

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

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Definition of Lobbyist.

ADVISORY OPINION # 326

SUMMARY

The potential for litigation on a given subject does not change the requirement to register as a lobbyist if the individual spends more than five hours in a month or \$250 in a year communicating with local officials to influence the official actions of a metropolitan governmental unit.

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 who represents clients in civil litigation with metropolitan government units, and the State of Minnesota.
2. In the course of representing your clients you communicated with elected local officials, petitioned for specific action from a state board, and testified before a metropolitan governmental unit, all in an effort to prompt a specific official action by a metropolitan governmental unit. When these communications were unsuccessful, you filed a lawsuit on behalf of your clients.
3. In the course of communicating with local metropolitan governmental units you sent copies of letters to state and county elected officials.
4. You have not spent more than five hours in any month nor more than \$250 in a year on behalf of your clients attempting to influence official actions of metropolitan governmental units. However the cost to your clients for your services in this matter exceeds \$250.

ISSUE ONE

Does communication that asks for a specific official action by a metropolitan governmental unit constitute lobbying if the communication is a part of an overall litigation strategy?

OPINION

Yes. Communications with public or local officials that attempt to influence the official action of a metropolitan governmental unit constitute lobbying. The fact that you filed a lawsuit when your efforts did not produce the desired result does not change the nature of the communication.

ISSUE TWO

Is sending copies of your communications with local government officials to a county commissioner and state legislators whose districts include your clients residences an act that qualifies as lobbying under Minn. Stat. §10A.01 Subd. 21?

OPINION

No. As stated in your request, the purpose of the copies of the communications were to inform the county commissioner and state legislators of a situation in their district, and did not attempt to influence the recipient to take any particular action.

ISSUE THREE

Should my fees as an attorney be included in determining if I have spent more than \$250 in any year for the purpose of influencing the official action of a metropolitan governmental unit?

OPINION

No. Minnesota Rules 4511.0100 Subp. 4 provides in part that the compensation paid to a lobbyist is not a lobbying disbursement.

ISSUE FOUR

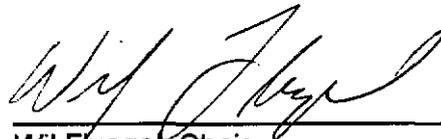
Have my activities, as described in the facts of this opinion, made me a lobbyist and triggered an obligation to register with the Board?

OPINION

No. In the facts you have provided the Board as a basis for this opinion you state that you have not spent more than five hours in any month in communicating with public or local officials on behalf of your clients, and you have not spent over \$250 in a year for those communications.

However, you should continue to be aware of the five hour and \$250 triggers for lobbyist registration. Additionally please note that metropolitan governmental units have the authority under Minnesota Rules 4501.0400 to determine which employees are "local officials". You may wish to contact the metropolitan governmental units with which you are communicating to receive a definitive list of individuals classified as local officials in order to accurately track your lobbying time and expense.

Issued: 5-22-01



Wil Fluegel, Chair
Campaign Finance and Public Disclosure Board

CITED AUTHORITIES

MINNESOTA STATUTES 10A.01 DEFINITIONS.

Subd. 21. 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:

(1) a public official;

(2) an employee of the state, including an employee of any of the public higher education systems;

(3) an elected local official;

(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;

(5) a party or the party's representative appearing in a proceeding before a state board, commission, or agency of the executive branch unless the board, commission, or agency is taking administrative action;

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

(7) news medium or its employees or agents while engaged in the publishing or broadcasting of news items, editorial comments, or paid advertisements which directly or indirectly urge official action;

(8) a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony; or

(9) a party or the party's representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Subd. 22. 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.

MINNESOTA RULES

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.

4511.0100 DEFINITIONS.

Subp. 4. Lobbyist's disbursements. "Lobbyist's disbursements" include all disbursements for lobbying made by the lobbyist, the lobbyist's employer or employee, or any person or association represented by the lobbyist, but do not include compensation paid to the lobbyist.