

State of Minnesota
Campaign Finance & Public Disclosure Board
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provided by the requester

Issued to: Eric L. Lipman
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ADVISORY OPINION 470

SUMMARY

Activities that do not require an expenditure of personal funds are not considered when determining if an individual must register as a lobbyist. An individual who is not a lobbyist is not subject to the restrictions of the gift prohibition.

Facts

As a representative for Utility Reform Now! (the association) you ask the Campaign Finance and Public Disclosure Board for an advisory opinion regarding the definition of "lobbyist" as provided in Minnesota Statutes section 10A.01, subdivision 21, and guidance on the application of the gift prohibition in Minnesota Statutes section 10A.071. The request is based on the following facts:

1. Utility Reform Now! is an all-volunteer association of individuals who receive electricity and natural gas service from one of Minnesota's rate-regulated utilities. The association's members oppose the rise in regulatory expenses assessed by the Minnesota Public Utilities Commission (MPUC) under Minnesota Statutes section 216B.62.
2. The association's goal is to raise awareness on this issue, and urge for policy changes that will lead to lower assessments by the MPUC. To accomplish this goal the association hosts a website and social media channels that contain information on the assessment of regulatory expenses. Additionally, the association filed a petition for rulemaking with the MPUC, and will seek intervention as a party in rate-related contested cases that come before the MPUC and the Court of Administrative Hearings. Finally, the association will communicate with public officials about the statutory and regulatory changes needed to lower MPUC assessments.

3. The requestor acknowledges that the expenses of the association will, in part, be used for communications that are an attempt to influence legislative or administrative action by communicating with public and local officials.
4. Utility Reform Now! has no paid staff.
5. The requestor pays the expenses of the association with personal funds. The expenses include printing, postage, web hosting and an email account. The combined cost of these items has so far been below \$3,000. Utility Reform Now! has no other donors, and declines contributions and offers of in-kind assistance from individuals and organizations.
6. The requestor is aware that an individual must register as a lobbyist if they spend more than \$3,000 of their personal funds in a year, not including the individual's own traveling expenses and membership dues, for the purpose of attempting to influence legislative or administrative action, or the official action of a political subdivision, by communicating with public or local officials¹.
7. The requestor wants to ensure that their understanding of the personal costs that should be counted towards the \$3,000 threshold for registration is correct, and asks the Board to provide guidance on specific costs.

Issue One

The association's website contains content in support of the association's goals, which would require an official action by public officials. The association cannot determine if public or local officials visit the website. Is the website a communication with public and local officials that is lobbying to influence an official action, and if so, does the cost of the website count against the \$3,000 threshold for registration as a lobbyist?

Opinion One

No, the website is not a communication with public or local officials because the website is not directed to, or limited to, public or local officials. Therefore, the cost of the website does not count against the \$3,000 lobbyist registration threshold for using personal funds "by communicating with public or local officials".

If the content of the website becomes a call to action for the public to contact public or local officials in order to influence an official decision, commonly known as "grass roots lobbying", the cost of the website still would not count against the \$3,000 registration threshold. In 2024 the legislature changed the definition of lobbyist to exclude money spent to urge others to communicate with public or local officials².

¹ [Minn. Stat. § 10A.01, subd. 21 \(a\) \(2\).](#)

² [2024 Minn. Laws ch. 112, art. 4, § 4.](#)

Issue Two

The association files documents with the MPUC and the Court of Administrative Hearings regarding rate-related dockets and administrative rule making. The filings are drafted by the requestor, who is not paid for creating the documents. In most cases the filings are submitted electronically. Do the filings represent a cost that counts against the \$3,000 lobbyist registration threshold?

Opinion Two

No. While the filings are communications with public officials in an attempt to influence the MPUC on rate setting or administrative action, there is no expenditure of the requestor's personal funds needed to draft the documents or file the documents electronically. Therefore, there is no cost to count against the \$3,000 registration threshold. If the filings must be submitted as a printed document, then the cost to produce and mail the document is a cost that counts towards the \$3,000 registration threshold.

Issue Three

The requestor creates documents used to communicate with public and local officials using a personal computer and Microsoft Office software. Does the requestor need to calculate a cost for generating communications with these products that will count against the \$3,000 lobbyist registration threshold?

Opinion Three

No. The Board's understanding is that the requestor already owned the computer and software used to generate the communications, and no additional expenditure of personal funds occurred. Therefore, there is no cost to be counted against the \$3,000 registration threshold. If an individual uses personal funds to purchase a computer or software specifically for the purpose of lobbying, then those costs would count against the \$3,000 registration threshold.

Issue Four

As part of the association's communication efforts, information on policy issues that the association advocates for are commercially printed on card stock and given to public and local officials. The requestor understands that the cost of producing the policy documents is a cost that counts against the \$3,000 registration threshold. The association is concerned that the documents may be in violation of the gift prohibition in Chapter 10A.

Opinion Four

The gift prohibition only applies if the gift is from a lobbyist, from a lobbyist principal, or given at the request of a lobbyist or a lobbyist principal³. As established in the facts of this opinion the requestor is not a lobbyist, and the association is not a lobbyist principal. Until that changes the gift prohibition does not apply to an item provided to a public or local official by the requestor or the association.

Additionally, the gift prohibition has a number of limited exceptions, among which are two that may apply when providing informational materials to public and local officials. First, is an exception for providing informational materials with a resale value of \$5 or less.⁴ Second, is a broader exception that encompasses “services to assist an official in the performance of official duties” such as providing information.⁵ The Board clarified this second exception through administrative rule⁶, which provides that:

A gift is not prohibited if it consists of informational material given by a lobbyist or principal to assist an official in the performance of official duties and the lobbyist or principal had a significant role in the creation, development, or production of that material.

If at some point the requestor or the association is subject to the provisions of the gift prohibition, then providing informational material on card stock is not a prohibited gift under both exceptions. The association’s policy positions are informational material, which are provided to assist the official in making an informed decision during the performance of their official duties. There is no reason to believe that the association’s informational material will have a resale value of over \$5, even if it is printed on card stock. If the presentation of the informational material changes, and it now has a resale value of over \$5, it still would not be a prohibited gift as long as the requestor had a significant role in its creation.

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David Asp, Chair
Campaign Finance and Public Disclosure Board

³ [Minn. Stat. § 10A.071, subd. 2.](#)

⁴ [Minn. Stat. § 10A.071, subd. 3 \(a\) \(6\).](#)

⁵ [Minn. Stat. § 10A.071, subd. 3 \(a\) \(2\).](#)

⁶ [Minn. R. 4511.0200, subp. 3.](#)