

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

**FINDINGS IN THE MATTER OF A COMPLAINT REGARDING HIMLE HORNER,
AND THE NORTHSTAR CORRIDOR DEVELOPMENT AUTHORITY**

Procedural Background

On November 20, 2003, Representative Phil Krinkie filed a complaint with the Campaign Finance and Public Disclosure Board (“the Board”) against Himle Horner Incorporated (“Himle Horner”) and the Northstar Corridor Development Authority (“NCDA”) alleging that Himle Horner and the NCDA violated Minnesota Statutes, Chapter 10A.

Representative Krinkie’s complaint alleged that the designated lobbyist for the NCDA underreported lobbying expenses and that Himle Horner employees were acting as lobbyists without registering with the Board. In support of his complaint, Representative Krinkie provided a copy of a contract between Himle Horner and the NCDA and print-outs from the Northstar Commuter Rail web site.

Representative Krinkie stated that the services outlined in the contract between Himle Horner and the NCDA included services that took “the firm [Himle Horner] beyond public relations and directly into lobbying.” Services outlined in the contract that were highlighted by Representative Krinkie included: reviewing and updating the Northstar web site, providing information to freshman legislators, key committees and Minnesota House and Senate leadership, and developing materials for Governor Pawlenty’s administration. Representative Krinkie alleged that the print-outs from the Northstar Commuter Rail web site demonstrate that Himle Horner engaged in attempting to urge others to communicate with public officials to influence legislative action.

Representative Krinkie also alleged that the NCDA’s registered lobbyist underreported the amount spent on lobbying efforts by failing to report the cost of hiring Himle Horner as a lobbying disbursement. Representative Krinkie noted that the contract provided for payment of \$600,000 to Himle Horner for services rendered between January 1, 2003, and December 31, 2003. Board records indicate that the NCDA reported lobbying disbursements totaling \$114,809.83 during this time period.

On November 25, 2003, Board staff sent letters to John Himle, principal of Himle Horner, Ross Kramer (#6221), a registered lobbyist for NCDA, and Tim Yantos, Executive Director of the NCDA.

David Johnson, attorney, responded by letter dated December 10, 2003, on behalf of NCDA. Mr. Johnson stated “the ‘Legislative Communication’ section of the NCDA contract referenced by Complainant [Representative Krinkie] required Himle Horner to provide information for distribution to legislators by NCDA registered lobbyists and bill authors and assist Northstar staff by providing materials to respond to legislator questions...it does not require Himle Horner employees to directly contact state legislators or officials in the Pawlenty administration for the purpose of influencing the state’s decision to fund or otherwise support the Northstar Commuter Rail project.”

In response to the Northstar Commuter Rail web site print-outs provided by Representative Krinkie, Mr. Johnson stated “the NCDA owns the Northstar web site. Himle Horner is merely providing web site support services. Accordingly, it is the NCDA urging others to communicate with state legislators and Pawlenty administration officials regarding state funding of the Northstar commuter rail project, not Himle Horner.”

Mr. Kramer responded by letter dated December 8, 2003, and stated that he was provided with information regarding lobbying disbursements made directly by the NCDA and that he reported that information on his Lobbyist Disbursement Reports.

Mr. Himle responded on December 10, 2003, and stated “Himle Horner did not provide lobbying services to the NCDA or engage in activity that would require us to register with the Board as a lobbyist.” Mr. Himle stated that the majority of Himle Horner’s work for the NCDA “is public information about the project to corridor residents/other interested parties, corridor employers, public involvement, market research/public opinion survey work, communication to the news media, etc.”

Mr. Himle indicated that during seven meetings with legislators or public officials in 2002 and 2003, a Himle Horner employee was present as a technical resource to explain public opinion survey research conducted by Himle Horner related to the Northstar project. Mr. Himle stated, “in all cases where we have incurred expenses and fees on behalf of a client that could qualify as lobbying expenses, we have reported these expenses to the client (including the NCDA).”

On December 11, 2003, John Knapp, attorney, provided an additional response on behalf of Himle Horner. Mr. Knapp stated that there was “absolutely no evidence that the legal definition of lobbying was met in this circumstance” by employees of Himle Horner. Mr. Knapp stated “first...the total time of all the seven meetings that were held with legislators never exceeded five hours in a month. Additionally, there is no indication that more than \$250 was spent in a lobbying effort. Second, the contacts that did take place were not for the purpose of attempting to influence legislative action.”

In response to a Board inquiry dated December 24, 2003, Mr. Himle submitted an additional response on January 12, 2004, and provided information about contact between Himle Horner employees and legislators regarding the Northstar project. Mr. Himle stated “Himle Horner representatives were not engaged by the NCDA to influence legislative action by communicating with legislators and we did not [do] so in these meetings.”

In response to a Board inquiry dated December 24, 2003, Mr. Johnson submitted an additional response on January 22, 2004, providing information about contact between Himle Horner employees and legislators, local officials of metropolitan governmental units, or administrative officials regarding the Northstar project. Mr. Johnson stated that although Himle Horner employees attended meetings with legislators and members of the administration that “it is the NCDA’s understanding that Himle Horner employees did not attend these meetings for the purpose of influencing legislative or administrative action with respect to Northstar Commuter rail.” Mr. Johnson concluded by stating “the NCDA would like to reiterate that it did not retain Himle Horner to lobby the Pawlenty administration or the Minnesota Legislature with respect to the Northstar Commuter Rail project. It had separate contract lobbyists, duly registered with the Board, to perform that task.”

By letter dated December 24, 2003, the Board requested additional information from Representative Krinkie regarding any direct contact between Himle Horner employees and legislators regarding the Northstar Commuter Rail project. The Board requested that Representative Krinkie respond by January 13, 2003 [sic].

A request to postpone action was received from Representative Krinke on February 24, 2004. In his request Representative Krinkie proposed that the Board delay issuing Findings until he received information from Himle Horner that he requested. However, it is clear from the information provided by Representative Krinkie that there is a dispute as to whether or not the additional information is subject to the Data Practices Act, involving matters outside the jurisdiction of the Board. Based on the Board's mandate to act promptly upon receiving complaints, and that this complaint was received on November 20, 2003, the request to postpone has been denied. The Board's findings are based solely upon information received as of February 25, 2004.

On February 2, 2004, Mr. Johnson provided additional information regarding contact between Himle Horner employees, legislators, local officials of metropolitan governmental units and members of the Pawlenty administration. This response included an attachment that summarized information from Himle Horner billing records regarding contact between Himle Horner employees.

In this response Mr. Johnson noted that that the definition of lobbyist changed in 2003. Mr. Johnson stated that prior to July 1, 2003, Chapter 10A defined a lobbyist in part as an individual who spent more than five hours in a month attempting to influence legislative action. Mr. Johnson stated "even if the Board were to consider each and every contact on the attachment an attempt to influence legislative or administrative action, no Himle Horner employee spent more than five hours in any month in contact with public officials."

Mr. Johnson noted that under the changed definition of lobbyist an individual engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of lobbying must register with the Board. Mr. Johnson stated "from July 1, 2003, through December 31, 2003, Himle Horner, Inc. was compensated approximately \$1,470 for all contacts between its employees and state legislators, members of Governor Palwenty's administration or members of a metropolitan governmental unit."

This matter was considered by the Board in executive sessions in its meetings on December 17, 2003, and February 25, 2004. The Board's decision was based upon the complaint, the documents provided in support of the complaint, Mr. Himle's responses, Mr. Johnson's responses, Mr. Knapp's response, Mr. Kramer's response and Board records.

Based on the record before it, the Board issues the following:

EVIDENTIARY FINDINGS

1. Prior to August 1, 2003, a "lobbyist" was defined by Minn. Stat. §10A.01, subd. 21 (a) (1), in part as an individual engaged for pay or other consideration, or authorized to spend money by an association who spends more than five hours in any month or more than \$250 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.

2. After August 1, 2003, a “lobbyist” is defined by Minn. Stat. §10A.01, subd. 21 (a) (1) in part as 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.
3. Minn. Stat. §10A.03 requires an individual to register with the Board within five days after meeting the definition of a lobbyist.
4. Minn. Rules 4511.0100, subp. 1a, defines a “designated lobbyist” as a lobbyist responsible for reporting the lobbying disbursements of the entity the lobbyist represents.
5. Minn. Rules 4511.0100, subp. 4, defines “lobbyist’s disbursements” as 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.
6. Minn. Stat. §10A.04, subd. 3, requires that an association about whose activities a lobbyist is required to report must provide the information required to the designated lobbyist no later than five days before the prescribed filing date.
7. There is no evidence before the Board at this time that any Himle employee directly communicated with or urged others to communicate with public or local officials in order to influence legislative or administrative action, or the official action of a metropolitan governmental unit in relation to the Northstar Commuter Rail project.
8. There is evidence that Himle Horner provided the NCDA with information regarding lobbying disbursements made by Himle Horner and that the NCDA provided this information to its designated lobbyist, Ross Kramer.
9. There is evidence that Mr. Kramer reported Himle Horner’s lobbying expenses on behalf of the NCDA to the Board on his Lobbyist Disbursement Report for the periods covering January 1, 2003, through March 31, 2003, April 1, 2003, through June 30, 2003, and July 1, 2003, through December 31, 2003.

Based on the above Statement of the Evidence, the Board makes the following:

FINDINGS CONCERNING PROBABLE CAUSE

1. There is no probable cause to believe that Himle Horner employees violated Minn. Stat. §10A.03 by failing to register with the Board as lobbyists because there is no probable cause to believe that any Himle Horner’s activities met either definition of lobbyist that applied during 2003.
2. There is no probable cause to believe that the NCDA failed to provide its designated lobbyist, Ross Kramer, with complete information about lobbying expenses incurred by the association.

3. There is no probable cause to believe that Mr. Kramer failed to report the association's direct lobbying expenses to the Board on his Lobbyist Disbursement Reports.

Based on the above Findings, the Board issues the following:

ORDER

1. The complaint alleging that Himle Horner employees violated Minn. Stat. §10A.03, by failing to register with the Board as lobbyists, is dismissed in its entirety. The definition of lobbyist changed during the time period of activities covered by the complaint. The Board reminds employees of Himle Horner that the new definition of lobbyist may require one or more employees of Himle Horner to register as a lobbyist in the future.
2. The complaint that the NCDA violated Minn. Stat. §10A.04, subd. 3, by failing to provide the association's designated lobbyist with information regarding the association's lobbying disbursements, is dismissed in its entirety.
3. The record in this matter and all correspondence is hereby entered into public record in accordance with Minn. Stat. §10A.02, subd. 11. Board staff shall provide copies of these Findings to Representative Krinkie, Mr. Himle, Mr. Johnson, Mr. Knapp, Mr. Kramer, and Mr. Yantos.

Dated: March 1, 2004

Wil Fluegel, Chair
Campaign Finance and Public Disclosure Board