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MINNESOTA STATE ETHICAL PRACTICES BOARD
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SAINT PAUL, MINNESOTA 55155
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ADVISORY OPINIONS

SEPTEMBER 8, 1976 — JUNE 30, 1977

NUMBERS 31-34



JULY 1, 1977

ADVISORY OPINIONS

SEPTEMBER 8, 1976 — JUNE 30, 1977

NUMBERS 31-34

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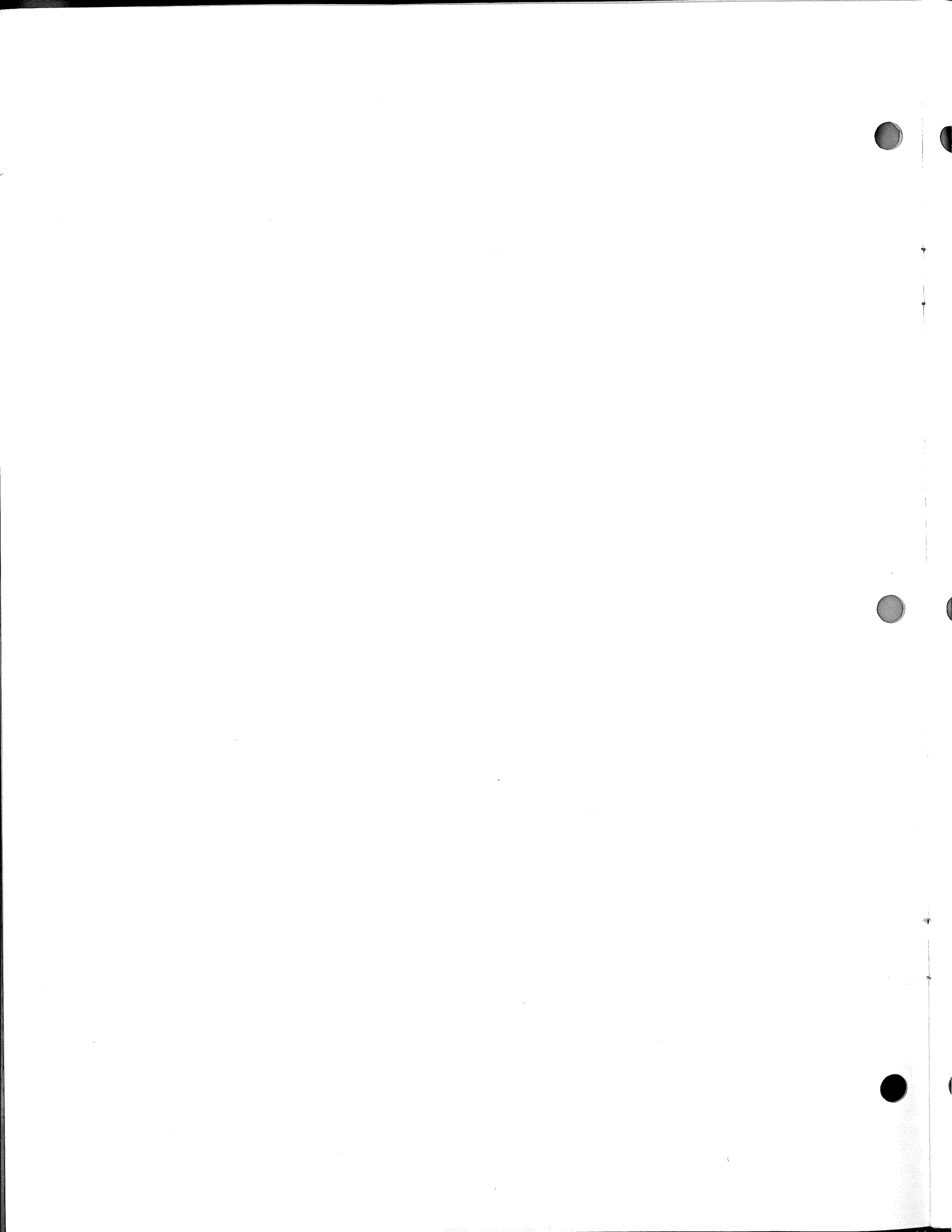
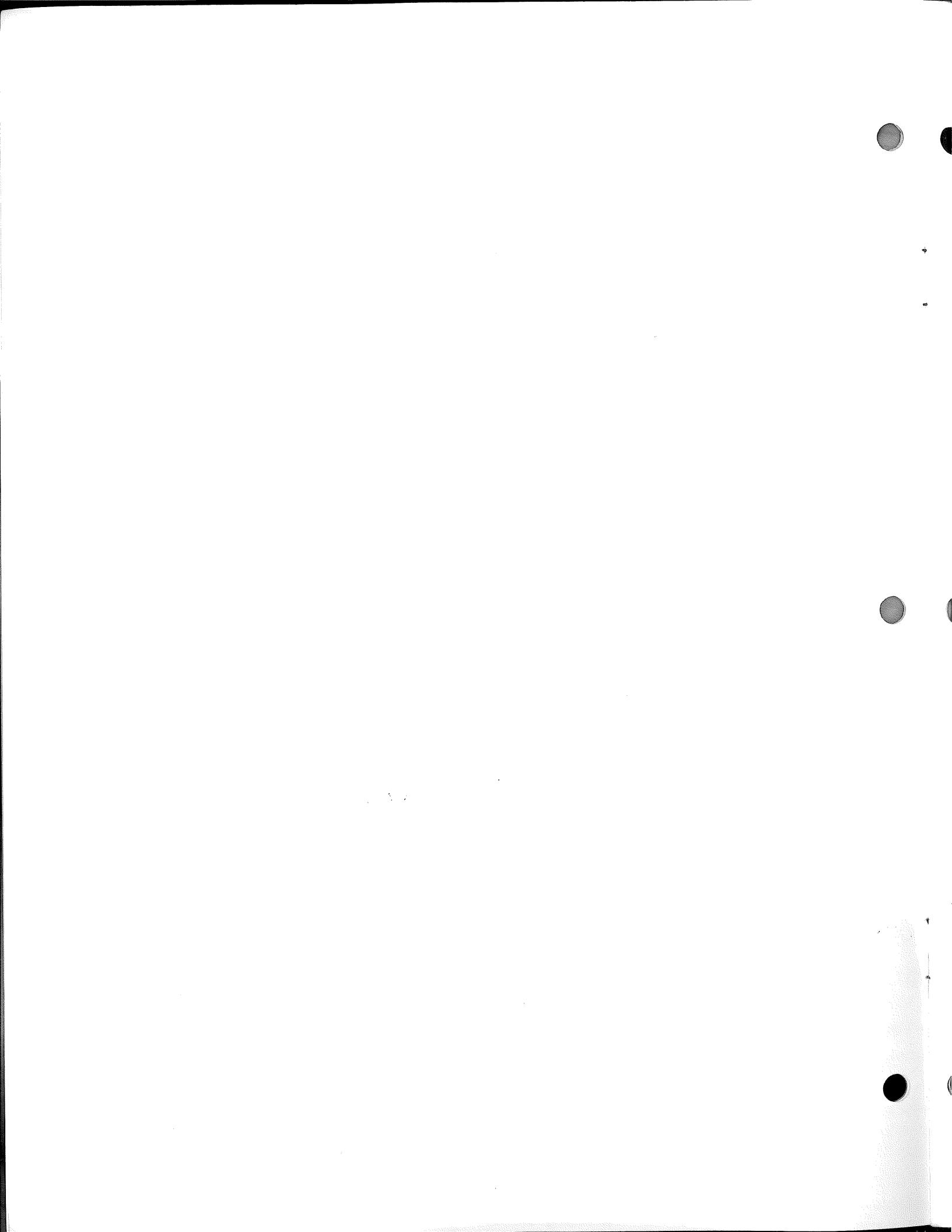


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MINNESOTA ETHICAL PRACTICES BOARD

ADVISORY OPINION NO. 31

October 20, 1976

Issued to:

B. Allen Clutter
 Executive Director
 Minnesota Ethical Practices Board
 41 State Office Building
 St. Paul, Minnesota 55155

Syllabus

31. Fundraisers

The costs of fundraisers held by political party committees for several candidates are considered to be on behalf of and charged against the expenditure limits of the candidates if the fundraisers are authorized by the candidates, and the candidates are specifically referred to in advance publicity, and if the candidates receive proceeds; if any.

The costs of a fundraiser held for a single candidate are charged against the expenditure limit of the candidate if authorized by the candidate and if the candidate receives proceeds; if any.

TEXT

You have requested an advisory opinion from the Ethical Practices Board based upon the following:

FACTS

As Executive Director of the Minnesota State Ethical Practices Board you seek to advise individuals, funds and committees concerning fundraisers; and, therefore, you ask the following:

QUESTION

When are expenditures incurred in connection with fundraisers incurred "on behalf of" candidates so as to make such expenditures allocable against the expenditure limit of those candidates?

OPINION

A. A fundraiser held by the state or local committee of a political party for more than one candidate will be considered as "on behalf of" candidates and charged against the expenditure limit of candidates under the following conditions:

1. The fundraiser is expressly or implicitly authorized by the candidate or his treasurer to be held "on behalf of" the candidate;¹ and

1. Minn. Stat. 10A.17, Subd. 2 (1974) requires prior written authorization from the treasurers of the candidate's principal campaign committees. Prior written authorization is express authorization. Whether a fundraiser is implicitly authorized by a candidate is a factual determination to be made on a case by case basis.

2. The candidate is "specifically referred to"² in advertisements, tickets, or any advance publicity for the fundraiser; and
3. The candidate receives proceeds, if any, from the fundraiser.

B. A fundraiser held by a political party committee for only one candidate, or a fundraiser held by an individual, fund or committee other than a political party committee or the principal campaign committee of the candidate for candidates will be considered as "on behalf of" and charged against the expenditure limit of candidates if conditions 1 and 3 listed above are satisfied.

Condition 2 listed above only applies to fundraisers held by political party committees for more than one candidate.

The pertinent statutory authority is as follows:

- a. M.S. 10A.17, Subd. 2 (1974) provides that expenditures of more than \$20.00 made on behalf of a candidate by any person or persons other than the candidate and treasurer of the candidate's principal campaign committee shall be counted against the expenditure limitations of the candidate if such expenditures are made with the express or implied consent of the candidate or his agent, or under the control, direct or indirect, of a candidate or his agent;
(emphasis added)
- b. Minnesota Laws 1076, c. 307, s. 24 (to be codified as 10A.27, Subd. 3), provides in pertinent part that expenditures by the state or local committee of any political party on behalf of candidates of that party generally without referring to any of them specifically in any advertisement published, posted or broadcast shall not be allocated to any candidate.
(emphasis added)

Approved by Minnesota State Ethical Practices Board on October 19, 1976.

2. "Specifically referred to" means that (1) the name of the candidate is used; (2) a photograph or drawing of the candidate appears; or (3) the identity of the candidate is apparent by unambiguous reference.

MINNESOTA ETHICAL PRACTICES BOARD

ADVISORY OPINION NO. 32

January 5, 1977

Issued to:

B. Allen Clutter
Executive Director
Minnesota Ethical Practices Board
41 State Office Building
St. Paul, Minnesota 55155

Syllabus

32. Lobbyists

Clarifies registration and reporting requirements for lobbyists under the 1976 Amendments to Minn. Stat. 10A, Ethics in Government Act.

TEXT

You have requested an advisory opinion from the Ethical Practices Board based upon the following:

FACTS

As Executive Director of the Minnesota Ethical Practices Board, you are called upon to advise individuals and associations of their responsibilities and duties under Minn. Stat. 10A as amended in 1976 regarding lobbying in the following situations:

1. QUESTION

Should time spent attending hearings but not testifying or communicating with public officials be included as time spent lobbying?

OPINION

No. Time spent attending hearings but not testifying or communicating with public officials is not included in determining time spent lobbying since no communication with public officials has occurred.

2. QUESTION

Should time spent in research and writing subsequent reports from which material is used in lobbying be included as time lobbying?

OPINION

No. In Advisory Opinion No. 13, the cost of research and writing subsequent reports is specifically excluded from being reported as a lobbying expense; and, therefore, it follows that time so spent is not to be included as time

lobbying. However, the cost of writing and preparing lobbying materials* using such research data is reportable as a lobbying expense.

*Lobbying materials are those materials which:

- (a) are prepared by or on behalf of a lobbyist's employer; and
- (b) advocate a position to be taken by a public official; and
- (c) are communicated either to a public official or to others urging them to communicate a position to a public official.

3. QUESTION

If an association spends in excess of \$250 in a calendar year in the production of materials advocating a position, and these materials are sent to persons urging them to communicate the position advocated to public officials, must an individual be required to register and report as a lobbyist for that association?

OPINION

Yes. If a person or association spends in excess of \$250 in a calendar year to influence legislative or administrative action, an individual must have been authorized to spend in excess of \$250; and, therefore, an individual from that association must register as a lobbyist to report the lobbying expenses incurred even if the individual is not paid as a lobbyist.

4. QUESTION

Should "urging others to communicate" with public officials for the purpose of influencing legislative or administrative actions be included as lobbying?

OPINION

"Urging others to communicate" with public officials is only included as lobbying, if such urging is related to advocacy of a position.

Situations where individuals are merely encouraged to express their own opinions and not urged to support the particular position advocated by the lobbyist are not included as lobbying.

FACTS

An individual is the sole proprietor of an unincorporated business.

5. QUESTION

Must that individual register as a lobbyist if the individual attempts to influence actions or decisions of a public official regarding a matter of interest to the business of the individual by communicating with or by urging others to communicate with a public official?

OPINION

No. An individual who is the sole owner of an unincorporated business does not have to register and report as a lobbyist unless he spends more than \$250, not including membership dues or travel expense, to influence the actions or decisions of a public official regarding a matter of interest to the business.

6. SOLE SHAREHOLDER

FACTS

An individual is the sole shareholder of an incorporated business and an employee of that business.

QUESTION

Must that individual register as a lobbyist if he spends more than \$250 in a calendar year or more than five hours in any month seeking to influence legislative or administrative action of a public official on behalf of a matter of interest to the corporation?

OPINION

Yes. Such an individual must register and report as a lobbyist, with the exception of a stockholder of a family farm corporation, who must register only if spending in excess of \$250 in a calendar year in communicating with or urging others to communicate with public officials.

7. EMPLOYEES OF STATE AGENCIES

FACTS

An agency of the state or a political subdivision retains an individual to represent that agency for lobbying purposes; and you ask:

QUESTION

Must that individual register and report as a lobbyist if otherwise fulfilling the time or monetary requirements of a lobbyist?

OPINION

Yes. An individual not otherwise a regular employee of a state agency or political subdivision retained to represent that agency for lobbying purposes is not regarded as an employee of that agency or subdivision and must register and report as a lobbyist. Any individual who represents a non-governmental association of public officials, public employees or governmental units must register and report as a lobbyist if otherwise qualified as a lobbyist.

8. FUNDRAISER TICKETS

FACTS

A campaign contribution in the form of a ticket to a fundraiser of a candidate is made by an individual who is a lobbyist from personal funds; and you ask:

QUESTION

Is the campaign contribution reportable as a lobbying disbursement?

OPINION

No. The contribution is not a lobbying expense but is a political contribution by the lobbyist of the political committee or fund.

However, if the association is repaying a lobbyist for such a contribution, the lobbyist must designate the source of the contribution to the candidate.

Note: Minn. Stat. 211.27 prohibits political contributions by corporations. (A lobbyist receiving reimbursement from a corporation may fall under this prohibition.)

9. EXPERT WITNESS

FACTS

A lobbyist pays a fee to an expert witness and arranges for that witness to appear before a legislative committee or administrative body to testify on some matter; and you ask:

QUESTIONS

1. Must the expert witness register and report as a lobbyist?
2. Are the expenses paid to bring the expert witness to testify reportable as an expense by the lobbyist?
3. Is the fee paid to the expert witness reportable as an expense by the lobbyist?

OPINION

1. Yes. An expert witness who is paid for his services must register and report as a lobbyist provided that he spends over five hours in any month or in excess of \$250 in a calendar year lobbying unless the legislative body itself requests his appearance and pays him a fee.

However, a paid expert witness who testified in a proceeding before an administrative agency is not required to register and report as lobbyist if the testimony of the witness is requested either by that agency or by a party to the proceeding.

2. Yes. If paid by the lobbyist, expenses incurred by an expert witness must be reported by the lobbyist as lobbying expense.
3. Yes. Any fee paid to a consultant by a lobbyist, or the employer of a lobbyist, related to lobbying purposes must be reported as expenses by the lobbyist.

10. FAMILY MEMBERS OF A PUBLIC OFFICIAL

FACTS

A public official and the spouse of the official are entertained by a lobbyist and the total expense for entertaining those two individuals was \$25.00. The portion allocable to the public official, however, is less than \$20.00; and you ask:

QUESTION

Must the name and address of the public official receiving the gift, honorarium or item of benefit; the date, nature and amount of the transaction be disclosed in the lobbyist disbursement report?

OPINION

Disclosure is required only when \$20.00 or more was given or paid to the public official as a gift, loan, honorarium, item of benefit. The allocable portion given or paid directly to a public official's spouse, or to other members of the official's family, need not be included in determining whether \$20.00 or more in value has been given or paid to a public official. However, the total spent is reportable as a disbursement by the lobbyist including those expenses of the lobbyist in the company of the public official.

11. ADMINISTRATIVE PROCEEDINGS

FACTS

A corporation applies to the Pollution Control Agency for a permit to discharge waste into a river; and you ask:

QUESTION

Are the representatives required to register and report as lobbyists?

OPINION

No. Persons who appear before an administrative agency are not required to register as lobbyists on matters involving the application of rules or regulations in specific cases, except in cases of rate-setting and power plant siting.

However, a person who appears before an administrative agency concerning rules and regulations is required to register and report if otherwise qualified as a lobbyist.

12. SALARIES

FACTS

A salary is paid by an association to an individual as a lobbyist; and you ask:

QUESTION

1. Is the salary paid to the lobbyist reportable as a lobbying expense?
2. Is the salary paid to a part-time or full-time employee subject to reporting as a lobbying expense if that employee works on tasks related to lobbying?

OPINION

1. No. Lobbyist Rules and Regulations 205, Required Reporting Information, 2 (ii) specifically exempts the salary of the lobbyist from reporting requirements.
2. Yes. If that employee is not registered as a lobbyist and the tasks performed are directly related to performance of tasks related to lobbying.

Approved by Minnesota State Ethical Practices Board on January 4, 1977.

MINNESOTA ETHICAL PRACTICES BOARD

ADVISORY OPINION NO. 33

January 5, 1977

Issued to:

James R. Habicht, Attorney
 Minnesota Power and Light Company
 30 West Superior Street
 Duluth, Minnesota 55802

Syllabus

33. Contested Case Hearing Representative

A representative of a party to a contested case rate proceeding before a state hearing examiner is required to register and report as a lobbyist providing other qualifying requirements have been met.

TEXT

You have requested an advisory opinion from the Minnesota Ethical Practices Board based upon the following:

FACTS

As an attorney representing a public utility in contested rate proceedings held before a state hearing examiner, ordered by the State Public Service Commission, wherein the Public Service Commission will make the final determination, you ask the following:

QUESTION

Is a representative of a party to such a contested rate proceeding a lobbyist within the meaning of Minn. Stat. 10A.01, Subd. 11, as amended in 1976; of the Ethics In Government Act?

OPINION

Yes, if the individual is engaged for pay or is authorized to spend money and spends more than five hours in any month or more than \$250.00 in a calendar year, not including travel expenses or membership dues, to influence legislative or administrative action by communicating with or urging others to communicate with public officials.

The representative is not exempt under the section of that statute which provides that a party or his representative is not a lobbyist when appearing in a proceeding before a state board, commission or agency unless the board, commission or agency is taking administrative action. It is the opinion of the Board that the exemption is not applicable here, because a contested case rate proceeding constitutes administrative action.

Minn. Stat. 10A.01, Subd. 2 (1974) as amended by Minn. Laws 1976, c. 470, s. 1, defines administrative action as follows:

“An action by any official, board, commission or agency of the executive branch to make rules. ‘Administrative action’ does not include the application or administration of those rules, except in cases of rate setting, power plant siting and others specified by the board.”

Rate setting by the Public Service Commission clearly falls within the statutory definition of administrative action. Therefore, communication with public officials in an attempt to influence such rate setting decision constitutes lobbying. The Public Service Commissioners, who make the ultimate rate setting decision, are public officials within the meaning of the Act. Since they base their decision on the record of the contested case hearing, any attempt to influence rate setting through an appearance at the contested case hearing is an attempt to influence their decision and constitutes lobbying.¹

Approved by Minnesota State Ethical Practices Board on January 4, 1977.

1. This opinion is consistent with that portion of Advisory Opinion No. 15, in which the Board determined that once the Commissioner of Public Welfare has issued his rate determination, the rate setting proceeding has ended. If the rate determination is appealed, any attempt to influence that appeals proceeding is not lobbying. The situation you present does not involve an appeals proceeding, but the proceeding held for purposes of initially setting the rate.

MINNESOTA ETHICAL PRACTICES BOARD

ADVISORY OPINION NO. 34

January 5, 1977

Issued to:

Senator Ronald Sieloff
State Office Building
St. Paul, Minnesota

Syllabus

34. Legislative Aide

A legislative aide to a legislator may be paid by the principal campaign committee of the legislator for services during a legislative session. Such expenses are reportable as non-campaign expenditures.

TEXT

You have requested an advisory opinion from the Minnesota Ethical Practices Board based upon the following:

FACTS

As a member of the Minnesota Legislature, you are contemplating the hiring of an aide during the legislative session to assist in taking care of correspondence, constituent calls, constituent meetings, newsletters and other miscellaneous duties which arise during the session.

You wish to use funds in your principal campaign committee account for this purpose and you ask:

QUESTION

Can funds from a principal campaign committee be used to pay expenses of an aid during the legislative session? Secondly, must these expenses be reported as a campaign expenditure?

OPINION

It is the opinion of the Board that a principal campaign committee can pay expenses for a legislative aide during legislative sessions and in non-election years for purposes of providing constituents services. These expenses are not campaign expenditures under Minn. Stat. 10A.01, Subd. 10 (1974). Such expenses are reportable under Minn. Stat. 10A.20 (1974) as non-campaign expenses, which are not counted toward campaign spending limits. Payments made by a principal campaign committee to an aide for the provision of constituent service after the last day of the legislative session and through general election day in an election year must be reported as a campaign expenditure.

This opinion is consistent with Advisory Opinion Nos. 19 and 24, wherein the Board said:

One of the functions of a legislator is to report to his constituents on possible legislative action and to obtain their opinions on matters which come before the Legislature so that he may represent them during the session. Any activities designed to enable him to fulfill that function are legitimate constituent services, even though they may have an incidental effect on the legislator's chances for re-election.

Approved by the Minnesota State Ethical Practices Board on January 4, 1977.