

**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)**

ADVISORY OPINION 458

SUMMARY

Determining if an individual must register as a lobbyist requires an examination of the communication made by the individual, who the communication was made to, if the communication attempts to influence an official action, and the compensation received for making the communication.

Facts

As a representative of a member-based organization (the Organization), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion on lobbying regulations that may impact members of the organization. The request is based on the following facts:

1. The Organization represents the Minnesota business community, and seeks to inform decision makers (and the public) about challenges facing Minnesota, as well as make recommendations to strengthen Minnesota's economy and quality of life.
2. The Organization employs full-time staff and is a lobbyist principal in Minnesota.
3. The Organization's board of directors is comprised of executives from companies who are members of the Organization (Member Companies). Members of the board of directors for the Organization do not receive any compensation from the Organization for board service, but are generally highly-compensated, salaried executives.
4. Some Member Companies retain lobbyists on their own behalf, and are also lobbyist principals separate from the Organization.
5. Representatives from Member Companies, including Organization board members and others, often attend educational events organized by the Organization and join the Organization in speaking out on issues of importance to Minnesota businesses.

The Organization requests the Board's opinion with respect to a series of scenarios involving activities by the Organization, Member Companies and officers of the Member Companies.

INTRODUCTION

The request contains thirteen scenarios that vary in the specifics of communication between an individual, usually the CEO of a company, and public officials, local officials, or government employees. Most of the scenarios then present a series of questions to understand at what point, if any, lobbying occurs, and what registration and reporting requirements may result from the scenario. In developing opinions for the questions asked the Board considered the following statutory provisions which are reviewed here once, rather than for each scenario.

Purpose of the communication – Lobbying occurs when the communication is for the purpose of attempting to influence legislative or administrative action, or the official action of a political subdivision. The communication may be directly with public or local officials, but also may occur indirectly by asking other individuals to contact public or local officials to request an official action.¹ Clearly not all communication with public or local officials is lobbying. The Board has previously concluded that communication for the purpose of issue advocacy alone, without a request for action by a public or local official, will not bring an individual under the definition of a "lobbyist" and will not bring an association under the definition of "principal".² Further, communication that requests information is, by itself, not an attempt to influence an official action, and is therefore not lobbying.³ The Board's opinions rely on the characterization of the communication described in each scenario.

Who are public and local officials – Communication with a government employee for the purpose of supporting a lobbying effort will not require registration as a lobbyist if the government employee is not a public or local official and the government employee is not asked to contact public or local officials to request an official action. The definition of public official is specific, and includes elected state office holders.⁴ The list of local officials is less definitive. Local officials include all individuals who hold an elective position in a political subdivision, but it also includes individuals who are appointed or employed by a political subdivision in a position 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.

Official action – The scenarios provided in the opinion request may result in a request for an "official action of a political subdivision", or a "legislative action" (official action). The Board notes that actions to influence the adoption, repeal, or amendment of administrative rules are lobbying, and that attempting to influence a decision of the Minnesota Public Utilities Commission in cases

¹ Minn. Stat. § 10A.01, subd. 21 (a) 1 (i). See also [Minn. R. 4511.0100, subp. 3](#). The Board intends to replace the term "metropolitan governmental unit" with the term "political subdivision" within its administrative rules in order to reflect changes to various statutes that will take effect on January 1, 2024.

² See [Findings and Order in the Matter of the Complaint of Kurt M. Anderson regarding the Archdiocese of St. Paul and Minneapolis \(Dec. 8, 2011\)](#); [Advisory Opinion 409 \(Aug. 3, 2010\)](#), stating that "Communications that do not urge others to communicate with public officials to influence the action of those officials are not included in the communications that will bring a person into the definition of a lobbyist..."

³ See [Findings and Order in the Matter of the Complaint by Karl Bremer regarding The Conach Group and Mike Campbell \(Aug. 16, 2011\)](#).

⁴ [Minn. Stat. § 10A.01, subd. 35](#).

of rate setting, power plant and powerline siting, and granting of certificates of need may also require registration as a lobbyist. The scenarios in this advisory opinion do not reference administrative lobbying or lobbying the Minnesota Public Utilities Commission.

The definition of official action of a political subdivision is provided in Minnesota Statutes section 10A.01, subdivision 26b:

"Official action of a political subdivision" means any action that requires a vote or approval by one or more elected local officials while acting in their official capacity; or an action by an appointed or employed local official 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.

The definition can be read as having two parts. The first part of the definition applies only to elected local officials. Any matter before an elected public official that requires a vote of members of the governing body of the political subdivision, or any subcommittee of the governing body of the political subdivision, is an official action of the political subdivision. Further, any action that requires "the approval" of the elected local official is an official action of the political subdivision. In the Board's view, routine administrative tasks that are done through the office of a local elected official, and do not require the elected official to personally approve the action, are not official actions. An action that requires the elected public official to personally use their discretion to approve or not approve an action is an official action of the political subdivision.

The second part of the definition applies only to individuals who are local officials because they hold appointed positions or are employed in positions within a political subdivision with the authority to make major decisions regarding expenditures or investments of public money. An action by a nonelected local official that does not relate to a major expenditure or investment of public funds is not an official action of a political subdivision. Therefore, attempting to influence the action of a nonelected local official that does not require a major expenditure or investment of public funds is not lobbying of a political subdivision.

The definition of legislative action is provided in Minnesota Statutes section 10A.01, subdivision 19a:

"Legislative action" means any of the following:

- (1) the development of prospective legislation, including the development of amendment language to prospective legislation;
- (2) the review, modification, adoption, or rejection by a member of the legislature or an employee of the legislature, if applicable, of any (i) bill, (ii) amendment, (iii) resolution, (iv) confirmation considered by the legislature, or (v) report;
- (3) the development of, in conjunction with a constitutional officer, prospective legislation or a request for support or opposition to introduced legislation; and
- (4) the action of the governor in approving or vetoing any act of the legislature or portion of an act of the legislature.

It is important to note that a request for legislative action includes the development of legislation, and may occur without a specific proposal that requires action.⁵ Additionally, the definition is not limited to members of the legislature, and includes requesting that a constitutional office holder develop legislation, or support or oppose introduced legislation.

Compensation – An individual who is not compensated for attempting to influence official actions is not required to register or report as a lobbyist unless the individual spends more than \$3,000 of their own money in a calendar year in support of those attempts (not including the cost of travel expenses or membership dues related to that effort).

An individual who is compensated for attempting to influence official actions is required to register and report as a lobbyist only when the compensation exceeds \$3,000 from all sources in a calendar year. An individual who is compensated by their employer in part for attempting to influence official actions, and in part for other duties, can determine the portion of their salary derived from lobbying activities by multiplying their gross salary by the percentage of their work time spent lobbying.

The scenarios provided in this advisory opinion do not indicate the compensation being paid to the individuals for actions that may be lobbying. The request states that CEOs of Member Corporations are highly compensated for their work, therefore the Board assumes that the individuals in the scenarios will in a relatively short amount of time receive compensation that exceeds \$3,000 for the communication described. However, in some of the scenarios the time needed for the communication described would presumably take only a few minutes to complete, and the Board will not assume that the brief communications described in the scenarios, by themselves, will require registration because of the compensation received by the CEO. The Board will also assume that the compensation received for the actions described in the scenarios is the only compensation received by the individual during the calendar year for lobbying.

Principal Reports – A “principal”, which is an association or individual that is represented by a lobbyist or spends money on lobbying without engaging a lobbyist, is required to file an annual report with the Board that discloses totals of certain categories of disbursements made to support the principal’s lobbying in Minnesota.⁶ The annual report discloses the total of disbursements made by the principal for each type of official action that the principal attempted to influence. The disbursement categories include:

- (1) the portion of all direct payments for compensation and benefits paid by the principal to lobbyists in this state for that type of lobbying;

⁵ See [Settlement Agreement in the Matter of the Complaint of Carol Becker regarding the Minneapolis Bicycle Coalition, DBA Our Streets Minneapolis \(Jan. 5, 2023\)](#). In that matter the Board determined that lobbying activity as defined in Chapter 10A does not require reference to specific legislative or administrative proposals.

⁶ [Minn. Stat. § 10A.04, subd. 6.](#)

- (2) the portion of all expenditures for advertising, mailing, research, consulting, surveys, expert testimony, studies, reports, analysis, compilation and dissemination of information, social media and public relations campaigns, and legal counsel used to support that type of lobbying in this state; and
- (3) a reasonable good faith estimate of the portion of all salaries and administrative overhead expenses attributable to activities of the principal for that type of lobbying in this state.

An expenditure by the principal that does not match one of the listed disbursement categories should not be included in the total lobbying disbursements disclosed on the lobbyist principal annual report.

Issue One

The CEO of a Member Company attends a board meeting of the Organization where she receives an update from Organization staff about current legislative proposals. The CEO provides feedback on how various legislative proposals may impact the Member Company's business operations in Minnesota. This feedback helps the Organization shape future messaging to the Legislature on various issues including, but not limited to, proposals to amend prospective legislation. For purposes of this question, please assume that the board members are urging the Organization staff to communicate the Organization's (and Member Company's) position on legislative proposals to members of the Legislature.

- a. Does the CEO's discussion of legislative proposals at Organization board and/or committee meetings trigger lobbyist registration and reporting of the CEO as a lobbyist?

Opinion: Yes, to the extent the CEO receives pay or other compensation of more than \$3,000 for attempting to influence legislative action. Urging Organization staff to communicate to members of the legislature proposals to amend legislation is lobbying to influence legislative action. However, the CEO is lobbying only in that portion of the meeting where she is urging staff to communicate with legislators. As described the meeting also includes an update on current legislative proposals, and feedback from board members on how the legislation may impact their business operations. Participation in those portions of the meeting is not lobbying. If registration as a lobbyist is required, the CEO would register as a lobbyist representing her Member Company.

- b. If the answer to 1(a) is no, and the CEO's Member Organization is a lobbyist principal, does the value of CEO's attendance at these meetings need to be included in the Organization's calculation of salary and overhead as set forth in 10A.04, subd. 6(c)(3) on the Organization's annual lobbyist principal report?

Opinion: The question refers to the CEO's "Member Organization" and it is not clear whether the requestor is referring to itself (the Organization) or the CEO's employer (Member Company). If the question is referring to the Organization, the answer is no. If the question

is referring to the CEO's Member Company, the cost of her attendance, if required to be reported at all, would be reported by the Member Company.

Issue Two

The CEO of a Member Company attends a legislative breakfast series sponsored by a local law firm. As part of the breakfast series, various members of State Government (Legislators, members of Governors office, etc.) provide perspective on the state of affairs in Minnesota, including current legislative proposals. During the breakfast series, the CEO asks questions about issues that are important to the Member Company and provides feedback on how current legislative proposals will impact the Member Company.

- a. Does the CEO's attendance at the legislative breakfast trigger lobbyist registration and reporting of the CEO as a lobbyist?

Opinion: No. Requesting information on legislative proposals is not lobbying. Providing feedback on how legislative proposals will affect the CEO's company, without more, is not lobbying.

- b. Does the answer to question 2(a) change if the CEO is merely in attendance at the breakfast but does not ask any questions or provide feedback on any proposals?

Opinion: No.

- c. If the answer to question 2(a) is "no" but the Member Company is a lobbyist principal, does the value of the CEO's attendance at the breakfast series need to be included in the Organization's calculation of salary and overhead as set forth in 10A.04, subd. 6(c)(3) on the Organization's annual lobbyist principal report?

Opinion: No. The attendance of the CEO at the breakfast meeting is not lobbying, and the cost of the CEO's attendance does not qualify as a lobbying disbursement.

Issue Three

The CEOs of several Member Companies attend a dinner with the Governor where the discussion includes topics that would be covered by the new definition of "legislative action." The CEOs share their thoughts with the Governor about the impact of these initiatives.

- a. Do the CEOs of the Member Companies trigger registration and reporting requirements if they provide feedback to the Governor about how the "legislative action" would impact their Member Company and encourage the Governor to act one way or another with respect to these proposals?

Opinion: Yes, if compensation for the communication exceeds \$3,000. It is important to focus on the communication that occurs when a CEO asks the Governor “to act one way or another” regarding the legislative proposals. Asking the Governor to veto or approve legislation is lobbying of legislative action, and so is asking any constitutional officer to support or oppose introduced legislation. The CEOs should consider only that portion of the event when the legislative proposals are discussed with the Governor when determining if the compensation earned for the time lobbying requires registration as a lobbyist.

- b. Does the answer to question 3(a) change if the CEO provides feedback on how the legislative action will impact the Member Company but the CEO does not expressly ask or encourage the Governor to act in a particular way?

Opinion: Yes. Providing information on an issue is not lobbying if the CEO does not ask the Governor to take legislative action.

- c. Does the answer to question 3(a) change if the CEOs limit their feedback to how the legislative action would impact the business climate in Minnesota or an industry as a whole (without reference to impact on the Member Company)?

Opinion: Yes. Issue advocacy, for example stating the need to improve the business climate in Minnesota, without asking for official action on the issue, is not a communication that requires registration and reporting as a lobbyist. This opinion does not change even if the CEO does reference the impact of the issue on their company.

- d. If, under any of these scenarios, lobbyist registration is not triggered by the CEO’s attendance at this dinner, but the Member Organization is a lobbyist principal, does the value of the CEO’s attendance at the dinner need to be included in the Organization’s annual lobbyist principal report?

Opinion: No. If the CEO’s attendance at the dinner is not lobbying, then the related costs for attendance does not need to be reported as a lobbyist disbursement in any principal report.

Issue Four

The Organization plans a “Day at the Capitol” to introduce Member Companies to the legislative process. During the event, Member Companies meet with various elected officials.

- a. Is the time spent by Organization staff members planning the event and organizing logistics considered “lobbying” if the staff members do not attend the Day at the Capitol or expressly encourage attendees to communicate with elected officials at the event?

Opinion: No. If the Organization’s staff do not meet or communicate with public officials to ask for legislative action, or urge Member Companies to ask for legislative action, then the staff’s efforts are not lobbying. If the “Day at the Capitol” is intended to support the efforts of lobbyists registered

for the Organization, then the cost of the event and staff time organizing the event are lobbying disbursements that should be reported by the Organization on the annual principal report.

- b. Is attendance at the Day at the Capitol event by Member Company's employees considered lobbying by the Member Company if Member Company representatives share their views on current legislative proposals or strategies?

Opinion: Yes. In this opinion the Board assumes that the Member Company's employees are being paid while at the event, and that when the employees are "sharing their views on current legislative proposals or strategies" the communication will include asking the legislators to support or oppose the legislative proposal or strategy. Whether the employees will need to register as a lobbyist is again determined by the compensation earned while lobbying.

- c. Can a Member Company avoid lobbyist registration if the Member Company representative simply listens to information shared at the Day at the Capitol event but does not offer any feedback or make any comments about proposed legislation?

Opinion: Yes. Simply attending the event is not communication that requires registration as a lobbyist.

Issue Five

The CEO of a Member Company travels with the Governor on a trade mission to a foreign country. While traveling, the CEO shares information with (a) the Governor and staff and (b) foreign business leaders about initiatives in the State of Minnesota. The Member Company CEO provides candid feedback on what legislative initiatives are working and which ones need reform.

- a. Is the trade mission trip considered a lobbying activity by the Member Company CEO?

Opinion: Sharing information on initiatives in Minnesota with foreign business leaders, the Governor, and the Governor's staff, without more, is not lobbying. Identifying legislative initiatives that "need reform", may be lobbying if the intent is to influence the Governor to support legislative action on the ineffective legislative initiatives.

- b. Does the answer to question 5(a) change if the Member Company CEO refrains from discussing any current legislative proposals?

Opinion: No. For the purpose of this opinion the Board assumes that "discussing" legislative proposals does not include asking the Governor to support or oppose the proposals. If that assumption is incorrect, then asking the Governor to support or oppose the legislative proposals is communication that asks for legislative action, which is lobbying.

- c. If the Member Company CEO describes a situation and the Governor says “we should change that” does this discussion constitute efforts to “develop” prospective legislation or is “legislative activity” not triggered until a specific legislative proposal is developed?

Opinion: No. Developing prospective legislation in conjunction with the Governor, or any constitutional officer, requires more than the constitutional officer acknowledging that a problem exists. However, the existence of a specific legislative proposal is not needed before communication with a constitutional officer is a request for legislative action. Communication with the constitutional officer on statutory changes to be included in the prospective legislation, devising strategy to develop support for the prospective legislation, and considering the fiscal impact of the prospective legislation, are examples of communication that are used to develop prospective legislation. Developing prospective legislation with a constitutional officer is lobbying.

Issue Six

A Member Company is contemplating the expansion of operations in Minnesota versus relocating to another state. In connection with this decision, the CEO (and other employees) of the Member Company engage in various conversations with state and local officials.

- a. If the Member Company’s CEO meets with the Governor’s office to discuss options for the Member Company to remain in Minnesota, including potential incentives that would need to be granted by the State of Minnesota, would the CEO’s meeting with the Governor’s staff on this topic be considered lobbying?

Opinion: Yes, to the extent the CEO receives pay or other compensation of more than \$3,000 for attempting to influence legislative action. The Board assumes that at the meeting the CEO will ask the staff to inform the Governor of the legislative actions needed for the company to remain in Minnesota, and ask for the Governor’s support of those actions. Asking the Governor to support legislative action, including making the request through the Governor’s staff, is lobbying.

- b. If the Member Company’s CEO meets with the Commissioner of the Minnesota Department of Employment and Economic Development (DEED) to discuss the availability of specific financial incentives, and the CEO asks the DEED Commissioner to assemble proposed incentives, does the CEO’s action constitute lobbying?

Opinion: No. A commissioner of a state agency is a public official, but requesting information on the proposed incentives, or asking the commissioner to express support for the incentives, is not requesting support for a legislative action. If the CEO also asks the commissioner to urge the Governor or members of the legislature to support the incentives, then the request would be lobbying.

- c. If the Member Company's CEO meets with the mayor of the city where the Member Company's facility is located and discusses the need for local approval of various items in order to incent the Member Company to expand, does this activity constitute lobbying?

Opinion: Yes. The Board assumes that "discusses the need for local approval" includes a request for that local approval. Asking an elected official of a political subdivision for local approval of items needed in order for the company to expand is lobbying for an official action of a political subdivision.

- d. If employees of the Member Company attend a planning commission meeting where a site plan for the Member Company's expansion is being considered, and the employees speak to the planning commission and encourage approval of the site plan, are these employees required to register as lobbyists (assuming they meet the \$3,000 threshold)?

Opinion: Yes. In this scenario the Board assumes that members of the planning commission are either elected officials, or are local officials because they have the authority to make a recommendation regarding the site plan, and that approval of the site plan and expansion incentives will require a major decision regarding expenditures of public money. If the employees are individually compensated over \$3,000 for attending the commission meeting to speak and encourage approval of the site plan, then the employees will need to register as lobbyists because their actions are lobbying of an official decision of a political subdivision.

- e. If the Member Company asks the outside engineering firm that prepared the site plan to attend the planning commission meeting and answer questions (in order to obtain approval of the site plan), does the outside engineer become a lobbyist if he or she is paid \$3,000 or more for these services?

Opinion: No. The outside engineering firm employee is answering technical questions on the site plan, which is not communication urging approval of the site plan. The cost of developing the site plan is a disbursement to support the lobbying effort for approval of an official action of a political subdivision, and should be included as a lobbying disbursement on the annual principal report.

- f. In calculating the \$3,000 threshold, is the proper consideration only time spent in front of decision makers or does the Member Company have to include time spent preparing for the discussion with the local officials (i.e. development of the site plan, pre-meetings with the City's planning staff)?

Opinion: Time spent communicating with public or local officials to influence an official action, or time spent urging others to communicate with public or local officials regarding an official action, is the time used to calculate the \$3,000 threshold for compensation for lobbying.⁷ The

⁷ See [Findings and Order in the Matter of the Complaint by Common Cause Minnesota regarding Dan McGrath and Minnesota Majority](#) (October 12, 2012) An individual whose job duties include both lobbying activities and activities unrelated to lobbying must determine if the compensation they receive for lobbying activities exceeds the \$3,000 threshold for registration.

time used to prepare for discussions with local officials, or the development of the site plan, are lobbying disbursements in support of lobbying, but are not considered when determining if an individual has exceeded the \$3,000 threshold for lobbying compensation.

Issue Seven

Assume the Member Company in question 6 moves forward with an expansion in a Minnesota city.

- a. If the Member Company hires a lawyer (in private practice) to review and negotiate the development agreement proposed by the city in connection with the expansion, and the lawyer is paid more than \$3,000 for this service, is the lawyer required to register as a lobbyist?

Opinion: No. The company lobbied to influence the official action of a political subdivision, namely the decision to approve the site plan and offer a development agreement to support the company's expansion. The fee paid to a lawyer to get the development agreement into the form of a contract is similar to the engineering cost described in question 6(e); a lobbying disbursement in support of the lobbying effort that should be included on the annual principal report.

- b. If the answer to question seven (a) is yes, and the lawyer regularly represents other clients in real estate matters involving other cities, is the lawyer obligated to register on behalf of each and every additional client for which the lawyer provides real estate services (regardless of money spent) so long as the lawyer is currently a lobbyist?

Opinion: The answer to question seven (a) is no. Even if the facts of the scenario are changed, and the lawyer represented the company in a way that required registration as a lobbyist, the lawyer would need to register as a lobbyist for other clients only if "real estate services" required the lawyer to request public or local officials for an official action of a political subdivision.

- c. If the answer to question seven (a) is yes, does every single future client of the lawyer (real estate or other) who spends more than \$500 on the lawyer's services become a lobbyist principal under 10A.01, subd. 33(a) definition of a "lobbyist principal" which includes anyone who "spends more than \$500 in the aggregate in any calendar year to engage a lobbyist" since this is not specific to engaging a lobbyist for purposes of lobbying?

Opinion: The answer to question seven (a) is no.

- d. If the answer to question seven (a) is yes, at what point can the lawyer terminate his / her lobbyist registration? Assuming the registration for the original Member Company is completed upon the execution of the development agreement, is it acceptable for the lawyer to terminate his / her lobbyist registration at that time? How does this impact any additional lobbyist principal registrations that were triggered during the period in which the lawyer met the lobbyist definition?

Opinion: The answer to question seven (a) is no. An individual should terminate a lobbyist registration when the individual is no longer providing lobbyist services to the principal.

Issue Eight

The Organization helps a Member Company plan a tour of their facility for elected officials to help elected officials understand business operations. During the tour, representatives of the Member Company interact with various elected officials.

- a. Does inviting an elected official to a business facility constitute lobbying activity by the Member Company?

Opinion: No. Providing a tour of the company's facility provides information to the elected officials. By itself, the tour is not lobbying.

- b. Is the time spent by Organization staff members planning the tour and organizing logistics considered "lobbying" if the staff members do not attend the tour or expressly encourage attendees to communicate with elected officials at the event?

Opinion: No. The rationale for this opinion is the same as provided in response to question four (a).

- c. Is attendance at the tour by Member Company's employees considered lobbying by the Member Company if Member Company representatives share their views on current legislative proposals or strategies?

Opinion: Yes. The rationale for this opinion is the same as provided in response to question four (b).

Issue Nine

A member of the legislature, directly or through their staff member, contacts a representative of Member Company to present at a legislative hearing.

- a. If the invited representative of a Member Company provides comments on how specific legislation will impact their operations, must the invited representative register as a lobbyist?

Opinion: No. As described the representative of the Member Company is providing information on how legislation will impact the company's operations. If the nature of the testimony changes, and the representative of the Member Company urges legislators to support or oppose the legislation, then the representative will need to calculate the compensation received while providing the testimony in order to determine if they are required to register as a lobbyist.

- b. If the invited representative of a Member Company provides general comments on business climate, must the invited representative register as a lobbyist?

Opinion: No. General comments on a subject that do not include a request for legislators to take an official action is not lobbying.

- c. If the invited representative of a Member Company provides a general presentation on business operations, must the invited representative register as a lobbyist?

Opinion: No. A general presentation on business operations that does not include a request for legislative action is not lobbying.

- d. If the invited representative of a Member Company provides background information on a topic, such as broadband delivery, must the invited representative register as a lobbyist?

Opinion: No. Providing background information on a topic that does not include a request for a legislative action is not lobbying.

- e. If the invited representative of a Member Company provides a statement of support for a broad concept, such as support for early childhood education, or environmental protection, must the invited representative register as a lobbyist?

Opinion: No. A statement of support for a broad concept, without more, is issue advocacy, and not a request for legislative action, and is not a lobbying communication. Testimony in support of a broad concept may become a request for legislative action if the company representative links the broad concept to the legislature's review, modification, adoption, or rejection of any bill, amendment, resolution, confirmation, or report.

Issue Ten

The Organization is developing a sign-on letter to signal support from Member Companies, and the Organization intends to provide the letter to elected officials. The Organization intends to ask CEOs to sign their name to the letter.

- a. If the sign-on letter references specific legislation, must the CEO signatory register as a lobbyist?

Opinion: No. The Board assumes that even a highly compensated CEO is not compensated more than \$3,000 for the time it takes to sign a letter.

- b. If the sign-on letter references a general topic, such as clean energy, must the CEO signatory register as a lobbyist?

Opinion: No, for the same reason provided in response to question ten (a). A letter referencing only a general topic is not lobbying unless the letter also asks for legislative action of the topic.

- c. Must staff of the Organization who draft the letter and seek signatures register as lobbyists?

Opinion: The compensation received by individual staff members for drafting the letter and collecting signatures will need to be calculated. Drafting correspondence that attempts to influence the official actions of elected officials, urging others to sign the letter, and then providing the letter to elected officials, is a communication that requires registration as a lobbyist if an individual is compensated more than \$3,000 for the communication.

Issue Eleven

An elected official contacts a CEO by telephone to ask a question. Contact is initiated by the elected official.

- a. If the elected official references specific legislation, and the CEO engages in conversation about the legislation, does the conversation constitute a lobbying activity that could trigger a requirement for the CEO to register as a lobbyist?

Opinion: No. The question does not provide, and the Board does not assume, that during the conversation the CEO is trying to influence the elected official to support or oppose the legislation. If the CEO uses the conversation to only provide information on how the legislation would impact the CEO's company, or discuss the specifics of the legislation, then the conversation is not lobbying. If during the conversation the CEO tries to influence the elected official to support or oppose the legislation, then the conversation is lobbying that may require registration if the \$3,000 compensation threshold is exceeded. Whether the phone call was initiated by the CEO or the elected official is irrelevant to the analysis provided in this opinion.

- b. If the elected official references a general topic that has the potential to be legislation in the upcoming session, does the conversation constitute a lobbying activity that could trigger a requirement for the CEO to register as a lobbyist?

Opinion: No, assuming that the CEO does not use the elected official's reference to the topic as an opportunity to appeal for the elected official to develop prospective legislation on the topic. If the CEO does use the conversation to develop prospective legislation, then the conversation is an attempt to influence legislative action that may require registration if the compensation threshold is reached.

Issue Twelve

Facilities staff at a Member Company attends a series of public meetings held by the city's public works department which are held to gather public input regarding the re-design of the street adjacent to the Member Company's main entrance. The Member Company's facilities staff expresses concern about the proposed street design and asks the public works employees to consider modifications of the design they plan to recommend to the city council. The Member

Company's CEO discusses the public works' recommended street design with neighboring property owners along the impacted city street and encourages the neighboring property owners to contact their city council members about it. Does this type of communication constitute activity that would trigger lobbyist registration and reporting requirements for the company's facilities staff and/or CEO?

- a. Do the company's facilities staff need to register as lobbyists?

Opinion: No. Asking public work employees to consider changes to a street design at a public meeting held to gather public feedback on the street design is not the same type of communication as urging others to contact elected local officials to influence an official decision of the political subdivision.

- b. Does the company's CEO need to register as a lobbyist?

Opinion: Yes, to the extent the CEO receives pay or other compensation of more than \$3,000 for attempting to influence the official action of the political subdivision. City council members are elected local officials. Urging others to contact elected local officials on an issue is lobbying to influence an official action of a political subdivision.

Issue Thirteen

Does a Member Company executive who lives and works in the same city trigger lobbying registration and reporting requirements if she talks to the Mayor on a regular basis about the need for more effective city action to address an issue of city-wide importance (e.g. crime, trash, graffiti removal, homelessness)?

Opinion: If the executive is asking the Mayor to act on the issue (e.g. increasing city spending on the issue, passing an ordinance to address the problem) then the communication is lobbying of an official action of a political subdivision. If the executive is contacting the Mayor on behalf of the Member Company, then registration as a lobbyist is required if compensation for lobbying exceeds \$3,000. If the executive is contacting the Mayor on her own behalf as a resident of the city, then registration is required if the executive spends more than \$3,000 of her own money on the lobbying effort (not including transportation costs or membership fees).

Issued January 3, 2024



David Asp, Chair
Campaign Finance and Public Disclosure Board