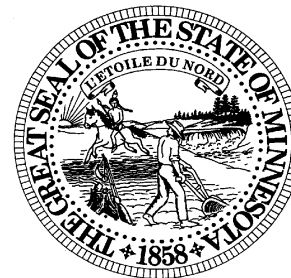


Minnesota

*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 413

SUMMARY

Lobbyists must register on behalf of each association whose interests it promotes, regardless of the mechanism used to retain or direct the efforts of the lobbyists.

FACTS

As the attorney for a business enterprise (“the Enterprise”), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts.

1. The Enterprise consists of a parent company and a number of affiliates, including subsidiaries and joint ventures controlled by or under common ownership and control of the parent company (“the Affiliates”). Several of the Affiliates have legislative and administrative interests in Minnesota, and lobbying is conducted on their behalf.
2. The parent company has created a subsidiary (herein referred to as “the Service Company”) specifically to manage a range of legal and professional functions for the Affiliates, including directing and controlling their government affairs activities. The Service Company has no independent legislative or administrative interests in Minnesota.
3. The Service Company solely directs and controls the government affairs activities conducted on behalf of the Affiliates. Among other things, this includes developing legislative and administrative priorities and government affairs strategy; determining if and under what circumstances lobbyists will be retained (either as employees of Service Company or as contract lobbyists of the Service Company) to represent the interests of one or more of the Affiliates; directing and controlling which matters the lobbyists act on,

the positions that they will take and the messages that they will convey; and providing resources for the lobbying effort. Although the Affiliates consult with the Service Company, none of the Affiliates directs or controls the lobbyists who represent their respective interests.

4. The Minnesota lobbyists who represent the interests of one or more of the Affiliates are not under contract with or paid by such Affiliate(s). Rather, they are either employees of the Service Company or contract directly with the Service Company to act on behalf of the Affiliates. Hence, the Service Company is the entity that makes all payments to the lobbyists, both for their services and related expenses.
5. Although the Service Company pays such lobbying expenses, each Affiliate directly reimburses the Service Company for the payments the Service Company makes on its behalf.

Based on the stated facts, you ask the following questions:

QUESTION ONE

Is it permissible under Minnesota's lobbying law for the lobbyists retained by the Service Company to register on behalf of: "Service Company and its Affiliated Entities" or a similar name?

OPINION

Lobbyists retained by the Service Company must register on behalf of each Affiliate whose interests they represent.

When interpreting statutes, the Board must implement the intent of the legislature to the extent that intent can be determined. In the case of Chapter 10A, it has long been recognized by the Board that the intent of the legislature is to provide meaningful disclosure to the public.

This goal is incorporated into the core of the Board's mission, which is "to promote public confidence in state government decision-making through development, administration, and enforcement of disclosure and public financing programs which will ensure public access to and understanding of information filed with the Board".

Meaningful disclosure about lobbying requires that the disclosure be closely linked to the entity whose interests are represented and who hopes to benefit from the lobbyist's efforts to influence public officials. In this case, that entity is the "Affiliate", not the parent company or the Service Company.

The Service Company manages and directs lobbying for the Affiliates. It has no independent legislative or administrative interests in Minnesota. Lobbying in Minnesota, though conducted by the Service Company, is conducted on behalf of the Affiliates; the only entities with a direct interest in the results of the lobbying efforts. Though not controlling in this opinion, the fact that the Affiliates each pay for their own lobbying services adds weight to the Board's conclusion.

Unless the lobbyists register on behalf of each Affiliate, the public will not have the most clear and direct access to information about whose interests are actually being promoted by these lobbyists.

QUESTION TWO

If so, is it proper to disclose the relevant Affiliate(s) as the original source of funds on Schedule C of the Lobbyist Disbursement Report of the designated lobbyist for "Service Company and its Affiliated Entities," in the amounts that each Affiliate reimburses Service Company for lobbying?

OPINION

Disclosing the Affiliates as original sources of funds for lobbying by the Service Company would not resolve the problem of inadequate disclosure, nor would it be consistent with the concept of disclosure of original sources of funds.

An association that is represented by a lobbyist, but uses money from underlying sources to pay for the lobbying discloses those sources, although the lobbyist does not represent the entities that provided the underlying funds. For example, trade associations often use membership dues for lobbying purposes. The lobbyist, however, represents the association, not the individual members who are the source of funds for lobbying. Listing entities on whose individual behalf lobbyists advocate as original sources of funds rather than as represented associations does not accurately reflect the true relationships between the lobbyists and the associations.

QUESTION THREE

If an Affiliate reimburses the Service Company for lobbying in amounts that exceed \$50,000 per calendar year and discloses such payments on Schedule C of the Lobbyist Disbursement Report of the designated lobbyist for "Service Company and its Affiliated Entities", are such payments properly disclosed on the Annual Report of Lobbyist Principal of "Service Company and its Affiliated Entities", a separate Annual Report of Lobbyist Principal filed by the Affiliate making such payments, or both?

OPINION

Although the premise of the question is not completely relevant considering the opinions in response to questions one and two, the Board provides the following guidance with respect to the annual report of lobbyist principal.

If an Affiliate pays the Service Company more than \$500 in a year for the services of lobbyists, or more than \$50,000 in a year for all lobbying, the Affiliate is a lobbyist principal and must file the Annual Report of Lobbyist Principal.

Additionally, because the Service Company is providing much more than the costs of contract lobbyists, each Affiliate should include on its Report of Lobbyist Principal its pro-rata share of the Service Company's overhead and operating expenses related to the lobbying done for the Affiliate.

RELEVANT STATUTES AND RULES

MINNESOTA STATUTES

10A.01 DEFINITIONS

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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;

. . .

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.

MINNESOTA RULES

4511.0200 REGISTRATION.

Subpart 1. **Separate registration required for each entity.** A lobbyist who lobbies on behalf of more than one individual, association, political subdivision, or public higher education system shall register separately for each separate entity. Members or affiliates of an association represented by a lobbyist are not separate entities for the purposes of this requirement.

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