

Issued to:

Jane A. McPeak, City Attorney
City of St. Paul
647 City Hall
St. Paul, MN 55102

RE: Lobbyist Disclosure

ADVISORY OPINION #111

SUMMARY

111. The governing body of a metropolitan governmental unit may determine what constitute "major decisions" for purposes of the economic interest disclosure and the lobbyist disclosure provisions of Minn. Stat. ch. 10A. The governing body should maintain for public inspection a list of the nonelected officials and employees whom it has designated as "local officials" under Minn. Stat. § 10A.01, subds. 25 and 26 (1990).

FACTS

You are the city attorney of the City of St. Paul which has concerns caused by the changes in Minn. Stat. ch. 10A enacted by the Legislature in 1990. The City of St. Paul is concerned about two areas. The first concern is about the application of the statute to the City of St. Paul and its employees and the possible need for registration and reporting of activity that appears to fall within the purview of the statute as lobbying activity. The second concern is the apparent burden the statute creates on those members of the public who deal with the City of St. Paul on a daily basis and the burden created for the City in tracking the registration of these persons.

You state that the concerns are rooted in the seemingly overbroad definition of lobbying and local government official contained in the statute. The plain language of the statute could mean that dozens of City employees could be "lobbyists" if they interact with other units of government in the routine course of their duties of providing service to the City's taxpayers. An example would be City Public Works Department officials who meet with representatives of the Metropolitan Waste Control Commission to discuss various aspects of the City's sewer separation project. If the statute is strictly construed and enforced these employees face the risk of prosecution if they fail to register as a lobbyist, and the City faces a problem if it fails to adequately report the expenses incurred in their effort.

You further state that the definition of "local government official" also appears overly broad and raises questions about how the "lobbyist" is to know when he or she is in contact with a "local government official." The definition does not limit the application to elected officials. You add that again a strict application of the statute would require that anyone who contacts a municipal employee would first have to question that employee on their position in the chain of authority to determine if the

course of action on the specific subject employee is in a position to recommend a involved. Then questions would have to be asked on how important the matter is since there must be a decision on whether the matter is a "major decision."

While Advisory Opinion No. 108 as published allows the municipality to define who is a "local official", in your opinion, that still does not solve the problems you have noted. Without making inquiry a person who is talking to a public employee does not know if that person is a designated "local official" and therefore does not know if the expenses incurred as part of that contact need to be tracked and reported. You state that the Board's opinion may allow the City of St. Paul to shorten the list of "local officials", but, in your view, that does little to solve the major problems this legislation has created.

Finally, in your view, there exists the possibility that a very large number of persons who come in contact with the City will fall within the purview of the definition of "lobbyist" and face the necessity of registration and reporting expenses. In your view, virtually everyone who appears before the City Council falls within the definition from homeowners appealing an assessment or their lawyer representatives to persons seeking a rezoning or involved in a development project. Literally dozens of people a week exercise their right to seek redress from the government. Each person feels that his or her matter involves a "major decision." Each person could easily run afoul of the statute.

You state that it would appear that the depth to which this statute could apply to City government was not considered when the current language was drafted. You add that the expense to the City of trying to identify affected employees, track, and report their activities would be immense. The expense of compliance by persons who interact with the City would also be considerable. Finally, you state that in your opinion the burden imposed on the City to somehow take the information supplied by these individuals and put it to some meaningful use, or make it available, is very significant and must be taken into account.

You state that the fact that the Board and its staff have attempted to clarify the statute is appreciated. You further state that in your opinion the Board has been asked to perform an impossible task and that enforcement of this statute for complete compliance will require a Herculean effort.

You ask the Board the following questions:

QUESTION ONE

What enforcement does the Board intend to take with respect to the portions of the statute that create a duty by government employees who do not function as lobbyists in the more traditional sense?

OPINION

A nonelected official or employee of a political subdivision may meet the definition of "lobbyist" under certain conditions. The definition of a lobbyist set forth in Minn. Stat. § 10A.01, subd. 11 (b) (4) includes a

nonelected official or employee of a political subdivision who spends more than 50 hours in any month attempting to influence legislative or administrative action or the official action of a metropolitan governmental unit other than the political subdivision employing the official or employee. The following are to be included when calculating the time factor that may require registration as a lobbyist under Minn. Stat. §§ 10A.01, subd. 11 (b) (4) and 10A.03: time spent monitoring legislative, administrative, or metropolitan governmental unit action and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state or to the policies of metropolitan governmental units.

A nonelected official or employee of a political subdivision must file a registration form with the Board within five days after becoming a lobbyist as defined above. The Board prescribes and furnishes lobbyist registration forms under Minn. Stat. §§ 10A.02, subd. 8 (b) and 10A.03.

Each registered lobbyist must file with the Board a report on the lobbyist's activities as long as the lobbyist continues to lobby. A lobbyist may file a termination statement at any time after ceasing to lobby. Minn. Stat. § 10A.04. About three weeks before each periodic reporting date, the Board sends to each registered lobbyist the necessary report forms and instructions in accordance with Minn. Stat. §§ 10A.02, subd. 8 (b) and 10A.04.

Should a registered lobbyist fail to file a required report, the Board proceeds to secure the report by sending notices to the lobbyist as required by Minn. Stat. § 10A.04, subd. 5., and by legal action under Minn. Stat. § 10A.34. The Board has experienced a voluntary compliance level of approximately 99% in administering the lobbyist disclosure provisions of Minn. Stat. ch. 10A since enactment in 1974.

The Board conducts an active program of information about the lobbyist registration and reporting requirements of Minn. Stat. ch. 10A. Board staff members respond to oral and written requests for information, conduct public information meetings, and upon request present information to meetings of associations and organizations whose activities may require registration of a lobbyist.

It is the intent of the Board to continue in its information dissemination and enforcement activities to ensure required disclosure in compliance with the lobbyist registration and reporting provisions of Minn. Stat. ch. 10A. The means whereby a political subdivision describes or assigns duties to its nonelected officials or employees is not within the jurisdiction of the Board. Should the assigned duties meet the definition of "lobbyist," the Board is prepared to offer assistance to the political subdivision, the nonelected official, or the employee to effect compliance with the registration and reporting requirements of Minn. Stat. ch. 10A.

QUESTION TWO

What enforcement does the Board intend to take with respect to persons who have contact with local government officials, or what enforcement efforts or assistance do you expect from the local units of government?

OPINION

From time to time Board staff receives from a variety of sources inquiries about the activities of associations or individuals that may require lobbyist registration and reporting. In response to the inquiries, staff members provide information orally and in writing about the lobbyist disclosure laws.

The Board's active program of information about the lobbyist registration and reporting requirements of Minn. Stat. ch. 10A includes maintaining lists of registered lobbyists, the names of the associations or individuals they represent, the subjects on which they intend to lobby, and the kinds of lobbying they seek to influence: legislative, administrative, or metropolitan governmental unit action. This list is updated regularly and is available for inspection in the Board office.

Thirty days after each lobbyist reporting date the Board compiles the foregoing information in the Lobbyist Report required by Minn. Stat. § 10A.05. Under this statute the Board distributes to the governing body of each metropolitan governmental unit the Lobbyist Report pertaining to lobbyists who seek to influence metropolitan governmental units. This requirement was enacted in 1990 and became effective for metropolitan governmental units with the Lobbyist Report issued May 15, 1991.

Should the governing body of a metropolitan governmental unit fail to find information on the Lobbyist Report about an individual or association attempting to influence the unit's official actions, the Board invites the governing body to call or write the Board about the matter. In the Board's opinion this kind of exchange of information regarding legislative and administrative action has contributed to voluntary compliance with the lobbyist disclosure laws.

The Board's information program also includes maintaining lists of individuals who are "public officials" as defined in Minn. Stat. § 10A.01, subd. 18. The lists include the official's name, the state agency in which the official serves, and the term for which the official was elected or appointed. Individuals, including registered lobbyists, who seek to influence legislative or administrative action may consult this list when determining the application of the lobbyist disclosure laws to their lobbying activities.

In response to concerns expressed in this advisory opinion request, the Board suggests that the governing body of a metropolitan governmental unit should maintain for public inspection a list of those individuals who are determined to be "local officials" within the meaning of Minn. Stat. § 10A.01, subd. 25. The list should include the local official's name and the department or division in which the official serves. Individuals, including registered lobbyists, who seek to influence the official action of that metropolitan governmental unit could consult this list when determining the application of the lobbyist disclosure laws to their lobbying activities.

QUESTION THREE

What steps are going to be taken to clarify the statute, hopefully to

limit the application of it with respect to the problems noted above?

OPINION

The Board is required to report at the close of each fiscal year to the legislature, the governor, and the public about its activities and may indicate apparent abuses and offer legislative recommendations. Minn. Stat. § 10A.02, subd. 8 (a).

In a supplement to its Annual Report for Fiscal Year 1990, the Board forwarded to the legislature, the governor, and the public certain recommendations designed to help the Board fully implement Minn. Stat. ch. 10A including amendments to the economic interest and lobbyist disclosure provisions enacted in 1990 that became effective January 1, 1991.


Among the recommendations about economic interest disclosure, the Board asked the legislature to clarify filing requirements of a "local official" and to define "major decisions" as the term is used in the definition of local official at Minn. Stat. § 10A.01, subd. 25.

Among the recommendations about lobbyist disclosure, the Board asked the legislature to define "lobbying", to provide for a records retention requirement for lobbyists and principals, and to require a lobbyist to include on the lobbyist registration form the kind of lobbying the lobbyist seeks to influence for each of the subjects the lobbyist seeks to lobby.

Although some of the Board's recommendations for the 1991 legislative session were introduced in proposed legislation, the recommendations cited above were not enacted in the legislative session that ended May 20, 1991. The Board plans to include in its Annual Report for Fiscal Year 1991 recommendations to the 1992 Legislative Session. The Board will consider issues raised in this advisory opinion request when preparing its recommendations and invites additional suggestions from individuals, associations, and political subdivisions whose activities may require disclosure under Minn. Stat. ch. 10A.

The Board reaffirms its opinion that a city council in a metropolitan governmental unit must examine the organizational structure of decision making assigned to its nonelected officials and employees when determining which officials or employees meet the definition of "local official" for purposes of the application of economic interest and potential conflicts of interest disclosure. In the opinion of the Board the city council's determination of what constitute "major decisions" for purposes of both economic interest disclosure and lobbyist disclosure is valid until such time as the Legislature may clarify the applicable provisions of Minn. Stat. ch. 10A.

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Douglas R. Ewald, Chair
Ethical Practices Board