

ETHICAL PRACTICES BOARD

First Floor South, Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

Issued to:

Katherine E. Sasseville, General Counsel
Otter Tail Power Company
215 South Cascade Street
P. O. Box 496
Fergus Falls, MN 56538-0496

RE: Lobbyist Registration

ADVISORY OPINION #208

SUMMARY

208. Time spent by an employee of an association other than a political subdivision monitoring legislation is not considered communicating or urging others to communicate with public or local officials for purposes of lobbyist registration and reporting. The costs of presenting factual material without comment are not reportable as lobbying disbursements. Minn. Stat. §§ 10A.01, subd. 11, 10A.03, and 10A.04; Minn. Rules pt. 4510.0100, subp. 5.

FACTS

As general counsel for the Otter Tail Power Company, a lobbyist principal, you ask the Ethical Practices Board for an advisory opinion based on your statement of the following facts and information provided:

1. The statutory requirement for registration as a lobbyist is that an individual employed by an association such as Otter Tail Power Company be authorized to spend money and devote five hours or more in a month for the purpose of attempting to influence legislative or administrative action... "by communicating or urging others to communicate with public or local officials... ." You state that the meaning of "communicating" in this context is not clear.
2. You state that a closely related question is whether advertising, brochures, forums, or seminars provided to the general public which are designed to educate the public about a general legislative matter, but without overt efforts to bring the public to communicate with the legislature, are activities that require lobbyist registration and reporting.

QUESTION ONE

Is time that an Otter Tail Power Company employee spends observing or monitoring legislative activity considered to be "communicating or urging others to communicate with public or local

officials" even though the employee never speaks to a legislator or an official?

OPINION

No. Although time spent by an employee of a political subdivision monitoring legislative or administrative action and related research, analysis, and compilation or dissemination of information relating to legislative or administrative policy in Minnesota must be included in calculating the hourly standard that requires registration as a lobbyist, the present law does not impose this requirement on other individuals. Minn. Stat. §§ 10A.01, subd. 11 (b)(4), 10A.03.

QUESTION TWO

If an Otter Tail Power Company employee who monitors legislative or administrative action for forty hours a week, but communicates, orally or in written form only twice, totalling one hour of the employee's time, is the employee required to register as a lobbyist?

OPINION

No. Please see response to Question One, above.

QUESTION THREE

Are the costs of advertising, brochures, forums, or seminars provided to the general public which are designed to educate the public about a general legislative matter, but without overt efforts to bring the public to communicate with the legislature, considered to be reportable lobbying activities?

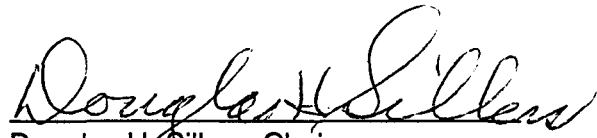
OPINION

No. The presentation of factual material without comment does not fall within the definition of "urging/urges others to communicate" with public or local officials. This term as used in Minn. Stat. § 10A.01, subd. 11, means any written or oral communication by a lobbyist or a lobbyist principal which requests that an individual or association advocate a particular position to public or local officials concerning legislative or administrative action. Also included are requests by a lobbyist or lobbyist principal that an individual or association advocate that a public or local official initiate any particular legislative or administrative action. Minn. Rules pt. 4510.0100, subp. 5. See copy attached for reference.

COMMENT

It is the opinion of the Board that a series of questions in your letter about the application of certain lobbyist registration and reporting laws to the activities of a grass-roots organization do not constitute a request for an advisory opinion to guide your company's disclosure obligations under Minn. Stat. § 10A.02, subd. 12 (a).

Issued: 10/14/95


Douglas H. Sillers, Chair
Ethical Practices Board

PERTINENT STATUTES AND RULES

Minn. Stat. § 10A.01 DEFINITIONS provides:

...

Subd. 11. (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration, or authorized to spend money by another individual, association, political subdivision, or public higher education system, who spends more than five hours in any month or more than \$250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative action or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

...

(b) "Lobbyist" does not include:

...

(4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a metropolitan governmental unit, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of metropolitan governmental units;

...

Subd. 18. "Public official" means any:

(a) member of the legislature;

(b) constitutional officer in the executive branch and the officer's chief administrative

deputy;

(c) member, chief administrative officer or deputy chief administrative officer of a state board or commission which has at least one of the following powers: (i) the power to adopt, amend or repeal rules, or (ii) the power to adjudicate contested cases or appeals;

(d) commissioner, deputy commissioner, or assistant commissioner of any state department as designated pursuant to section 15.01;

(e) individual employed in the executive branch who is authorized to adopt, amend or repeal rules or adjudicate contested cases;

(f) executive director of the state board of investment;

(g) executive director of the Indian affairs intertribal board;

(h) commissioner of the iron range resources and rehabilitation board;

(i) commissioner of mediation services;

(j) deputy of any official listed in clauses (e) to (i);

(k) judge of the workers' compensation court of appeals;

(l) administrative law judge or compensation judge in the state office of administrative hearings or referee in the department of jobs and training;

(m) solicitor general or deputy, assistant or special assistant attorney general;

(n) individual employed by the legislature as secretary of the senate, chief clerk of the house, revisor of statutes, or researcher, legislative analyst, or attorney in the office of senate counsel and research or house research;

(o) member or chief administrative officer of the metropolitan council, regional transit board, metropolitan transit commission, metropolitan waste control commission, metropolitan parks and open spaces commission, metropolitan airports commission or metropolitan sports facilities commission;

(p) the director of the racing commission, the director of the gambling control board, the director of the state lottery, and the deputy director of the state lottery;

(q) director or the division of gambling enforcement in the department of public safety;

(r) member or executive director of the higher education facilities authority; or

(s) member of the board of directors or president of the Minnesota world trade center corporation.

Subd. 25. Local official. "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.

Subd. 26. Metropolitan governmental unit. "Metropolitan governmental unit" means 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 these counties under section 398A.03, a city with a population of over 50,1000 located in the seven-county metropolitan area, the metropolitan council, a metropolitan agency as defined in section 473.121, subdivision 5a, a municipality as defined in section 471.345, subdivision 1, the Minnesota state high school league, and Minnesota Technology, Inc.

Minnesota Rules 1993 Chapter 4510 Lobbyist Registration and Reporting

Minn. Rules pt. 4510.0100 DEFINITIONS provides:

...
Subp. 5. **Urging/urges others to communicate.** "Urging/urges others to communicate" means any written or oral communication by a lobbyist which requests that an individual or association advocate a particular position to a public official concerning any legislative action or administrative action, or which requests an individual or association to advocate a public official initiate any particular legislative or administrative action. The term does not include mere presentation of factual material without comment.