

Minnesota

Campaign Finance and Public Disclosure Board Meeting

Tuesday, January 9, 2018
10:00 AM

Room 230
Minnesota Judicial Center
St Paul MN

REGULAR SESSION AGENDA

1. **Minutes**
Regular session, December 14, 2017
2. **Chair's report**
 - A. Meeting schedule
3. **Executive director report**
4. **Report on 2016 Reconciliation**
5. **Enforcement report**
6. **Advisory Opinion Request 445**
7. **Legal report**
8. **Other business**

EXECUTIVE SESSION

Immediately following regular session

Minutes from December 14, 2017

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

.....
December 14, 2017
Nokomis Room
Centennial Office Building
.....

MINUTES

The meeting was called to order by Chair Rosen.

Members present: Flynn (arrived during chair's report), Haugen, Leppik, Moilanen, Rosen, Swanson

Others present: Sigurdson, Goldsmith, Pope, staff; Christie Eller, counsel

The meeting did not strictly follow the order of business set forth in the agenda.

MINUTES (November 1, 2017)

After discussion, the following motion was made:

Member Moilanen's motion: To approve the November 1, 2017, minutes as drafted.

Vote on motion: Unanimously passed (Flynn absent).

CHAIR'S REPORT

A. Meeting schedule

The next Board meeting is scheduled for 10 a.m. on Tuesday, January 9, 2018.

ADVISORY OPINION REQUEST

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that the requester had agreed to make the matter public and that the request concerned the effect of the gift prohibition on the provision of books and informational materials to legislative and executive branch officials. Mr. Sigurdson told members that the request had not been received in time to prepare a draft opinion for consideration at the December meeting and that the matter therefore needed to be laid over to the January meeting.

After discussion, the following motion was made:

Member Leppik's motion: To lay the advisory opinion request over to the January meeting.

Vote on motion: Unanimously passed.

HENNEPIN COUNTY – CHAPTER 383B

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that two representatives from Hennepin County wanted to address the Board to explain a potential legislative proposal that would repeal the provisions in Chapter 383B that allow political committees and funds active in that county to register either with the county or with the Board. Mr. Sigurdson said that the proposed legislation would require these committees and funds to register with and report to the Board.

Ginny Gelms, Hennepin County Elections Manager, and Dan Rogen, Senior Hennepin County Attorney, then addressed the Board. Mr. Rogen said that major city elections in Hennepin County are held in odd-numbered years. Political committees registered with Hennepin County must file reports before the city primary and general elections and in January of the following year. Political committees registered with the Board that are active in those city elections do not have to report their activity, however, until the year-end report when the election is long over. Mr. Rogen said that Hennepin County wanted to end this disclosure discrepancy by requiring all political committees active in that county to register with the Board and to file three reports for the odd-numbered years. Ms. Gelms stated that another advantage of placing these political committees solely under the Board's jurisdiction is that Chapter 10A has provisions governing independent expenditures while Chapter 383B does not.

Mr. Rogen told members that Hennepin County planned to ask the legislature to require all political committees and funds active in the county to register with the Board and to report in odd-numbered years. Mr. Rogen said that the county was addressing the Board to ensure that this proposal was feasible and not opposed by the Board.

Mr. Sigurdson told members that changes would need to be made to Chapter 10A to ensure that only committees active in odd-numbered year elections in Hennepin County would be required to file multiple reports in odd-numbered years. Changes also would need to be made to the Campaign Finance Reporter software. Mr. Sigurdson said, however, that he believed that these changes would not have a large impact on current Board operations. Members then discussed the issue and voiced no objections to Hennepin County's plan to present the issue to the legislature.

EXECUTIVE DIRECTOR REPORT

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. There was no discussion of this matter.

REPORT ON 2016 RECONCILIATION

There was no presentation or discussion of this matter.

ENFORCEMENT REPORT

There was no presentation or discussion of this matter.

LEGAL COUNSEL'S REPORT

Ms. Eller presented members with a legal report that is attached to and made a part of these minutes. There was no discussion of this matter.

OTHER BUSINESS

There was no other business to report.

EXECUTIVE SESSION

The chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the regular session of the meeting was called back to order and the Chair had nothing to report into regular session.

There being no other business, the meeting was adjourned by the chair.

Respectfully submitted,

Jeff Sigurdson
Executive Director

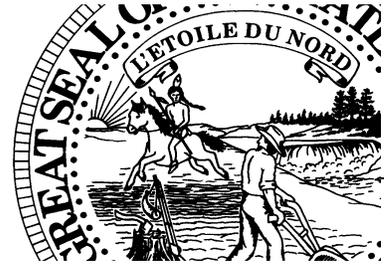
Attachments:
Memorandum regarding advisory opinion request
Memorandum regarding Hennepin County Chapter 383B
Memorandum regarding executive director report
Memorandum regarding 2016 reconciliation
Enforcement report
Legal report

Chair's Report

Campaign Finance and Public Disclosure Board

190 Centennial Bldg, 658 Cedar St, St Paul, MN 55155

www.cfboard.state.mn.us



Board Meeting Dates for Calendar Year 2018

Meetings are at **10:00 A.M.** unless otherwise noted.

2018

Wednesday, February 7

Wednesday, March 7

Wednesday, April 4

Wednesday, May 2

Wednesday, June 6

Wednesday, July 11

Wednesday, August 1

Wednesday, September 5

Wednesday, October 3

Wednesday, November 7

Wednesday, December 5

Executive Director's Report

Minnesota

Campaign Finance and Public Disclosure Board



Date: January 2, 2018

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report – Board Operations December 2017

Year-end Reports

December is always one of the busiest times of the year for Board staff as it prepares for end of the year reporting in all three major program areas; campaign finance, lobbying, and economic interest. For all three programs staff sends a first class letter to the individual responsible for filing the report. As the reporting deadline approaches reminder e-mails are sent to those who have not yet filed, and reminder phone calls are made to non-filers near the reporting deadline.

Lobbying Program. The lobbyist disbursement report covering the period of June 1 through December 31, 2017, is due on January 16, 2018. Staff sent reporting notifications to 809 lobbyists who will file about 2,076 reports. The Board provides a voluntary online filing system for lobbyist disbursement reports; usually around 98% of the reports will be filed through the online filing system. Marcia Waller and Jon Peterson are the lead staff for this report.

Campaign Finance Program. The year-end report of receipts and expenditures for 2017 is due on January 31, 2018. Reports are due from 618 candidates, 318 political party units, 342 political committees and funds, and 46 independent expenditure committees and funds. Over 90% of the reports will be filed electronically, but a significant amount of reports will require staff data entry. Joyce Larson, Jon Peterson, and Gary Bauer are the lead staff for this report.

Economic Interest Program. The annual certification by public officials for 2017 is due on January 29, 2018. There will be 2,924 annual certifications due, plus another 25 original economic interest statements filed by public officials recently appointed to their positions. Staff expects that over 90% of annual certifications will be done through the online filing system. Jodi Pope and Jon Peterson are primarily responsible for this reporting project, with lots of hands on training for Kevin Lochner as he will be taking over the administration of the EIS program from Ms. Pope during 2018.

Personnel

The position of assistant executive director was posted on November 20, and closed on December 20, 2017. A total of 23 applicants applied directly through the state employment website. The Board's HR representative did the first review of the applicants and determined that fifteen meet the minimum qualifications for the position. I am in the process of reviewing the applications forwarded from HR and intend to conduct interviews in January.

Reconciliation Update

Campaign Finance and Public Disclosure Board



190 Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

DATE: November 22, 2017

TO: Board Members

FROM: Jeff Sigurdson
Executive Director

TELEPHONE: 651-539-1189

SUBJECT: 2016 - Yearly Update on Reconciliation of Contributions between Registered Committees

Background

In the fall of 2013, the Star Tribune published an article describing problems found in the database of contributions to state candidates, political party units, and political committees and funds provided to the paper by the Campaign Finance and Public Disclosure Board. In particular the Star Tribune found that it could not reconcile over \$20 million dollars in contributions reported between registered committees during the years 2000 to 2012. Staff confirmed that the problems identified in the article existed, and during the remainder of 2013, all of 2014, and the first quarter of 2015, worked to reduce the number of contributions between registered entities that did not reconcile.

At the August 2015 Board meeting staff reported to the Board on the progress made in reconciling contributions, and reported on nine steps implemented by the executive director to minimize unreconciled contributions in future reporting years. The Board directed staff to stop the active reconciliation of contributions made prior to 2014, and to report annually to the Board regarding the reconciliation of contributions for the prior reporting year. This memo provides the status of the reconciliation of contributions between registered entities reported in 2016.

Reconciliation of 2016

The 2016 year-end reports of receipts and expenditures were due on January 31, 2017. The reports were processed using procedures designed to limit the number of unreconciled contributions caused by data entry errors. These procedures include double checking the data entry of paper reports and requiring treasurers to submit complete amended reports if warranted. In Table 1 the 2016 reconciliation numbers are highlighted in grey, the years 2010 – 2015 are provided for comparison.

Table 1

Year	Total Itemized Transfers	Amount Initially Not Reconciled	Percentage Initially Reconciled	Current Amount Not Reconciled	Percentage Currently Reconciled
2010	\$25,459,972	\$4,791,084	81.18%	\$31,968	99.87%
2011	\$4,087,836	\$500,960	87.75%	\$5,870	99.86%
2012	\$32,772,360	\$4,326,600	86.80%	\$19,614	99.94%
2013	\$4,506,703	\$417,657	90.73%	\$8,167	99.82%
2014	\$24,647,813	\$1,955,927	92.06%	\$30,561	99.88%
2015	\$5,125,778	\$530,272	89.65%	\$1,430	99.97%
2016	\$32,920,683	\$5,621,789	83.02%	\$20,858	99.94%
Totals	\$129,521,145	\$18,144,289	85.99%	\$118,468	99.91%

The reconciliation process takes considerable staff time to complete. The initial mailing to committees with a reconciliation issue was in April, with 485 committees contacted for reporting at least one contribution to or from another registered committee that failed to reconcile. In almost all cases, amendments were secured from the donor, the recipient, or both to resolve the discrepancy. Staff is still working with eight committees to resolve contributions made in 2016 that do not reconcile.

Enforcement Report

Campaign Finance and Public Disclosure Board

190 Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603 FAX: 651-539-1196 or 800-357-4114

DATE: January 2, 2017

TO: Board Members
Counsel Hartshorn

FROM: Jodi Pope, Legal/Management Analyst

SUBJECT: Enforcement report for consideration at the January 9, 2018, Board meeting

A. Discussion items

1. Balance adjustment request – Joe McDonald for State Rep

The Joe McDonald for State Rep committee is the principal campaign committee of Rep. Joe McDonald. In 2017, Board staff notified the McDonald committee that there was a discrepancy between the beginning cash balance on its 2016 report and the ending cash balance on its 2015 year-end report. The committee's treasurer explained that the discrepancy arose before she became treasurer at the end of 2014. The treasurer stated that despite the previous treasurer's poor recordkeeping, she had been able to find and correct a large error in 2010 but had not been able to locate the source of the remaining \$587.56 discrepancy. The treasurer told staff that the committee's 2015 and 2016 transactions were all accounted for on the committee's reports. The treasurer then filed an amended 2015 report showing the committee's actual beginning and ending cash balances for that year. The committee is asking the Board to adjust its year-end balance for 2014 from \$6,149.69 to \$6,737.25 to match its actual cash balance at the beginning of 2015. The committee registered with the Board on June 9, 2010, and has not received any other balance adjustments.

2. Balance adjustment request – Ryan Winkler Volunteer Committee

The Ryan Winkler Volunteer Committee is the house campaign committee of former Rep. Ryan Winkler. The committee reported that its 2016 year-end balance was \$963.58. The committee, however, states that its actual bank balance at the end of 2016 was \$190.37, which is a discrepancy of \$773.21. The committee has examined its records and determined that the bulk of the discrepancy occurred before 2007. The committee cannot find the exact source of the discrepancy because bank records for 2006 are no longer available. The committee is asking to adjust its year-end 2016 balance to \$190.37. The committee then plans to file its 2017 report and terminate its registration. The committee registered with the Board on February 17, 2006, and has not been granted any other balance adjustments.

3. Reconsideration of waiver request – SEIU Local 26 Political Fund

SEIU Local 26 is a political fund and therefore not required to file reports for periods with no activity. The fund's only receipts are transfers from its parent association. In June 2017 as part of an effort to correct balance discrepancy issues, the fund filed a 2016 year-end report showing all of the transfers as unitemized contributions. Because the transfers exceeded the itemization threshold, staff told the fund to amend its report to itemize the transfers. The amended report showed that based on the timing of the transactions, the fund should have filed a 24-hour notice

report before the 2016 primary, a 10-day pre-general-election report, and a year-end report. The fund accrued the maximum \$1,000 late filing fee for all three reports. At the November meeting, the Board made no motion on the fund's waiver request. Staff notes that the Board has consistently reduced a 24-hour notice late fee from \$1,000 to \$250.

4. Request to refer matter to the Attorney General's Office – Brown (Chilah) for Senate

The Brown (Chilah) for Senate committee is the principal campaign committee of Chilah Brown. Ms. Brown and her treasurer Michelle Berger have failed to file the committee's 2016 year-end report of receipts and expenditures. The committee last reported a cash balance of \$3,556.18 and received \$7,757 in public subsidy funds. The committee has accrued \$1,000 in late fees and \$1,000 in civil penalties for the year-end report. The committee also has an unpaid \$50 late fee for the 2016 pre-general-election report. Staff is asking the Board to refer the matter to the Attorney General's Office to seek an order compelling the filing of the report and a judgment for the accrued late filing fees and civil penalties.

5. Request to refer matter to the Attorney General's Office – Duluth DFL

The Duluth DFL is a local party unit that has failed to file its 2016 year-end report. On its pre-general-election report, the party unit reported a cash balance of \$6,957.09. The Duluth DFL has accrued the maximum \$1,000 in late fees and \$1,000 in civil penalties for the year-end report. Staff is asking the Board to refer the matter to the Attorney General's Office to seek an order compelling the filing of the report and a judgment for the accrued late filing fees and civil penalties.

B. Waiver Requests

	Committee/ Entity	Late Fee or Civil Penalty	Report Due	Factors	Most Recent Balance	Previous Waivers Granted
1	Kirsten Johnson (candidate)	\$100 LFF, \$1,000 CP	6/14/2016 Candidate EIS	Candidate was required to file economic interest statement because she filed to be on the ballot for state senate. Candidate's employer then decided that running for office would be a conflict of interest. This decision was made after the last day that candidate could withdraw her name from the ballot but before she had spent any money. Candidate then immediately ended campaign activity. Candidate called Board in response to request for report and was told that she did not have to file campaign finance reports if she had not spent any money. Candidate believed that this direction also applied to EIS. Candidate was referred to attorney general's office and submitted EIS after receiving complaint.	NA	No

Informational Items

A. Payment of a late filing fee for amended 2016 year-end report of receipts and expenditures

Neighbors for Ilhan Omar, \$150

B. Payment of a late filing fee for amended 2016 year-end report of receipts and expenditures

Citizens for Jane Montemayor, \$201.25 (Revenue Recapture)

C. Payment of a late filing fee for failure to file 2016 pre-primary-election report of receipts and expenditures

Lawrence Patwin (candidate did not register committee) \$83.72 from Revenue Recapture

D. Payment of a late filing fee for the June 15, 2017, lobbyist disbursement report

Sarah Janecek, Caribou MSP, \$225
Eric Reichwald, Down in the Valley, \$375
Matt Jeschke, Kennecott Eagle Minerals, \$50
Elizabeth King, Geronimo Energy, \$525

E. Payment of a late filing fee for a statement of economic interest for a public official

David Berglund, Cook County SWCD, \$200 (2016 and 2017)

F. Payment of a late filing fee and civil penalty for a statement of economic interest for a local candidate

Lisa Bender, City Council of Minneapolis, \$100 late fee, \$600 civil penalty

G. Payment of a late filing fee for March 15, 2016, annual report of lobbyist principal

Tavern League of Minn, \$25

H. Payment of a civil penalty for false certification

Branden Petersen, October, \$280; November, \$280; December, \$280

I. Payment of a civil penalty for excess special source contributions

Jim Nash for Minnesota, \$250

J. Payment of a civil penalty for acceptance of an earmarked contribution:

Goodhue County RPM, \$1,000

Larson, Joyce (CFB)

From: Rachel McDonald <rachel@mcdonaldsstudio.com>
Sent: Friday, October 27, 2017 4:27 PM
To: Larson, Joyce (CFB)
Subject: balance adjustment

Hello Joyce,

I am requesting a one time balance adjustment of \$587.56 for the Joe McDonald for State Rep account. There is a discrepancy somewhere between 2010-2014 and I took over as treasurer at the end of 2014. I have balance the checkbook going forward and my books for 2015, 2116 and current as of October 27th 2017 are balanced and correct. The beginning balance for 23015 should be \$6737.25.

Sincerely,

Rachel McDonald
Treasurer for Joe McDonald for State Rep.

CFBEmail

From: Susan Merthan <smerthan01@gmail.com>
Sent: Thursday, November 09, 2017 8:41 PM
To: CFBEmail
Subject: Request to terminate Ryan Winkler Volunteer Committee
Attachments: winkler dec 2006-march 2007.pdf

Greetings,

I'm requesting to terminate the Ryan Winkler Volunteer Committee (his House committee) with a balance discrepancy. I spoke to Joyce via phone earlier this week.

Our bank balance is currently \$75.20. According to expenses subtracted from our last report, we have \$848.41. Our discrepancy is \$773.21.

After significant review of records, the bulk of the discrepancy appears to originate between 2006 and 2007. Attached is the statement showing the different amount from the 2006 report, with the discrepancy amount at this time being \$626.32.

The ending cash balance on 12/31/06 per the finance report was \$1,369.19. The ending cash balance per the bank on 1/17/07 was \$742.87.

The bank only has statements dating back to the first quarter of 2007, so we cannot access 2006. (We have contacted former treasurers with no luck.)

We are able to share statements from 2007-present, if needed.

The rest of the discrepancy likely happened in smaller amounts before 2010.

Please let our committee know how you'd like us to proceed in terminating our account and righting our finances.

Thank you,

Susie

--

Susie Merthan
smerthan01@gmail.com
651-235-8608



November 7, 2017

RE: CFB Fund #30602

Joyce Larson, Compliance Officer
MN Campaign Finance & Public Disclosure Board
190 Centennial Building
St. Pau, MN 55155-1603

17 NOV 15 AM 10:48
CAMPAIGN FINANCE &
PUBLIC DISCLOSURE BOARD

Dear Officer Larson,

Per the attached notice dated July 7, 2017, I am writing to request a waiver or reduction of the late filing fees described in the July 7th notice:

- \$1000 late filing fee for 2016 pre-general election report due October 31, 2016 (not filed)
- \$1000 late filing fee for 2016 Year-End Report – Amended and filed on July 5, 2017
- \$1000 late filing fee for \$1,082.50 contribution received in July of 2016 but not reported within the 24-hour notice period for large contributions

JAVIER MORILLO-ALICEA
President

We acknowledge our Fund's responsibility to report accurately to the Campaign Finance and Public Disclosure Board and we understand the rules that apply to future contributions in excess of \$1,000. We have taken measures to ensure that subsequent reporting is done in a more timely fashion.

Thank you for your consideration,

Sincerely,

Javier Morillo-Alicea
Treasurer – SEIU Local 26 Political Fund (30602)

JMA:knh
Cc: Brendan Cummins

SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

612.331.8336
Fax: 612.331.8347

Good afternoon Campaign Finance Board,

I'm writing to request a waiver of any late fees or penalties on submitting my campaign finance report.

I originally filed to run for Senate with the intention of fully doing it, but my employer notified me I was not allowed to run for office as it was a conflict of interest from their perspective. They made that decision after the period to withdraw from the race, but before I spent any money on my campaign. So I never started any kind of activity and was just a name on the ballot in 2016.

During this time, I received a finance request, and I explained over the phone that was not spending or fundraising any dollars, and was effectively NOT running at all, so they said something to the effect of "don't worry about it" and so I never submitted a form. This was a misunderstanding and ignorance on my part that the form was still required.

So I'm submitting it now with information as it was last year. And with the knowledge and much better understanding of the process! Thank you for your consideration and patience!

A handwritten signature in black ink that reads "Kirsten Johnson". The signature is written in a cursive style with a large, prominent "J" at the end.

Kirsten Johnson

Advisory Opinion Request

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: January 2, 2018

To: Board members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Advisory Opinion 445 – The gift of informational material to legislative and executive branch public officials.

The request for this advisory opinion was received on December 6, 2017. On December 12, 2017, the Institute for Justice provided written consent to make the request public information. The Board laid over the opinion request at the December 14, 2017, meeting.

The Institute for Justice is a lobbyist principal represented by a registered lobbyist. In support of its lobbying efforts the Institute for Justice wishes to give two publications to legislators and public officials in the executive branch. The request concerns the potential application of two exceptions to the general prohibition on gifts to public officials found in Minnesota Statutes section 10A.071.

The draft opinion compares the publications to the exceptions in the gift prohibition provided for informational material with a resale value of five dollars or less, and for services to assist a public official in the performance of official duties. The draft opinion concludes that the publications may be provided to public officials, but must be reported as permissible gifts on the lobbyist disbursement report.

Members should feel free to contact me with any questions or suggested changes prior to the Board meeting.

Attachments:

Advisory Opinion Request – Institute for Justice
Draft Advisory Opinion 445



INSTITUTE FOR JUSTICE

17 DEC -6 AM 10:16
CAMPAIGN FINANCE &
PUBLIC DISCLOSURE BOARD

December 5, 2017

Via UPS

Jeff Sigurdson
Executive Director
Minnesota Campaign Finance &
Public Disclosure Board
190 Centennial Office Building
658 Cedar St.
St. Paul, MN 55155

Re: Advisory-opinion request regarding the application of Minnesota's gift laws to books and reports provided to government officials

Dear Mr. Sigurdson,

I am writing on behalf of the Institute for Justice (IJ) to seek an advisory opinion about the potential application of Minnesota's gift ban to informational material that IJ wishes to provide legislative and executive branch officials in Minnesota. Specifically, I am writing to determine whether this provision prohibits IJ from sending books and reports on public policy that IJ believes are relevant and useful to our lobbying efforts in Minnesota to legislative or executive branch officials.

Background

IJ is a 501(c)(3) nonprofit public-interest law firm founded in 1991 that litigates across the country to promote economic liberty, freedom of speech, educational choice, and property rights. Although IJ's work consists predominately of litigation and communications with the public about policy issues, IJ also engages in a limited amount of lobbying at the federal, state, and local level. IJ has registered lobbyists in Minnesota and intends to lobby members of the Minnesota legislative and executive branch in the future.

As part of IJ's mission, IJ employees also write books and reports on public-policy issues. Last December, for example, Encounter Books published *Bottleneckers: Gaming the Government for Power and Private Profit* by William Mellor and Dick M. Carpenter II, which discusses the problem of

Jeff Sigurdson, Executive Director
Minnesota Campaign Finance &
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politically powerful groups using government power to limit competition and thereby reap monopoly profits and other benefits. And last month, IJ published *License to Work 2*, a report that examines the burdens of occupational licensing laws in all 50 states and the District of Columbia.

IJ believes that both of these publications would be helpful to government officials trying to understand the issue of occupational licensing, and as part of our lobbying efforts, we would like to provide copies of these materials to legislative and executive branch officials in Minnesota. But we wish to make certain that doing so will not implicate Minnesota's gift regulations.

Bottleneckers is a commercially available book with a list price of \$27.99. However, IJ currently receives an author's discount that brings our purchase price for the book to less than \$17.

License to Work 2 is available for free download through IJ's website, though at some time in the future may be available for download on Amazon Kindle devices for a nominal charge (likely \$2.00). IJ's per-unit cost for printing *License to Work 2* is approximately \$6-10.

Questions Presented

1. Do *Bottleneckers* and *License to Work 2* fall within the statutory definition of gift?
2. Do *Bottleneckers* or *License to Work 2* qualify for any statutory exemption to Minnesota's gift ban.

Discussion

We believe that both *Bottleneckers* and *License to Work 2* may fall within the statutory definition of gift, and we are concerned that *Bottleneckers* may be considered a prohibited gift.

Minnesota law broadly defines "gift" for purposes of state ethics laws as including any "personal property . . . that is given and received without the giver receiving consideration of equal or greater value in return."¹ *Bottleneckers*—and potentially *License to Work 2*—would appear to fall

¹ Minn. Stat. Ann. § 10A.071, subd. 1(b)

Jeff Sigurdson, Executive Director
Minnesota Campaign Finance &
Public Disclosure Board
December 5, 2017
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within this definition, at least as it applies to physical copies of those publications.

Subject to statutorily specified exceptions, Minnesota prohibits lobbyists or their principals from giving any gift to any official.² The only exception that would appear to apply in this case is the exception for “informational material with a resale value of \$5 or less.”³

We believe this exception clearly applies to *License to Work 2*, which will be made available for free on IJ’s website. But we have no way of determining whether this exception applies to *Bottlenecks*. Although we know with reasonable certainty the retail value of *new* copies of that book, we do not know how the Board would calculate the *resale* value of those copies once they have been given to a government official. An internet search suggests that used copies vary in price from as low as \$2.06 from Barnes & Noble⁴ to as much as \$56.68 from Amazon.com.⁵ (We believe that the former more accurately reflects the resale value of used, mass-marketed books about public policy.)

If you could please provide answers to the two questions presented in this request—directed to psherman@ij.org—we would be most appreciative. If you need additional information, please don’t hesitate to email or call at (703) 682-9320.

Sincerely,



Paul Sherman
Senior Attorney
Institute for Justice

² Minn. Stat. Ann. § 10A.071, subd. 2

³ Minn. Stat. Ann. § 10A.071, subd. 3(a)(6).

⁴ <https://www.barnesandnoble.com/p/bottlenecks-william-mellor/1123588285/2678359199683>

⁵ goo.gl/8q3hxF

State of Minnesota
Campaign Finance and Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information
provided by the requester

Issued to: Paul Sherman
Institute for Justice
901 N Glebe Road
Suite 900
Arlington, VA 22203

RE: Gift of publications to public officials

ADVISORY OPINION 445

SUMMARY

Informational material provided by a principal to public officials may qualify for the exception in the gift prohibition for services to assist an official in the performance of official duties if the principal or the principal's lobbyist had a significant role in the creation, development, or production of the information.

FACTS

As senior attorney for the Institute for Justice (the Institute) you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts.

1. A lobbyist registered in Minnesota represents the Institute. The Institute is a principal as defined in Minnesota Statutes section 10A.01, subdivision 33.
2. Institute employees write books and reports on public-policy issues. The Institute would like to use two of these publications to support an upcoming lobbying effort in Minnesota. The publications are intended to help public officials better understand issues of concern to the Institute. Therefore, the Institute would like to give the two publications to public officials, which includes all members of the Minnesota legislature, and to public officials serving in the executive branch.
3. One of the publications is entitled *License to Work* (2nd Edition), and is a report on occupational licensing laws in all 50 states. The report is available as a free PDF download on the Institute's website. The Institute estimates that the cost to print and bind the report is approximately six to ten dollars.
4. The other publication is entitled *Bottlenecks: Gaming the Government for Power and Private Profit* (*Bottlenecks*). This publication is described on the Institute's website, but it is not available for free download. A link is provided to the publisher where the book may be purchased new for \$27.99. The Institute

may purchase the book with an author's discount that lowers the price to less than \$17.00. The current chairperson and founding general counsel for the Institute for Justice, and the director of strategic research at the Institute for Justice, are the co-authors of *Bottleneckers*.

5. *Bottleneckers* is also available for purchase used at various internet sites. A search by Board staff found used copies of the book readily available for around \$13.70. The Institute states that at one time a used copy of the book was available for \$2.06. The review by Board staff was not able to replicate that price point.
6. Your review of the gift prohibition in Minnesota Statutes section 10A.071 leads you to believe that *License to Work* qualifies for the exception provided for informational material with a resale value of \$5 or less, but you would like the Board to confirm that conclusion. You are not sure if *Bottleneckers* may be provided to the public officials.

ISSUE ONE

May the Institute provide *License to Work* to public officials without violating the gift prohibition in Minnesota Statutes section 10A.071?

OPINION ONE

Minnesota Statutes section 10A.071, generally prohibits a principal or lobbyist from giving a gift to a public official. There are however, a number of exceptions to the prohibition provided in the statute. In specific, subdivision 3 (6) exempts "informational material with a resale value of \$5 or less."

The *License to Work* report is available as a free download to anyone on the Institute's website. In Advisory Opinion 317, the Board approved of giving a book to public officials that was also available free to the public. Consistent with the prior opinion, informational material, such as *License to Work*, that is available for free distribution to the public on a website may also be given to public officials under the exception for informational material.¹

Lobbyists must report gifts made by their principal if the value of the gift is five dollars or more.² Providing public officials with the website link to the publication does not exceed the five-dollar threshold, and does not need to be reported as a gift.

The Institute may decide to print and bind *License to Work* for distribution to public officials at a cost of six to ten dollars per copy. If that occurs, the publication will still qualify for the exception for informational material with a resale value of five dollars or less. However, the cost of preparing a bound copy of the report will result in a gift that

¹ When Advisory Opinion 317 was issued in 1999, Minnesota Statutes section 10A.071, subdivision 3 (6), provided an exception for "informational material of unexceptional value." The exception was modified to replace "unexceptional value" with the standard of "resale value of \$5 or less" in 2012.

² Minnesota Statutes section 10A.04, subdivision 4 (c).

must be reported on the first lobbyist disbursement report following distribution of the publication.

ISSUE TWO

May the Institute provide *Bottleneckers* to public officials without violating the gift prohibition in Minnesota Statutes section 10A.071?

OPINION TWO

The exception to the gift prohibition for material with a resale value of less than five dollars does not apply to *Bottleneckers* because the resale value for the book is consistently over the five-dollar limit. However, another exception is potentially applicable.

In Minnesota Statutes section 10A.071, subdivision 3 (2), an exception is made for

services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents.

In prior advisory opinions the Board has found that providing informational materials may qualify as a service to assist an official in the performance of official duties if the material provides information and communication in connection with legislation.³ In Advisory Opinion 396, the Board limited the application of this exception to informational materials where “the lobbyist or principal have a significant role in the creation, development, or production of the information.”

The book *Bottleneckers* provides information on upcoming legislation, and was authored by the chairperson and director of strategic research for the Institute. In view of these facts, providing the publication to public officials qualifies as a service to assist an official in the performance of official duties, and is not a prohibited gift.

The value of the book exceeds the five-dollar threshold for the reporting of gifts, and must be reported by the Institute’s lobbyist on the applicable report of lobbyist disbursements.

The Board notes that *License to Work* also appears to qualify for this exception. However, in most situations the application of a set resale value will be easier to apply than an evaluation of the material for its service to an official in the performance of official duties. The Board therefore evaluated *License to Work* under the resale value criteria.

Issued: January 9, 2018

Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

³ See Advisory Opinions 156, 204, and 246.

DRAFT

Legal Report

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
January, 2018

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
David Berglund	Cook Soil and Water Conservation District	Unfiled Economic Interest Statement due January 25, 2016 Untimely Filing of 2015 Economic Interest Statement Untimely Filing 2011 Economic Interest Statement	\$100 LF \$1,000 CP \$80 LF \$100 LF \$100 CP	7/7/16	12/30/16 8/18/17			Matter settled; drafting voluntary dismissal documents
Roxana Bruins	Roxana Bruins for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17			Personal Service Requested 12/29
Brenden Ellingboe	Ellingboe (Brenden) for House	Unfiled 2015 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	11/29/16	5/26/17			Personal service unsuccessful Hold by Board
Kirsten Johnson		Unfiled Economic Interest Statement due June 14, 2016	\$100 LF \$1,000 CP	1/17/17	5/26/17			Hold by Board

