

ETHICAL PRACTICES BOARD

First Floor South, Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

The following publication does not identify the requester of the advisory opinion, which is nonpublic data under Minn. Stat. § 10A.02, subd. 12(b)

RE: Political Activity as bona fide occupational qualification

ADVISORY OPINION # 240

SUMMARY

A "bona fide occupational qualification", as that phrase is used in Minn. Stat. § 10A.20, subd. 11, may include a requirement that an employee who is a legislative lobbyist not be an endorsed candidate for legislative office.

FACTS

As the authorized representative of an association, you request an advisory opinion from the Ethical Practices Board based on the following facts provided in your request or conveyed by you to Board staff:

1. The association you represent is a Minnesota nonprofit corporation which exists to promote the goals of its members.
2. Part of the association's efforts on behalf of its members include employing lobbyists who are engaged to influence legislative action.
3. In order to be credible and effective in their lobbying efforts, the association believes that its employees who are lobbyists must:
 - (a) avoid any appearance of political affiliation in the performance of their lobbying activities;

- (b) avoid becoming involved in situations which might result in placing their own interests or the interests of third parties in conflict with those of the association;
- 4. These employees are required to devote full time and their best efforts to representing the interests of the association and persuading members of the legislature to vote in favor of the association's positions.
- 5. One of the association's lobbyist employees was recently endorsed by a major political party as a candidate for the Minnesota legislature.
- 6. The association is concerned that a lobbyist who is an endorsed legislative candidate will not be able to effectively continue the work of the association because of the lobbyist's political activity. The association includes among its concerns its belief that:
 - (a) the lobbyist will no longer be effective as a representative of the association, since by accepting the nomination of a political party, the lobbyist becomes a member of an opposition party for many legislators;
 - (b) the individual as a candidate may take positions which are in opposition to those that the individual as a lobbyist would be required to advocate on behalf of the association.
- 7. The association further believes that it would not be possible for a sitting legislator to devote sufficient time during the legislative session to the association's lobbying efforts.

ISSUE

May a requirement that an employee who is a legislative lobbyist refrain from being an endorsed candidate for the legislature be established as a "bona fide occupational qualification" as that phrase is used in Minn. Stat. § 10A.20, subd. 11?

OPINION

Yes, a requirement that a legislative lobbyist employee refrain from being an endorsed candidate for the legislature may be established as a bona fide occupational qualification under the facts stated above.

Minn. Stat. § 10A.20, subd. 11, prohibits employers from taking certain actions against employees based on the employees' political activities. The prohibition is not applicable,

however, "when the political affiliation or viewpoint of the employee is a bona fide occupational qualification of the employment."

A bona fide occupational qualification concerning political affiliation may include an affirmative requirement of, or the prohibition of, a political affiliation. The occupational qualification your association asks about is a requirement that the employee not be affiliated with a political party as one of its endorsed legislative candidates.

While it is the opinion of the Board that the stated requirement may be established as a bona fide occupational qualification within the meaning of Minn. Stat. § 10A.20, subd. 11, the Board does not render an opinion on whether the requirement has been effectively established with respect to any particular employee of the association. Determination of that question requires interpretation of principals of contract and other law not within the Board's jurisdiction.

Issues you raise about the employee not having enough time to perform the association's work are not addressed by the Board because they do not relate to the employee's political affiliation and, thus, do not fall within the scope of Minn. Stat. § 10A.20, subd. 11.

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Carolyn Rodriguez, Chair
Ethical Practices Board

CITED STATUTES

Minn. Stat. § 10A.20 Campaign Reports

Subd. 11. No person or association shall engage in economic reprisals or threaten loss of employment or physical coercion against any person or association because of that person's or association's political contributions or political activity. This subdivision shall not apply to compensation for employment or loss of employment when the political affiliation or viewpoint of the employee is a bona fide occupational qualification of the employment. Any person or association which violates this subdivision is guilty of a gross misdemeanor.