two interest rates represents an in-kind contribution from the Partnership to the political fund.

Issue Three

Do the limits on administrative assistance to a political fund provided in Minnesota Statutes section 211B.15, subdivision 17, apply to the Partnership?

Opinion Three

No. Minnesota Statutes section 211B.15, subdivision 17, provides for limited administrative assistance to a political committee or fund by a nonprofit corporation. The Partnership is not a corporation, so the limitations in the statute do not apply. If the Partnership pays for office space or other operating costs for the political fund those costs are in-kind contributions to the political fund and are reported at the fair market value of the office space or operating cost.

The facts of this opinion provide that the Partnership may solicit contributions for the political fund. If the Partnership incurs costs soliciting contributions, then those costs must be reported as an in-kind contribution to the political fund.

Issued: May 1, 2024



David Asp, Chair
Campaign Finance and Public Disclosure Board

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: Tammera R. Diehm
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ADVISORY OPINION 463

SUMMARY

News media organizations and their employees and agents are not lobbyists as a result of publishing or broadcasting news items, editorial comments, or paid advertisements which directly or indirectly urge official action by public or local officials.

Facts

As representative for the Minnesota Broadcasters Association (MBA) and the Minnesota Newspaper Association (MNA), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion on lobbying regulations that may impact members of these organizations. The request is based on the following facts:

1. The MBA represents the radio and television industry and their related platforms. The MNA is a voluntary trade association of all general-interest newspapers in the State of Minnesota.
2. The MBA and MNA are aware that the definition of “lobbyist” provided in Chapter 10A makes it clear that a lobbyist does not include “a news medium or its employees or agents while engaged in the publishing or broadcasting of news items, editorial comments, or paid advertisements which directly or indirectly urge official action.”¹
3. The requester points out that in 1990 the legislature amended the wording of this exclusion to change “news media” to “news medium”.
4. The MBA and MNA are also aware that the definition of “principal” provided in Chapter 10A does not contain a similar exception for the publication or broadcasting of news items or editorial comments.² Principals are associations that either spend more than

¹ [Minn. Stat. § 10A.01, subd. 21\(b\)\(7\).](#)

² [Minn. Stat. § 10A.01, subd. 33](#); See also [2024 Minn. Laws ch. 112, art. 4, sec. 5](#), which increased the threshold amount at which compensation paid to a lobbyist results in the payor being defined as a

\$3,000 in a year to engage or compensate a lobbyist; or spend at least \$50,000 in a year to influence legislative action, administrative action, or the official action of one or more political subdivisions.

5. The MBA and MNA acknowledge the evolving way that news is delivered, and are aware of the addition of a statutory definition of “legislative action” that became effective in 2024.

Given these facts, the MBA and MNA request the Board’s opinion with respect to activities that broadcasters and publishers have historically considered to be part of news media.

Issue One

The description of those who are engaged in the delivery or distribution of news-related material has changed since 1990 when the phrase “news medium” was used to define those who are excluded from the definition of lobbyist. Given that change, does the exclusion for “*news medium or its employees or agents*” found in the definition of lobbyist include any media organization engaged in the publication or broadcasting of news information via radio, television, podcast, print, online and/or digital platforms?

Opinion One

Yes. Before 1990, the statute used the term “news media” which is commonly defined as any means of distributing news by mass communication. The current statute applies the exclusion to the “news medium”, which is commonly defined as any system or method through which a speaker or writer provides news to their audience. At no time has the exclusion been limited to print, broadcast, or any other method of distributing the news. Undoubtedly new online and digital methods to deliver news content have been developed since 1990. However, the definition is written so that the exclusion is not limited to any particular method of distribution of information by news organizations.

Issue Two

The content delivered by news mediums has changed since 1990. Given that change, does the exclusion in the definition of a lobbyist for a news medium or its employee or agents “*while engaged in the publishing or broadcasting of news items, editorial comments, or paid advertisements which directly or indirectly urge official action*” apply to the following activities:

Board Note: For all scenarios in issue two the Board assumes that the activity is by a news medium.

- A. Editorial commentary provided by either a guest or host of a talk, television, radio or podcast show.

principal, from \$500 to \$3,000, and changed “the official action of metropolitan governmental units” to “the official action of political subdivisions”. This section became effective the day following final enactment.

Opinion: Yes. The exclusion specifically references “editorial comments” as content that does not require an individual to register as a lobbyist. The Board considers the word “publishing” to be inclusive of making content known to the general public by any means, including web based and digital communication.

B. Podcast content and/or commentary.

Opinion: Yes. However, the exclusion does not apply to individuals who are not employees or agents of a news medium. For example, a podcast created by an association that is not a news medium, for the purpose of urging the public to contact officials on an issue, may require the association to report as a principal if the cost of producing the podcast is \$50,000 or more during a calendar year.

C. Questions, answers, and comments made as part of guest interviews that are included in public affairs programming.

Opinion: Yes. Guest interviews are a method of providing information on news topics or events to an audience. Public affairs programming includes publishing or broadcasting news items, and is therefore within the exclusion for registration as a lobbyist.

D. Letters to the editor and/or publication of positions taken by the editorial board of members of the MBA and MNA.

Opinion: Yes. The positions developed by the editorial board of news organizations result in editorial commentary, which is specifically listed in the exclusion. Letters to the editor provide a means of communication and feedback between a news organization and its audience, which is a part of providing news content and editorial commentary.

E. Comments posted by third parties in response to online digital content.

Opinion: Yes, the online comment section is the digital equivalent of letters to the editor for print media.

F. Advocacy/solutions journalism that presents a clear conclusion about remedies for a social ill, including a call to action for reform or a legislative fix.

Opinion: Yes. The exclusion includes individuals who disseminate news items that “directly or indirectly urge official action”.

G. A reporter or host expressing sympathy or support, or calling for listeners or readers to take action, for a position expressed by a person being interviewed, understanding that the position may be the subject of a current legislative proposal or future legislation.

Opinion: Yes, for the same reason as provided in response to question number six.

Issue Three

Is a news medium, including television and radio broadcasters, media organizations, newspapers, and those engaged in broadcasting, publishing and/or journalism able to engage in activities that an individual is able to engage in without being defined as a lobbyist under Minnesota Statutes section 10A.01, subdivision 21, paragraph (b), clause (7), without triggering the need to report as a lobbyist principal? Assume for this issue that the news medium spends \$50,000 or more in a calendar year to publish or broadcast content that directly or indirectly urges official action.

Opinion Three

Yes. The legislature not only excluded the employees and agents of a news medium from the definition of lobbyist, it also specifically excluded the news medium from the requirement to register as a lobbyist. Including news mediums in the exclusion was unnecessary because only individuals are defined as, and register as, lobbyists, while a news organization cannot register as a lobbyist. The Board believes that by including "news medium" in the exclusion, the legislature intended to exempt news organizations from lobbying regulation and reporting while engaged in the publishing or broadcasting of news items, editorial comments, or paid advertisements. Therefore, they are not considered principals required to report lobbying-related expenditures.

Further, lobbyist principals report the amount spent by the principal lobbying within the state.³ Requiring a news medium to report the costs of publishing or broadcasting news or editorial content or advertising it is paid to disseminate as a cost of lobbying, when its employees and agents are excluded from the definition of lobbyist, is an absurd result that the legislature would not have intended.⁴


Although not related to lobbying, the Board notes that the legislature has included specific exclusions for news organizations throughout Chapters 10A and 211B. In Minnesota Statutes section 10A.01, subdivision 9, the "publishing or broadcasting of news items or editorial comments by the news media" is excluded from the definition of campaign expenditure. In Minnesota Statutes section 10A.01, subdivision 11, the definition of contribution excludes "the publishing or broadcasting of news items or editorial comments by the news media". In Minnesota Statutes section 10A.201, subdivision 6, a communication is generally not an electioneering communication if it "appears in a news story, commentary, or editorial distributed through the facilities of any broadcast, cable, or satellite television or radio station...". In Minnesota Statutes section 211B.01, news items and editorial comments by the news media are excluded from the definitions of "campaign material" and acts done for "political purposes." And finally, in Minnesota Statutes section 211B.15, subdivision 5, the prohibition on corporate

³ The Board notes that a news medium that spends more than \$3,000 to be represented by a lobbyist, or that spends more than \$50,000 on lobbying activity not discussed in this opinion or otherwise excluded from what is defined as lobbying, is a principal, and will need to file the annual lobbyist principal report.

⁴ See [Minn. Stat. § 645.17](#).

political contributions “does not prohibit publication or broadcasting of news items or editorial comments by the news media.” The legislature clearly recognizes the unique role of news organizations, and has moved to ensure that news organizations can freely publish and broadcast news items and editorial comment without regulation or reporting to the Board. The Board believes that this opinion is consistent with that legislative direction.

Issued June 5, 2024



David Asp, Chair
Campaign Finance and Public Disclosure Board