

State of Minnesota

**Campaign Finance & Public Disclosure Board**

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

THIS ADVISORY OPINION IS PUBLIC DATA  
pursuant to a Consent for Release of Information signed by the requester

Issued to: John H. Herman  
Leonard, Street and Deinard  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402

RE: Lobbying Municipal Governmental Units

**ADVISORY OPINION 304**

**SUMMARY**

An individual becomes a lobbyist by spending five hours in a month communicating with or urging others to communicate with local officials of a metropolitan governmental unit. Local officials include only those persons who meet the statutory definition of a local official. The exception to the lobbyist definition for individuals engaged in the sale of goods or services extends to attorneys representing clients in such sales.

**FACTS**

You ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion concerning issues related to the following facts:

1. You are an attorney in a firm that represents clients in a variety of matters before metropolitan governmental units.
2. You or members of your firm may represent companies selling insurance, financial services, business consulting, or educational services to a metropolitan governmental unit.
3. You may represent a client seeking a specific governmental approval from a metropolitan governmental unit. Examples of such approvals include zoning variances, conditional use permits, building permits, or business licenses.
4. You may also assist clients in preparing responses or appearing at administrative hearings related to the issuance of orders or the imposition of

administrative penalties.

5. The services you provide to clients may also extend to representation in matters relating to redevelopment projects. Your activities in this area could include assisting your client in being selected for a redevelopment project, negotiating a redevelopment contract, or being awarded financial assistance such as tax increment financing or a grant.

#### **Issue One**

Is an attorney who represents a client in the process of selling insurance, financial services, business consulting, or educational services to a metropolitan governmental unit required to register as a lobbyist?

#### **Opinion**

No. An attorney assisting a client engaged in selling goods or services to be paid for with public funds is excluded from the definition of a lobbyist by the exception created in Minn. Stat. § 10A.01, subd. 11 (2)(b)(6).

This exception applies to individuals selling goods or services on their own behalf as well as to employees or independent contractors, such as attorneys, acting on behalf of sellers.

#### **Issue Two**

Is an attorney who represents a client in relation to an administrative order or penalty, or in seeking a specific governmental approval from a metropolitan governmental unit, required to register as a lobbyist?

#### **Opinion**

The lobbyist registration requirement does not depend on the nature of the governmental action involved. Rather, the registration requirement depends on the status and authority of the people who are influenced to bring about the desired action. To trigger the lobbyist registration requirement, an attorney must spend five hours in a month communicating directly with, or urging others to communicate with people who hold "local official" positions. Minn. Stat. § 10A.01, subd. 11.

Local officials of metropolitan governmental units include:

- elected metropolitan governmental unit officials
- appointed officials or employees who have the authority to make, recommend, or vote on as a member of the governing body, major decisions regarding the expenditure of public money. Minn. Stat. § 10A.01, subd. 25.

Many governmental decisions are made by people who do not meet the statutory definition of local officials. Communication with people who are not local officials does not trigger the lobbyist registration requirement unless that communication is to urge those people, in turn, to

communicate with local officials to influence the governmental action. Minn. Stat. § 10A.01, subd. 11.

Even when you do communicate with local officials, lobbyist registration is triggered only by spending the requisite five hours in a single month in that communication (or urging others to engage in that communication). Time spent advising clients, preparing written materials, preparing or reviewing responses, observing or waiting during proceedings, and similar activities not involving direct communication are not included in the five hour threshold.

To determine whether a person is a local official, you may consult the list maintained by the Board pursuant to Minn. Rules pt. 4501.0400, subp. 1. Under that rule, each metropolitan governmental unit is required to identify the positions that constitute its local officials and report them to the Board on an annual basis. While this list is informative, the statute does not provide that it is the authoritative source for determining who is a local official. Ultimately, the statutory definition controls.

### Issue Three

Is an attorney who represents a client seeking governmental assistance for a redevelopment project required to register as a lobbyist?

### Opinion

If the representation includes five hours in a month communicating with local officials of the metropolitan governmental unit or urging others to communicate with those officials, the attorney must register as a lobbyist.

The Board does not consider obtaining or negotiating a metropolitan governmental unit redevelopment project to be a sale of goods or services. Rather, the Board understands a redevelopment project to be a complex relationship in which the developer is ultimately granted the right to develop a project which the developer will own.

Typically, development projects will not be included in the exemption for sales of services discussed in issue one above. If the requester believes that participation in a specific redevelopment project should result in a different conclusion, that example could be considered in another request for an advisory opinion that includes specific facts concerning the project and the attorney's involvement.

Issued: 10-30-98

  
Carolyn D. Rodriguez, Chair  
Campaign Finance and Public Disclosure Board

## CITED STATUTES

### 10A.01 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 10A.01 to 10A.34, the terms defined in this section have the meanings given them unless the context clearly indicates otherwise.

Subd. 11. **Lobbyist.** (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 or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, 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.

(b) "Lobbyist" does not include:

(6) an individual while engaged in selling goods or services to be paid for by public funds;

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 those counties under section 398A.03,

a city with a population of over 50,000 located in the seven-county metropolitan area,

the metropolitan council,

a metropolitan agency as defined in section 473.121, subdivision 5a,

the Minnesota state high school league, and  
Minnesota Technology, Inc.

Minn. Rule 4501.0400 DETERMINATION OF LOCAL OR PUBLIC OFFICIAL STATUS.

**Subpart 1. Metropolitan governmental units to determine local official status. Annually, each metropolitan governmental unit must determine which positions within the metropolitan governmental unit constitute its local officials and must provide the board with a list of those positions.**

**Subp. 2. Acting or part-time local or public official. An individual who fills a local or public official position on an acting or part-time basis is a local or public official.**