

**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 464**

**SUMMARY**

A communication that does not use words or phrases of express advocacy and does not clearly include an electoral portion, does not contain express advocacy. A communication that clearly identifies a candidate, clearly includes an electoral portion, and could only be interpreted by a reasonable person as encouraging them to vote for a specific candidate contains express advocacy.

**Facts**

As a representative of an organization (the Organization), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion regarding the application of the term “expressly advocating” under Minnesota Statutes section 10A.01, subdivision 16a. The request is based on the following facts:

1. The Organization is a nonpartisan 501(c)(4) grassroots public policy advocacy organization that operates in multiple states, including Minnesota.
2. The Organization seeks to educate the public about legislative and executive branch measures that elected officials are considering, and to mobilize citizens to contact officials to support or oppose those measures.
3. The definition of the term “expressly advocating,” codified at Minnesota Statutes section 10A.01, subdivision 16a, was amended in 2023. The revised definition became effective on August 1, 2023.
4. The language added to Minnesota Statutes section 10A.01, subdivision 16a, in 2023 is nearly identical to the text of paragraph (b) within 11 C.F.R. § 100.22, which contains the definition of “expressly advocating” applicable to entities under the jurisdiction of the Federal Election Commission (FEC).
5. The FEC’s definitions of the terms “expressly advocating” and “clearly identified” were revised in 1995 “to provide further guidance on what types of communications constitute express advocacy of clearly identified candidates, in accordance with the judicial

interpretations found in” five separate judicial opinions.<sup>1</sup> The revised FEC definition of the term “expressly advocating” included elements from three judicial opinions “emphasizing the necessity for communications to be susceptible to no other reasonable interpretation but as encouraging actions to elect or defeat a specific candidate.”<sup>2</sup>

6. In 2007 the United States Supreme Court held that “a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.”<sup>3</sup>
7. During legislative committee hearings regarding H.F. 3, the bill that was enacted in 2023 and amended the definition of “expressly advocating” under Minnesota Statutes section 10A.01, subdivision 16a, the Board’s executive director testified and provided six examples of past communications.

## INTRODUCTION

Prior to being amended in 2023, Minnesota Statutes section 10A.01, subdivision 16a, defined “expressly advocating” as follows:

"Expressly advocating" means that a communication clearly identifies a candidate or a local candidate and uses words or phrases of express advocacy.

Minnesota Statutes section 10A.01, subdivision 16a, presently defines “expressly advocating” as follows:

"Expressly advocating" means that a communication:

(1) clearly identifies a candidate or a local candidate and uses words or phrases of express advocacy; or

(2) when taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates because:

(i) the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

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<sup>1</sup> [Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures](#), 60 Fed. Reg. 35292, 35293 (July 6, 1995) (citing [Buckley v. Valeo](#), 424 U.S. 1 (1976), [FEC v. Massachusetts Citizens for Life, Inc.](#), 479 U.S. 238 (1986), [FEC v. Furgatch](#), 807 F.2d 857 (9th Cir. 1987), [FEC v. National Organization for Women](#), 713 F. Supp. 428, 429 (D.D.C. 1989), and [Faucher v. FEC](#), 743 F. Supp. 64 (D. Me. 1990)).

<sup>2</sup> Id. at 35294 (citing [Buckley v. Valeo](#), 424 U.S. 1 (1976), [FEC v. Massachusetts Citizens for Life, Inc.](#), 479 U.S. 238 (1986), and [FEC v. Furgatch](#), 807 F.2d 857 (9th Cir. 1987)).

<sup>3</sup> [FEC v. Wisconsin Right To Life, Inc.](#), 551 U.S. 449, 451 (2007).

(ii) reasonable minds could not differ as to whether the communication encourages actions to elect or defeat one or more clearly identified candidates or encourages some other kind of action.

Because the language added to Minnesota Statutes section 10A.01, subdivision 16a, is nearly identical to the text of paragraph (b) within 11 C.F.R. § 100.22, which contains the federal definition of “expressly advocating,” the Board will construe the new language in a manner that is consistent with how federal courts have applied the federal definition.<sup>4</sup> Advisory opinions and statements of reasons issued by the FEC regarding the federal definition may be instructive. However, the Board is not bound to follow guidance issued by the FEC in applying Minnesota Statutes chapter 10A.

In 1986 the United States Supreme Court considered, in *Federal Election Commission v. Massachusetts Citizens for Life (MCFL)*, whether a flyer, referred to as a special edition of an organization’s newsletter, contained express advocacy.

The front page of the publication was headlined “EVERYTHING YOU NEED TO KNOW TO VOTE PRO–LIFE,” and readers were admonished that “[n]o pro-life candidate can win in November without your vote in September.” “VOTE PRO–LIFE” was printed in large bold-faced letters on the back page, and a coupon was provided to be clipped and taken to the polls to remind voters of the name of the “pro-life” candidates.

To aid the reader in selecting candidates, the flyer listed the candidates for each state and federal office in every voting district in Massachusetts, and identified each one as either supporting or opposing what MCFL regarded as the correct position on three issues. A “y” indicated that a candidate supported the MCFL view on a particular issue and an “n” indicated that the candidate opposed it.<sup>5</sup>

The Court concluded that:

The Edition cannot be regarded as a mere discussion of public issues that by their nature raise the names of certain politicians. Rather, it provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than “Vote for Smith” does not change its essential nature.<sup>6</sup>

The Court therefore held that the flyer “represents express advocacy of the election of particular candidates distributed to members of the general public.”<sup>7</sup>

The meaning of the phrase “expressly advocating” was reviewed in *Federal Election Commission v. Furgatch* in 1987. The Ninth Circuit Court of Appeals considered whether a

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<sup>4</sup> See [Minn. Stat. § 645.08](#), providing that “technical words and phrases and such others as have acquired a special meaning . . . are construed according to such special meaning. . . .”

<sup>5</sup> [FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 243 \(1986\)](#) (internal citation omitted).

<sup>6</sup> *Id.* at 249.

<sup>7</sup> *Id.* at 250.

newspaper advertisement published a week prior to a presidential election, criticizing President Carter, contained express advocacy.<sup>8</sup> The advertisement accused President Carter of attempting to “buy entire cities, the steel industry, the auto industry, and others with public funds,” and of being divisive in “an attempt to hide his own record, or lack of it.”<sup>9</sup> The advertisement ended by stating:

If he succeeds the country will be burdened with four more years of incoherencies, ineptness and illusion, as he leaves a legacy of low-level campaigning.

DON'T LET HIM DO IT.<sup>10</sup>

The court reversed a district court, concluding that “[w]e have no doubt that the ad asks the public to vote against Carter.”<sup>11</sup> The court rejected the notion that the text “don’t let him do it” and specifically the word “it” could be “read to refer to Carter’s degradation of his office, and his manipulation of the campaign process.”<sup>12</sup> The court concluded that the phrase “don’t let him” is a command.<sup>13</sup> The court held that the advertisement contained “an express call to action, but no express indication of what action is appropriate.”<sup>14</sup> The court determined that a “failure to state with specificity the action required does not remove political speech from the coverage of the Campaign Act when it is clearly the kind of advocacy of the defeat of an identified candidate that Congress intended to regulate.”<sup>15</sup> The court further held that “[r]easonable minds could not dispute that Furgatch’s advertisement urged readers to vote against Jimmy Carter” because that “was the only action open to those who would not ‘let him do it.’”<sup>16</sup>

The opinions in *MCFL* and *Furgatch* were two of a small number of judicial opinions relied upon by the FEC in drafting the text of 11 C.F.R. § 100.22.<sup>17</sup> Since 1995 federal courts have repeatedly held that the FEC and states may, consistent with the First Amendment, regulate speech that is the functional equivalent of express advocacy.<sup>18</sup> Express advocacy is not limited to the magic words listed in footnote 52 of *Buckley v. Valeo*, including “‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ ‘reject.’”<sup>19</sup>

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<sup>8</sup> [FEC v. Furgatch, 807 F.2d 857 \(9th Cir. 1987\)](#).

<sup>9</sup> *Id.* at 858.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 864.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 865.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> [Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35292, 35293-94 \(July 6, 1995\)](#).

<sup>18</sup> See, e.g., [FEC v. Wisconsin Right To Life, Inc., 551 U.S. 449, 456-57 \(2007\)](#); [Citizens United v. FEC, 558 U.S. 310, 324-26 \(2010\)](#).

<sup>19</sup> See *Buckley*, 424 U.S. at 44 n.52.

## Issue One

The Organization may sponsor a television advertisement with the following script:

[Female 1] Governor Walz and the Democrats completely control our state government, and look at what they're doing.

[Male 1] They're building a new luxury office building, for themselves.

[Female 2] A building that will cost taxpayers \$77 million.

[Male 2] And to pay for their new luxury office building, they passed a record-setting tax increase

[Female 3] And our property taxes went up.

[Male 3] Instead of wasting our tax dollars on their new luxury office building, why aren't Governor Walz and Democrats fixing our roads and potholes?

[Female 1] Minnesota, we deserve better.

The Organization asks the Board to assume that the facts stated in the advertisement are true, the visual and audio components of the advertisement will be materially indistinguishable from those used in a 2014 Freedom Club State PAC advertisement that the Board's executive director referenced in testimony to a legislative committee regarding H.F. 3, and Governor Walz will seek re-election in 2026. The advertisement may run statewide in Minnesota:

- (i) in February 2026, when the Legislature may be in session;
- (ii) alternatively, in June 2026, when the Legislature is presumed to be adjourned;
- (iii) alternatively, in August 2026;
- (iv) alternatively, from August 12 through September 3, 2026; and
- (v) alternatively, in October 2026.

Would this communication qualify as express advocacy under the amended definition of "expressly advocating"? If the Board concludes that the answer is yes, would it make a difference if the statement "Minnesota, we deserve better" was replaced with a call to action such as "Call Governor Walz at (651) 201-3400 [the telephone number for the Governor's office] and tell him to spend our tax dollars on fixing roads and potholes instead of luxury office buildings"?

## Opinion One

The Organization's hypothetical television advertisement clearly identifies a candidate. However, the advertisement does not use words or phrases of express advocacy, and it differs from the newspaper advertisement considered in *Furgatch* in at least one critical respect, in that it does not clearly refer to an election. While the advertisement considered in *Furgatch* stated

that President Carter’s success would result in “four more years,” the Organization’s hypothetical advertisement includes spoken words that, at best, make a vague reference to an upcoming election in stating “we deserve better.” The advertisement’s graphics likewise do not include clear electoral elements. Therefore, “the electoral portion of the communication is” not “unmistakable, unambiguous, and suggestive of only one meaning,” and the hypothetical advertisement does not contain express advocacy.

Whether the statement “Minnesota, we deserve better” is a call to action and could reasonably be perceived to encourage action other than action to defeat Governor Walz when coupled with a clear electoral portion may depend on the timing of the advertisement. For example, it may be the case that a reasonable mind could not conclude that an advertisement airing shortly before the 2026 general election, criticizing Governor Walz regarding a construction project that began in 2023 and stating “we deserve better” while referring to the election, when Governor Walz is on the general election ballot, encourages action other than action to defeat Governor Walz in the 2026 general election. However, the Board need not decide that issue due to the advertisement’s lack of a clear electoral portion.

## **Issue Two**

The Organization may sponsor a television advertisement with the following script:

[Narrator] Look across the land, on farms, and in factories, in classrooms, and construction sites. Minnesota is working.

Four years ago, Minnesota faced a \$5 billion deficit.

[On screen text] “state faces \$5 billion deficit” [Citation to news article]

[Narrator] But Governor Tim Walz showed strong leadership. He raised taxes on the wealthiest two percent, so we could invest in our schools and reduce middle-class taxes. Now Minnesota has over 150,000 new jobs and a budget surplus.

[On screen text] “Tim Walz Calls for Tax Overhaul, Higher Rates for Wealthy”  
[Quoting news article headline]

“Gov. Tim Walz  
All-Day Kindergarten”

“Gov. Tim Walz  
Reduced Middle-Class Taxes”

“Gov. Tim Walz  
150,000 New Jobs”

“Gov. Tim Walz  
\$1.2 Billion Surplus”

“Governor Tim Walz  
Working for us”

[Narrator] Governor Tim Walz is working for us.

The Organization asks the Board to assume that the facts stated in the advertisement are true, the visual components of the advertisement will be materially indistinguishable from those used in a 2014 Alliance for a Better Minnesota Action Fund advertisement that the Board’s executive director referenced in testimony to a legislative committee regarding H.F. 3, and Governor Walz will seek re-election in 2026. The advertisement may run statewide in Minnesota:

- (i) in February 2026, when the Legislature may be in session;
- (ii) alternatively, in June 2026, when the Legislature is presumed to be adjourned;
- (iii) alternatively, in August 2026;
- (iv) alternatively, from August 12 through September 3, 2026; and
- (v) alternatively, in October 2026.

Would this communication qualify as express advocacy under the amended definition of “expressly advocating”? If the Board concludes that the answer is yes, would it make a difference if the statement “Governor Tim Walz is working for us” was replaced with a call to action such as “Call Governor Walz at (651) 201-3400 [the telephone number for the Governor’s office] and tell him to keep focusing on the economy, cutting the deficit, and creating new jobs”?

## **Opinion Two**

The Organization’s hypothetical television advertisement clearly identifies a candidate. However, the advertisement does not use words or phrases of express advocacy, and like the advertisement discussed in Opinion One, it does not clearly refer to an election. The Organization’s hypothetical advertisement includes spoken words that, at best, make a vague reference to an upcoming election in stating that Minnesota faced a budget deficit “[f]our years ago.” The advertisement’s graphics likewise do not include clear electoral elements. Therefore, “the electoral portion of the communication is” not “unmistakable, unambiguous, and suggestive of only one meaning,” and the hypothetical advertisement does not contain express advocacy.

Whether the statement “Governor Tim Walz is working for us” could reasonably be perceived to encourage action other than action to elect Governor Walz when coupled with a clear electoral portion may depend on the timing of the advertisement. For example, it may be the case that a reasonable mind could not conclude that an advertisement airing shortly before the 2026 general election, praising Governor Walz for actions taken over a four-year period and stating “Governor Tim Walz is working for us” while referring to the election, when Governor Walz is on the general election ballot, encourages action other than action to elect Governor Walz in the 2026 general election. However, the Board need not decide that issue due to the advertisement’s lack of a clear electoral portion.

### Issue Three

The Organization may sponsor a mailer with the following language:

[Side 1] REP. DAVE LISLEGARD **BETRAYED** YOU!

BY VOTING TO **PROTECT** GOVERNOR TIM WALZ' EMERGENCY POWERS

[Photo of Rep. Lislegard with Gov. Walz in the background]

[Side 2] > Voted with Metro Democrats to protect Walz' Emergency Powers  
**indefinitely**

> Allowing the Governor to **shut down businesses** in the future.

MAKE DAVE LISLEGARD LISTEN. CALL HIM AT 651.296.0170  
rep.dave.lislegard@house.mn.gov

**DEMAND** he keeps his promise & votes **YES** on the End Walz' Emergency Powers Resolution

SIGN THE PETITION AT  
[https://www.action4liberty.com/never\\_again](https://www.action4liberty.com/never_again)

The Organization asks the Board to assume that the facts stated in the mailer are true, the visual components of the mailer will be materially indistinguishable from those used in a 2021 Action 4 Liberty mailer that the Board's executive director referenced in testimony to a legislative committee regarding H.F. 3,<sup>20</sup> and Representative Lislegard will seek election to the office of state representative for House District 7B in 2026. The mailer may be distributed to residents in House District 7B:

- (i) in February 2026, when the Legislature may be in session;
- (ii) alternatively, in June 2026, when the Legislature is presumed to be adjourned;
- (iii) alternatively, in August 2026;
- (iv) alternatively, from August 12 through September 3, 2026; and
- (v) alternatively, in October 2026.

Would this communication qualify as express advocacy under the amended definition of "expressly advocating"?

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<sup>20</sup> Each side of the mailer referenced in testimony regarding H.F. 3 contained a photograph of then-Representative Julie Sandstede. The question states that the mailer would include a photograph of Representative Lislegard with Governor Walz in the background. Therefore, the Board assumes that the photograph of Representative Sandstede would be replaced with a photograph of Representative Lislegard.



### Opinion Three

The Organization's hypothetical mailer clearly identifies a candidate. However, it does not use words or phrases of express advocacy, and it does not clearly refer to an election. Moreover, it does not clearly encourage action to elect or defeat a candidate, and instead encourages two alternative actions, namely contacting Representative Lislegard and signing an online petition. Therefore, the hypothetical mailer does not contain express advocacy.

### Issue Four

The Organization may sponsor a printed voter guide with the following language:

2026 Voter Guide:	Tim Walz & Peggy Flanagan	Jeff Johnson & Donna Bergstrom
Governor		
What are your values and priorities?		
Making healthcare more affordable and accessible by giving every Minnesotan the option to get coverage through MinnesotaCare?	Yes	No
Fixing our roads, bridges and transportation infrastructure?	Yes	No
Combating climate change by investing in local, renewable energy jobs?	Yes	No
Promoting vocational schools and trade programs?	Yes	Yes
Fully and equitably funding our schools and supporting Universal Pre-K for Minnesota kids?	Yes	No

Join your friends & neighbors on Tuesday, November 3rd. Thank you for voting!

The Organization asks the Board to assume that the facts stated in the voter guide are true, the visual components of the mailer will be materially indistinguishable from those used in a 2018 LIUNA Minnesota voter guide that the Board's executive director referenced in testimony to a legislative committee regarding H.F. 3, Walz-Flanagan and Johnson-Bergstrom will be opposing governor-lieutenant governor candidate tickets in the 2026 general election, and the voter guide will be distributed statewide in October 2026.

Would this communication qualify as express advocacy under the amended definition of “expressly advocating”?

#### **Opinion Four**

The Organization’s hypothetical voter guide clearly identifies four candidates. It does not use words or phrases of express advocacy such as “vote for,” “vote against,” “elect,” or “defeat.”<sup>21</sup> However, in calling on readers to join their friends and neighbors on election day and thanking them in advance for voting, “the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning.” The voter guide also clearly encourages readers to vote for the Walz-Flanagan ticket, and clearly does not encourage another kind of action.

The voter guide is structured as a series of questions comprised of incomplete sentences with one-word responses supposedly provided by each slate of candidates. The attribution of the one-word responses to each slate of candidates is made clear by the statement, appearing atop the list of questions, which states “What are your values and priorities?” The Board does not believe that the Organization intends to assert that Jeff Johnson, Donna Bergstrom, or any representative of the Johnson (Jeff) for Governor committee has ever or will ever respond to a question asking whether fixing roads, bridges, and transportation infrastructure is a priority with an unqualified “No.”

While not identical to the flyer considered in *MCFL* that included the exhortation “VOTE PRO-LIFE,”<sup>22</sup> the publication at issue here includes names and pictures of candidates, specifically identifies the office sought by the candidates for governor, identifies the date of the general election, and refers to “voting” at that election. These attributes, combined with the nature of the questions and the false attribution of “responses” within the voter guide, lead to the conclusion that the guide unmistakably and unambiguously is suggestive of one meaning—it encourages voting for the Walz-Flanagan ticket in the election on November 3. Whether the communication includes the phrase “voter guide” is immaterial, because regardless of how the communication is characterized on its face, reasonable minds could not differ as to whether it encourages readers to vote for the Walz-Flanagan ticket. The hypothetical voter guide contains express advocacy.

#### **Board Note**

The Organization’s request is specific in asking whether the hypothetical communications contain express advocacy, which may impact whether the Organization is required to register with the Board, file campaign finance reports with the Board, and include the disclaimer required by Minnesota Statutes section 211B.04, subdivision 2, in preparing and disseminating campaign

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<sup>21</sup> See *Buckley*, 424 U.S. at 44 n.52 (listing these, and other, words and phrases of express advocacy).

<sup>22</sup> See *Massachusetts Citizens for Life, Inc.*, 479 U.S. at 243.

material. The opinions provided therefore do not address whether the Organization may be required to file statements of electioneering communications pursuant to Minnesota Statutes section 10A.202, and include the disclaimer required by Minnesota Statutes section 10A.202, subdivision 4, when making the hypothetical communications.

Issued September 4, 2024



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David Asp, Chair  
Campaign Finance and Public Disclosure Board

**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: Annie Levenson-Falk  
Citizens Utility Board of Minnesota  
Suite W1360  
332 Minnesota St.  
St. Paul, MN 55101

**ADVISORY OPINION 465**

**SUMMARY**

Lobbying occurs when individuals attempt to influence the application of administrative rules by the Minnesota Public Utilities Commission regarding rate setting, power plant and powerline siting, and granting of certificates of need under Minnesota Statutes section 216B.243, or attempt to influence the Minnesota Public Utilities Commission's adoption, amendment, or repeal of administrative rules. Registration as a lobbyist is required if an individual is compensated more than \$3,000 in a year to directly communicate with public or local officials, and the purpose of the communication is to influence an official action by the public or local official.

**Facts**

On behalf of the Citizens Utility Board of Minnesota, CenterPoint Energy, Community Power, the Environmental Law & Policy Center, Fresh Energy, the Institute for Local Self-Reliance, the Minnesota Center for Environmental Advocacy, the Minnesota Energy Resources Corporation, Minnesota Interfaith Power & Light, Minnesota Power (ALLETE, Inc.), and the Minnesota Solar Energy Industries Association (organizations), you request an advisory opinion from the Campaign Finance and Public Disclosure Board. The request is based on the following facts:

1. The organizations participate in regulatory proceedings before the Minnesota Public Utilities Commission (PUC).
2. All but one of the organizations are represented by lobbyists registered with the Board, and report to the Board as lobbyist principals.<sup>1</sup>
3. The organizations are aware that the definition of "lobbyist" provided in Chapter 10A requires, in part, that an individual register as a lobbyist if the individual is compensated

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<sup>1</sup> See [Minn. Stat. § 10A.01, subd. 33](#).

more than \$3,000 in a year from all sources for the purpose of influencing the official action of a public official.<sup>2</sup>

4. The organizations are aware that lobbying to influence “administrative action”<sup>3</sup> generally does not include the application or administration of an adopted rule by a state agency, board, or commission, but does include the application by the PUC of administrative rules that apply to rate setting, power plant and powerline siting, and granting of certificates of need under Minnesota Statutes section 216B.243.

### **Issue One**

Are there any forms of advocacy before the PUC that must be reported as lobbying that are in addition to advocating on rate setting, power plant and powerline siting, and granting of certificates of need under Minnesota Statutes section 216B.243?

### **Opinion One**

Yes. The PUC has promulgated thirty-four chapters of administrative rules under Minnesota Statutes Chapter 14.<sup>4</sup> An attempt to influence the content of rules that the PUC may adopt, amend, or repeal is an attempt to influence “administrative action” and therefore is defined as lobbying. Lobbying on PUC administrative rules begins when the PUC takes the first formal action required by Chapter 14 to begin the rulemaking process.<sup>5</sup>

Lobbying of the PUC regarding administrative rules is reported by the lobbyist as administrative lobbying, and is not included in the disclosure of lobbying the PUC on rate setting, power plant and powerline siting, and granting of certificates of need. The disclosure required includes the name of the agency, board, or commission promulgating administrative rules, the Revisor of Statutes number assigned to the rules (if available when the report is filed), the applicable general lobbying category, and the specific subjects of interest within the rules that were the focus of the lobbying effort.

### **Issue Two**

The request presents four scenarios in which individuals take action related to dockets before the PUC regarding rate setting, power plant and powerline siting, and granting of certificates of need. The request asks if the actions described in the scenarios require the individual to register and report as a lobbyist.

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<sup>2</sup> [Minn. Stat. § 10A.01, subd. 21 \(1\).](#)

<sup>3</sup> [Minn. Stat. § 10A.01, subd. 2.](#)

<sup>4</sup> [revisor.mn.gov/rules/agency/138](http://revisor.mn.gov/rules/agency/138)

<sup>5</sup> [Minn. R. 4511.0800, subp. 1.](#)

In evaluating the scenarios, the Board applies the definition of lobbyist provided in Minnesota Statutes section 10A.01, subdivision 21. Generally, paragraph (1), clause (i) of this subdivision requires an individual to register as a lobbyist if three conditions are met: 1) the individual is compensated more than \$3,000 from all sources in a year; 2) the compensation is for attempting to influence legislative or administrative action, or the official action of a political subdivision; and 3) the attempt to influence was made by directly communicating with a public or local official.<sup>6</sup> In both enforcement actions and advisory opinions the Board has looked for all three factors before concluding that an individual was a lobbyist.<sup>7 8</sup>

- A. An advocate is party to a general rate case before the PUC. The rate case is referred to the Office of Administrative Hearings for a contested case proceeding. The advocate pays an independent contractor more than \$3,000 to prepare expert witness testimony to be filed in the rate case docket. The independent contractor also testifies in an evidentiary hearing before an administrative law judge overseeing the contested case. Do these actions require the independent contractor to register and report lobbying activities to the Board?

**Opinion:** Yes. With one exception expert testimony provided to influence administrative action is considered lobbying. The exception is provided in Minnesota Statutes section 10A.01, subdivision 21, paragraph (b), clause (8), which excludes from the definition of the term lobbyist “a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony”. In this scenario the independent contractor does not qualify for the exception because their testimony was not requested by the administrative law judge conducting the contested case hearing. The expert witness is being compensated more than \$3,000 in a year to provide direct communication with public officials in an attempt to influence an act by the PUC, and therefore will need to register and report as a lobbyist. Termination of a lobbyist registration may occur at any time after the lobbyist is no longer engaged in lobbying.

- B. A utility files a certificate of need application with the PUC.<sup>9</sup> The utility pays an external consultant more than \$3,000 to work on the environmental review section of the certificate of need application. The consultant does not file testimony in the consultant’s name, and does not testify at any evidentiary, public, or PUC hearing about the

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<sup>6</sup> The Board notes in [Laws of 2024, Chapter 112, Article 4, section 4](#), the requirement to register as a lobbyist when urging others to communicate with public or local officials in an attempt to influence official actions was eliminated.

<sup>7</sup> See, e.g., [Advisory Opinion 409 \(Aug. 3, 2010\); Findings and Order in the Matter of the Complaint by Karl Bremer regarding The Conach Group and Mike Campbell \(Aug. 16, 2011\)](#).

<sup>9</sup> For purposes of this opinion, the Board presumes that the certificate of need application in question is submitted pursuant to Minnesota Statutes section 216B.243.

certificate of need. Given this activity, does the consultant need to register and report as a lobbyist?

**Opinion:** No. The consultant was compensated over \$3,000, but did not directly communicate with public officials through written or verbal testimony in an attempt to influence the PUC. In some cases, the name of the consultant that completed the environmental review section may be identified on the document. However, the consultant does not provide expert testimony, written or in person, at any hearing on the certificate of need application. The environmental review is submitted in the name of the utility as support for the utility's lobbying effort to receive a certificate of need. The cost of the environmental review, including the payment to the consultant, must be included in the disbursements made to lobby the PUC reported by the utility on the annual lobbyist principal report.<sup>10</sup>

- C. A utility files a petition for a general rate increase under section 216B.16. The utility pays an internal employee more than \$3,000 (determined by multiplying the employee's hourly salary by the number of hours spent on the filing) to help with drafting the petition. The employee signs the petition as the utility employee responsible for the content of the filing. The employee does not file testimony with the PUC in the employee's name, or testify at any evidentiary, public, or PUC hearing about the rate case. Given this activity does the employee need to register and report as a lobbyist?

**Opinion:** Yes. The employee was compensated more than \$3,000 for working on the application petition needed to bring the rate increase request to the PUC. Unlike scenario B, the employee who is responsible for the petition must be identified to the PUC, and is required under PUC administrative rules to provide the PUC with contact information.<sup>11</sup> If the employee's role in accumulating the statements of facts, expert opinions, substantiating documents, and required exhibits for the petition<sup>12</sup> is just administrative, then the utility may wish to consider if the employee is the appropriate person to be listed as "responsible for the filing" of the petition. By identifying the employee to the PUC, and providing the employee with a stated role in the effort to secure the rate increase, the utility has assigned tasks to the employee that will require registration and reporting as a lobbyist.

- D. A registered lobbyist who, as part of their paid work on behalf of the principal they represent, contributes feedback that will be used to strengthen comments that are filed in a PUC proceeding. The comments filed with the PUC qualify as lobbying. However, neither the lobbyist nor the principal signs the comments filed with the PUC. Must the

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<sup>10</sup> See [Minn. Stat. §10A.04, subd. 6 \(c\) \(2\)](#).

<sup>11</sup> See [Minn. R. 7829.1300, subp. 3](#), providing that a filing must contain "the signature, electronic address, and title of the utility employee responsible for the filing".

<sup>12</sup> See [Minn. Stat. §216B.16, subd. 1](#).

lobbyist and/or the principal track and report their time providing feedback to the comments as a lobbying expense or activity?

**Opinion:** Yes. Unlike the previous three scenarios, the question here is not whether an individual will need to register as a lobbyist. The question is whether the work of the lobbyist is a reportable lobbying activity. The fact that the comments are filed by another entity does not change the purpose of the work done by the lobbyist on behalf of the principal. The lobbyist's review and feedback on comments is done in order to improve the effectiveness of the comments, and through the comments, attempt to lobby the decision of the PUC regarding the proceeding. The principal is compensating the lobbyist for the work done to improve the comments submitted to the PUC. The compensation is a lobbying disbursement that is disclosed to the Board on the annual lobbyist principal report. If the lobbyist is only representing the principal before the PUC, then the total compensation paid to the lobbyist is disclosed on the annual lobbyist principal report as a disbursement to influence the PUC. If the lobbyist also represents the principal by seeking to influence legislative action, lobbying a political subdivision, or lobbying a state agency regarding administrative rules, then the lobbyist will need to monitor their time spent on each type of lobbying. The information from the lobbyist is used by the principal to comply with Minnesota Statutes section 10A.04, subdivision 6, which requires the principal to report "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."

The lobbyist's use of the comments to influence the action of the PUC regarding the proceeding is reported as required by Minnesota Statutes section 10A.04, subdivision 4, paragraph (f), which provides, "A lobbyist must report the Public Utilities Commission project name for each rate setting, power plant and powerline siting, or granting of certification of need before the Public Utilities Commission that the represented entity sought to influence during the reporting period."

Issued November 6, 2024



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David Asp, Chair  
Campaign Finance and Public Disclosure Board



**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: Jake Loesch  
Citizens League  
400 Robert Street N.  
Suite 1820  
St. Paul, MN 55101

**RE: Application of Gift Prohibition to Members of the Legislature**

**ADVISORY OPINION 466**

**SUMMARY**

An association that is not a lobbyist principal may pay travel expenses for a public official provided that a lobbyist or lobbyist principal did not request that the public official receive the travel, and a lobbyist or lobbyist principal did not provide funding for the travel expenses.

**FACTS**

On behalf of the Citizens League (CL), you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts provided to the Board in a written request and discussed in a phone conversation.

1. The CL is a 501(c)(3) organization and a Minnesota nonprofit corporation, and currently receives funding from individuals, foundations, and corporations and organizations that are lobbyist principals in Minnesota. The CL is not currently a lobbyist principal; the organization was last represented by a lobbyist in 2020.
2. The CL wishes to start a new initiative, the Minnesota Legislative Exchange (MLE). The premise of the MLE is to encourage members of the Minnesota State Legislature to build relationships, camaraderie, and collaboration across the political aisle by visiting another member from the opposite party in their district and spending time together outside the State Capitol.
3. The MLE would reach an agreement with a legislator from either the Democratic-Farmer-Labor Party (DFL) or the Republican Party of Minnesota (RPM) to visit a legislator of the opposing party in their legislative district. At some point there would be a reciprocal trip where the visiting legislator would host the other legislator in their district.

4. The CL would design the itinerary for the visit in communication with the host district legislator. The CL would arrange and manage all the travel logistics, and set up the meetings, tours and activities. Trips would likely last from twelve to thirty-six hours depending on the size of the district and the travel time required.
5. The CL would pay for the travel costs of the visiting legislator; including air fare, car rental or reimbursement for mileage if a personal vehicle is used, the cost of meals, and lodging if an overnight stay is required. The host legislator would be asked to use their own funds for costs incurred during the visit.
6. The CL would also pay the travel costs of the spouse or significant other of the visiting legislator, or a senior staff member to accompany the visiting legislator.
7. The trip itineraries would be designed to be entirely educational and substantive, focused on creating conversations that build bipartisan relationships and explore public policy solutions.
8. After the trips, the intention is that the two legislators would identify policy issues that they could work on together. The CL would support and encourage that work by building connections to policy experts on the issues at Minnesota-based organizations.
9. There would be no political campaigning on the trips.
10. The CL does not intend for the trips to be an opportunity for lobbying. However, it is possible that registered lobbyist(s) may be present for some part of the itinerary, for example if the itinerary included a stop at a company or organization that is represented by lobbyists. In those instances, the CL will cover the costs of any meals that might accompany the meeting.
11. The CL is aware that lobbyists and principals are prohibited from giving gifts to public officials, as provided in Minnesota Statutes section 10A.071. The CL wishes to ensure that the MLE program will not violate this provision, or any other provision in Chapter 10A that may apply to the activities on the MLE.

### **Issue One**

May the CL use its general operations funding, which includes unrestricted contributions from lobbyist principals, to support the MLE?

### **Opinion One**

No. The MLE program will be a major initiative for the CL. CL donors, including lobbyist principals, will certainly be aware of the program and know that their contributions are, in part, funding a program that provides gifts of travel and lodging to legislators. Minnesota Rules Part 4512.0300 provides that a gift is given by the association paying for the gift. Donations from lobbyist principals that are, in part, used to fund the program, in combination with the lobbyist principal's knowledge that the donation may be used for gifts to public officials, results in lobbyist principals paying for the gift within the meaning of this rule.<sup>1</sup>

To avoid using contributions from lobbyists and lobbyist principals to fund the MLE program, the CL could set up a separate segregated account from the general operating fund of the CL. The separate segregated account, which is basically a separate bank account, would only contain contributions from individuals who are not lobbyists and associations that are not lobbyist principals.

### **Issue Two**

If a company that is a lobbyist principal were interested in supporting the MLE program, could the lobbyist principal provide funding to CL through their charitable foundation?

### **Opinion Two**

No. The lobbyist principal is making the decision to contribute to the MLE program. Directing a charitable foundation affiliated with the lobbyist principal to make the contribution, or routing the contribution through another association, does not separate the decision to make the contribution from the lobbyist principal.

A charitable foundation may make a contribution to support the MLE program as long as the charitable foundation is not itself a lobbyist principal, and the foundation was not directed to make the contribution by a lobbyist or a lobbyist principal.

### **Issue Three**

Are there other provisions in Chapter 10A that the CL should consider when operating the MLE program?

### **Opinion Three**

If operated as described the MLE program is not lobbying, does not create reportable gifts from a lobbyist or principal to a public official, and is not a campaign contribution to the legislators that participate in the program. Therefore, the CL will not need to register and report the activities of the MLE program to the Board.

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<sup>1</sup> The Board reached a similar conclusion in [Advisory Opinion 277](#).

The Board understands that the CL will promote the MLE program, that the CL may have photographs taken of legislators participating in the MLE program, and that the photographs may be provided to the legislators. If the legislator uses the photographs in material prepared by their principal campaign committee, then the photographs are an in-kind contribution to that candidate's committee. Nonprofit corporations are generally prohibited from contributing to candidates,<sup>2</sup> and even if the contribution is allowed it could lead to a situation where the CL would need to register and report to the Board as a political fund<sup>3</sup>. To avoid that outcome the CL could either reach an agreement with the legislators that the photographs will not be used by their principal campaign committee, or have the legislator's principal campaign committee purchase the photographs from the CL at their fair market value so that the photographs are not a contribution.

Issued: February 13, 2025

  
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Faris Rashid, Chair  
Campaign Finance and Public Disclosure Board

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<sup>2</sup> [Minnesota Statutes section 211B.15, subdivision 15](#), provides an exception to the general prohibition on corporate contributions for nonprofit corporations if they meet certain qualifications.

<sup>3</sup> [Minnesota Statutes section 10A.27, subdivision 13](#), requires a disclosure statement from an unregistered association that makes a contribution in excess of \$200, and registration as a political committee or fund if an association contributes in excess of \$200 to more than three principal campaign committees within a calendar year.

**State of Minnesota**  
**Campaign Finance and 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 467**

**SUMMARY**

A legislator may use principal campaign committee funds to pay for housing if the costs were incurred because of legislative service and funds from the legislature are not available to pay for those costs.

**FACTS**

On behalf of a registered political party unit and members of the legislature, you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts as stated in the request.

1. The House of Representatives has not yet approved the housing allowance for the 94<sup>th</sup> Legislature.
2. Members of the House of Representatives are currently living in St. Paul preparing for the legislative session. The cost of securing housing that is not currently being reimbursed is creating a financial hardship for some legislators
3. You are aware that the Board has previously determined that legislators may not use principal campaign funds to supplement the housing allowance provided by the legislature.

With this background in mind, you ask the following question.

**Issue One**

May legislators use principal campaign committee funds to pay for housing expenses until the House of Representatives is able to approve the housing allowance for the session?

**Opinion One**

Yes. As provided in Minnesota Statutes section 10A.173, subdivision 4, some expenses incurred by a legislator for serving in public office may be paid for with principal campaign committee funds. Among the listed expenses are:

(1) the cost of transportation, lodging, meals, and other expenses necessary to attend meetings and conferences when the reason that the candidate attends the event is to assist the candidate in performing the duties of the office held and the candidate would not attend the event if the candidate were not an office holder;

The House of Representatives was scheduled to meet on January 14, 2025. Elected representatives with both political parties came to St. Paul presuming that would occur and to prepare for the session. The delay in the House of Representatives beginning to meet has not prevented legislators from participating in meetings, drafting legislation, and performing duties for the office they hold. Legislators would not have secured housing in St. Paul if not for the office they hold and the assumption that the House of Representatives would meet as scheduled.

The Board concludes that the housing costs described in the facts of this opinion are an expense for serving in public office as provided by Minnesota Statutes section 10A.173. Therefore, legislators may use principal campaign committee funds to temporarily pay housing costs until the housing allowance is established. If the legislature makes the housing allowance retroactive to January 14, or an earlier date, then the principal campaign committee must be reimbursed for any housing costs it paid that are ultimately paid for by the legislature.

Issued: February 13, 2025

  
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Faris Rashid, Chair  
Campaign Finance and Public Disclosure Board