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Subject: Minnesota Association of Townships" Initial Comments on 10A issues
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Hi Jeff,

Thank you for highlighting this issue for us. I will be present at the August 19 meeting; I'm looking forward to a productive conversation on these issues. In any event, let me dive right in to our comments.

Present law is structured in a way that is problematic for township officers in a variety of ways. First, a word about townships so that the Board understands what makes us distinct and unusual among local governments. Townships were the original form of local government in Minnesota, established in the late 1700s when Congress ordered a survey that divided the territory into 36 square mile tracts of land. Townships exist in every area of the state, including the metropolitan area. Some, with populations of more than 1,000 function in much the same way as a small city. Most are much smaller. A township board of supervisors, usually three members, are elected by their residents to staggered three-year terms, and make up the township governing body.

The annual meeting is what really sets townships apart from other forms of local government. At this meeting, the residents of the township have a direct voice in how the township will be run, can pass laws on certain subjects, and can set their own taxes. As a result, townships are not usually run by professionals. Instead, the board of supervisors is usually composed of individuals who have another primary job. As a result of Minnesota Law requiring the voters to approve their own taxes, the supervisors are subject to serious checks that other forms of government simply are not. Based on the most recent data for the state demographer's office, approximately 922,013 residents of Minnesota live in one of Minnesota's 1,780 townships. The largely non-professional nature of Township governance means that legal technicalities can be more significantly more burdensome for us

For example the inconsistencies between the gift-and-interested persons provisions in chapter 10A (which appears to include township officers) and Minn. Stat. 471.895 (which excludes them) appear to operate as a trap for the unwary. Diligent township officers looking to understand their obligations would likely look to Chapter 471 (governing municipalities generally) rather than the more specialized 10A, and would therefore likely be led to believe that certain conduct was legal when it is not. This issue is amplified by the whack-a-mole nature of the way 10A defines its terms.

Minn. Stat. § 10A.071 subd. 1 provides that "official" means "a public official, an

employee of the legislature, or a local official.” Local official is not defined in § 10A.071. Instead we must turn to §10A.01 subd. 22 which provides that “Local official” means 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.” Next, we must flip to subdivision 31 to find out that “political subdivision” means “a municipality as defined in section 471.345, subdivision 1.” Finally, section 471.345 tells us that “municipality” means a town.

In addition, the extremely broad brush nature of the way that “lobbyist” and “principal” are defined creates particular difficulties for our members. Minn. Stat. § 10A.01 subd. 21 tells us that a “lobbyist” is an individual who is “(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year: (i) for the purpose of attempting to influence legislative or administrative action” and prohibitions often bind not just the lobbyist but the principal. To bring home how hard this can be to administer on the sharp end, picture a situation in which a supervisor sits down at the bar next to a neighbor who he has known for years. This neighbor happens to own a business that unequivocally lobbies the state legislature but is not located in the town and has no dealings with the town board. The neighbor buys the supervisor, his friend, a \$6 beer. The town supervisor may not be aware that the neighbor counts as a principal, may not be aware that he even owns a business. There is no risk of the public being swindled by this transaction, yet it would appear to be in violation of 10A.071 subd. 2.

The Township Association believes that this could be improved with a few tweaks. First, the board might consider mirroring the language of Minnesota Government Data Practices Act, which divides townships between those with enough administrative lift capacity to handle the requirement and those that do not. See Minn. Stat. 13.02 subd. 11. The change could be as simple as adding “excluding any town not exercising powers under chapter 368 and located in the metropolitan area, as defined in section 473.121, subdivision 2” to Minn. Stat. 10A.01 subd. 33 or subd. 22. (cf. with Minn. Stat. 13.02 subd. 11. Gift-giving to all township officials with the intent to influence a decision would remain illegal. See e.g. Minn. Stat. § 609.42. Self-interested transactions would remain illegal. Minn. Stat. 365.37.

If the Board believes that this provides insufficient protection for the public, the board might consider leaving smaller townships bound, but requiring a higher degree of knowledge for the smaller townships.

Regardless, the Board can rest assured that Townships’ voter-focused structure offers a strong barrier to the sort of back-scratching under-the-table skullduggery 10A aims to prevent. At the end of the day, town supervisors must submit their tax requests to the voters themselves, who may approve or deny it. Minn. Stat. § 365.431. As a result, the Township Association believes that a simpler structure for township officers is simply a better fit for the people of Minnesota.

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