

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 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: Lobbying on a contingency fee basis.

ADVISORY OPINION 350

SUMMARY

Lobbyists may not provide services on a contingency fee basis to a client for which they are registered to lobby.

FACTS

As a member of a law firm that represents registered lobbyists you ask the Campaign Finance and Public Disclosure Board (the Board), for an advisory opinion based on the following facts:

1. Potential clients who want assistance in selling goods or services to the state occasionally approach lobbyists for assistance in securing state government contracts.
2. The lobbyists are asked to assist the clients in securing the contracts on a contingency fee basis.
3. The securing of the contract may in some cases necessitate the change, adoption, or repeal of an administrative rule or state statute.

ISSUE ONE

Does Minnesota Statutes Chapter 10A prohibit a lobbyist from accepting compensation dependent in the clients being awarded a state procurement contract to sell goods and services to the state?

OPINION

If the effort to secure the contract will not require legislative action or the amendment, adoption, or repeal of an administrative rule, the services provided to the client do not meet the definition of lobbying provided in Minn. Stat. §10A.01, subd. 21. If an individual is not lobbying, the compensation they receive for their services is not limited by the prohibition on contingent fees contained in Minn. Stat. §10A.06.

ISSUE TWO

In the event that a lobbyist, as part of its representation of the client in the contract procurement process must work to change a law or administrative rule, may the lobbyist lawfully be paid a contingent fee for work dedicated to the procurement process and charge a non-contingent fee for legislative work?

OPINION

No. The selling of goods or services and the effort to influence a legislative or administrative action that allows the awarding of the contract to purchase the goods or services, are mutually dependent on each other for success. A lobbyist cannot build a wall of separation that allows them to think and act on one aspect of securing a state contract without considering the impact the actions will have on their lobbying efforts to influence legislative or administrative action that will make the contract possible.

ISSUE THREE

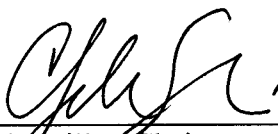
May a lobbyist collect a contingent fee from a client that is successful in the procurement process and charge a non-contingent fee to the same client for unrelated legislative or administrative work?

OPINION

No. Individuals register with the Board as a lobbyist for a given client because they are providing the service of attempting to influence legislative or administrative action. Compensation from a client to a lobbyist is regulated by Minn. Stat. 10A.06, which

prohibits contingent fees. An individual may be compensated in accordance with Minn. Stat. 10A.06 for providing lobbying services to one client, and also provide assistance other than lobbying to a separate client under a different compensation arrangement.

Issued August 27, 2003



Clyde Miller, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes

10A.01 Definitions.

Subd. 2. **Administrative action.** "Administrative action" means an action by any official, board, commission or agency of the executive branch to adopt, amend, or repeal a rule under chapter 14. "Administrative action" does not include the application or administration of an adopted rule, except in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243.

Subd. 21. **Lobbyist.**

(a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources 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) a 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.

(c) An individual who volunteers personal time to work without pay or other consideration on a lobbying campaign, and who does not spend more than the limit in paragraph (a), clause (2), need not register as a lobbyist.

(d) An individual who provides administrative support to a lobbyist and whose salary and administrative expenses attributable to lobbying activities are reported as lobbying expenses by the lobbyist, but who does not communicate or urge others to communicate with public or local officials, need not register as a lobbyist.

10A.06 CONTINGENT FEES PROHIBITED.

No person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislative or administrative action, or of the official action of a metropolitan governmental unit. A person who violates this section is guilty of a gross misdemeanor.