

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: Determination and Reporting of Lobbying Disbursements

ADVISORY OPINION 358

SUMMARY

Lobbyists and lobbyist principals must reasonably allocate and report expenditures for items and services that have both a lobbying and a nonlobbying purpose.

FACTS

As a member of a professional association (the Firm), which employs lobbyists registered with the Campaign Finance and Public Disclosure Board (the Board), you ask for an advisory opinion based on the following facts:

1. Your Firm represents a non-profit advocacy association (the Association). The Association is involved with the legislative process. Some members of the Firm are registered lobbyists for the Association. The Association is a lobbyist principal as defined in Minn. Stat. §10A.01, subd. 33.
2. As required by Minn. Stat. §10A.04, subd. 4, the members of the Firm who are registered lobbyists for the Association submit periodic reports of Lobbyist Disbursements. Additionally, the Firm provides information on lobbying expenditures to the Association's treasurer so that the Association may file an accurate Annual Report of Lobbyist Principal, as required by Minn. Stat. §10A.04, subd. 6. In collecting information to include in these reports the Firm has included all expenses related to lobbying, and all salaries and administrative expenses attributable to lobbying. Neither the lobbyist nor the Association has reported expenditures that they deem unrelated to lobbying.
3. The Association also has activities that are not for the purpose of influencing the legislative process, but which are educational and informational in nature.

4. As part of the “Agreement for Legislative Services” that the Firm has with the Association the Firm provides services that include “administrative, research, analysis, bill and amendment drafting, monitoring, and advocacy.”
5. The Firm maintains a web site for the Association. The web site is updated with information for the use of the Association’s members, and the general public. You do not consider the cost of the web site a lobbying disbursement because the purpose of the web site is to provide information, and not to influence legislative action.
6. The Firm also maintains a property tax computer model for the Association. The computer model is used for both educational and lobbying activities. Maintenance provided by the Firm includes writing computer code and updating the information base used by the computer model. The Firm and the Association have not reported the maintenance costs associated with the computer model as a lobbying disbursement. The direct cost of using the computer model to simulate a proposed legislative action and the cost of using the results generated by the model in attempting to influence legislative action has been reported as a lobbying disbursement by the lobbyists and the Association.
7. You believe that there are similarities between the web site services and computer model maintenance provided by the Firm and the facts of the findings issued by the Board in response to a complaint filed against Himle Horner and the Northstar Corridor Development Authority.

ISSUE ONE

Should the Association and the designated lobbyist report the cost of administering a web site used only for informational purposes unrelated to influencing the actions of public or local officials as a lobbying disbursement?

OPINION

No. Advisory opinions are based on the facts presented in the request; the Board has no reason to question the requestors statement that the web site is for informational purposes only and is not intended to support the lobbying efforts of the Association. The lobbying services that the Firm provides to the Association do not affect the nature of other services unrelated to lobbying provided to the Association.

A web site has the potential to be a lobbying expenditure if a purpose of the content on the site is to motivate people to contact public officials or local officials in order to influence an official action. Because the content of a web site is transitory in nature the Association and the Firm will need to monitor all postings to insure that the site remains outside of the scope of lobbying activity.

BOARD NOTE

The analogy that the requestor believes exists between the facts of this advisory opinion and the facts of the findings issued in response to a complaint filed against Himle Horner and the Northstar Corridor Development Authority does not exist. There was agreement by all parties to that complaint that the web site in question was, in part, a lobbying effort. The cost of the web site related to lobbying was properly reported as a lobbying disbursement. The issue in the findings was whether a vendor who provides web site administrative services is required to register as a lobbyist. The Board's position is that a vendor may provide a service that is a lobbying disbursement without meeting the definition of lobbyist found in Minn. Stat. §10A.01, subd. 21.

ISSUE TWO

Should the Association and the designated lobbyist report the cost of maintaining the computer model as a lobbying disbursement?

OPINION

Yes. The cost of maintenance reported as a lobbying disbursement should be in proportion to the use of the computer model for lobbying purposes. As described in the facts of this opinion, the computer model is, in part, a lobbying tool. As provided in Minnesota Rules 4511.0600, subp. 4, "A disbursement that is partially in support of lobbying and partially for a nonlobbying purpose must be allocated on a reasonable basis between the two purposes and the portion which is for lobbying activities must be reported." The computer model cannot generate information for a lobbying effort if it is not accurate and current; the cost of this maintenance is partially a lobbying disbursement. Because the computer model is also used for purposes other than lobbying the Association and the Firm will need to develop a method to track the percentage of time the computer model is used for various purposes. The percentage of time the computer model is used to support lobbying efforts is the percentage that may be reasonably used to allocate a share of the maintenance costs as a lobbying disbursement.

The Association must include the yearly cost of maintaining the computer model proportionate to its use as a lobbying tool with other lobbying disbursements disclosed on its Annual Report of Lobbyist Principal. The designated lobbyist for the Association must include the proportionate maintenance costs in their periodic Lobbyist Disbursement Reports.

ISSUE THREE

May the Association and designated lobbyist amend their 2003 reports to include the maintenance costs of the computer model allocated to lobbying?

OPINION

Yes. Corrections to reports previously filed with the Board must be made in writing within ten days of the date of the event prompting the change, or ten days of the person responsible for the report becoming aware of an inaccuracy (Minn. Stat. §10A.025, subd. 4). In this case the Association will need to amend the appropriate Annual Report(s) and the lobbyist designated to report the costs of the Association on their periodic Lobbyist Disbursement Report will need to amend the appropriate reports to reflect the maintenance costs for each reporting period.

ISSUE FOUR

Will the Association and the designated Lobbyist meet the applicable reporting requirements of Chapter 10A by reporting the total amount the Firm is paid by the Association (including payment for services unrelated to lobbying) as a lobbying disbursement?

OPINION

No. As provided in the facts of this opinion the cost of the web site and some portion of the cost of maintaining the computer model are not related to lobbying activities. The purpose of the lobbyist reporting required in Chapter 10A is to provide the public with accurate information on the resources being expended to affect legislative, administrative, and metropolitan governmental unit actions. Deliberately over reporting the cost of lobbying efforts obscures from the public the true cost of lobbying both for the specific Association and for the Association in relation to other lobbying efforts in Minnesota.

The Board understands that some lobbying expenditures must be allocated between multiple entities, multiple purposes, and in some cases may only be approximated. In recognition of this the Board adopted Minnesota Rules 4511.0600, which provides guidance on reporting lobbying expenditures and authorizes lobbyists and lobbyist principals to make allocations and approximations in filing lobbying reports under Chapter 10A. While this rule recognizes that reported lobbying disbursements may not be exact it does not excuse lobbyist and lobbyist principals from making reasonable efforts to track and calculate lobbying expenditures, even when such efforts are not administratively expedient.

Issued June 15, 2004



Wil Fluegel, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.01 Definitions.

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.

Subd. 33. **Principal.** "Principal" means an individual or association that:

(1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or

(2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.

10A.025 Filing requirements.

Subd. 4. **Changes and corrections.** Material changes in information previously submitted and corrections to a report or statement must be reported in writing to the board within ten days following the date of the event prompting the change or the date upon which the person filing became aware of the inaccuracy. The change or correction must identify the form and the paragraph containing the information to be changed or corrected.

A person who willfully fails to report a material change or correction is guilty of a gross misdemeanor and is subject to a civil penalty imposed by the board of up to \$3,000.

The board must send a notice by certified mail to any individual who fails to file a report required by this subdivision. If the individual fails to file the required report within ten business days after the notice was sent, the board may impose a late filing fee of \$5 per day up to \$100 starting on the 11th day after the notice was sent. The board must send an additional notice by certified mail to an individual who fails to file a report within 14 days after the first notice was sent by the board that the individual may be subject to a civil penalty for failure to file a report. An individual who fails to file a report required by this subdivision within seven days after the second notice was sent by the board is subject to a civil penalty imposed by the board of up to \$1,000.

10A.04 Lobbyist reports.

Subd. 4. **Content.** (a) A report under this section must include information the board requires from the registration form and the information required by this subdivision for the reporting period.

(b) A lobbyist must report the lobbyist's total disbursements on lobbying, separately listing lobbying to influence legislative action, lobbying to influence administrative action, and lobbying to influence the official actions of a metropolitan governmental unit, and a breakdown of disbursements for each of those kinds of lobbying into categories specified by the board, including but not limited to the cost of publication and distribution of each publication used in lobbying; other printing; media, including the cost of production; postage; travel; fees, including allowances; entertainment; telephone and telegraph; and other expenses.

(c) A lobbyist must report the amount and nature of each gift, item, or benefit, excluding contributions to a candidate, equal in value to \$5 or more, given or paid to any official, as defined in section 10A.071, subdivision 1, by the lobbyist or an employer or employee of the lobbyist. The list must include the name and address of each official to whom the gift, item, or benefit was given or paid and the date it was given or paid.

(d) A lobbyist must report each original source of money in excess of \$500 in any year used for the purpose of lobbying to influence legislative action, administrative action, or the official action of a metropolitan governmental unit. The list must include the name, address, and employer, or, if self-employed, the occupation and principal place of business, of each payer of money in excess of \$500.

(e) On the report due June 15, the lobbyist must provide a general description of the subjects lobbied in the previous 12 months.

Subd. 6. **Principal reports.** (a) A principal must report to the board as required in this subdivision by March 15 for the preceding calendar year. Along with the report, the principal must pay a fee of \$50, except as otherwise provided in this subdivision. The fee must be no more than necessary to cover the cost of administering sections 10A.03 to 10A.06. The amount of the fee is subject to change each biennium in accordance with the budget request made by the board.

(b) The principal must report the total amount, rounded to the nearest \$20,000, spent by the principal during the preceding calendar year to influence legislative action, administrative action, and the official action of metropolitan governmental units.

(c) The principal must report under this subdivision a total amount that includes:

(1) all direct payments by the principal to lobbyists in this state;

(2) all expenditures for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns related to legislative action,

administrative action, or the official action of metropolitan governmental units in this state; and

(3) all salaries and administrative expenses attributable to activities of the principal relating to efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units in this state.

4511.0600 REPORTING DISBURSEMENTS.

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

Subp. 2. **Approximation of costs.** If the actual cost of a lobbying activity cannot be obtained or calculated through reasonable means, those costs must be reasonably approximated.

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

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

Subp. 5. **Specific disbursement categories.** Disbursements must be reported based on the categories in items A to I.

A. "Lobbying materials" includes the cost of production, purchase, or other acquisition of materials that directly support lobbying.

B. "Media costs" includes the cost of media space or time used for lobbying activities. The cost of preparation of materials for use in the media is reported in the lobbying materials category.

C. "Telephone and communications" includes costs for local and long-distance telephone services, electronic mail, pagers, cellular telephones, facsimile distribution services, telegraph, and other communications services.

D. "Postage and distribution" includes costs of postage from the United States Postal Service as well as other distribution costs associated with lobbying activities.

E. "Fees and allowances" includes fees for consulting or other services as well as expenses associated with those services.

F. "Entertainment" includes costs of all entertainment associated with any situation where lobbying activities take place.

G. "Food and beverages" includes costs of all food and beverages associated with any situation where lobbying activities take place.

H. "Travel and lodging" includes costs of all travel and lodging associated with any lobbying activity, excluding the costs of the lobbyist's own travel to accomplish the lobbying activity.

I. "Other disbursements" includes general administration and overhead and any other lobbyist disbursements not reported in other categories.

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