

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)**

**RE: Communications for the purpose of obtaining a contract with the State of
Minnesota.**

ADVISORY OPINION 349

SUMMARY

An individual who communicates with state employees, public officials, and elected officials, to sell goods or services is not required to register as a lobbyist.

FACTS

As a member of a firm that may communicate with state employees and elected officials you ask the Campaign Finance and Public Disclosure Board (the Board), for an advisory opinion based on the following facts:

1. Your firm has been asked to assist a business in seeking a contract with the state of Minnesota. Your services to the business will be compensated contingent on the securing of the state contract.
2. Your firm's services will consist of assisting the business in working with state employees, commissioners, and the Governor's office to obtain a contract.
3. Your firm will not attempt to change Minnesota statutes or administrative rules in order to procure the contract.

ISSUE ONE

Do the described services constitute lobbying under Minnesota Statutes or Administrative Rules?

OPINION

No. The purpose of the proposed communication with state employees and elected officials is to secure a state contract. The effort to secure the contract will not require legislative action or the amendment, adoption, or repeal of an administrative rule. Minn. Stat. §10A.01, subd. 21, (1), provides in part that a lobbyist means an individual "...attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials;" For the purposes of Chapter 10A "administrative action" is defined in Minn. Stat. §10A.01, subd. 2, as an action to amend, adopt, or repeal an administrative rule under the provisions of Minnesota Statutes Chapter 14. Additionally, Minn. Stat. §10A.01, subd. 21, (6), provides that lobbying does not include activities of "an individual while engaged in selling goods or services to be paid for by public funds;"

ISSUE TWO

May your firm be compensated for the services described in the facts of this advisory opinion on a contingency basis?

OPINION

Yes. As provided in the answer to issue one the services that may be provided by your firm do not constitute lobbying under the provisions of Chapter 10A. Therefore, the prohibition on compensating lobbying services on a contingency basis found in Minn. Stat. §10A.06 does not apply.

Issued August 27, 2003

Clyde Miller, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes

10A.01 Definitions.

Subd. 2. **Administrative action.** "Administrative action" means an action by any official, board, commission or agency of the executive branch to adopt, amend, or repeal a rule under chapter 14. "Administrative action" does not include the application or administration of an adopted rule, except in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243.

Subd. 21. **Lobbyist.**

(a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year, for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

(b) "Lobbyist" does not include:

(1) a public official;

(2) an employee of the state, including an employee of any of the public higher education systems;

(3) an elected local official;

(4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision 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, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a metropolitan governmental unit, 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;

(5) a party or the party's representative appearing in a proceeding before a state board, commission, or agency of the executive branch unless the board, commission, or agency is taking administrative action;

(6) an individual while engaged in selling goods or services to be paid for by public funds;

(7) 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;

(8) 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; or

(9) a party or the party's representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

(c) An individual who volunteers personal time to work without pay or other consideration on a lobbying campaign, and who does not spend more than the limit in paragraph (a), clause (2), need not register as a lobbyist.

(d) An individual who provides administrative support to a lobbyist and whose salary and administrative expenses attributable to lobbying activities are reported as lobbying expenses by the lobbyist, but who does not communicate or urge others to communicate with public or local officials, need not register as a lobbyist.

10A.06 CONTINGENT FEES PROHIBITED.

No person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislative or administrative action, or of the official action of a metropolitan governmental unit. A person who violates this section is guilty of a gross misdemeanor.