

Minnesota

Campaign Finance and Public Disclosure Board Meeting

Wednesday, February 7, 2024

9:30 A.M.

Blazing Star Room

Centennial Office Building

REGULAR SESSION AGENDA

1. Approval of minutes

A. January 3, 2024

2. Chair's report

A. Meeting schedule

3. Executive director's report

4. Enforcement report

5. Advisory opinion requests

A. Advisory Opinion 461

B. Consideration of request for Advisory Opinion 459

6. Rulemaking update

7. Legal report

8. Other business

EXECUTIVE SESSION

Immediately following regular session

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

.....
**January 3, 2024
Blazing Star Room
Centennial Office Building**
.....

MINUTES

The meeting was called to order by Chair Soule.

Members present: Asp, Flynn, Leppik, Rashid, Soule, Swanson

Others present: Sigurdson, Engelhardt, Johnson, Olson, staff; Hartshorn, counsel

MINUTES (December 13, 2023)

The following motion was made:

Member Leppik's motion: To approve the December 13, 2023, minutes as drafted.

Vote on motion: Unanimously passed. Rashid abstained.

VERBAL REPORT OF THE NOMINATION COMMITTEE

Members Leppik and Soule moved to nominate Member Asp as chair and Member Rashid as vice chair for 2024.

The following motion was made:

Chair Soule's motion: To approve the nominations.

Vote on motion: Unanimously approved.

CHAIR'S REPORT

2024 meeting schedule

The next Board meeting is scheduled for 9:30 a.m. on Wednesday, February 7, 2024.

EXECUTIVE DIRECTOR'S REPORT

1. Mr. Sigurdson requested Board approval of a modification to the Board's budget for fiscal year 2024. Mr. Sigurdson stated that the litigation costs related to the Dept. of Commerce case have reached a total of \$62,000. Of that amount \$50,000 will be used for payments to an expert witness for the state, and \$12,000 in court reporter costs for depositions. Mr. Sigurdson also stated that the Board cannot refuse to pay these costs, and that the costs were not anticipated when the budget was approved by the Board in July of last year. Mr. Sigurdson requested that funding for the litigation costs be taken out of the website and IT budgets.

The following motion was made:

Member Flynn: To approve the budget modification.

Vote on motion: Unanimously approved.

2. Mr. Sigurdson stated that at the 2023 legislative session, all technical and policy recommendations made to the legislature for all three CFB programs were adopted. Mr. Sigurdson stated the Board does not have any outstanding policy recommendations. However, Mr. Sigurdson stated there are some technical problems regarding the reporting of electioneering communications that would be best addressed through a brief bill offered by the Board. Mr. Sigurdson will present the Board with draft language at the February meeting. Lastly, Mr. Sigurdson stated the rulemaking committee may determine that a draft rule deals with an issue that beyond the scope of administrative rules, and is better dealt with by the legislature. If that is the case, the Board may also want to contact the legislature regarding those issues.

ENFORCEMENT REPORT

A. Discussion Items

1. Balance adjustment request—Goggin (Michael) for Senate (#17869)

Ms. Engelhardt explained the Goggin committee wants to terminate; however, in preparing the termination report for 2023, Mr. Goggin discovered a cash balance discrepancy. The candidate spent significant time attempting to resolve the issue but was unable to find the discrepancy. The 2022 ending cash balance according to the 2022 year-end report was \$2,716.17; however, the 2022 ending cash balance according to the 2022 bank statement was \$4,692.10, a difference of \$1,975.93. The Goggin committee is requesting an upward adjustment to \$4,692.10. If approved the Goggin committee will then disperse the remaining funds and file a termination report to close the committee.

The following motion was made:

Member Soule's motion: To approve the requested balance adjustment.

Vote on motion: Unanimously passed.

2. Balance adjustment request—Friends of Mark Bishofsky (#18729)

Ms. Engelhardt stated the 44th Senate District DFL (Old) requested a downward balance adjustment from \$2,791.46 to \$0 at the August Board meeting. The treasurer of the 44th Senate District DFL (Old), Kevin Hanstad, took over as treasurer in 2017 and did not believe that he had the time or skills to work on discovering the issues that caused the balance discrepancy. In August, the Board requested that Board staff review the bank records and report information to see if the source of the issues could be found. Mr. Hanstad provided bank statements to the Board for 2018 to 2022. Ms. Engelhardt stated that their 2022 bank statements show the committee had a \$0 cash balance when it closed in May of 2022. The 2018 beginning bank balance was \$7,129.54, while the 2018 report shows a beginning balance of \$6,885.60, a difference of \$243.94. Mr. Hanstad's installation of the CFR software did not allow him access to 2019 and 2020, so he was not able to provide those records to Board staff. Mr. Hanstad did provide access to 2021 and 2022 CFR records; however, the bank records show that by 2020, the ending bank balance was \$1,329.87 while the reported 2020 ending cash balance was \$4,867.59, a difference of \$3,537.78. Board staff concluded that the balance discrepancies occurred in years that are not accessible via the CFR software, and therefore, Board staff will not have the needed information to conduct an audit. Ms. Engelhardt stated Board staff is requesting that the Board grant a downward adjustment to its reported 2022 ending cash balance, changing the 2022 ending cash balance from \$2,791.46 to \$0 for the party unit to amend its 2022 year-end report to a termination report.

The following motion was made:

Chair Asp's motion: To approve the requested balance adjustment.

Vote on motion: Unanimously passed.

B. Waiver Requests

#	Committee/ Entity	Late Fee/ Civil Penalty	Report Due	Factors	Prior Waivers	Action
1	Douglas Eisenmenger (Martin SWCD)	\$55 LFF	Original EIS	EIS due 10/17/2023 and filed 11/17/2023. Mr. Eisenmenger is a farmer and stated he was not able to file his statement on time because the harvest went late this year. He also had a major surgery on 11/13/2023.	No.	Waived.

The following motion was made:

Member Flynn’s motion: To approve the waiver request.

Vote on motion: Unanimously passed.

C. Informational Items

1. Payment of civil penalty for excess individual contributions

Neighbors for Zaynab Mohamed, \$1,000

2. Payment of late filing fee for September 2023 report of receipts and expenditures

Firefighters Association of Minneapolis Political Fund, \$800
 Minnesota AFL-CIO, \$75

3. Payment of late filing fee for 2023 pre-general report of receipts and expenditures

All of Mpls, \$50

4. Payment of late filing fee for 2022 year-end report of receipts and expenditures

65th Senate District DFL, \$1,000

5. Payment of late filing fee for 2022 annual EIS

Representative Aisha Gomez, \$100

6. Payment of late filing fee for Original EIS

Paul Reese, \$70
Kelly Kirkpatrick, \$70
Benjamin Brutlag, \$5

ADVISORY OPINIONS

A. Advisory Opinion 457

The organization that brought this forward did not make their request and the resulting opinion public data. The opinion request was laid over at the December meeting. The request was made by members of an organization who have previously provided legal representation for clients before political subdivisions. They are concerned that the same representation will now require registration as a lobbyist. They are seeking general guidance on when registration as a lobbyist is required. The request also asks the Board to guide them as to whether twenty-seven specific scenarios create a situation where registration as a lobbyist is required.

After the draft opinion was released to the public before the December Board meeting, staff received suggestions from the public. One expressed concern that three of the responses in the opinion did not adequately consider whether a planning commission or zoning board could be made up of non-elected officials and have final authority to decide issues that do not require a major decision regarding an expenditure of public money. Staff agrees with this concern and has modified opinions 4, 5, and 14 to better reflect the variables that will determine if the described activity in those opinions is lobbying for an official action of a political subdivision. Additionally, changes to the opinion suggested by Members Swanson and Asp at the December meeting have been incorporated into the new drafts.

The following motion was made:

Member Soule's motion: To issue the opinion as drafted, with the typographical changes suggested by Member Swanson.

Vote on motion: Unanimously passed.

B. Advisory Opinion 458

Mr. Sigurdson stated the requestor has not made the opinion request public data. The request includes thirteen general scenarios and forty-one specific questions based on the scenarios. The questions mainly seek to determine the circumstances under which communication between a corporation's CEO and public or local officials would require the CEO to register as a lobbyist. The opinions provided in response to these questions are based on existing statutes and are consistent with Board findings and prior advisory opinions on lobbying. Mr. Sigurdson stated that he believed that the proposed

administrative rules would have a minimal impact on this advisory opinion as the scenarios focus more on legislative action than the official action of a political subdivision.

Chair Asp praised the Board staff for their work on the draft opinion. Member Flynn acknowledged the complexity of the questions, which she attributed to the size of the Minnesota government. Member Swanson asked a question regarding "legislative action" and the statute surrounding it. Additionally, Member Swanson pointed out technical and typographical errors in issues 3, 6, 7, and 8, which were addressed. Ms. Engelhardt asked for clarification on the language to be used, and Mr. Olson offered suggestions. Member Rashid also contributed his suggestions during the discussion.

The following motion was made:

Chair Asp's motion: To issue the opinion as drafted, with the changes suggested by Member Swanson and subsequent discussion of the Board.

Vote on motion: Unanimously passed.

C. Advisory Opinion 460

Mr. Sigurdson stated that Kirk Schneidawind, Executive Director for the Minnesota School Boards Association (MSBA) requested an advisory opinion on December 14, 2023. The request sought clarification on the registration of school district employees as lobbyists in situations where they communicate with public or local officials, to influence official actions. The opinion provides that, Minnesota Statutes section 10A.01, subdivision 21, defines the term "lobbyist" and outlines some exclusions for individuals who are not lobbyists due to their job position. The opinion concludes that school district employees are required to register as lobbyists if they receive over \$3,000 in compensation for lobbying and spend more than 50 hours in any month trying to influence official actions.

After discussion, the following motion was made:

Chair Asp's motion: To issue the opinion as drafted.

Vote on motion: Unanimously passed.

LAYOVER OF OPINIONS 459 AND 461

Mr. Sigurdson gave an update to the Board regarding Opinions 459 and 461. Mr. Sigurdson mentioned that Mr. Olson would do the research for Opinion 459, and that Opinion 461 pertains to lobbying and collective bargaining of a union contract.

Member Swanson expressed his concern regarding the request for Opinion 459. He stated that it seems the requestor is asking the Board to agree or disagree with their statements, and he didn't think that this request was valid enough to warrant an advisory opinion. Member Swanson went through the advisory opinion statute and compared it to the request, concluding that it did not meet the requirements for an advisory opinion. Therefore, he suggested that Board staff consult with Mr. Hartshorn about whether or not this opinion can move forward. Member Soule stated that he agrees with Member Swanson's opinion.

The following motion was made:

Chair Asp's motion: To lay over the opinions until the February meeting.

Vote on motion: Unanimously passed.

Responsive motion: To consult the AG's office regarding the request for Opinion 459.

RULEMAKING UPDATE

Mr. Olson informed the members about the upcoming rulemaking committee meeting and asked the Board if public comments should be taken during the meeting. Member Swanson sought clarification on the draft rules and asked which version was available to the public. Member Swanson also inquired whether a committee with only three members could create rules without meeting with the public. Mr. Hartshorn clarified that the public must be notified of the meeting. Additionally, Member Swanson asked if two public hearings would be held, and Mr. Sigurdson replied that there would most likely be two hearings based on previous rulemaking efforts by the Board. Member Swanson requested a unified draft of the rules, regardless of whether they were deemed controversial or not, and that information on the purpose of the public hearing be provided to the public.

LEGAL REPORT

During the meeting, Mr. Hartshorn announced that the Trace LLC issue had been resolved and that a summons and complaint for the Mariani matter were forthcoming.

EXECUTIVE SESSION

Chair Asp recessed the regular session of the meeting and called to order the executive session.

Chair Asp recessed the executive session of the meeting. There being no other business, the meeting was adjourned by the chair.

Respectfully submitted,



Jeff Sigurdson
Executive Director

Attachments:

Executive director's report
Memo on Advisory Opinion 457
Memo on Advisory Opinion 458
Memo on Advisory Opinion 460
Layover of Advisory Opinions 459 and 461
Rulemaking Update Memo
Legal Report



MINNESOTA

CAMPAIGN FINANCE BOARD

Board Meeting Dates for Calendar Year 2024

Meetings are at **9:30 A.M.** unless otherwise noted.

2024

Wednesday, March 6

Wednesday, April 3

Wednesday, May 1

Wednesday, June 5

Wednesday, July 3

Wednesday, August 7

Wednesday, September 4

Wednesday, October 2

Wednesday, November 6

Wednesday, December 4



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: January 31, 2024

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report – Board Operations

Year-end Reports

All three major program areas; campaign finance, lobbying, and economic interest statements had year-end filing requirements in January. A brief update for each program follows:

Lobbying Program. The lobbyist disbursement report covering the period of June 1 through December 31, 2023, was due on January 16, 2024. Of the 2,547 reports due, 2,507 (98.5%) were filed by the deadline. As of the date of this memo, five reports are still outstanding. The use of the online reporting system remains high with 94% of lobbyist disbursement reports filed electronically.

Campaign Finance Program. The year-end report of receipts and expenditures for 2023 is due on January 31, 2024. Reports are expected from 1,299 candidate committees, political party units, and political committees and funds. This is the first reporting period where Campaign Finance Reporter Online (CFRO) is being used to file reports. The process of migrating committee data from the PC-based reporting software provided by the Board to CFRO has been arduous. Staff has put a lot of effort into producing online videos that explain the migration process, and how to use CFRO. Staff has also spent a lot of time working with individual treasurers who were having a problem with the migration. At the Board meeting, I will have an update on the number of reports filed, and the number still outstanding.

Economic Interest Statement. The annual certification by public officials for 2023 was due on January 29, 2024. Of the 2,609 public officials required to file, 2,432 (93%) were filed by the deadline. There is a grace period for the late filing of an economic interest statement, late fees will not begin until February 13th, and will accumulate at a rate of \$5 a day to a \$100 maximum. A \$1,000 civil penalty may also be imposed after a certified letter is sent.

Training

Staff has offered WebEx-based training sessions on using CFRO to report receipts and expenditures, compliance training for treasurers of political party units and political committees, and compliance training for candidate committees. Training is scheduled on February 8th to review the new compliance and reporting requirements for lobbyists. Remote training is usually well attended. For example, 119 treasurers attended the CFRO training. In addition, the training sessions are recorded and placed on the Board's website for individuals who could not attend the session, or who want to review some portion of the training.



MINNESOTA CAMPAIGN FINANCE BOARD

Date: February 7, 2024

To: Board members
Counsel Hartshorn

From: Megan Engelhardt, Assistant Executive Director
Greta Johnson, Legal/Management Analyst **Telephone:** 651-539-1183

Subject: Enforcement report for consideration at the February 7, 2024, Board meeting

A. Consent Items

1. Lobbyist registration termination of Eric Hyland (#2986)

Eric Hyland, who was a registered lobbyist for seven principals, passed away on August 6, 2023. As of that date, the Board staff provisionally terminated his lobbyist registrations. Mr. Hyland was the designated lobbyist for two principals, one of which has already assigned a new designated lobbyist. Staff is currently waiting to hear from the other principal regarding the registration of a new designated lobbyist. Staff asks for authorization to terminate the registrations for Mr. Hyland.

B. Discussion Items

1. Administrative termination of lobbyists Justin Lewandowski (#4720) and Lee Blons (#5020)

Beacon Interfaith Housing Collaborative (#4750) requests the lobbyist registration of lobbyists Lewandowski and Blons be terminated. Lewandowski left Beacon on June 7, 2023, and Blons left Beacon on August 31, 2023. The principal attempted to contact the lobbyists via phone and e-mail asking them to file termination agreements, without any success. Both of their disbursements have been reported and they are no longer active.

2. Balance adjustment request—Hausman (Alice) Volunteer Committee (#12313)

The Hausman committee would like to terminate; however, in preparing the termination report for 2023, the committee's treasurer discovered a cash balance discrepancy. The current treasurer stepped in on an ad-hoc basis to assist the Hausman committee as the previous treasurer had a family emergency. The bank balance at the end of 2022 was \$899.43 higher than the 2022 ending cash balance from the 2022 year-end report. The current treasurer has attempted to find the error but only has access to records from 2021 to 2023. The cash balance issue existed prior to 2021. The bank account was closed in September 2023 with a \$0 balance. The 2023 year-end report was

filed with a negative \$899.43 balance. The Hausman committee is requesting an upward balance adjustment from negative \$899.43 to \$0 in order to terminate the committee.

3. Balance adjustment request—Friends of MN School Bus Operators Assn (#30639)

The Friends of MN School Bus Operators Assn is requesting a balance adjustment. Their 2023 ending cash balance is \$11,068.54; however, the 12/31/2023 bank statement shows a balance of \$10,864.04. The treasurer worked with Board staff to find the discrepancy but was unable to find it. The Friends of MN School Bus Operators Assn is requesting a downward balance adjustment of \$204.50 for the ending cash balance of 2023.

C. Waiver Requests

#	Committee/ Entity	Late Fee/ Civil Penalty	Report Due	Factors	Prior Waivers	Recommended Action
1	Debra White (Cook County Commissioner)	\$100 LFF \$1,000 CP	Original EIS	Report due 1/30/23 and filed on 10/11/23. Ms. White reported that her email account had been hacked, and she had changed her phone number from the one she initially provided to CFB. Due to the unstable internet connection in her area, email correspondence from CFB was intermittent. Although CFB sent reminders to her home address, she did not receive them because the postal service only delivers to PO Boxes in her locality. Ms. White explained that she is a caregiver to her husband, which made it difficult for her to adjust to her new position.	No.	Waive.

D. Informational Items

1. Payment of civil penalty for 2022 annual EIS

Gertrude Matemba-Mutasa - \$250

2. Return of public subsidy payment

Stephen Lowell for Senate Committee - \$576.25



2610 University Ave West, Suite 100, St. Paul, MN 55114 | p. 651-789-6260

January 17, 2024

Minnesota Campaign Finance Board
658 Cedar St.
St. Paul, MN 55155

Dear MN Campaign Finance Board,

Beacon Interfaith Housing Collaborative (registration #4750) is requesting an administrative termination from the Board for the following lobbyists:

- Justin Lewandowski #4720 terminated on June 7, 2023
- Lee Blons #5020 terminated on August 31, 2023

The lobbyists have terminated from Beacon on the above-mentioned dates and will no longer lobby on our behalf. We have reached out via phone call and email to both individuals with instructions for terminating their own agreements without any success. All their disbursements have been reported and they are no longer active.

Kind regards,

A handwritten signature in black ink, appearing to read "Mindy Mader", with a horizontal line extending to the right.

Mindy Mader
Human Resources Associate

Engelhardt, Megan (CFB)

From: Noelle Bakken <noelle.pierce@gmail.com>
Sent: Monday, January 29, 2024 7:45 PM
To: Engelhardt, Megan (CFB)
Cc: Alice
Subject: Hausman #12313 - Balance adjustment request
Attachments: 12313_Candidate_Registration_Amendment.pdf; Hausman 2023 year end report.pdf; Hausman bank statements 2023.pdf

You don't often get email from noelle.pierce@gmail.com. [Learn why this is important](#)

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Hello,

I am emailing to request a balance adjustment of +\$899.43 to Representative Alice Hausman's campaign finance records. She has been a candidate since 1989, and we are in the process of terminating her campaign. I began assisting Representative Hausman with her financial report filing starting with the 2021 year end report when her previous treasurer, Joseph Stephenson, was dealing with a family emergency. I continued filing Representative Hausman's report for 2022, and now the termination report in 2023. I was helping out on an ad-hoc basis so a committee amendment registration wasn't previously submitted, but I have included a copy with this email.

I've found the campaign finance report balances to be off compared to her bank statements by \$899.43. This discrepancy appears to have been in place since before I began running her reports, and could have accumulated over some time.

Representative Hausman closed her account in September 2023, distributing all remaining funds to non-profit organizations as you will see in the attached report. Note that the account did receive some erroneous deposits during 2023, which the bank refunded. These transactions are accounted for in the report.

Please find the following items attached:

- A candidate registration amendment form
- A PDF copy of the 2023 year end report (since CFRO will not allow me to submit the report with a negative balance)
- A copy of Alice's bank statements from the beginning and end of 2023:
 - Note that the year end 2022 balance is \$899.43 higher than what was reported in Campaign Finance Reporter, and the 2023 year end balance is \$0 after the account closed.

If any other documentation is needed, please don't hesitate to contact me at 507-321-0075.

Thank you,

Noelle Bakken

Engelhardt, Megan (CFB)

From: Friends MSBOA <friendsmsboa@gmail.com>
Sent: Wednesday, January 17, 2024 10:21 AM
To: Engelhardt, Megan (CFB)
Subject: Re: Friends MN School Bus Filing
Attachments: MSBOA PAC 12-31-23.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

You don't often get email from friendsmsboa@gmail.com. [Learn why this is important](#)

Megan,

Thank you. The statement you requested is attached. I have finished and submitted our 2023 report as well.

Scott

On Wed, Jan 17, 2024 at 9:11 AM Engelhardt, Megan (CFB) <megan.engelhardt@state.mn.us> wrote:

Hello Scott,

Melissa forwarded me your email for me to respond. We will have to take your balance adjustment to the Board. We can do that for the February 7, 2024, Board meeting. I will need a copy of the bank statement that shows the bank balance as of December 31, 2023. You will still need to file your 2023 year-end report on time, and then we will amend the 2024 beginning cash balance. If you have questions or concerns, please contact me. Thanks!

Megan

Megan Engelhardt

Assistant Executive Director

Minnesota State Campaign Finance and Public Disclosure Board

190 Centennial Building

658 Cedar Street

St. Paul, MN 55155-1603

651-539-1182

Megan.Engelhardt@state.mn.us



MINNESOTA CAMPAIGN FINANCE BOARD

From: Friends MSBOA <friendsmsboa@gmail.com>
Sent: Tuesday, January 16, 2024 2:15 PM
To: Stevens, Melissa (CFB) <melissa.stevens@state.mn.us>
Subject: Friends MN School Bus Filing

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Melissa,

I have completed and submitted the end-of-year report for the Friends of the MN School Bus Operators Assn campaign committee.

Per our previous phone conversation, our opening balance included in the system, \$8319.05, is higher than what our bank balance was on January 1, 2023 by \$204.50. Our actual opening balance was \$8114.55.

Due to this, our ending balance in our report is \$204.50 higher than our actual December 31, 2023 balance. The report shows an ending balance of \$11,068.54, but our actual ending balance was \$10,864.04.

I have reviewed the past few years CFB reports, and checked them against our bank records, but am unable to identify where the \$204.50 difference originated.

Please advise on what steps are needed to bring our report into compliance, or what information the CFB needs.

If you have any questions, please feel free to contact me at this email address or at 612-590-3464.

Thank you,

Scott McMahon

Treasurer

Friends of the MN School Bus Operators Assoc.

Johnson, Greta (CFB)

From: Debra White <dwhite@boreal.org>
Sent: Friday, December 29, 2023 12:27 PM
To: Johnson, Greta (CFB)
Cc: Debra White
Subject: waiver

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Sent from [Mail](#) for Windows

Sirs:

I am requesting a waiver from the late filing fees and penalties accrued for not submitting the require financial report after my election to the county board of commissioners.

Here in the eastern end of Cook County electrical reliability is not sterling. Intermittent, unplanned power outages and or surges are not uncommon. Interruption in the power supply, especially when the power goes off and on repeatedly 4 or 5 times in ½ hourplays havoc with the electronics (computers, routers, printers, televisions, etc. Information gets lost.

I was unaware of this document until I was notified of the penalty for not submitting said document. After checking with our court house auditor/tax department head, to secure a form (he had no knowledge of it), I contacted the state and got a copy of the form. I filled it out and mailed it to required address. Since I knew I had submitted required form, I moved on to other responsibilities. It was not until months later that I once again was contacted RE non submittal of document and late penalty fees. Once again I filled out the form and sent it along with details of why.

I will once again list the reasons: My initially listed contact email had been hacked and then shut down entirely.

I created a new account the latter part of 2022 – dwhite@boreal.org.

The initially listed phone number had also changed; contact number is now 218-275-9353.

Consequently, if any phone calls came from the state about the forms, I never got them.

And on a more personal level, health concerns. I am the caregiver for my husband. Getting through the snowy 2022 /23 winter (plowing the one mile of driveway into our homestead) and assimilating into my new position required a great deal of time and energy.

Now, one year later, I still have no financial secrets or hidden stashes of money. We own raw land and homestead our home. That is it for assets. Social security is our source of income. I am respectfully requesting a waiver from the accumulated late fees and penalties.

Sincerely,

Debra K White
District One County Commissioner



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: January 31, 2024

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Advisory Opinion 461 – An official action of a political subdivision occurs when elected local officials vote to approve a collective bargaining agreement for a public employee union. Attempting to influence the vote of the elected official is lobbying. Administration of the agreement, including advocating for public employees by agents of the union, is not an official action of a political subdivision, and is therefore not lobbying.

The request for this advisory opinion was received from Education Minnesota, the Minnesota State Building and Construction Trades Council, and Teamsters Joint Council 32 on December 21, 2023. The request was received too late for staff to draft an opinion for the January meeting, and the request was laid over. Representatives for Education Minnesota, the Minnesota State Building and Construction Trades Council, and Teamsters Joint Council 32 signed a release making the request and the resulting opinion public data.

The request provides that unions with public sector members negotiate collective bargaining agreements with political subdivisions. The request states that a collective bargaining agreement provides the terms and conditions under which public employees provide services to the political subdivision. The request points out that Minnesota Statutes section 10A.01, subd. 21 (b)(6), provides that selling goods or services that are to be paid for with public funds is not lobbying.

Based on these facts, the request asks if negotiating a collective bargaining agreement can be viewed as selling a service to a political subdivision, and therefore not lobbying of the political subdivision. For reasons explained in the opinion, the opinion provides that the exception to the definition of “lobbyist” for selling goods and services to a political subdivision cannot be applied to negotiating a collective bargaining agreement.

The request also asks if work by an agent of the public sector union to enforce provisions of the collective bargaining agreement, or representing a union employee before the human resources staff of a political subdivision, is lobbying. As drafted the opinion provides that neither action requires an official action of a political subdivision, and therefore is not lobbying.

Attachments

Advisory Opinion Request
Draft Advisory Opinion 461

December 20, 2023

Mr. Jeff Sigurdson
Executive Director
Minnesota Campaign Finance and Public Disclosure Board
190 Centennial Office Building
485 Cedar Street
St. Paul, MN 55155

Re: New Lobbyist Requirements

Dear Mr. Sigurdson:

We are writing on behalf of a number of unions with public sector members, including Education Minnesota, the Teamsters Joint Council 32 and the Minnesota State Building and Construction Trades Council to request an advisory opinion regarding the application of the new statutory provisions for lobbyists. In particular, we request guidance on the extent to which the definition of “lobbying” extends to negotiations over the value of employee services. We believe that these negotiations may be subject to the reporting exception that pertains to individuals selling goods and services to a unit of government. This question has taken on new importance with the expansion of lobbyist reporting requirements to many additional local units of government, including school districts and municipalities.

We represent several unions whose members work in the public sector. The local unions have been elected to serve as the exclusive representative in negotiations regarding compensation and fringe benefits. Minn. Stat. § 179A.03, subd. 8. Some exclusive representatives employ individuals who work as representatives for the local in its contractual relationship with a public employer. Some local unions receive the assistance of an affiliated labor organization that provides this support, in which case an agent works with the public employer on behalf of the local.

It is often the case that union agents meet with elected officials for a local unit of government. In the case of school districts, the agent’s contact will sometimes be with school board members or with the superintendent. In the case of cities and townships, the agent’s contact may be with members of a city council or town board or supervisors. In some larger school districts and municipalities, an agent’s contact may primarily be with staff in a human resources department.

In representing employees of a local union, an individual may be engaged for compensation exceeding \$3,000 for the purpose of assisting a local union with negotiating and enforcing the provisions of an agreement with a public employer that captures the compensation and working conditions of employees in a particular bargaining unit. Minnesota Statute Section 179A.06, subd. 5 describes the bargaining relationship in this way:

Mr. Jeff Sigurdson

December 20, 2023

Page 2

Public employees, through their certified exclusive representative, have the right and obligation to meet and negotiate in good faith with their employer regarding grievance procedures and the terms and conditions of employment, but this obligation does not compel the exclusive representative to agree to a proposal or require the making of a concession.

“Terms and conditions of employment” includes “the hours of employment, the compensation therefor including fringe benefits except retirement contributions or benefits other than employer payment of, or contributions to, premiums for group insurance coverage of retired employees or severance pay, staffing ratios, and the employer's personnel policies affecting the working conditions of the employees.” Minn. Stat. § 179A.03, subd. 19. In other words, these are the circumstances under which an employee will provide service to a public employer.

Minnesota Statutes Section 10A.01, subd. 21 (b) (6) excludes from the definition of lobbyist an individual “engaged in selling goods or services to be paid for by public funds.” Additionally, The Campaign Finance Board has previously stated that “the exception applies to individuals selling goods and services on their own behalf as well as to employees or independent contractors, such as attorneys, acting on behalf of sellers.” Op. Campaign Fin. & Pub. Disclosure Bd. 304 (October 30, 1998) (Advisory Opinion 304). In that opinion, an attorney served as an agent for clients selling their services, including financial, educational, and consulting, to a public entity.

The unions we represent request responses to the following questions:

1. Does working as an agent helping employees to collectively bargain the compensation for their services fall under the lobbying exception set forth in Minnesota Statutes Section 10A.01, subd. 21?
2. Does working as an agent helping employees to enforce the provisions of a collective bargaining agreement setting forth their compensation for services to a public entity fall under the lobbying exception set forth in Minnesota Statutes Section 10A.01, subd. 21?
3. If the answers to Questions 1 or 2 are no, does advocacy on behalf of public employees to human resources staff for a public entity qualify as attempting to influence official action?

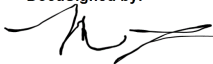
We appreciate your consideration of these questions. If you require additional information in order to better understand our inquiry, please do not hesitate to contact us.

Sincerely,

DocuSigned by:

13FEC2917E9A423...

Tom Dicklich
Minnesota State Building and
Construction Trades Council

DocuSigned by:

894BA2D48C804F5...

Meg Luger-Nikolai
Education Minnesota

DocuSigned by:

8A279A157634436...

Kyle Makarios
Teamsters Join Council 32

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

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information provided by the requester

Issued to: Meg Luger-Nikolai
Education Minnesota
41 Sherburne Avenue
St. Paul, MN 55103

Tom Dicklich
MN State Building & Construction Trades Council
353 W 7th Street
Suite 105
St Paul, MN 55102

Kyle Makarios
Teamsters Joint Council 32
3001 University Ave SE
Suite 510
Minneapolis, MN 55414

RE: Lobbyist Registration and Reporting

ADVISORY OPINION 461

SUMMARY

The vote of an elected local official to adopt a collective bargaining agreement for union employees of a political subdivision is an official action of a political subdivision. Attempting to influence the vote of an elected official on a collective bargaining agreement is lobbying. Actions by union representatives to enforce the provisions of a collective bargaining agreement after it has been adopted, or to represent union employees in discussions with human resource staff, is not lobbying.

FACTS

On behalf of Education Minnesota, the Minnesota State Building and Construction Trades Council, and Teamsters Joint Council 32 you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts which were provided to the Board in a written request.

1. Education Minnesota, the Minnesota State Building and Construction Trades Council, and Teamsters Joint Council 32 represent several unions whose members work in the public sector. The local unions have been elected to serve as the exclusive representative in negotiations regarding compensation and fringe benefits.

2. Some local unions employ individuals who work as representatives for the union in contractual relationships with a public employer. Some local unions receive the assistance of an affiliated labor organization, in which case an agent works with the public employer on behalf of the local union.
3. Union representatives and agents often meet with elected officials for a political subdivision. In the case of school districts, the representatives and agents may contact school board members or the superintendent. In the case of cities and townships, the representatives and agents contact city council members or town board supervisors. In larger school districts and cities, the contact may be primarily with staff in a human resources department.
4. In representing employees of the local union, the representatives and agents may be compensated more than \$3,000 for assisting with negotiating and enforcing the provisions of an agreement on compensation and working conditions with a public employer.
5. You state that Minnesota Statutes section 179A.06 provides the right for public employees to negotiate through their union representative terms and conditions of employment and grievance procedures. You describe the terms of and conditions of employment as the circumstances under which an employee will provide service to a public employer.
6. You note that Minnesota Statutes section 10A.01, subdivision 21 (b) (6) excludes from the definition of lobbyist individuals “engaged in selling goods or services to be paid for by public funds.” You further note that in Advisory Opinion 304¹ the Board provides that “...the exception applies to individuals selling goods and services on their own behalf as well as to employees or independent contractors, such as attorneys, acting on behalf of sellers.”

Issue One

Does working as an agent helping employees to collectively bargain the compensation for their services fall under the lobbying exception for individuals selling goods and services that will be paid for with public funds?

Opinion One

No. The Board understands the negotiation of a labor contract to be a complex process that involves many factors and issues. In the Board’s view a union contract is not the type of transaction that may be reasonably seen as the selling of goods or services to a political subdivision.

¹ [Advisory Opinion 304](#), issued October 30, 1998.

Issue Two

Does working as an agent helping employees to enforce the provisions of a collective bargaining agreement setting forth employees' compensation for services to a political subdivision constitute lobbying?

Opinion Two

No. Lobbying of a political subdivision occurs when an individual attempts to influence an official action of the political subdivision. 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 vote of elected local officials to accept the collective bargaining agreement is an official action of a political subdivision, and attempting to influence the vote of the elected official, including negotiating with the elected official on the content of the collective bargaining agreement, is lobbying.

However, in this question, the vote to accept the collective bargaining agreement has already occurred, and the issue is the application of some provision of that agreement. The administration of the collective bargaining agreement, including discussions to ensure that the terms of the contract are followed, do not require local officials to make an "official action of a political subdivision". Therefore, working with local officials to enforce the provisions of the collective bargaining agreement is not lobbying of the political subdivision.

Issue Three

Does advocacy on behalf of public employees to human resources staff for a public entity qualify as attempting to influence official action of a local official?

Opinion Three

No. Similar to the answer provided for issue two, union representation advocating on behalf of a public employee with human resources staff is not an attempt to influence the official action of a political subdivision, and therefore is not lobbying.

Board Note

If the Board intends to apply principles of law or policy announced in an advisory opinion more broadly than to the individual or association that requested the opinion, then the Board must adopt the principal or policy in an administrative rule.² The Board notes that it is in the process of adopting and modifying administrative rules regarding lobbying, and that the issue of negotiating a collective bargaining agreement with political subdivisions may be addressed in the forthcoming administrative rules.

Issued: February 7, 2024

David Asp, Chair
Campaign Finance and Public Disclosure Board

² Minn. Stat. § 10A.02, subd. 12a.



MINNESOTA CAMPAIGN FINANCE BOARD

Date: January 31, 2024

To: Board members
Nathan Hartshorn, counsel

From: Andrew Olson, Legal/Management Analyst

Telephone: 651-539-1190

Re: Request for advisory opinion 459

In late November the Board received an advisory opinion request regarding the recently amended definition of the term “expressly advocating,” which impacts the scope of which communications are independent expenditures. The Board laid over the request at the December and January Board meetings. During the January Board meeting, there was a discussion about whether the request is valid and whether the Board is required to issue an advisory opinion in response.

Attached is a memorandum from Board counsel, Nathan Hartshorn, addressing four specific questions posed during the discussion during the January Board meeting. Because the requestor has not consented to its identity being revealed, portions of the memorandum from the Board’s legal counsel have been redacted, and the request itself is not being made available to the public. During the Board’s discussion, it is important to not reveal details about the requestor that would allow it to be identified.

Board staff has not yet prepared a draft advisory opinion. If the Board wishes to issue an advisory opinion in response, Board staff asks that the matter be laid over again so that Board staff may prepare a draft advisory opinion in advance of the March Board meeting.

Attachments:

Request for advisory opinion 459

Memorandum from Board counsel, Nathan Hartshorn

Governing Law

Under Minnesota law, the Board “may issue and publish advisory opinions on the requirements of [chapter 10A] . . . based upon real or hypothetical situations.” Minn. Stat. § 10A.02, subd. 12(a) (2022). The Board “must issue written opinions on all such questions submitted to it within 30 days after receipt of written application,” though the Board can, by majority vote, extend this time limit. *Id.*¹

An advisory opinion is generally binding on the Board in a subsequent administrative proceeding involving the requester and can generally be used as a defense in a judicial proceeding involving the subject matter of the opinion. *Id.*, subd. 12(b). These general rules, however, are subject to specific exceptions: most notably, an opinion does not bind the Board if the opinion request “omitted or misstated material facts” or if the person making the request or alleging that they are covered by it has not acted in good faith. *Id.*, subd. 12(b)(2)-(3).

You ask four questions prompted by the advisory opinion request. I will take each one in turn.

1. The Board has discretionary authority to issue advisory opinions.

Your first question is whether the Board is required by law to issue advisory opinions in response to all requests that satisfy the conditions in its statute.

As noted above, the Board’s statute provides that the Board “may issue and publish advisory opinions.” Minn. Stat. § 10A.02, subd. 12(a). In Minnesota statutes, “may” is permissive, while “must” is mandatory. *Id.* § 645.44, subs. 15-15a. As a result, the Board’s authority to issue advisory opinions is discretionary.

A requester could conceivably argue that third sentence of Minn. Stat. § 10A.02, subd. 12(a), which states that the Board “must issue written opinions on all such questions submitted to it within 30 days after receipt of written application,” creates a mandatory duty to issue advisory opinions when they are requested. Minnesota courts, however, read and construe each statute as a whole and interpret each provision within it in light of the surrounding ones to avoid conflicting interpretations. *Pooley v. Pooley*, 979 N.W.2d 867, 877 (Minn. 2022). Moreover, the canons of statutory construction require Minnesota courts to give meaning to every word and phrase in a statute. *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). Under those standards, a court would likely hold that, in light of the use of “may” in the first sentence of subdivision 12(a), the mandatory nature of the “must” in the third sentence applies to the 30-day time limit if the Board chooses to issue an opinion and not to the Board’s general authority to provide advisory opinions upon request. The statute’s use of “such” in the third sentence (“The board must issue written opinions on all *such* questions....”) also supports the inference

¹ The Board voted unanimously to lay the advisory opinion request over, thus extending the 30-day statutory time limit, at both the December and January monthly meetings.

that that sentence is subject to the first sentence of subdivision 12(a) and its use of “may.”²

The Board should be aware that, even if section 10A.02 gives the Board legal authority to decline to issue an advisory opinion, doing so in this or any similar situation involves some level of litigation risk. First, if the Board does not provide a reasonable basis for declining to issue an opinion, a court could conclude that that decision was arbitrary and capricious and therefore unlawful. *See In re Max Schwartzman & Sons*, 670 N.W.2d 746, 752 (Minn. Ct. App. 2003) (holding that decision of administrative agency can be overturned on appeal if it is arbitrary and capricious). More specifically, in the Board’s context, the requester could respond to a Board decision not to issue an advisory opinion by filing a declaratory judgment action in state or federal court, arguing that the ambiguity left by the amended Minn. Stat. § 10A.01, subd. 16a, chills the requester’s First Amendment activity. *Cf., e.g., ACLU v. The Fla. Bar*, 999 F.2d 1486, 1490 (11th Cir. 1993) (holding that judicial candidate’s speech had been chilled after state judicial qualifications commission refused to issue advisory opinion on First Amendment issue), *McCutcheon v. FEC*, 496 F. Supp. 3d 318, 330 (D. D.C. 2020) (adjudicating plaintiffs’ claim that Federal Election Commission’s failure to issue advisory opinion chilled their First Amendment rights).

2. The requester likely satisfies the conditions stated in the advisory opinion statute.

Next, you ask whether the requester in this matter meets the conditions stated in the statute—that is, whether the requester is “a person who is subject to this chapter and who wishes to use the opinion to guide the person’s own conduct.” *See* Minn. Stat. § 10A.02, subd. 12(a); *see also id.* § 10A.01, subd. 26a (defining “person” to include individuals and associations). The requester in this matter fits that definition. You state that the entity that made the request is [REDACTED] and is closely affiliated with [REDACTED].

Under these facts, I believe it is likely that a court would hold that the requester met the requirement that it is subject to chapter 10A and intends to use the opinion to guide its own conduct. The Board should not refuse to provide an advisory opinion on this basis.

² A search into the legislative history of subdivision 12(a) provided no clarification of the legislature’s intent for the purposes of interpreting the “may” in the first sentence and the “must” in the third.

3. Concerns about misstatements of fact or bad faith do not affect the Board's authority to issue an advisory opinion.

You ask whether an omission or misstatement of material facts within the request or the submission of the request in bad faith alter the Board's obligation, if any, to issue an advisory opinion.

As noted above, an entity regulated by the Board may not be allowed to use an advisory opinion to defend itself if the request for that opinion (a) "omitted or misstated material facts" or (b) was not made in good faith. *Id.*, subd. 12(b)(2)-(3). Nothing in the statute, however, suggests that these conditions would alter the Board's authority to issue an advisory opinion.

In light of the fact that, as explained above, the Board's advisory-opinion power is discretionary, it could conceivably cite either (a) omissions or misstatements of fact or (b) bad faith as grounds for refusing to issue an advisory opinion in response to a request. In the current case, however, I am not aware of any basis for the Board to conclude that the request has either of these problems. Indeed, in light of the fact that the current request pertains to hypothetical fact patterns, it is difficult to understand what it would mean for the request to "omit[] or misstate[] material facts."

4. The Board has legal authority to issue an advisory opinion in response to the request.

Finally, you note that the Board "has no authority to issue general advisory opinions to guide the public, and specific advisory opinions must be based upon specific articulated material facts and cannot be applied beyond the requester unless adopted by rule." You ask whether this provides grounds for the Board to refuse to issue an advisory opinion in this matter.

I answer this question in the negative. You are correct that (1) the Board does not have general, open-ended authority to issue advisory opinions and (2) an advisory opinion does not bind the Board in a case that does not involve the requester or does not involve the specific facts identified in the request. Nonetheless, the Board's statute explicitly authorizes the Board to issue advisory opinions "based upon real or hypothetical situations." *Id.*, subd. 12(a). If, in the future, the requester at issue here or another entity attempts to take shelter under the Board's advisory opinion, any differences between the facts of that future case and the hypothetical fact patterns contained in the current request may render the advisory opinion inapplicable to the future case. At present, however, there does not appear to be any problem with the advisory opinion request that would bring it outside of the discretionary authority provided to the Board by subdivision 12(a).



MINNESOTA CAMPAIGN FINANCE BOARD

Date: January 31, 2024

To: Board members
Nathan Hartshorn, counsel

From: Andrew Olson, Legal/Management Analyst **Telephone:** 651-539-1190

Subject: Rulemaking update

The first meeting of the Rulemaking Committee was held on January 29, 2024. Four organizations submitted written comments addressing draft rule language concerning lobbying. Two individuals testified before the committee regarding the draft rule language concerning lobbying. No written comments were received, or testimony made, regarding the draft rule language concerning campaign finance or audits and investigations. Several people attended the meeting in person and several more attended remotely via Webex. Committee members suggested several changes to the draft rule language, which will be incorporated by staff for further discussion at the next meeting of the Rulemaking Committee. The draft rule language considered by the committee, written comments, and video of the committee meeting, are available at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket/committee-meeting-materials/.

The Rulemaking Committee will meet again on Friday, February 9, 2024, at 9:30 a.m. The meeting will be held in the Lady Slipper Room on the ground floor of the Centennial Office Building. The meeting will be open to the public and interested individuals may attend the meeting remotely by Webex. There will be an opportunity for public comment regarding the draft rule language being considered by the committee.

The Board does not need to take any action at this time regarding administrative rulemaking.

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
 FEBUARY 2024
ACTIVE FILES**

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Personally Served	Default Hearing Date	Date Judgment Entered	Case Status
Mariani, Carlos	Neighbors for Mariani	2022 year-end report	\$1,000 LFF \$1,000 CP	11/22/23				
		Late filing of 2018 year-end report	\$525 LFF					
		Late filing of 2020 pre-primary report	\$1,000 LFF \$1,000 CP					
		Late filing of 2018 pre-primary report	\$1,000 LFF \$100 CP					
		2018 pre-general report	\$1,000 LFF \$1,000 CP					
		2020 pre-general 24- hour large contribution notice	\$1,000 LFF					
		2022 annual statement of economic interest	\$1,000 LFF \$100 CP					
		Late filing of 2018 annual statement of economic interest	\$1,000 LFF \$100 CP					
		Late filing of 2018 candidate statement of economic interest	\$95 LFF					