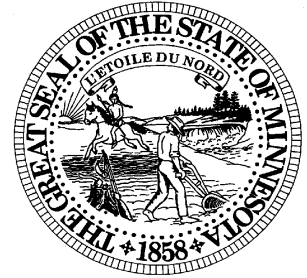


Minnesota

*Campaign Finance and
Public Disclosure Board*



**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 409

SUMMARY

Communication with officials for compensation may bring an individual within the definition of a lobbyist. Once a person is a lobbyist all support for the lobbyist's communication is reported as lobbyist disbursements. Underlying support activities for a project are not lobbyist disbursements unless they support a lobbyist's communications.

FACTS

As the attorney for a nonprofit corporation, ("The Nonprofit Corporation") you ask the Board for an advisory opinion based on the following facts:

1. Minnesota has a number of legislative entities that are experts in various areas of public policy and are charged with making recommendations to the full Legislature regarding appropriations made through the programs under their jurisdictions. These legislative entities (collectively, "Committees") are usually made up of citizens with certain qualifications and members of the House and Senate. For the purpose of this Advisory Opinion it will be assumed that all Committee members are public officials under Minn. Stat. § 10A.01, subd. 35 (10) and 35 (23).
2. Each committee has paid staff that helps implement its programs.
3. The Committees solicit applications for funding through various solicitation processes.
4. Applications for funding may require research or collection of data, and the written proposals may include exhibits such as maps and other data regarding the attributes and features of the projects proposed. Proposals also include detailed project budgets.
5. Applicants for funding may communicate regularly with Committee staff, both in writing and orally, prior to formal submission of the application and afterward. Generally such communications do not involve the applicant expressly urging Committee staff to

communicate with public officials about the proposal. Prior to formal submission of an application, committee staff works with all potential applicants equally.

6. After proposals are submitted, the Committee evaluates the proposals and invites some but not all applicants to appear before the Committee to present the proposal and answer any questions. In the presentation, the applicant may urge that the Committee support funding for the proposal.
7. After further evaluation of the proposals presented, the Committees give certain applicants preliminary approval for a specified appropriation level. The applicant then develops a more detailed plan for the recommended funding. There is then additional written and oral communication between the Committee staff and the applicant.
8. After finalizing the detailed plan with Committee staff, the proposal is submitted for final approval by the Committee. The Committees typically recommend a package of several proposals for funding.
9. The Committees make recommendations to the full Legislature for a vote on appropriations for the recommended projects. (The Governor also must approve the appropriation.)

Issue One

Oral communications that attempt to influence appropriation recommendations occur with the public officials serving on the Committees. Do these communications constitute lobbying for purposes of: a) registration as a lobbyist as required by Minn. Stat. § 10A.03; and/or b) reporting lobbying expenditures as required by Minn. Stat. § 10A.04?

Opinion

A person must register as a lobbyist if the person is “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 . . . action . . . by communicating or urging others to communicate with public or local officials.” Minnesota Statutes Section 10A.01, subd. 21.

All of the members of the Committees are public officials. The work of the Committees eventually results in recommendations to the Legislature regarding appropriations. Communication with Committee members is, by definition, communication with public officials. Due to the fact that the Committees will ultimately make recommendations to the legislature, communication urging the Committees to include a project in their recommendations constitutes communication for the purpose of attempting to influence legislative action.

Such communications are included in the communications that may trigger a person being defined as a lobbyist under §10A.01, subd. 21. Once a person is included in the definition of a lobbyist, that person must register according to the terms of §10A.03.

Expenditures reported by a lobbyist under §10A.04, do not include the lobbyist's compensation for lobbying. Thus, if the person testifying is the lobbyist, the cost of that person's time appearing before the Committees is not reported on the lobbyist's report.

If the Nonprofit Corporation has a lobbyist who is involved in legislative action related to the proposals, but a paid staff member other than the lobbyist presents a project to the Committees, the cost of that staff member's paid time is a lobbyist disbursement that must be included on the lobbyist's disbursement report.

Issue Two

Is the preparation of written materials, including the application, supporting documentation, budgets, including editing back and forth with Committee staff, that will be presented ultimately to a Committee in support of an application for an appropriation lobbying for purposes of a) registration as a lobbyist as required by Minn. Stat. § 10A.03; and/or b) reporting lobbying expenditures as required by Minn. Stat. § 10A.04?

Opinion

The staff members of the Committees are not, themselves, public officials, so there is no direct communication with public officials that would make a person communicating with Committee staff a lobbyist under §10A.01, subd. 21. However, a person may also become a lobbyist if the person "urg[es] others to communicate with public officials" to influence legislative action.

The communication with Committee staff to develop and refine a proposal, without more, is not communication urging the staff to communicate with Committee members on behalf of the Nonprofit Corporation's proposal. Therefore, this communication could not make a person a lobbyist under §10A.01, subd. 21. However, it is possible that a fact situation could arise in which the Nonprofit Corporation's staff did, in fact, urge Committee staff to advocate the Nonprofit Corporation's proposal to the Committee. Under such a fact setting, the communication would be included in communication that could bring a person within the definition of a lobbyist and trigger the registration requirement.

If the Nonprofit Corporation has a registered lobbyist, costs of all activities that support that lobbyist's communication with public officials, including preparation of proposals to be presented, are a part of that lobbyist's reportable disbursements. This is the case whether the lobbyist's communications are with the public officials on the Committees or with legislators or legislative staff later in the process of obtaining legislative funding for the proposed project.

If the Nonprofit Corporation communicates with officials only through its non-lobbyist staff members, that communication is lobbying under Minn. Rules Part 4511.0100, subp. 3, even though the communication may not bring the staff member within the definition of a lobbyist. Since the activities supporting development of the project support the staff member's lobbying, they are reportable on the disbursement report filed by the Nonprofit Corporation's lobbyist under §10A.04, subsd. 2 and 4, and Minn. Rules Part 4511.0100, subp. 4.

Issue Three

Are oral communications with the staff of the Committees that do not expressly urge the committee staff to communicate with public officials regarding appropriations that will be recommended by the Committees lobbying for purposes of a) registration as a lobbyist as required by Minn. Stat. § 10A.03; and/or b) reporting lobbying expenditures as required by Minn. Stat. § 10A.04?

Opinion

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 under §10A.01, subd. 21, with the resultant registration requirement under §10A.03.

The Board notes that the requester uses the phrase “expressly urge” in describing the communications. The statute does not include the word “expressly” and the Board does not interpret the §10A.01, subd. 21, as requiring one to “expressly urge” others to communicate with officials. Some communications could include by implication a message urging others to communicate with officials. Such communications would be included in those that could make a person a lobbyist. However, communications in the course of developing a proposal, including activities described in Issue Two, without more, would not be considered communications urging others to advocate on behalf of the proposal.

It is understood that the Nonprofit Corporation’s staff will believe that their proposal has merit and should move forward. The Nonprofit Corporation’s staff should use restraint in conveying that belief to staff of the Committees.

Treatment of the costs of staff communications as lobbyist disbursements follows the same criteria as described for staff work in Issue Two.

Issued August 3, 2010

/s/ Bob Milbert
Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

STATUTORY AND ADMINISTRATIVE RULE CITATIONS

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.

10A.03 LOBBYIST REGISTRATION.

Subdivision 1. **First registration.** A lobbyist must file a registration form with the board within five days after becoming a lobbyist or being engaged by a new individual, association, political subdivision, or public higher education system.

. . .

10A.04 LOBBYIST REPORTS.

Subdivision 1. **Reports required.** A lobbyist must file reports of the lobbyist's activities with the board as long as the lobbyist continues to lobby. The report may be filed electronically. A lobbyist may file a termination statement at any time after ceasing to lobby.

. . .

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.

Minnesota Rules

4511.0100 DEFINITIONS.

. . .

Subp. 3. Lobbying. "Lobbying" means attempting to influence legislative action, administrative action, or the official action of a metropolitan governmental unit 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.

Subp. 4. Lobbyist's disbursements. "Lobbyist's disbursements" include all disbursements for lobbying made by the lobbyist, the lobbyist's employer or employee, or any person or association represented by the lobbyist, but do not include compensation paid to the lobbyist.