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January 25, 2024

**VIA EMAIL**

Mr. Jeff Sigurdson  
Executive Director  
Minnesota State Campaign Finance and Public Disclosure Board  
190 Centennial Building  
658 Cedar Street  
St. Paul, Mn 55155

Re: ACEC/MN and AIA Minnesota Comments Regarding Proposed  
Regulations

Dear Jeff:

I'm an attorney licensed to practice in Minnesota, and I work with the American Council of Engineering Companies of Minnesota ("ACEC/MN") and the American Institute of Architects Minnesota ("AIA Minnesota") on a volunteer basis to help them address various legal issues which may affect the membership. ACEC/MN's members are consulting engineering firms. AIA Minnesota members are Architects and their firms. Members of both AIA Minnesota and ACEC/MN provide professional services to the State, Counties, municipalities, other governmental entities, individuals and private businesses.

ACEC/MN and AIA Minnesota have reviewed the 2023 changes in the statute regarding lobbyist registration and reporting as well as the and the recent advisory opinions issued by this Board. As you know, I also attended most if not all of the rule making committee hearings to provide input on our concerns regarding the new Statutes. After the work we put in and the unsuccessful attempt to address the issues legislatively,

we are concerned that work which consulting engineers and architects perform on a daily basis will be considered “lobbying” under the statutory changes. As a result, we submit this letter in connection with the legislatively mandated study to express our concerns and to suggest a means to address the work of Architects and Professional Engineers which is not truly lobbying, but could be considered lobbying under the current language.

As you know, we addressed the situation where a consulting engineer is hired as a City Engineer in the rulemaking process. We also addressed the situation where the Architect or Consulting Engineer is hired by the municipality directly to perform the design work. The remaining concern involves situations where a developer or land owner hires an architect or a consulting engineer while pursuing a project under the jurisdiction of the particular political subdivision. For example, in many cases, a municipality will enter into a development agreement with the landowner with regard to a particular project such as a residential subdivision. Under that development agreement, the engineer, at the developer’s expense, designs infrastructure for the project which meets the city’s requirements. In connection with this work, the engineer often needs to provide information to the municipality with respect to the proposed designs to ensure that the designs meet the municipality’s approval and the relevant ordinances. In addition, there needs to be discussion regarding making the municipality’s existing infrastructure available to the new project.

Similarly, often times an architect hired by a developer will consult with and confer with a local code official or the political subdivision’s planning commission regarding the elements and code compliance of the project. This may include using their expertise, skill and experience to make recommendations regarding how the project should be completed.

Under the new definition of lobbying in the statute, all of these discussions could be considered for the “purpose of influencing the official action of the political subdivision” and therefore lobbying. We discussed addressing this by creating a rule which confirmed that such discussions were not lobbying, but the rules committee was concerned that the rule may conflict with the statutory mandate. As a result, when an amendment to the statute was introduced, we worked with the author to address the issue at the legislature. The revisions to the statutes were not adopted and as a result, architects and engineers are left in limbo regarding how to perform their jobs without being accused of lobbying.

As a result, we seek an exception in the regulations for architects, engineers and other design professionals working on the behalf of their clients in such a scenario.

Our recommendation is for either a statutory amendment or a clarification of the regulations to make it clear that an Architect, Engineer or other design professional making recommendations and opinions based upon their education, training and experience are not “Lobbyists” under the statute. An example of such an exemption is

January 24, 2024

Page 3

the expert exemption located in Minn. Stat. Section 10A.01 Subd. 21 (b)(8). In the alternative, and as we discussed at length this spring, we could also add a section to the statute or regulations making it clear that a professional who offers his or her opinions based upon his or her education, training and experience is not engaged in “communications for the purpose of attempting to influence the official action of a political subdivision”. Either of these changes would insulate architects, engineers, land surveyors, landscape architects, geologists, and certified interior designers from being considered lobbyists while practicing their professions as defined by Minnesota Statutes § 326.

We believe that this clarification within the regulation is not only consistent with the intent of changes in the statute, but is also in the State’s best interest. The municipalities benefit from having licensed professionals with experience in industry providing them information, opinions and recommendations related to issues within their profession. The result of having those professionals considered to be “lobbyists” will be the inability of the political subdivisions to obtain the information, opinions and recommendations directly from the source in connection with potential projects. As a result, projects will take longer to approve, will likely be more expensive, and the decisions will be made by the political subdivisions without the full picture often needed to make an informed and rational decision.

We appreciate the opportunity to participate in the study of the impacts of the statutory and regulatory changes. We are committed to working with the Board to develop a statute and regulations which accomplish the legislative goals while also protecting the architectural and engineering profession. If you have any questions about these proposals, please do not hesitate to contact me. I would be more than happy to discuss them with you.

Sincerely,

HELEY, DUNCAN & MELANDER, PLLP

*s/ Eric R. Heiberg*

Eric R. Heiberg

cc: Thomas Poul (via email)  
Jonathan Curry (via email)  
Megan Engelhardt (via email)  
Sheri Hansen (via email)  
Sarah Strong (via email)

ERH/jb