

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

Findings, Conclusions, and Order in the Matter the Minnesota Licensed Beverage Association, Lobbyist Frank Ball, and Lobbyist William Griffith

Summary of the Facts

On April 17, 2014, the Board received two complaints submitted by Mark Jacobson. The first complaint concerned the actions of Frank Ball, a lobbyist registered with the Board, and his activities on behalf of the Minnesota Licensed Beverage Association (MLBA). Mr. Ball was at all relevant times the Executive Director of and a registered lobbyist for the MLBA.

The complaint alleged:

Since late October or early November 2012, Mr. Ball . . . has been urging his members and others to contact members of the Bloomington and Burnsville City Councils, asking them to vote against Total Wine & More's off-sale liquor license applications. Both Bloomington and Burnsville have populations exceeding 50,000 and are located in the seven county metropolitan area. As such, they are considered metropolitan governmental units for the purposes of Minnesota Statutes Chapter 10A. See *Minn. Stat. §10A.01, subd. 4*.

The Bloomington and Burnsville City Councils must take official action to approve Total Wine & More's liquor license applications...

Members of the MLBA have spoken to and e-mailed Bloomington and Burnsville City Council members, asking them to reject Total Wine & More's application for an off-sale liquor license. Representatives of Total Wine & More have been told that municipal liquor stores in communities surrounding Bloomington and Burnsville have also contacted elected and appointed officials asking them to reject Total Wine & More's application for an off-sale liquor license...

Mr. Ball has attempted to influence the official action of the Bloomington and Burnsville City Councils by urging his members and others to communicate with the local officials in these communities...We would note that while Mr. Ball is currently registered as a lobbyist on behalf of the MLBA it is only with respect to legislative action. He is not registered with respect to his attempts to influence the official action of metropolitan governmental units like Bloomington and Burnsville.

The complaint supported these allegations with circumstantial evidence that Mr. Ball had been observed "coordinating [the] efforts of his members to influence the decision of governmental entities" with the Burnsville Planning Commission and the Roseville City Council, entities that do not qualify as metropolitan governmental units (MGUs).

The complaint further alleged that this lobbying activity triggered an obligation for the MLBA to file an Annual Principal Report that includes the expenditures made by the association to lobby MGUs during 2013.

The second complaint contained similar allegations with respect to William Griffith, a lobbyist registered with the Board. The complaint stated:

Mr. Griffith was retained by the [MLBA] at least as early as late October or early November 2013, to oppose Total Wine & More's efforts to obtain off sale liquor licenses in the cities of Bloomington and Burnsville. . . .

Mr. Griffith has been communicating with elected officials in Bloomington and Burnsville to influence the official action of the Bloomington and Burnsville City Councils with respect to Total Wine & More's off-sale liquor license applications...

Because Mr. Griffith was already a registered lobbyist, Minn. Stat. §10A.03, subd. 1 (1) requires him to register with the Board on behalf of the MLBA within five days of having been retained. He has not done so as of today and is in violation of the registration requirements of Chapter 10A.

The complaint supported these allegations by attaching three letters written by Mr. Griffith that identify the MLBA as his client. According to the complaint these letters were written, "in an attempt to influence the official action of the Bloomington and Burnsville City Councils with respect to Total Wine & More's off-sale liquor license applications." The first letter is dated November 1, 2013, and is addressed to the city attorney of the City of Bloomington, the second letter is dated January 24, 2014, and is addressed to the Bloomington Mayor and City Council members, and the third letter is dated February 19, 2014, and is addressed to the licensing specialist for the City of Burnsville (additionally cc'd to the Burnsville Mayor and City Council members, among others).

On May 5, 2014, Mr. Jacobson submitted three more pieces of evidence detailing correspondence between Mr. Griffith and the Burnsville Mayor and City Council members in which Mr. Griffith submits various justifications by which the Burnsville City Council could or should deny Total Wine & More's liquor license application.

Board staff notified Mr. Ball and Mr. Griffith of the complaints on April 25, 2014. Although separate complaints were filed against Mr. Ball and Mr. Griffith the common facts in the complaint led the Board to combine the complaints in one investigation.

Board staff discussed the complaint and the requirements of Chapter 10A in separate phone conversations with Mr. Ball (April 29, 2014) and Mr. Griffith (May 5, 2014). Mr. Ball explained an arrangement whereby Mr. Griffith represented members of the MLBA who had an interest in Total Wine & More's liquor license applications before the city councils of Bloomington, Burnsville, Roseville, and Woodbury. These interested members submitted payment to the MLBA, which in turn compensated Mr. Griffith for his activities.

By letter dated May 5, 2014, Mr. Griffith responded to the complaint. Mr. Griffith stated:

...we believe that our representation of MLBA primarily involved providing legal advice to the association since we had no one on one meetings with decision makers. However, in the interest of resolving this matter, I have enclosed the completed Lobbyist Registration form for Minnesota Licensed Beverage

Association. We opened our file for work at the City of Bloomington on October 29, 2013, and our file for work at the City of Burnsville for February 5, 2014.

Mr. Griffith's lobbyist registration on behalf of the MLBA was accepted as retroactive to October 29, 2013. The registration provided that Mr. Griffith would lobby on the subject of the issuance of liquor licenses and that the type of action sought would be by MGUs. On May 21, 2014, Mr. Griffith amended his registration to retroactively authorize Mr. Ball to be his reporting lobbyist for 2013 and going forward.

By letter dated May 6, 2014, Mr. Ball responded to the complaint. Mr. Ball stated:

I am the designated lobbyist for the Minnesota Licensed Beverage Association (MLBA). I have submitted my lobbyist disbursement reports in a timely manner as directed through your office. That report does not reflect the activities outlined in the complaint. The activities as outlined in the complaint...were that of orchestrating and coordinating certain private business owners who are members of the MLBA in matters before various Cities. I did not have one-on-one interactions with MGUs. My activities were not intended to avoid my report responsibilities, of which I take seriously....

Mr. Griffith ...was hired by a number of our private retail stores who are association members. He represented these businesspersons with legal decisions on investigative matters that were researched in various jurisdictions across the United States. Mr. Griffith assisted me in coordinating this data....The individual private retail stores in the cities indicated paid his fees, and those funds were coordinated and distributed through the MLBA business office....The MLBA business office was the contact and coordinating agency for those funds. No MLBA budgeted funds; no PAC funds or business funds were used or authorized by the Board of Directors or me to be utilized in the proceedings outlined in the complaint.

On May 21, 2014, Mr. Ball amended his 2013 year-end Lobbyist Disbursement Report. The amendment lists Mr. Griffith as a lobbyist on behalf of whom Mr. Ball reports. The amended report also lists disbursements to influence MGUs, and provides a list of fifteen sources of funds used to lobby MGUs in 2013.

Additionally, Mr. Ball amended the MLBA's 2013 Annual Principal Report to increase the overall disbursements of the association by \$47,500.

Board Analysis

Lobbying is often thought of in terms of the time and money spent attempting to influence the legislative process. But, in fact, attempting to influence some types of official and local decisions made outside of the legislature also requires registration and reporting under the lobbying provisions of Chapter 10A. Minnesota Statutes section 10A.01, subdivision 21, provides that a lobbyist is an individual 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.

A metropolitan governmental unit is defined by Minnesota Statutes section 10A.01, subdivision 24, as

...any of the seven counties in the metropolitan area as defined in section 473.121, subdivision 2, a regional railroad authority established by one or more of those counties under section 398A.03, a city with a population of over 50,000 located in the seven-county metropolitan area, the Metropolitan Council, or a metropolitan agency as defined in section 473.121, subdivision 5a.

Currently, the cities with a population over 50,000 qualifying as MGUs are Blaine, Bloomington, Brooklyn Park, Burnsville, Coon Rapids, Eagan, Eden Prairie, Maple Grove, Minneapolis, Minnetonka, Plymouth, and St. Paul. Within these cities are individuals who, because of the position they hold, are classified as "local officials." A local official is defined in Minnesota Statutes section 10A.01, subdivision 22, as

...a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.

Considering these definitions and the facts presented in the complaints, the Board concludes that attempting to influence the official actions of the city councils of Bloomington and Burnsville, specifically the issuing of a liquor license, is an activity that requires lobbyist registration and reporting once the \$3,000 compensation threshold is exceeded.

An individual is required to file a lobbyist registration with the Board within five days after meeting the definition of a lobbyist or, if the individual is already a lobbyist for another association, within five days of being engaged by a new association. Before an individual may be penalized for failure to register as a lobbyist the Board must send a notice by certified mail notifying the individual of the need to register. If an individual fails to register within ten business days after the Board notice was sent, the Board may begin imposing a late filing fee. Minn. Stat. §10A.03.

Once a lobbyist registration is submitted, the lobbyist is obligated to either report lobbying disbursements to the Board, or to designate another lobbyist registered for the association to report disbursements. Reports are due on January 15 and June 15 of each year, covering the period from the final day of the last reporting period to fifteen days before the filing date. A lobbyist must separately list the disbursements spent lobbying to influence legislative action, lobbying to influence administrative action, and lobbying to influence the official actions of a metropolitan governmental unit.

The disbursement report must also report each original source of money received by the association represented by the lobbyist for the specific purpose of paying for lobbying efforts. The source of money is listed only if the source provided over \$500 for the purpose of lobbying. On the report due June 15, the lobbyist must update the list of subjects lobbied in the previous twelve months and indicate the type of official action the lobbyist attempted to influence.

An association represented by lobbyists is a principal and must file an annual report by March 15 providing the total amount, rounded to the nearest \$20,000, spent by the association during the preceding calendar year to influence official actions. This amount includes all direct payments to lobbyists in the state, and all other expenditures in support of efforts to influence official actions. The report separates out total expenditures to influence the Public Utilities

Commission from all other expenditures. The report does not separate the amount spent to influence the action of MGUs from legislative or administrative lobbying.

Allegations Regarding Mr. Griffith

The complaint provides six letters from Mr. Griffith sent either directly to the mayor and city council members of either Bloomington or Burnsville or to an official of one of the two cities with a cc copy sent to the mayor and city council members. Each of the communications contained information that placed Total Wine & More in a negative light, presented various reasons by which the city councils could or should deny the applications, and, at times, explicitly urged the members to deny Total Wine & More's off-sale liquor license applications.

Mr. Griffith states that he viewed his work as primarily legal research, and that he did not meet one on one with the local officials. In this case the legal research was used as the basis for the city council members to oppose the granting of a liquor license to Total Wine & More. Further, lobbying is not limited to face to face communications. These communications were clearly attempts to influence the official action of MGUs, and therefore constituted lobbying.

Mr. Griffith was already registered as a lobbyist representing several other associations at the time he sent the first of the letters provided with the complaint. Therefore, Mr. Griffith was obligated to register as a lobbyist on behalf of the MLBA no later than November 4, 2013, five days after he opened his file for the city of Bloomington on October 29, 2013.

As noted above, Mr. Griffith has retroactively registered as a lobbyist on behalf of the MLBA, authorizing Mr. Ball to report on his behalf.

Allegations Regarding Mr. Ball

Mr. Ball registered as a lobbyist on behalf of the MLBA in 2008. The complainant acknowledges this fact, but indicates that a separate registration was required for influencing the actions of MGUs. That assertion is not accurate; a lobbyist registration is filed for each association represented, not for each type of official action that will be influenced.

If Mr. Ball was involved in lobbying any MGU during the period of June 1, 2013, through May 31, 2014, he will report that fact on the lobbyist disbursement report due on June 16, 2014. This is the first opportunity for Mr. Ball to report the lobbying of MGUs because the disbursement report filed in June provides the subject areas and type of official action lobbied during the prior year.

However, the allegation that Mr. Ball was required to include disbursements to influence the actions of MGUs in his report covering the period June 1, 2013, through December 31, 2013, is accurate. As noted above, Mr. Ball has filed amended reports disclosing disbursements related to lobbying MGUs, and further, has amended his report to include the source of funding for the lobbying of MGUs.

Mr. Ball's response provides that the information was not initially reported because Mr. Griffith's work was paid for by MLBA members, and not directly from MLBA funds. The Board does not find this argument persuasive as Mr. Ball admits that the MLBA was the contact and coordinating agency for the funds. Further, the letters from Mr. Griffith consistently state that he is representing the MLBA. The MLBA cannot agree to be named as an association weighing in on an issue before an MGU, and then claim that it was only a pass through for the funds used for the lobbying effort. Indeed, the provision in Chapter 10A requiring the disclosure of other

sources of funds used by an association for a lobbying effort is in place to provide disclosure for the type of arrangement the MLBA provided to some of its members.

The MLBA was required to include all expenditures to influence official actions during calendar year 2013 in its Annual Principal Report. An amended MLBA report has been filed to include expenditures related to the lobbying of MGUs. Expenditures that occurred in 2014 will be reported by the MLBA on the annual report filed in March of 2015.

Based on the above facts and the relevant statutes, the Board makes the following:

Findings of Fact

1. Mr. Griffith's activities on behalf of the MLBA constituted lobbying the official action of metropolitan governmental units, for which he was required to register with the Board within five days of being engaged by the association.
2. Mr. Griffith did not register as a lobbyist on behalf of the MLBA within five days of being engaged by the association.
3. Because Mr. Griffith was not registered as a lobbyist for the MLBA, the disbursements made on behalf of the association during 2013 were not reported.
4. Mr. Ball was properly registered as a lobbyist on behalf of the MLBA.
5. The MLBA filed an Annual Principal Report for 2013 that failed to account for activities to influence the official actions of metropolitan governmental units in that year. This report has since been amended to properly account for Mr. Griffith's lobbying activities.
6. Mr. Griffith's failure to timely register was inadvertent and was corrected in a timely manner after being notified by the Board.
7. Mr. Ball's failure to report Mr. Griffith's disbursements on behalf of the MLBA was inadvertent, and was corrected in a timely manner after being notified by the Board.

Conclusions of Law

1. Mr. Griffith violated Minnesota Statutes section 10A.03, subdivision 1, by failing to register within five days after becoming engaged by the MLBA.
2. Mr. Griffith complied with the requirements of Minnesota Statutes section 10A.03, subdivision 3, by submitting a lobbyist registration within ten days of being notified of the need to register for the MLBA. Therefore, as provided by this statute, no late filing fee or civil penalty is imposed.
3. Mr. Griffith violated Minnesota Statutes section 10A.04, subdivision 1, by failing to file a report with the Board by January 15, 2014, or to provide the disbursement information to a reporting lobbyist for the association.
4. Mr. Ball did not violate Minnesota Statutes section 10A.025, subdivision 4, by failing to register on behalf of the MLBA.

5. The 2013 Annual Principal Report filed on behalf of the MLBA did not disclose the cost of Mr. Griffith's lobbying activities. Therefore the report did not comply with Minnesota Statutes section 10A.04, subdivision 5. The MLBA worked with Board staff to submit an amendment to correct the report upon becoming aware of the inaccuracy. Therefore, as provided in Minnesota Statutes section 10A.025, subdivision 4, no late fee or civil penalty is imposed.

Based on the above Findings of Fact and Conclusions of Law, the Board issues the following:

ORDER

The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11.

Dated: June 3, 2014

/s/ Deanna Wiener

Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board