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Changes to Minnesota's Lobbying Laws Affecting Public Finance Lawyers

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Speaker



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Brian Bell assists clients in obtaining environmental and land use permits for controversial urban development, industrial, energy, and natural resources projects. As part of this work, Brian advocates for companies before local, state, and federal regulatory bodies and on judicial review.

Brian specializes in representing landowners in obtaining local land use approvals.

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Agenda

1. Statutory expansion of activities defined as lobbying
2. Rulemaking to implement expanded definition
3. Hypotheticals relevant to public finance professionals
4. Legislative outlook
5. Questions

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Expansion of Activities Considered Lobbying of Local Governments

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Thresholds for All Hired Lobbyists (Minn. Stat. § 10A.01, subd. 21)

- **Engaged for pay or other consideration of more than $3,000 *from all sources* in a year**
- **Purpose of attempting to influence legislative or administrative action, or the official action of a political subdivision by communicating with public or local officials**

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Thresholds for Lobbyists (Minn. Stat. § 10A.01, subd. 21)

- **Excludes nonelected local officials or employees of a political subdivision unless than spend >50 hours a month lobbying a political subdivision *other* than the political subdivision employing the official or employee .**
- **2024 legislation defines "employee of a political subdivision" to include an individual "employed by a business that has contracted with the political subdivision to provide legal counsel, professional services, or policy recommendations to the political subdivision." Minn. R. 4511.0100, subp. 4.**

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Local Government Lobbying: Pre-2024

Lobbyist includes individual paid to attempt to influence "the official action of a metropolitan governmental unit."

"Metropolitan governmental unit"

- **Seven counties in metro area**
- **Metro city with a population exceeding 50,000**
- **Metropolitan Council and other metropolitan agencies (e.g., Metropolitan Airports Commission)**

No definition of "official action of a metropolitan government unit"



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Local Government Lobbying: Two Changes

Expanded to include all political subdivisions*

Defined “official action”

**** Delayed until 2025***

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Official Action of a Political Subdivision
Minn. Stat. § 10A.01, subd. 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*. (Emphasis added.)



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Local Official

Elected Local Official v. Unelected Local Official

“Local official” means a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money. Minn. Stat. § 10A.01, subd. 22.

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Elected v. Unelected Official

Elected Officials (broader): anything that requires a vote or approval of the elected official

Unelected Local Official (narrower): recommendation, decision or vote on "major decisions regarding the expenditure or investment of public money"



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Prohibition on Contingent Lobbying. Minn. Stat. § 10A.06

"No person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislative or administrative action, or of the official action of a political subdivision. A person who violates this section is guilty of a gross misdemeanor."

***But see* 2024 Minn. Laws ch. 127, art. 15, sec. 52:**

Sec. 52. **CONTINGENT FEE PAYMENTS.**

Notwithstanding any law to the contrary, an attorney or financial adviser participating in conduit financing through a local unit of government may be paid on a contingent fee basis.

EFFECTIVE DATE. This section is effective the day following final enactment and expires June 1, 2025.



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2024 Legislative Changes

- **Delayed implementation of expansion of definition to all political subdivisions of the state until June 1, 2025**
- **Directed the Campaign Finance Board to study the issue**

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Rulemaking

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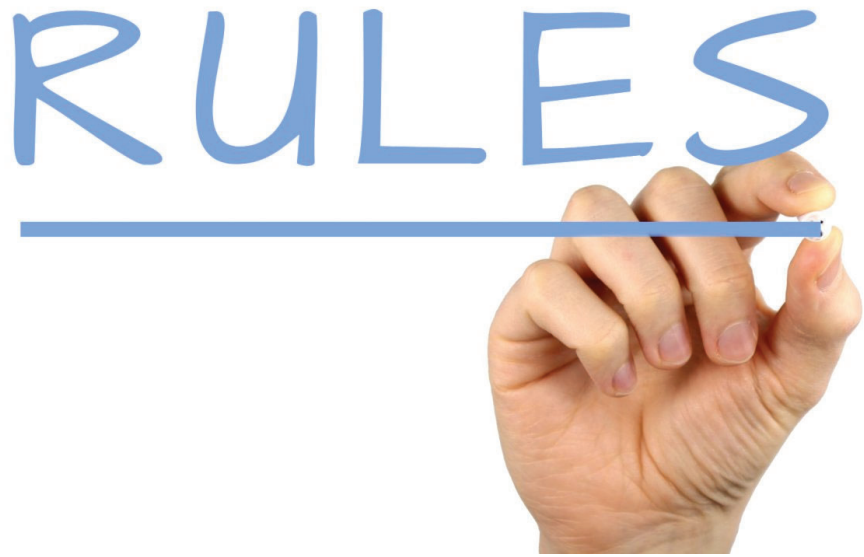
Rulemaking

Campaign Finance Board rulemaking recently released for comment amendments to lobbying rules to implement the new statute.



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Rules: Miscellaneous Definitions

Added definitions

- "Administrative overhead expenses"
- "Development of prospective legislation"
- "Pay or consideration for lobbying"
- "State agency"

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Approval of Elected Official (Minn. R. 4511.0100)

Subpart 1. **An action that requires a vote of the governing body.** Attempting to influence the vote of an elected local official while acting in their official capacity is lobbying of that official's political subdivision.

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Approval of Elected Official (Minn. R. 4511.1000, subp. 2)

"Approval by an elected local official. Attempting to influence a decision of an elected local official that does not require a vote by the elected local official is lobbying if the elected local official has discretion in their official capacity to either approve or deny a government service or action. Approval by an elected local official does not include:"

Excludes:

- Issuing a government license, permit, or variance that is routinely provide when the applicant has complied with the requirements of existing state code or local ordinances;
- Actions taken by the office of the elected official that does not require personal approval of the elected official;
- Prosecutorial discretion exercised by a county attorney; or
- Participating in discussions with a party or a party's representative regrading litigation between the party and the political subdivision of the elected local official.

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Major Decision Regarding Expenditure (Minn. R. 4511.1100, subp. 1)

Fact-specific question that may change based on the political subdivision involved. Advisory Op. 457 at 3.

Non-Exhaustive definition

- **The development and ratification of operating and capital budgets,**
- **Whether to apply for or accept public or private grants,**
- **Selecting grant recipients from the political subdivision, or**
- **Expenditures on public infrastructure to support private housing or business developments**

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Major Decision Regarding Expenditure (Minn. R. 4511.1100)

Excludes

- **Purchases with public funds that were already allocated,**
- **Collective bargaining, and**
- **Participating in discussions with a party or a party's representative regarding litigation between the party and the political subdivision of local official.**



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Major Decision Regarding Expenditure (Minn. R. 4511.1100)

Attempting to influence a nonelected local official is lobbying if the nonelected local official may make, recommend, or vote on as a member of the political subdivision's governing body, a major decision regarding an expenditure or investment of public money



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Hypotheticals and Campaign Finance Board Opinions

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Advisory Opinions

Advisory Opinion 457 is particularly instructive for private municipal lawyers but also relevant to other professionals.

Advisory Opinion 458 is relevant to business.

Advisory opinions are generally binding on the board as to the person making or covered by the request and is a defense in a judicial proceeding brought against the person making or covered by the request

https://cfb.mn.gov/citizen-resources/the-board/board-decisions/advisory-opinions/

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Providing Advice Solely to the Non-Profit

If, in a conduit financing deal, a Public Finance Professional represents a non-profit and provides recommendations and/or encourages the non-profit to choose one method of financing over another or to move forward with a particular financing option.

Not lobbying provided they are not assisting the non-profit in communicating with the political subdivision.

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Counseling the Political Subdivision

A Public Finance Professional represents the political subdivision and provides a recommendation or encourages the local elected official to choose one method of financing over another or to move forward with a particular financing that will be constructed, owned, and operated by a local non-profit.

Not lobbying, because the Public Finance Professional is acting as an independent contractor of the political subdivision.

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Public Finance Professional Drafting a Resolution

If a Public Finance Professional representing a non-profit drafts a resolution to authorize the financing or any of the financing documents that must be reviewed and approved by the local government's elected governing board.

It depends/unknown—is the Public Finance Professional communicating directly or through the client to the local government?



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Obtaining Host Approval

Local government is financing multiple locations of a hospital system and the government issuer must seek "host approval" in each jurisdiction where the financed project is located. Is the government issuer's outside Public Finance Professional seeking approval from other governmental entities lobbying?

No, unless the Public Finance Professional spends >50 hours a month seeking approval from other governmental entities.



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Appearing at Board Meeting

A Public Finance Professional representing the non-profit benefitting from conduit financing appears at a public meeting and presents the resolution or other documents for the consideration of the elected officials.

Likely, yes—are they advocating for the resolution or just there to answer technical questions?



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Advisory Op. 457: Redevelopment Agreement

Negotiating a development contract with city or county planning staff on behalf of a real estate developer that requires the expenditure of public money on public infrastructure.

Yes.



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Advisory Op. 457: Preliminary Plat

Meeting with the county planning director to review a proposed preliminary plat for development of multifamily housing that will receive a grant from HUD

Yes, assuming approval of the plat constitutes a major decision regarding the approval of public funds and it's more than an informational meeting, it's lobbying.

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Advisory Op. 458: Engineering Firm

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

No, assuming the engineer is just answering technical questions



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Advisory Op. 458: Chamber of Commerce Meeting

Executive discusses legislative proposals at a chamber of commerce board or committee meeting, urging the chamber to communicate a company's position on a topic.

Yes, because the executive is urging the chamber to communicate to members of the legislature proposals to amend legislation.*

***I don't think this survives recent legislative changes striking language that includes within the definition of lobbying "urging others to communicate with public or local officials"**



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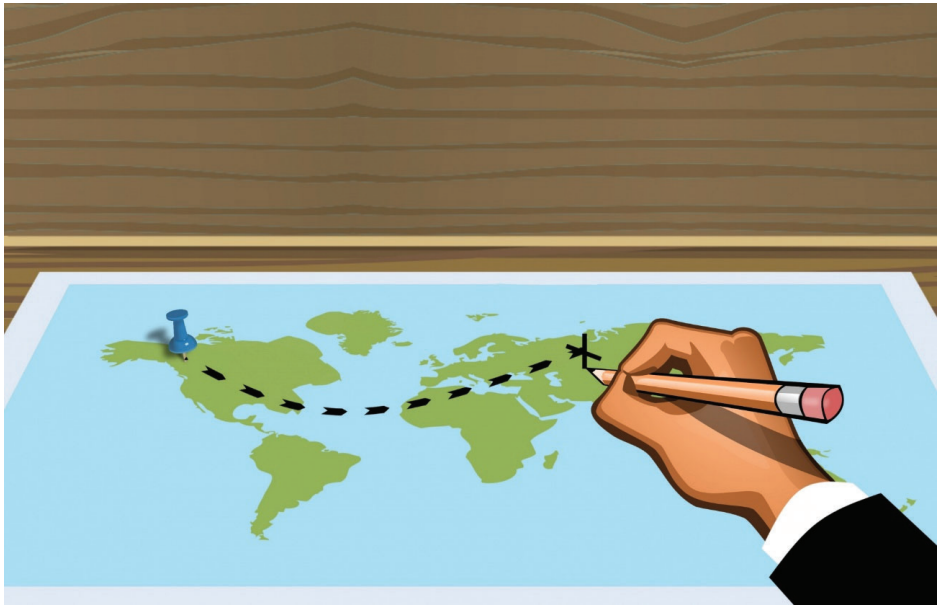
Advisory Op. 458: Trade Mission

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

It depends

- **Is the purpose of identifying initiatives that "need reform" to influence the Governor to support legislative action?**



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Legislative Outlook

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Questions?

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