

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File
519

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 5-1-79 Temporary Rule _____

Resubmitted and Received 6/5

DUE DATE 5-21-79

a. Returned to Agency w/o filing w/Secy of State 5/21 → For briefing vagueness question
b. Approved 6/8 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable ✓
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
17. Petition by Public, where applicable N.A.

May 21, 1979

Michael L. Flanagan, Esq., and
Michael J. Ahern
MOSS, FLAHERTY & CLARKSON
2350 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402

Re: Ethical Practices Board's Rules Governing
Lobbyist Registration

Dear Messrs. Flanagan & Ahern:

Enclosed herein is a copy of my memorandum to the agency. As you will note, it requests briefs from interested persons relating to the legal concerns which you have raised over the "Other Disbursements" section of the rules. I have requested that all briefs from interested persons be submitted to this office by May 30, 1979, with a copy to Mr. LeRoy E. Paddock, Special Assistant Attorney General, Counsel for the Ethical Practices Board. Mr. Paddock's office is Room 515 of the Department of Transportation Building.

If you have any questions, do not hesitate to call me. I will be out of town the week of May 28th. If procedural or other concerns arise, please feel free to contact me or my colleague, Joanne E. Hinderaker. While Ms. Hinderaker is not familiar with this specific set of rules, she is familiar with the office procedure regarding the handling of such matters. Thank you for your attention to this matter.

Very truly yours,

LEE E. SHEEHY
Special Assistant Attorney General

G-25 State Administration Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155
(612) 296-1288

LES/bw
cc: LeRoy Paddock

MINNESOTA STATE ETHICAL PRACTICES BOARD

PROPOSED LOBBYIST RULES AND

REGULATIONS INDEX

9MCAR 1.0200	Purpose of the Rules
9MCAR 1.0201	Definitions
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9MCAR 1.0204	Lobbyist Disbursement Reports and Reporting
9MCAR 1.0205	Lobbyist Retained by More Than One Employer
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9MCAR 1.0207	Lobbyist Disbursements for Administrative Actions
9MCAR 1.0208	Agency Solicitation of Outside Opinions
9MCAR 1.0209	Late Filing Fees

adopted

~~PROPOSED~~ RULES

~~EG-200~~ 9MCAR 1.0200 PURPOSE OF THE RULES. The purpose of Rules ~~EG-200-212~~ 9MCAR 1.0200-1.0209 is to implement the lobbyist registration and reporting provisions of Minnesota ~~Laws-1974,-Chapter-470-(Minnesota~~ Statutes~~,-1974~~, Sec. 10A.01-10A.34~~),~~. ~~hereinafter-"the-Act"~~

~~EG-201~~ 9MCAR 1.0201 DEFINITIONS.

~~(a)--"Address"-means-street-and-number-(Post-Office-box-or-rural-route,-if appropriate),-room-number-(if-any),-city,-state-and-zip-code.~~

~~(b)--"Association"-means-business,-corporation,-firm,-partnership,-committee, labor-organization,-club-or-any-other-group-of-two-or-more-persons,-which-includes more-than-an-immediate-family,-acting-in-concert.--Minn.-Stat.-10A.01,-subd.-3-(1974)~~

~~(c)--"Attempt-to-influence"-means-any-effort-to-persuade-a-public-official to-support-or-oppose-proposed-legislation-or-to-direct-the-outcome-of-an-administrative-action-in-a-particular-way.~~

~~(d)--"Disbursement"-means-any-payments-or-expenditures-made-by-the-lobbyist, or-any-employer-or-employee-of-the-lobbyist,-for-lobbying-purposes.~~

~~(e)--"Employee-of-the-lobbyist"-means-a-person-employed-by-the-lobbyist-to assist-him-in-his-lobbying-activities.~~

~~(f)--"Employer-of-the-lobbyist"-means-the-person-or-association-by-whom-he-is employed-for-the-purpose-of-lobbying.~~

~~(g)~~ A. "File", "Filed" and "Filing" means ~~delivery-to-the-Minnesota-State Ethics-Commission-by-midnight-of-the-prescribed-date-for-filing,-or-deposit-as certified-mail-in-a-U.S.-Post-Office,-postage-prepaid,-no-later-than-midnight-two days-before-the-prescribed-filing-date.~~ date of postmark or personally delivered to the Ethical Practices Board by the close of a business day.

~~(h)--"Lobbying"-means-to-attempt-to-influence-legislative-or-administrative actions-by-communicating-with-public-officials.--For-purposes-of-these-rules~~

~~"administrative action" means making rules or regulations, or cases of rate setting or power plant siting. For purposes of these rules "communicating" means any written or oral contact by a lobbyist with a public official. Lobbying does not include a request for information or interpretation.~~

~~(1)~~ B. "Lobbyist" means~~:~~ an individual as set forth in Minn. Stat. 10A.01, subd. 11. Lobbyist does not include an individual who merely communicates with a public official to obtain information or request an interpretation of a law, rule or agency action.

~~(1) Any individual who is engaged for pay or other consideration, or who is authorized by another person to spend money, for the purpose of attempting to influence legislative or administrative action by communicating with public officials.~~

~~(2) Any official designated representative of any person or association which has as a major purpose the influencing of legislative or administrative action by communicating with public officials. An officially designated representative is a person authorized by another to lobby on the latter's behalf.~~

~~(3) Any individual who spends more than $250, not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating with public officials.~~

~~"Lobbyist" does not include~~: an individual who merely communicates with a public official to obtain information or request an interpretation of a law, rule or agency action. By Jan E. Shuly per agency request it memo

~~(4) A public official, or employee of the state or any of its political subdivisions or public bodies, acting in his official capacity.~~

~~(5) Parties and their representatives appearing or acting in any proceeding before a state board, commission or agency of the executive branch other than rule making proceedings or cases of rate setting or power plant siting.~~

~~(6) Individuals in the course of selling goods or services to be paid for by public funds.~~

~~(7)--News-media-or-their-employees-or-agents,-but-only-while-acting-in-the-ordinary-course-of-business-of-publishing-or-broadcasting-news-items,-editorials-or-other-comments-or-paid-advertisements-which-directly-or-indirectly-urge-official-action.~~

~~(8)--Paid-expert-witnesses-whose-testimony-is-requested-by-the-body-before-which-they-are-appearing-or-by-one-of-the-parties-to-a-proceeding,-but-only-while-acting-in-the-ordinary-course-of-preparing-or-delivering-testimony.~~

~~Minn.-Stat.-10A.01,-subd.-11-(1974).~~

C. "Urging/Urges others to communicate" means any written or oral communication by a lobbyist which requests an individual or association to advocate a particular position to a public official concerning any legislative action or administrative action, or which requests an individual or association to advocate a public official initiate any particular legislative or administrative action. The term does not include mere presentation of factual material without comment.

~~(j)--"Occupation-and-principal-place-of-business"-means,-if-self-employed,-type-of-work-or-profession-and-city-and-state-where-self-employed;-or,-if-employed-by-another,-the-type-of-work-or-title,-name-of-employer-or-employing-organization,-and-city-and-state-of-employment.~~

~~(k)--"Public-Official"-means:~~

~~(1)--Any-member-of-the-legislature;~~

~~(2)--Any-person-holding-a-constitutional-office-in-the-executive-branch-and-his-chief-administrative-deputy;~~

~~(3)--Any-member-of-a-state-board-or-commission-with-rule-making-authority-as-provided-in-Minn.-Stat.-15.0411,-subd.-3;~~

~~(4)--Any-person-employed-by-the-legislature-as-secretary-of-the-senate,-chief-clerk-of-the-house,-revisor-of-statutes,-legislative-auditor,-or-researcher-or-attorney-in-the-office-of-legislative-research;~~

~~(5)--Any-person-employed-by-the-executive-branch-in-a-position-specified-in~~

~~Minn. Stat. 15A.081;~~

~~(6) Any member of the metropolitan council, metropolitan transit commission, metropolitan sewer board or metropolitan airports commission.~~

~~Minn. Stat. 10A.01, subd. 18 (1974).~~

~~EG-202~~ 9MCAR 1.0202 OBLIGATION TO REGISTER. ~~Each lobbyist must register with the Commission by filing the Lobbyist Registration Form (EG-Form-4) within five days after lobbyist activity has commenced by the lobbyist. No lobbyist shall be required to register before January 15, 1975.~~ An individual shall register as a lobbyist as required by Minn. Stat. 10A.03, Minn. Stat. 10A.01, subd. 11, and as follows:

A. Attendance at Legislative or Administrative Hearings. For purposes of determining time calculation necessary to require registration as lobbyist, mere attendance at a public hearing without testifying or communicating with a public official shall not be considered time spent attempting to influence a legislative or administrative action.

B. Paid Expert Witness Registration. An individual who is hired or paid by a lobbyist as an expert witness and whose testimony is requested by a legislative committee, or an agency defined by Minn. Stat. 15.0412, subd. 2, or a state hearing examiner, shall not be required to register as a lobbyist if the committee, agency, or hearing examiner, by order, resolution, recorded vote or other formal means requests such expert testimony. This exclusion shall be applicable only to the extent of preparing or delivering the requested testimony.

~~EG-203 REQUIRED REGISTRATION INFORMATION~~

~~(a) The Lobbyist Registration Form (EG-Form-4) shall include the following information:~~

~~(1) Name and address of the lobbyist.~~

~~(2) Principal place of business of the lobbyist, if any.~~

~~(3) Name and address of each person or association, if any, by whom the~~

~~lobbyist is retained or employed, or on whose behalf the lobbyist appears.~~

~~(4) The names and addresses of the officers and directors of each association the lobbyist represents.~~

~~(5) A general description of the subject or subjects on which the lobbyist expects to lobby, which general description shall include a listing of the categories of legislative or governmental activity concerning which the person expects to lobby.~~

~~(b) Each person or association on whose behalf a lobbyist is required to report shall provide the information required in EG-203 (A) and EG-205 to the lobbyist no later than five days before each prescribed filing date.~~

~~EG-204~~ 9MCAR 1.0203 ~~OBLIGATION AND TIME TO REPORT~~ OBLIGATION TO FILE DISBURSEMENT REPORT OR TERMINATION REPORT.

~~(a) Each person who is a lobbyist at any time during a calendar year shall file a Lobbyist Disbursement Report (EG Form 5) which shall include all disbursements made during the applicable reporting period as provided in EG-205. No Lobbyist Disbursement Report (EG Form 5) shall cover any activities or disbursements made prior to January 1, 1975.~~

A. A lobbyist shall file a lobbyist disbursement report on each reporting date indicating whether or not the lobbyist has any reportable disbursements during a reporting period.

~~(b) After filing the Lobbyist Regustration Form (EG Form 4), each lobbyist must file Lobbyist Disbursement Reports (EG Form 5) on the following dates of each year, beginning with the first such date which occurs 15 days or more after commencement of lobbying:~~

~~February 15;~~

~~March 15;~~

~~April 15;~~

~~June 15; and~~

~~October 15.~~

~~(c) The first Lobbyist Disbursement Report (EC Form 5) shall include disbursements subject to reporting under EC 205 which are made from the day lobbying commences to the day 15 days immediately preceding the current filing date. Each subsequent Lobbyist Disbursement Report (EC Form 5) shall include reportable disbursements made from the end of the period covered by the preceding report to the day 15 days immediately preceding the current filing date~~

~~(d) A lobbyist who testifies at only one legislative committee hearing, or at one proceeding of a state board, commission or agency, and who is not otherwise engaged in lobbying, shall register as required by Rule EC 202, but may terminate his requirement to file a Lobbyist Disbursement Report (EC Form 5) by identifying on the Lobbyist Registration Form (EC Form 4) the date, place, and forum of the single appearance as a lobbyist, and by stating (1) that no reportable disbursements were made in connection with the appearance such as to require reporting by the lobbyist, or (2) the name of the person or association reporting any reportable disbursements made in connection with the appearance.~~

B. Termination Report. ~~(e) Except as provided in EC 304 (D),~~ a A lobbyist who terminates his ~~activities as a lobbyist may terminate his duty to report by indicating on a Lobbyist Disbursement Report (EC Form 5) the fact that his activities as a lobbyist have terminated.~~ registration as a lobbyist prior to a reporting date shall file a Lobbyist Disbursement Report through the date of termination. If ~~such person~~ an individual subsequently renews lobbyist activity, ~~then he~~ the individual ~~must~~ shall re-register ~~in accordance with Rule EC 202 and file reports~~ as required by ~~Rule EC 204.~~ Minn. Stat. 10A.03, subd. 1.

~~EG-205~~ 9MCAR 1.0204 ~~REQUIRED REPORTING INFORMATION~~ LOBBYIST DISBURSEMENT REPORTS AND REPORTING.

~~(a)~~ A. Disbursements. Reports. ~~The lobbyist shall report the following information on the Lobbyist Disbursement Report (EG-Form-5).~~

~~(1) All information required on the Lobbyist Registration Form (EG-Form-4) by EG-203-(A),-(1-4), and a general description of the subject or subjects on which the lobbyist has lobbied, which general description shall include a listing of the categories of legislative or administrative activity concerning which the person has lobbied during the reporting period.~~

1. A lobbyist shall identify the names and, if known, the registration numbers of other lobbyists for whom he is reporting.

~~(2) Total disbursements by the lobbyist, or any employer or employee of the lobbyist, for lobbying purposes in each of the following categories.~~

2. On January 15th of each year a lobbyist shall file a current list of names and addresses of directors and officers of the association that he represents if there have been changes in the membership of said boards during the preceding calendar year.

3. A lobbyist disbursement report shall include the total disbursements for the reporting period by the lobbyist, and any employer or employee of the lobbyist, for lobbyist activities in each of the following categories:

~~(aa)~~ a. Preparation and distribution of lobbying materials. This category shall include ~~any~~ all disbursements for preparation and distribution of ~~any~~ printed material, publication, film, slide, recording~~,~~ and video tape~~,~~. ~~or other communication material specifically prepared by or for a lobbyist, or any employer or employee of the lobbyist, and which advocates, promotes and supports the special interests and concerns of an individual or association, and which is used to attempt to influence the action of any public official.~~ Lobbying material means any material, except media advertising, which is prepared or purchased by a

lobbyist for a lobbying purpose.

(1) Preparation of research material and reports. The cost of researching and writing reports from which data is used in preparing lobbying materials is not reportable as a lobbyist disbursement even if the individual preparing the research material is a registered lobbyist.

(2) Newsletters and publications. The cost of preparation, printing and distribution of a newsletter or other publication, including but not limited to, a reasonable estimate of prorata office expenses and compensation paid to employees for the preparation of such a publication or a portion of the publication shall be reported as a lobbyist disbursement if used for a lobbying purpose. Only the cost of that portion of a newsletter or publication which is lobbying material shall be reported as a lobbyist disbursement.

~~(bb)~~ b. Media Aadvertising. This category shall include only lobbyist disbursements for billboards, newspapers, radio and television time purchased for a lobbying purpose. The term does not include mere presentation of factual material without comment.

~~(cc)~~ c. Telegraph and telephone.

~~(dd)~~ d. Postage.

~~(ee)~~ e. Fees and allowances. This category shall include disbursements for consulting fees, or other fees, for services done or to be done, as well as expenses incurred in rendering such services. This category shall not include compensation paid to the lobbyist by his employer for services rendered as a lobbyist on behalf of the employer.

~~(ff)~~ f. Entertainment. This category shall include lobbyist disbursements for entertainment provided to public officials including but not limited to sporting, theatrical and musical events, ~~made on behalf of any public official,~~ as well as the cost of entertainment for the lobbyist, ~~or~~ and the employer or employee of the lobbyist, when in the company of ~~any~~ the public official.

~~EG-205~~ 9MCAR 1.0204 ~~REQUIRED REPORTING INFORMATION~~ LOBBYIST DISBURSEMENT REPORTS AND REPORTING.

~~(a)~~ A. Disbursements. Reports. ~~The lobbyist shall report the following information on the Lobbyist Disbursement Report (EG-Form-5):~~

~~(1) All information required on the Lobbyist Registration Form (EG-Form-4) by EG-203 (A), (1-4), and a general description of the subject or subjects on which the lobbyist has lobbied, which general description shall include a listing of the categories of legislative or administrative activity concerning which the person has lobbied during the reporting period.~~

1. A lobbyist shall identify the names and, if known, the registration numbers of other lobbyists for whom he is reporting.

~~(2) Total disbursements by the lobbyist, or any employer or employee of the lobbyist, for lobbying purposes in each of the following categories:~~

2. On January 15th of each year a lobbyist shall file a current list of names and addresses of directors and officers of the association that he represents if there have been changes in the membership of said boards during the preceding calendar year.

3. A lobbyist disbursement report shall include the total disbursements for the reporting period by the lobbyist, and any employer or employee of the lobbyist, for lobbyist activities in each of the following categories:

~~(aa)~~ a. Preparation and distribution of lobbying materials. This category shall include ~~any~~ all disbursements for preparation and distribution of ~~any~~ printed material, publication, film, slide, recording, and video tape~~, or other communication material specifically prepared by or for a lobbyist, or any employer or employee of the lobbyist, and which advocates, promotes and supports the special interests and concerns of an individual or association, and which is used to attempt to influence the action of any public official.~~ Lobbying material means any material, except media advertising, which is prepared or purchased by a

lobbyist for a lobbying purpose.

(1) Preparation of research material and reports. The cost of researching and writing reports from which data is used in preparing lobbying materials is not reportable as a lobbyist disbursement even if the individual preparing the research material is a registered lobbyist.

(2) Newsletters and publications. The cost of preparation, printing and distribution of a newsletter or other publication, including but not limited to, a reasonable estimate of prorata office expenses and compensation paid to employees for the preparation of such a publication or a portion of the publication shall be reported as a lobbyist disbursement if used for a lobbying purpose. Only the cost of that portion of a newsletter or publication which is lobbying material shall be reported as a lobbyist disbursement.

~~(bb)~~ b. Media ~~A~~advertising. This category shall include only lobbyist disbursements for billboards, newspapers, radio and television time purchased for a lobbying purpose. The term does not include mere presentation of factual material without comment.

~~(cc)~~ c. Telegraph and telephone.

~~(dd)~~ d. Postage.

~~(ee)~~ e. Fees and allowances. This category shall include disbursements for consulting fees, or other fees, for services done or to be done, as well as expenses incurred in rendering such services. This category shall not include compensation paid to the lobbyist by his employer for services rendered as a lobbyist on behalf of the employer.

~~(ff)~~ f. Entertainment. This category shall include lobbyist disbursements for entertainment provided to public officials including but not limited to sporting, theatrical and musical events, ~~made on behalf of any public official,~~ as well as the cost of entertainment for the lobbyist, ~~or~~ and the employer or employee of the lobbyist, when in the company of ~~any~~ the public official.

for a lobbying purpose.

~~(gg)~~ g. Food and ~~B~~beverages. This category shall include:

(1) All disbursements for food and beverages ~~for any~~ provided to public officials, as well as food and beverages for the lobbyist, ~~or~~ and any employer or employee of the lobbyist, when in the company of ~~any~~ a public official~~,~~ for a lobbying purpose.

(2) All disbursements for food and beverages provided to public officials who are invited to conferences, conventions, banquets, legislative days or other similar functions for a lobbying purpose.

(3) The cost of food and beverages provided by a lobbyist, the employer or employee of the lobbyist, at meetings or conferences for the purpose of urging others to communicate with public officials.

(4) The cost of food and beverages provided to expert witnesses by a lobbyist, the employer or employee of the lobbyist, when paid expert witnesses are brought to testify before legislative committees or in hearings conducted pursuant to Minn. Stat. 15.0412, if the paid expert witness does not register as a lobbyist.

~~(hh)~~ h. Travel and ~~L~~lodging. This category shall include:

(1) All disbursements for travel and lodging of the lobbyist, any employer or employee of the lobbyist, or ~~of any~~ provided to a public official, for a lobbying purpose, except those incurred for the purpose of enabling the lobbyist, or any employer or employee of the lobbyist, to attend a meeting of or to appear before a committee of the legislature, or a state board, commission or agency.

(2) The cost of travel and lodging for the lobbyist, the employer or employee of the lobbyist when in the company of a public official for a lobbying purpose.

(3) The cost of travel and lodging paid by a lobbyist, the employer or employee of the lobbyist when urging others to communicate with public officials.

(4) The cost of travel and lodging paid by a lobbyist, the employer or employee of the lobbyist, to bring paid expert witnesses to testify before legislative committees or in hearings conducted pursuant to Minn. Stat. 15.0412, if the paid expert witness does not register as a lobbyist.

(5) The cost of travel and lodging paid by a lobbyist to transport individuals for the purpose of lobbying.

~~(ii) Gifts.--This-category-shall-include-the-cost-of-anything-of value-given-or-paid-voluntarily-to-a-public-official-without-full-and-adequate-consideration,-and-which-is-not-reported-in-categories-(a)-(h)-but-shall-not-include contributions-to-candidates.--For-purposes-of-these-rules,-"contribution-to-a candidate"-shall-include-any-contribution-made-for-the-purpose-of-influencing-the nomination-for-election-or-election-of-a-candidate-to-office.~~

~~(jj)~~ i. Other disbursements. This category shall include ~~all-disbursements-not-reported-in-categories-(a)-(i),-but-shall-not-include-non-reimbursed, ordinary-and-necessary-office-expenses,-including-clerical-expenses,~~ a reasonable estimate of a prorata share of compensation paid to clerical employees incurred for the purpose of lobbying if not reported in categories (a)-(h).

~~(3)-Total-disbursements-reported-to-date-during-the-calendar-year-in each-of-the-categories-listed-in-EG205-(a)(2).~~

~~(b)~~ B. Disclosure of Gifts, Loans, Honorariums, Items or Benefits. The lobbyist shall report ~~on-the-Lobbyist-Disbursement-Report-(EG-(Form-5)~~ the name and address of each public official receiving any gift, honorarium, loan, item or benefit from the lobbyist, or any employer or employee of the lobbyist, equal in value to $20 or more, in a single transaction, ~~excluding-contributions-to-candidates,-and~~ to include the amount, the date on which it was received, and a description of the transaction, whether or not it was given for lobbying purposes, in the following categories:

~~(1)~~ 1. Gifts~~,~~ or benefits. This category shall include, ~~anything-of value,-other-than-an-item-or-benefit,~~ but not be limited to, entertainment, food,

beverage, travel and lodging as defined in 9MCAR 1.0204, given or paid voluntarily by the lobbyist, or any employer or employee of the lobbyist, to a public official without the public official providing full and adequate consideration. This category shall not include campaign contributions.

~~(2)~~ 2. Loans. This category shall include ~~anything of value~~ loans, given or paid voluntarily by the lobbyist, or any employer or employee of the lobbyist, to a public official which the public official agrees to return at some future time or to repay with something of value, except a loans from an financial institutions ~~engaged primarily in the business of making loans when~~ made in the ordinary course of business on substantially the same terms as those prevailing for comparable transactions with other persons.

~~(3)~~ 3. Honorariums. This category shall include ~~anything of value~~ a payment ~~given or~~ paid voluntarily by the lobbyist, or ~~any~~ the employer or employee of the lobbyist, to a public official for services for which there is no obligation to make repayment~~,~~; for example, honorariums paid for a speeches, an articles~~,~~ or similar services.

~~(4) Items or Benefits. This category shall include entertainment, food and beverages, travel and lodging~~

~~The name and address of the public official and the date of the transaction shall be reported only when the value of the gift, honorarium, loan, item or benefit provided to a public official in a single transaction is equal in value to $20 or more. Whenever a disbursement for a gift, item or benefit for a public official is reported under EC 205 (A)(2), the name and address of the public official must also be reported under EC 205 (B) if the value of such gift, item or benefit is equal in value to $20 or more. The lobbyist is not required to report any item or benefit given or paid to a part time, non elected public official by the lobbyist's employer, if it is given or paid to such public official in his non official capacity by a person other than the lobbyist, without any participation by the~~

~~lobbyist in the transaction, in connection with a specific business activity unrelated to lobbying.~~

~~(c)~~ C. Original Source of Funds. The lobbyist shall report ~~on the Lobbyist Disbursement Report (EG Form 5)~~ the following information as to the "original source of funds" in excess of $500 in the calendar year used for the purpose of lobbying: The name, address, and employer, or if self-employed, the occupation and principal place of business, of each original source of funds in excess of $500. It shall not include the amount paid. For reporting purposes, original source of funds shall mean any ~~person~~ individual or association who disburses $500 or more in any year directly to the lobbyist, or to any employer of the lobbyist, to be used for purposes of lobbying, including fees or salary paid to a lobbyist as compensation.

~~EG-206~~ 9MCAR 1.0205 LOBBYIST RETAINED BY MORE THAN ONE EMPLOYER. A lobbyist retained by or representing more than one employer shall submit a separate Lobbyist Registration Form ~~(EG-Form-4),~~ and a separate Lobbyist Disbursement Reports ~~(EG-Form-5),~~ for each employer by whom he the lobbyist is retained. If a disbursements ~~have~~ has been made on behalf of more than one employer, the lobbyist ~~may~~ must report ~~such disbursements on one Lobbyist Disbursement Report (EG-Form-5) as a joint disbursement together with a statement reasonably allocating disbursements among the several employers.~~ a reasonable allocation for each employer.

~~EG-207~~ 9MCAR 1.0206 EMPLOYERS WHICH EMPLOY MORE THAN ONE LOBBYIST. If the same person or association employs or is represented by more than one lobbyist, each lobbyist must register separately. However, one registered lobbyist may report all the disbursements for lobbying purposes made by all lobbyists representing a common employer, person or association. In such case, ~~each~~ the lobbyist ~~shall file a certified report on his Lobbyist Disbursement Report (EG Form-5) stating the name of the employer, person or association which the lobbyists represent in common. The reporting lobbyist shall certify the names of the~~

~~lobbyists for whom the Lobbyist Disbursement Report is made. Each other lobbyist shall certify on his Lobbyist Disbursement Report to the accuracy of the single report of his disbursements by the reporting lobbyist.~~ reporting all the disbursements must indicate the names of the other lobbyists for whom disbursements are being reported. A lobbyist, so represented, must file Lobbyist Disbursement Reports specifying the name of the lobbyist who will report total disbursements on behalf of the joint employer.

9MCAR 1.0207 LOBBYIST DISBURSEMENTS FOR ADMINISTRATIVE ACTIONS. A lobbyist who does both legislative and administrative lobbying may file separate reports for the purpose of segregating those disbursements which were incurred for administrative lobbying from those disbursements incurred for legislative lobbying. Unless separate reports are filed the Board will treat all disbursements as legislative lobbying disbursements.

~~EG-208--PLACE TO OBTAIN AND FILE FORMS.--All Lobbyist Registration Forms (EG-Form 4) and Lobbyist Disbursement Reports (EG-Form-5) shall be on forms issued by the Minnesota State Ethics Commission and shall be filed with the Minnesota State Ethics Commission.~~

9MCAR 1.0208 AGENCY SOLICITATION OF OUTSIDE OPINIONS. For purposes of registration and reporting lobbyist activity, an administrative action commences in administrative rulemaking when a state agency publishes a notice in the State Register, as required by Minn. Stat. 15.0412, subd. 6, or takes such other formal action provided by law to commence the rulemaking process.

~~EG-209--CHANGES AND CORRECTIONS.--Any material changes in information previously submitted, and any corrections to a Lobbyist Registration Form (EG-Form-4) or Lobbyist Disbursement Report (EG-Form-5), shall be filed in writing with the Commission within ten days following the date of the event prompting the change or the date upon which the person filing became aware of the inaccuracy.--The change or correction shall identify the form and the paragraph containing the information~~

~~to be changed or corrected, and shall be signed and certified to be true by the person filing.~~

9MCAR 1.0209 LATE FILING FEES

A. The Board shall grant a waiver of late filing fees for sickness or injury of the filer, or other compelling reason when a written request for waiver is submitted not later than the fifth business day following the day of filing the late statement or report.

B. A late filing fee shall not be assessed for Saturday, Sunday or legal holidays.

C. The late filing fee shall commence the eighth day following receipt of a late filing notice, unless the eighth day falls on Saturday, Sunday, or a legal holiday. The late filing fee shall then commence the next business day.

D. A late filing fee shall be charged through the business day preceding the day of filing of a late statement or late periodic report.

E. A certified letter returned to the Board by the U. S. Post Office marked "refused" shall be deemed to have been received by the addressee on the date of refusal. The late filing fee shall commence the first business day following the seventh day after refusal.

F. Except as provided in 9MCAR 1.0209 E, a certified letter returned to the Board by the U. S. Post Office undelivered for any reason shall be forwarded by first class mail to the lobbyist, addressed to the lobbyist at the address shown on his latest registration statement or disbursement report. The late filing fee shall then commence the first business day following the seventh day after deposit in First Class U. S. mail.

~~EC-210--CONTINGENT FEES PROHIBITED.--No person or association shall employ a lobbyist for compensation which is dependent upon the result or outcome of any legislative or administrative action.--Any person or association violating these provisions is guilty of a gross misdemeanor.~~

EC-211--FAILURE TO REPO[redacted]--The Commission must notify [redacted] registered mail any lobbyist who fails to register or report within five days after the required filing date. --A lobbyist who knowingly fails to register or make such periodic reports within seven days after receiving notice from the Commission is guilty of a misdemeanor.

EC-212--PENALTY FOR FALSE STATEMENTS. --Any registration form or report required by these rules shall be signed and certified to be true by the person required to file the report. --Any person who signs and certifies to be true a report or statement which he knows contains false information or who knowingly omits required information is guilty of a felony.

Filed December 31, 1974.

APPROVED AS TO FORM AND LEGALITY

JUN - 6 1979 19___

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 8 1979
Joan Anderson Growe
Secretary of State

10:55 AM

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

TELEPHONE
(612) 296-6196

June 5, 1979

Mr. Lee E. Sheehy
Special Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
G-25 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Dear Mr. Sheehy:

Enclosed is the brief discussing the issues raised in your memo of May 21, 1979.

Sincerely,

LEROY C. PADDOCK
Special Assistant
Attorney General

LCP/njh
Enclosure

STATE OF MINNESOTA
STATE ETHICAL PRACTICES BOARD

In the Matter of
Rules of the State
Ethical Practices
Board Governing
Lobbyist Registration
and Reporting
(9 MCAR §§ 1.200-1.209)

ATTORNEY GENERAL
REVIEW BRIEF OF
THE ETHICAL PRACTICES
BOARD

INTRODUCTION

Hearings on the adoption of revised Lobbyist Registration and Reporting rules were held on December 7 and December 28, 1978. The rule in question here, 9 MCAR § 1.0204(3)(i) "Other Disbursements", originally read as follows:

> This category shall include all disbursements not reported in categories (a)-(h) including non-reimbursed, ordinary and necessary office expenses, including clerical expenses incurred for the purpose of lobbying.

The hearing examiner's report, however, recommended that § 1.0204(A)(3)(i) not be adopted as proposed since it was, in his opinion, to vague. The Ethical Practices Board heeded the hearing examiner's recommendation, amending the rule to provide that:

> This category shall include a reasonable estimate of a pro-rata share of compensation paid to clerical employees incurred for the purpose of lobbying if not reported in categories (a)-(h).

On April 24, 1979, the Chief Hearing Examiner issued his report finding that the final proposed rules were not substantially different from those proposed at the public hearing.

ARGUMENT

I. 9 MCAR § 1.0204(A)(3)(i) IS NOT IMPERMISSABLY VAGUE

A. The Basic Standard

In Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court discussed the constitutional due process consideration related to the issue of vagueness. The Court noted that:

> Due process requires that a criminal statute provide adequate notice to a person of ordinary intelligence that his contemplated conduct is illegal, for "no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." United States v. Harriss, 347 U.S. 612, 617, 74 S.Ct. 808, 812, 98 L.Ed. 989 (1954) . . . . Where First Amendment rights are involved, an even "greater degree of specificity" is required.

Id. at 76.

The basic vagueness standard in Minnesota has been set out in State v. McCorvey, 262 Minn. 361, 114 N.W.2d 703 (1962), and repeated in State v. Target Stores, Inc., 279 Minn. 447, 156 N.W.2d 908. The Court in McCorvey opined that:

> A criminal statute must be definite enough to give notice of the conduct required to anyone who desires to avoid its penalties; it must be sufficiently definite to guide the judge in its application and the attorney in defending a person charged with its violation. No more than a reasonable certainty can be demanded.

State v. McCorvey, supra at 365, 114 N.W.2d at 706 (emphasis added).

B. The Standard of Review

The Court in Buckley remarked, however, that in reviewing a statute alleged to be impermissably vague that:

> [W]e have the further obligation to construe the statute, if that can be done consistent with the Legislature's purpose, to avoid the shoals of vagueness. United States v. Harriss, supra, 347 U.S. at 618 . . . .

Buckley v. Valeo, supra at 663. Thus,

> if the general class of offenses to which the statute is directed is plainly within its terms, the statute will not be struck down as vague even though marginal cases could be put where doubts might arise.

United States v. Harriss, 347 U.S. 612, 618 (1954).

C. Application To This Case

1. The Standard

9 MCAR § 1.024(A)(3)(i) provides notice to persons of ordinary intelligence of the acts he or she must do. It requires only that one required to file reports include as a lobbying expense a reasonable estimate of that portion of his or her clerical expenses incurred as a part of his or her lobbying efforts. A person's clerical expenses are, or should be readily ascertainable. So to, the amount of time spent by a clerical employee on lobbying-related projects should be easily accounted for. With these two facts in hand, the person reporting need only make a reasonable estimate of the pro-rata costs related to lobbying to comply with the rule. The meaning of the statute is crystal clear as it is finally proposed and therefore does not transgress anyone's due process rights.

2. The Standard of Review

Even assuming that in some marginal cases the application of 9 MCAR § 1.0204(A)(3)(i) may be vague which we believe not to be true,[1/] Buckley permits a court to construe a statute

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1/ The Minnesota Bar Association states in its brief that the Board admits that 9 MCAR § 1.0204(A)(3)(i) is vague. In support of this statement they cite portions of the hearing transcript in which the Board noted that advisory opinions could be used to clarify the rule. Even assuming that such a course is improper and could not be used to clarify unclear portions of a rule, the discussion in the transcript related to the rule as it was originally proposed. That version of the rule was far more inclusive than the very narrow rule finally proposed by the Board and subject to review here. The transcript cites are therefore irrelevant to the consideration of the present version of 9 MCAR § 1.0204(A)(3)(i).

whose general purpose is within the constitutionally permissable sphere in such a way as to avoid vagueness problems. Buckley v. Valeo, supra at 663.[2/]

Certainly then, in light of the Minnesota Supreme Court's decision in Minnesota-Dakota Retail Hardware Association v. State, No. 47900 (Minn. S.Ct., filed May 11, 1979), a determination of the constitutionality of 9 MCAR § 1.0204(A)(3)(i) before it has been applied would be premature. In Minnesota-Dakota the court addressed the standard of review of agency interpretative rules before those rules had gone into effect or had been applied. In holding that its review of rules presented in this context was narrow, the court commented:

> [T]he instant action is preliminary to any attempt by the attorney general or Consumer Services to cite any party for violation of these regulations or to otherwise apply or enforce then in any administrative, civil, or criminal proceeding, for they have not yet become effective. Consequently, the standard of review is necessarily more restricted. Broad and far-reaching scrutiny of a rule or regulation, based upon hypothetical facts, is a premature exercise by the judiciary when the actual application or enforcement of the rule remains subject to prosecutorial discretion or formal or informal variance or waiver procedures. Cf. Reserve Mining Co. v. Minnesota P.C.A., 294 Minn. 300, 200 N.W.2d 142 (1972).

Slip op. at 4. Buckley permits, if indeed it does not mandate, the courts to allow judicial narrowing of a rule through its application. Minnesota-Dakota requires that the courts await a rule's application. Thus, even assuming 9 MCAR § 1.0204(A)(3)(i) were in some respects vague, which we strongly believe it is not, the Attorney General's review of these rules is not the appropriate time to find that the rule is unconstitutional.

2/ Thus, the secretary's orthopedic shoes, even assuming they might be covered by the reporting requirement, are not dispositive of a law which properly addresses lobbyist reporting.

II. THE DEFINITION OF "LOBBYING" IS DEFINITE AND CERTAIN

Minn. Stat. § 10A.01, subd. 11 defines a lobbyist as a person who spends in excess of a certain amount of time or money in any year for the "purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials . . . ." Lobbying therefore is the act of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

In United States v. Harriss, supra, the United States Supreme Court was faced with a vagueness challenge to the Federal Regulation of Lobbying Act, 2 U.S.C. §§ 261-270. In sustaining the statutory definition of a lobbyist as one who acts to "influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States,"[3/] the Court held that:

> [T]his language should be construed to refer only to "'lobbying in its commonly accepted sense'"--to direct communication with members of Congress on pending or proposed federal legislation. The legislative history of the Act makes clear that, at the very least, Congress sought dis-

---

3/ The full text of the definitional provision read as follows:

> The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:
>
> (a) The passage or defeat of any legislation by the Congress of the United States.
>
> (b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

See United States v. Harriss, 347 U.S. 612, 618-19 (1954).

> closure of such direct pressures, exerted by the lobbyist themselves or through their hirelings or through an artificially stimulated letter campaign.

Id. at 813 (emphasis added). It is only this direct communication with members of state government either by the lobbyist, his or her employee or through urging others to directly communicate that constitutes lobbying under these rules. This, under Hariss, is "lobbying in its commonly accepted" and constitutionally permissible sense. See also 26 U.S.C.A. § 4911(d)(1) (Supp. 1979). No communication is forbidden by the lobbyist reporting rules. Instead, they merely provide for a modicum of information from those who attempt to influence legislation. See United States v. Hariss, supra at 625.[4/] Thus, lobbyist is both clearly and constitutionally defined for purposes of these rules by Minn. Stat. § 10A.01, subd. 11.

4/ Even assuming that in some hypothetical situations the definition of lobbyist and the consequent definition of lobbying might deter the exercise of some speech, such a result is not improper. As the Court noted in Harriss:

> It is suggested, however, that the Lobbying Act, with respect to persons other than those defined in § 307, may as a practical matter act as a deterrent to their exercise of First Amendment rights. Hypothetical borderline situations are conjured up on which such persons choose to remain silent because of fear of possible prosecution for failure to comply with the Act. Our narrow construction of the Act, precluding as it does reasonable fears, is calculated to avoid such restraint. But, even assuming some such deterrent effect, the restraint is at most an indirect one resulting from self-censorship, comparable in many ways to the restraint resulting from criminal libel laws. The hazard of such restraint is too remote to require striking down a statute which on its face is otherwise plainly within the area of congressional power and is designed to safeguard a vital national interest.

United States v. Harriss, supra at 626.

CONCLUSION

9 MCAR § 1.0204(A)(3)(i) is not vague either in its coverage of clerical expenses or the definition of what constitutes lobbying. However, even assuming some hypothetical applications of the section might be improper, it is premature at the stage of Attorney General review to reject the rule. The Ethical Practices Board therefore urges that 9 MCAR 1.0204(A)(3)(i) and the remainder of the Lobbyist Registration and Reporting rules be approved.

Dated: June 5, 1979

LEROY C. PADDOCK
515 Transportation Building
St. Paul, Minnesota 55155

Attorney for the Ethical
Practices Board

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May 30, 1979

Mr. Lee E. Sheehy
Special Assistant Attorney General
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50 Sherburne Avenue
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Dear Mr. Sheehy:

Enclosed is the brief discussing the issues raised in your memo of May 21, 1979, to Messrs. Flanagan and Ahern.

Very truly yours,

Michael H. Burns

MICHAEL H. BURNS

Enclosure
MHB:jm

CC: Mr. LeRoy Paddock
Ms. Elsa Carpenter

RECEIVED
MAY 30 1979
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STATE OF MINNESOTA

STATE ETHICAL PRACTICES BOARD

In the Matter of the Proposed Amendment of Rules of the State Ethical Practices Board Governing Lobbyist Registration and Reporting (9 MCAR §§ 1.200-1.209)	ATTORNEY GENERAL REVIEW BRIEF

SUBMITTED BY:

The Administrative Law Section
of
The Minnesota State Bar Association

William F. Brooks, Jr., Chairman

100 Minnesota Federal Building
Minneapolis, Minnesota 55401

I.

THE SCOPE OF REVIEW BY THE ATTORNEY GENERAL MUST BE TO REVIEW THE PROPOSED RULE BOTH "ON ITS FACE" AND "AS APPLIED".

MSA 15.0412 Subd. 4 charges the Attorney General to "review the rule for form and legality". The circumstances of this rule dictate a review that is a broad and far-reaching scrutiny based upon hypothetical facts and not a narrower examination of the rule itself. There are several reasons for this type of review.

A. STATEMENTS MADE BY THE ETHICAL PRACTICES BOARD

In statements to the Hearing Examiner regarding these rules, both Mr. B. Allen Clutter and Mr. Lee Paddock said the Ethical Practices Board would issue advisory opinions, and that, in essence, the Board would flesh out the rule with these advisory opinions. The Board apparently considers the rule to be of broad general application while the "real rule", the one that an individual must follow, will be written in the future as an advisory opinion. A copy of the relevant portion of the transcript of the statements made by Mr. Clutter and Mr. Paddock is attached.

Since the Board feels that future fact situations will play a role in the development of this rule as a working vehicle to guide lobbyists, the review should also be of the rule as applied to possible factual situations.

B. THE EFFECT OF CRIMINAL SANCTIONS

This rule purports to regulate First Amendment rights; therefore, in any criminal action brought to enforce it, the defendant may challenge its constitutionality, on its face, as applied to him and as it may be hypothetically applied to others. State vs. Hipp, 213 NW 2nd 610 (1973).

We may assume that there will someday be a criminal action based on these rules at which time a broad, far-reaching scrutiny of their constitutionality can be undertaken. The public policy behind a review by the Attorney General before rules become effective dictates that the constitutionality of these rules as applied be reviewed at this time.

The Attorney General's review is to catch problems before they arise. The only way this can effectively be done is to use the same tests in this review by the Attorney General as a court would use if the question were before a court.

C. THE PRESUMPTION OF CONSTITUTIONALITY AND THE ROLE OF THE ATTORNEY GENERAL

There is no presumption of constitutionality at this point. We are still in the midst of the rulemaking proceeding. The statute recognizes this: a "review for legality" by the Attorney General implies that constitutional, as well as other legal issues, will be looked at in the review. If a presumption of constitutionality existed at this point, the only times a thorough examination of the constitutionality of a rule would be done would be when an interested party attempted to rebut the presumption. While I have no statistics, only occasional rules are briefed as to their constitutionality at this point in the rulemaking process. Auerbach, Minn. Rulemaking 63 MLR 152.

The Code of Professional Responsibility has applicability to this issue. In reviewing proposed rules, the Attorney General acts as an advisor and so ED 7-3 applies, requiring consideration of ultimate court decisions.

Other critical considerations also apply. The Attorney General is a public prosecutor and a government lawyer, so EC 7-13 and EC 7-14 must be considered. The emphasis of these canons on public justice requires the Attorney General to consider the public and lobbyists as well as the Ethical Practices Board in his review of these rules. Accepting a presumption of constitutionality would certainly affect the Attorney General's duties under EC 7-12 and EC 7-13.

D. USE OF ADVISORY OPINIONS OR DECLARATORY JUDGMENT

These are not alternatives to a complete review by the Attorney General. Litigation involves great expense and they are both time consuming. External deadlines which lobbyists must meet create barriers to the use of either advisory opinions or declaratory judgment actions. The Ethical Practices Board has no real time limit in which to issue an advisory opinion and a declaratory judgment action

may easily take months. These are not effective methods of resolving a vague or ambiguous rule. Moreover, an advisory opinion lapses after approximately two years. MSA 10A.02 Subd. 12.

II.

THE ISSUE OF VAGUENESS OR OVERBREADTH

This doctrine does apply to lobbyist disclosure laws and regulations. U.S. vs. Harriss, 347 US 612, 74 S.Ct. 808 (1954), Advisory Op., Etc., of 1975 PA 227 (Q-2-10), 396 Mich 465, 242 NW 2nd 3 (1976). It therefore must be applied to this proposed rule. U.S. Supreme Court decisions applying this doctrine in cases involving First Amendment rights are extremely cautious and carefully scrutinize any law that affects such rights.

The language the U.S. Supreme Court used in Buckley vs. Valeo, 96 S.Ct. 612 (1976) shows this concern for protecting First Amendment rights:

> "Close examination of the specificity of the statutory limitation is required where, as here, the legislation imposes criminal penalties in an area permeated by First Amendment interests."....
>
> ...."The test is whether the language... affords the '[p]recision of regulation [that] must be the touchstone in an area so closely touching our most precious freedoms.' NAACP vs. Button, 371 U.S., at 438, 83 S.Ct., at 340.
>
> 96 S.Ct. at 645

In a footnote, n. 48, of the same decision, the Court states the danger is that:

> "...vague laws may not only 'trap the innocent by not providing fair warning' or foster 'arbitrary and discriminatory application' but also operate to inhibit protected expression by inducing 'citizens to "'steer far wider of the unlawful zone . . than if the boundaries of the forbidden areas were clearly marked."' Grayned vs. City of Rockford, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 2299, 33 L.Ed.2d 222 (1972), quoting Baggett vs. Bullitt, 377 U.S. 360, 372, 84 S.Ct. 1316, 1322, 12 L.Ed.2d 377 (1964), quoting Speiser vs. Randall, 357 U.S. 513, 526, 78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460 (1958). 'Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.' NAACP vs. Button, 370 U.S. 415, 433, 83 S.Ct. 328, 339, 9 L.Ed.2d 405 (1963)."
>
> 96 S.Ct. at 645

The Court concludes:

> "We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since NAACP vs. Alabama we have required that the subordinating interests of the State must survive exacting scrutiny. We also have insisted that there be a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed. See Pollard vs. Roberts, 283 F.Supp. 248, 257 (ED Ark.) (three-judge court), aff'd, 393 U.S. 14, 89 S.Ct. 47, 21 L.Ed.2d 14 (1968) (per curiam). This type of scrutiny is necessary even if any deterrent effect on the exercies of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure. NAACP vs. Alabama, supra, 357 U.S., at 461, 78 S.Ct., at 1171. Cf. Kusper vs. Pontikes, 414 U.S., at 57-58, 94 S.Ct. at 307-308.
>
> 96 S.Ct. at 656.

Such scrutiny of these rules is required. Without exacting scrutiny of the rule as applied to possible factual circumstances, it may not be possible to determine what indirect, unintended, chilling effect this rule will have on First Amendment rights.

In both Harriss (supra) and the Advisory Op. (supra), the Court found a portion of a lobbyist disclosure law vague and saved the law by judicially construing language in a narrow, limited sense. Harriss (supra) involved the definition of the term "lobbying" and defined it as follows:

> "...we believe this language should be construed to refer only to 'lobbying in its commonly accepted sense' -- to direct communication with members of Congress on pending or proposed federal legislation." 74 S.Ct. at 813.

A question as to the lack of a definition of lobbying in this rule has already been raised in these proceedings. The Advisory Op. (supra) decision reviewed a requirement of disclosure of expenses used for "soliciting of others to communicate" with public officials. In

construing this language with the "vagueness" doctrine and First Amendment rights the Court limited solicitation to "express and direct requests to so communicate" before disclosure was required. The Court then went further and said it would review the issue of the constitutionality of such restriction again if an actual case arose.

These tests allow disclosure of some items such as the cost of entertainment, food and beverages, but between such costs and the cost of a lobbyist's orthopedic shoes necessitated by marble floors, a line is passed abridging First Amendment rights. Proposed rule 9 MCAR 1.0204A.3.i is worded in such a way to possibly include orthopedic shoes. The use of the title "Other disbursements" and the words "This category shall include" certainly can be read to mean that clerical expenses are not the only disbursements to be included in this subdivision.

Another problem with 9 MCAR 1.0204A.3.i revolves around the lack of a definition of "lobbying." There are at least two possible interpretations of what must be disclosed in this subdivision. One interpretation is compensation paid to a secretary for typing material to be given to a public official. A second interpretation is to follow the U. S. Supreme Court interpretation of "lobbying" set out in Harriss (supra) and disclose compensation paid to a secretary only if the secretary is in direct communication with a public official. The second interpretation would result in virtually no disclosure of clerical employees' compensation.

The Ethical Practices Board admits these rules are vague. The transcript attached to this brief contains statements of this. The Board sees the use of advisory opinions by lobbyists as guiding their individual action. The diversity of lobbyists makes for so many unique situations that the bulk of the regulation may easily be in the form of advisory opinion and not rule. If the rule cannot be specific enough to guide reasonable men, it should not exist. Such a vague rule allows a serious potential for selective prosecution of lobbyists; the high emotion shown over some issues, such as abortion or power

lines certainly creates the possibility of selective prosecution. The potential for similar selective writing of advisory opinions exists.

Submitted by:

The Administrative Law Section of
The Minnesota State Bar Association
William F. Brooks, Jr., Chairman
100 Minnesota Federal Building
Minneapolis, Minnesota 55401

William F. Brooks, Jr.

DATED: May 30, 1979

BEFORE THE OFFICE OF HEARING EXAMINERS

OF THE STATE OF MINNESOTA

EXCERPT TESTIMONY

In the Matter of the Proposed
Adoption of Rules of the State
Ethical Practices Board Governing
Lobbyist Registration and Reporting
(9 MCAR Sec. 1.0200 to 1.0209).

HE DOCKET NO. EPB-79-002-AK

State Office Building
Room 57
St. Paul, Minnesota
Thursday, December 7, 1978

MET pursuant to notice approximately 9:30 a.m.

BEFORE:

ALLAN KLEIN: Hearing Examiner.

APPEARANCES:

B. ALLEN CLUTTER: Executive Director, Ethical Practices Board.

ELSA CARPENTER: Assistant Administrator, Ethical Practices Board.

LEE PADDOCK: Special Assistant Attorney General, representing the Ethical Practices Board.

E X C E R P T

EXAM. KLEIN: It is now approximately five minutes after one o'clock and we are resuming following a lunch break.

Mr. Clutter did you have the explanation requested in support of the proposed rule?

MR. CLUTTER: Yes, I'd like to make a presentation on this issue.

EXAM. KLEIN: OK.

MR. CLUTTER: The issue involves the category of other disbursements as proposed in this -- rules published in the State Register at the beginning of November. And I'd like to take you through the Board's rationale for such a rule and the historical basis for the rule as it existed and why the Board has changed its position, which I think has merit.

First of all, the statute defines lobbyists and I will not relatedthat, but it's important to note that within the statute upon definition there are specific statutory standards, categories as provided. And those categories we've enumerated above and defined. And the statute also provides a category of other expenses, and therefore, the Board considers it -- has a mandate to include such a category in its rules. It is called "and other disbursements".

In 1974 the statute, in the Board's judgment, related almost exclusively to direct lobbying activity. However, with the amendment in 1976 of the words, "or urging others to communicate" the Board's position is now that in its judgment the legislative policy has extended lobbying activity to include other than direct communication between a lobbyist and a public official. Therefore, it is not inconsistent in the Board's opinion for it to now require the reporting of necessary and ordinary office expenses including clerical expense.

I would like to point out that the Board considers the purpose of this law to be disclosure. And given the Legislative intent as the Board preceives it, through the 1976 amendments that it -- that disclosure of such indirect office expense or the expense of maintaining an office that relate to lobbying activity is something that the public has a right to know in terms of the total context of the amount of money spent by private organizations and associations.or private individuals to influence public policy.

The reasonableness of the rule, we would concede, may require an addition of such language as a reasonable estimated expense as suggested by public comment we have received to date. Such allocations are already required in other lobbying disbursement categories.

Specifically, I think, in the area of lobbying materials, such a pro rata allocation is -- has been, in fact, used since, I believe, 1975 and it is also noted in the rules in 1978.

As to the specificity issue that has been raised in earlier public comment it would be our position at this point that ordinary and necessary office expense including clerical expenses is specific rather than nonspecific as indicated.

In conclusion therefore, the Board thinks it is reasonable and proper and that given the amendment to the 19 -- by the Legislature of 1976 that it has an indication of legislative intent to require such disclosure, that the statute, by using other expense, indicates that such expenses are permissible given the nature of the rule -- the Board's power to make rule and to define lobbying disbursement categories.

I would also point out, as I did earlier, that if the rule as proposed and assuming it is adopted is -- proposes potential problems for any particular individual or association in terms of its actual interpretation for purposes of reporting the Board has, by power granted it by the Legislature, the power to provide specific guidance. to a -- to those persons in their unique situation.

I would say that the rules are suppose to be, as I

understand it and counsel may want to comment after I make this statement, suppose to have a general application and future effect. And that by use of the advisory opinion power in, specifically in this context, the Board could specifically tailor this unique circumstance of an organization or an indivudual that may have some difficulty -- might have difficulty in applying what we consider to be specific other disbursement category reporting.

EXAM. KLEIN: OK, could you wait just a moment.

(tape change.)

EXAM. KLEIN: Thank you.

MR. CLUTTER: OK, I believe that's all I have to say on this issue. We would, of course, plan to make comment -- we may plan to make comment after the 28th meeting.

Counsel do you have, is there anything that you'd like to say that I may have overlooked?

MR. PADDOCK: I think that the point that any specific facts that are somewhat unique which might fall into the other disbursement category being resolved by advisory opinions and thereby preventing people from being placed in jeopardy as a result of unsure -- being unsure of their statuses is an appropriate one in this context.

MR. CLUTTER: Just one other comment on this particular

issue and I -- it just occurred to me that in the decision Bang v. Chase which declared certain portions of our campaign financing unconstitutional, the three judge federal panel which reviewed the matter looked at the Board's advisory opinion power and spoke specifically to that issue and upheld the section of Minnesota law for -- based on the Board's ability to issue advisory opinions. And I think that you may want to take judicial note of that.

MR. KLEIN: Thank you. Were you finished?

MR. PADDOCK: Yes.

MR. KLEIN: Yeah. It had occurred to me when I had looked at this that the selection of the words "ordinary" and "necessary" might have come as a result of somebody who was familiar with tax law, and was it your intent to have which expenses were includable and which expenses were not includable be decided essentially in the same way that they're decided for tax purposes or not?

MR. CLUTTER: I'm -- I really can't say at this point.

MR. KLEIN: OK, did you -- did you choose the words "ordinary" and "necessary" when they went into the original rules?

MR. CLUTTER: No, I was not the director. It was drafted by the former solicitor general. It was -- he

drafted the rules for the Board at that point. And it's conceivable that that was the reason. And it's also the other reason that those words may be there is that "ordinary and necessary expenses" appear as, I believe in the campaign financing section, or did at that point, in terms of campaign expenditures. And all of these rules, as you may know, were put togeth -- were drafted and promulgated within a matter of about eight -- six to eight months and as a result a number of the -- numbers of the language was picked up that way. But that -- that is a point that I could certainly find. We may wish to submit it in the record after the 28th.

EXAM. KLEIN: It -- does that term "ordinary and necessary" still appear in the campaign financing law?

MR. CLUTTER: I don't believe so. I think they were taken -- it was taken out in 1978, I'm not certain I'd have to check.

EXAM. KLEIN: All right, does anybody have any questions with respect to this matter, questions that they'd like to have cleared up perhaps in advance of the meeting on the 28th? I think it might be appropriate to do it now while as many people as possible are here.

All right.

(Whereupon this excerpt is concluded.)

TRANSCRIBER'S CERTIFICATE

I, Nancy M. Thomas, do hereby certify that the excerpt had in the foregoing matter on the 7th day of December, 1978, at St. Paul, Minnesota before Allan Klein, Hearing Examiner, was recorded by electronic device on magnetic recording tapes by the Hearing Examiner.

I further certify that I thereafter transcribed into typewriting the foregoing excerpt from said recording tapes.

I further certify that said excerpt of said hearing constitutes a full, true and correct transcript of the proceedings to the best of my ability.

Dated this 12th day of

December, 1978

Nancy M. Thomas

NANCY M. THOMAS
Clerk Typist Int.
Office of Hearing Examiners.

ADMIN 1000

#519

STATE OF MINNESOTA

DEPARTMENT OFFICE OF HEARING EXAMINERS

Office Memorandum

TO : LEE SHEEHY
Special Assistant Attorney General

DATE: May 30, 1979

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: ETHICAL PRACTICES RULES

I received my copy of your memorandum to the parties on the Ethical Practices rules. Obviously, this office will be filing no briefs. However, I would be extremely interested, in view of George Beck's recent memo to you, in obtaining copies of the briefs filed on the issue raised by the recent Supreme Court decision.

DRH:sh

RECEIVED
MAY 31 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

COUNTY OF RAMSEY

- - - - - - - - - - - - - - - - - -

In the matter of the Proposed Adoption of Rules of the State Ethical Practices Board Governing Lobbyist Registration and Reporting (9MCAR 1.0200-1.0209)

PROPOSED RULES GOVERNING

LOBBYISTS NOTICE OF HEARING

- - - - - - - - - - - - - - - - - -

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Minn. Stat. Section 15.0412 (1978) and Minn. Laws 10A as amended in 1978 in the above entitled matter will be held in Room 57, State Office Building, St. Paul, Mn 55155, on Thursday, December 7, 1978, beginning at 9:30 A.M., and continuing until all persona have had an opportunity to be heard.

Statutory authority to promulgate the proposed rules is vested in the Ethical Practices Board by Minn. Stat. 10A.02 subd. 11 (1978).

The Ethical Practices Board proposes to amend existing rules EC200 - EC 211 to reflect changes in the statute in 1976, 1977, and 1978 relating to the registration and reporting of lobbyists. These amendments affect the definition of a lobbyist, lobbyist registration and reporting requirements, and penalties for late filing.

Free copies of the proposed rules are available and can be obtained from the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, or by calling 296-5148. Additional copies will be available at the hearing.

A Statement of Need explaining why the Board feels the proposed rules are necessary and a Statement of Evidence outlining the testimony they will introduce will be filed with the Hearing Examiner at least 25 days prior to the hearing and will be available for public inspection.

All interested or affected persons will have an opportunity to participate. Statements made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Hearing Examiner Allan W. Klein, telephone: 612-296-5938, either before the hearing, or within (5) five working days following the close of the hearing, or up to 20 days if ordered by the Hearing Examiner.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within 5 days after he

commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exemptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone: 612-296-5615.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report) or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Dated this 16th day of October, 1978.

MINNESOTA STATE ETHICAL PRACTICES BOARD

By Roger Noreen

Roger Noreen, Chairperson

Minnesota State Ethical Practices Board
Room 41, State Office Building
Saint Paul, Minnesota 55155

Telephone: 612-296-5148

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Elizabeth Ebbott, do hereby certify that I am secretary of the Ethical Practices Board of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Ethical Practices Board duly and properly called and held on the 12th day of June, 1978, (that a quorum was present at said meeting; that a majority of those present voted for the resolution); that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that B. Allen Clutter, Executive Director of the Board, be and he hereby is granted the authority and responsibility of drafting rules concerning Lobbyist Registration and Reporting and to solicit outside opinion regarding such solicitation."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of May, 1979.

Elizabeth Ebbott
Secretary

Roger D Moren
Attest by one other officer

RECEIVED
APR 9 19
OFFICE OF HEARING EXAMINERS

CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

I, Elizabeth Ebbott, do hereby certify that I am secretary of the Ethical Practices Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Ethical Practices Board duly and properly called and held on the 30th day of March, 1979; that a quorum was present at said meeting; (that a majority of those present voted for the resolution); that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules relating to Lobbyist Registration and Reporting be and they hereby are approved and adopted, pursuant to authority vested in us by M.S. 10A.02, subd. 13 and that Vernon Jensen, one of the members of the Ethical Practices Board, be and hereby is authorized to sign an order adopting those rules."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 5th day of April, 1979.

Attested by:

Karen Jensen

Elizabeth Ebbott
Secretary

STATE OF MINNESOTA

STATE ETHICAL PRACTICES BOARD

COUNTY OF RAMSEY

- - - - - - - - - - - - - - - - - - -

In the matter of the Proposed Adoption of Rules of the State Ethical Practices Board Governing Lobbyist Registration and Reporting (9MCAR 1.0200 - 1.0209)

ORDER ADOPTING RULES

- - - - - - - - - - - - - - - - - - -

The above-entitled matter came on for hearing before the Hearing Examiner of the State of Minnesota on the 7th day of December, 1978, at 9:30 A.M. in room 57 of the State Office Building, St. Paul, Minnesota, and at 9:30 A.M. on December 28, 1978, in room 14 of the State Office Building, St. Paul, Minnesota, after proper notice required by M.S. 1977, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as 9MCAR 1.0200 - 1.0209 are adopted this 30th day of March, 1979, pursuant to authority vested in me by Minn. Stat. 10A.02, subd. 13.

MINNESOTA STATE ETHICAL PRACTICES BOARD

By Vernon Jensen

Vernon Jensen, Vice Chairperson

EPB-79-002 AK

IN THE MATTER OF
THE PROPOSED AMENDMENT
OF RULES OF THE STATE
ETHICAL PRACTICES
BOARD GOVERNING
LOBBYIST REGISTRATION
AND REPORTING
(9 MCAR §§ 1.200-1.209)

STATEMENT OF
COMPLIANCE WITH
MANUAL OF RULE
MAKING PROCEDURES

I, Special Assistant Attorney General LeRoy C. Paddock, do hereby declare that I have examined the proposed rules and all related documents and that, based upon them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

LeRoy C. Paddock
Special Assistant Attorney General

Dated: April 30, 1979

STATE OF MINNESOTA

COUNTY OF RAMSEY

- - - - - - - - - - - - - - - - - - - -

In the matter of the Proposed Adoption of Rules of the State Ethical Practices Board Governing Lobbyist Registration and Reporting (9MCAR 1.0200-1.0209)

CERTIFICATE OF COMMISSION'S ADOPTION OF RULES RESOLUTION

- - - - - - - - - - - - - - - - - - - -

I, Elizabeth Ebbott, do hereby certify that I am secretary of the Minnesota State Ethical Practices Board, a Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board duly and properly called and held on the 27th day of September, 1978; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "Resolved, that the rules governing lobbyist registration and reporting (9MCAR 1.0200-209) be and they hereby are approved and adopted, pursuant to authority vested in us by Laws of Minnesota 1978, chapter 463, section 19-27, and that Roger Noreen, Chairperson of the Minnesota State Ethical Practices Board, be and he hereby is authorized to sign an order adopting those rules."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 16th day of October, 1978.

Elizabeth Ebbott, Secretary

Attest by one other Officer.

ATTORNEY GENERAL

LE ROY PADDOCK
Special Assistant
Attorney General

May 21, 1979

LEE E. SHEEHY
Special Assistant
Attorney General

296-1288

Ethical Practices Board Lobbyist Registration Rules

This office has not approved the above-captioned rules. The rules are being returned to the agency for briefing of the legal concern discussed below.

Upon submittal to this office, several interested persons raised questions relating to the legality of the "Other Disbursements" section of the rules. As you may recall, this section was the subject of some debate and amendment during the promulgation process. Legal arguments relating to the exact language of the section finally proposed for adoption were not developed in any brief filed in this matter. Because constitutional rights under a rule which is enforced through criminal sanctions may be at question, additional briefs are necessary to clarify the record and assist this office in making its determination. I am therefore requesting interested persons to submit additional legal arguments to me by May 30, 1979, with a copy to be delivered simultaneously to you. I am asking you to submit a Reply to me on June 5, 1979, with a copy to interested persons who have requested same from you.

Among matters discussed, I would hope that at least the following issues are addressed:

1. Applicability of Minnesota, as well as Federal, "void for vagueness" case law to the text of the rule proposed for adoption.

2. The presumption of constitutionality, including the impact of the Supreme Court's recent decision of Minnesota-Dakota Retail Hardware Assoc., et al vs. State of Minnesota (filed May 11, 1979) on the proper scope of review of the Office of the Attorney General.

If you have any questions, do not hesitate to call me.

LES/bw
cc: Elsa Carpenter
Michael L. Flanagan
Michael J. Ahern
Duane Harves
Marshall Whitlock
Melvin B. Goldberg

Minnesota Ethical Practices Board
[illegible] State Office Building
St. Paul, Minnesota 55155

PROPOSED LOBBYIST RULES HEARING - DECEMBER 7, 1978

9MCAR 1.0200 - 1.0209

AGENCY TECHNICAL CHANGES

Page 2
Lines 19-21

9MCAR 1.0201 B.
Strike lines 19-21 which are repetitive of lines 6-8.

Page 3
Line 12

9MCAR 1.0201 C.
Insert after the word "requests" the word "that"; and strike the word "to" after the word "association", for grammatical clarification.

Page 4
Line 20

9MCAR 1.0202
Strike the words "shall be" and insert the word "is".

Page 8
Lines 19-20

9MCAR 1.0204 A. 3. e.
Strike proposed new word "salaries". Inclusion is repetitive of 9MCAR 1.0204 A. 3. a. (2), page 8, lines 6-10 and 9MCAR 1.0204 A. 3. i., page 10, lines 13-16, and could lead to multiple reporting of a single item.

Page 9
Line 19

9MCAR 1.0204 A. 3. h. (1)
Insert before the word "provided" the word "those" for grammatical purposes.

DEPARTMENT ETHICAL PRACTICES BOARD

Office Memorandum

TO : Lee Sheehy
Special Assistant Attorney General
G25 Administration Building

DATE: May 1, 1979

FROM : Elsa Carpenter
Assistant Administrator

PHONE: 296-1722

SUBJECT: LOBBYIST RULES (9MCAR 1.0200 - 1.0209)

Today we delivered to your office the following:

1.	Rules as adopted	3 copies
2.	Proposed rules	2 copies
3.	Board approval of proposed rules	2 copies
4.	Order of Hearing	2 copies
5.	Notice of Hearing	2 copies
6.	Affidavit of Receipt of Secretary of State List ...	1 copy
7.	Secretary of State List	1 copy
8.	Affidavit of Mailing	2 copies
9.	Statement of Need	2 copies
10.	Chief Hearing Examiner report	2 copies
11.	Findings	2 copies
12.	Orders Adopting Rules	3 copies
13.	Certificates of Compliance from Paddock	2 copies
14.	Intent to solicit outside opinion	2 copies
15.	Responses to solicitation of outside opinion - originals	

May 9, 1979

EC:cg

16.	Hearing Examiner 's Report	2 copies
17.	Technical Changes in proposed rules	2 copies

May 11,1979

18.	Board resolution authorizing the Executive Director to pursue commencement of promulgation by preparing the order and notice of hearing.	2 copies

RECEIVED
MAY 10 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

STATE ETHICAL PRACTICES BOARD

COUNTY OF RAMSEY

- - - - - - - - - - - - - - - - - -

In the matter of the Proposed
Adoption of Rules of the State
Ethical Practices Board Governing
Lobbyist Registration and
Reporting (9MCAR 1.0200 - 1.0209)

FINDINGS

- - - - - - - - - - - - - - - - - -

The Ethical Practices Board acknowledges receipt of the Report of Hearing Examiner Allan W. Klein on March 2, 1979 regarding the proposed rules.

FINDINGS OF FACT

1. Hearing Examiner Klein recommended the following nonsubstantive change in 9MCAR 1.0204.A.3.a.2:

   That the words "a reasonable estimate of" be inserted before the words "pro rata office expenses."

   The Board accepted the recommendation of the Hearing Examiner for the following reason:

   The change, although not a substantive change, would improve the rules as proposed, allowing a reasonable latitude in reporting of office expenses.

2. A second proposal to amend 9MCAR 1.0204A.3.g.3 to insert the word "primary" before the word "purpose" in order to indicate that food and beverages provided at meetings or conferences were reportable only if the "primary" purpose of the meeting or conference was for a lobbying purpose, was discussed and rejected for the following reason:

   That the word "primary" was not defined and could be used to avoid any reporting in the category.

   Inasmuch as Hearing Examiner Klein viewed the proposal as reasonable but not necessary, the Board believes the original proposed language acceptable.

3. In the other contested matter concerning 9MCAR 1.0204.A.3.i, "Other disbursements," Hearing Examiner Klein found that the Board failed to demonstrate either the need for or reasonableness of the proposed rule, and further, recommended retention of the permanent rule in its existing form. In commenting, Hearing Examiner Klein suggested that any proposed change in language from the existing rule would be

acceptable only if it were more specific than proposed.

The Board, on March 30, 1979, approved the following language:

~~(jj)~~ i. Other disbursements. This category shall include ~~all disbursements not reported in categories (a)-(i), but shall not include non-reimbursed, ordinary and necessary office expenses, including clerical expenses,~~ a reasonable estimate of a prorata share of compensation paid to clerical employees incurred for the purpose of lobbying if not reported in categories (a)-(h).

The Board maintains that the proposed language provides further clarification of categories b.-h. with specificity which does not constitute a substantial change from the intent of the language originally submitted for hearing.

Existing rule EC 205 (aa) includes the reporting of the cost of clerical expense and no objection was made to its continued inclusion. Therefore, because the law was extended in 1976, to include indirect lobbying,[1/] the Board feels, to be consistent, that clerical expense incurred in categories b.-h. should also be required to be reported.

NOW, THEREFORE, the Board requests acceptance and inclusion by the Hearing Examiner of these three proposed amendments to the original rules heard by Hearing Examiner Klein.

Roger F. Noreen
Chairperson

Dated: April 18th, 1979

1/ Minn. Stat. 10A.01 subd. 11 (1976) extended the definition of "attempting to influence" to include urging others to communicate with public officials.

ADMIN. 1000A (REV. 8/76)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ETHICAL PRACTICES BOARD

TO : Lee Sheehy
Assistant Attorney General
G-25 Administration Building

DATE: May 15, 1979

FROM : Elsa Carpenter
Assistant Administrator

PHONE: 296-1722

SUBJECT: LOBBYIST RULES 9MCAR 1.0200 - 1.0209

On the copy we sent you of adopted rules, we inadvertently omitted the striking of page two (2), lines 19 - 21, presented as a technical amendment on December 7, 1978, in hearing before Hearing Examiner Allan Klein. Please correct your copy.

EC:cg

RECEIVED
MAY 16 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

ADMIN 1000 (REV. 4/77)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ETHICAL PRACTICES BOARD

TO : Lee Sheehy
Special Assistant Attorney General
G25 Administration Building

DATE: May 1, 1979

FROM : Elsa Carpenter
Assistant Administrator

PHONE: 296-1722

SUBJECT: LOBBYIST RULES (9MCAR 1.0200 - 1.0209)

Today we delivered to your office the following:

1.	Rules as adopted	3 copies
2.	Proposed rules	2 copies
3.	Board approval of proposed rules	2 copies
4.	Order of Hearing	2 copies
5.	Notice of Hearing	2 copies
6.	Affidavit of Receipt of Secretary of State List	1 copy
7.	Secretary of State List	1 copy
8.	Affidavit of Mailing	2 copies
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15.	Responses to solicitation of outside opinion - originals	

EC:cg

RECEIVED
MAY 2 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

① p. 2 – Same sentence twice

② p. 5 – When is reporting date 🗓 as est in "A"?

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE STATE ETHICAL PRACTICES BOARD

APR 26 1979

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE STATE ETHICAL PRACTICES BOARD GOVERNING LOBBYIST REGISTRATION AND REPORTING (9 MCAR §§ 1.200-1.209).

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, the above-entitled matter came on for hearing on December 7, 1978, and December 28, 1978, before Allan W. Klein, a Hearing Examiner of the State Office of Hearing Examiners, in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Ethical Practices Board on February 14, 1979; and

WHEREAS, the Ethical Practices Board has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Ethical Practices Board has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Ethical Practices Board has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Ethical Practices Board has the responsibility of submitting the complete hearing record and the rules as adopted by the Board to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 24th day of April, 1979.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
STATE ETHICAL PRACTICES BOARD
41 STATE OFFICE BUILDING
ST. PAUL, MINNESOTA 55155
PHONE: (612) 296-5148

July 3, 1978

As an individual or a representative of an association which has shown interest in the area of lobbying in the past, I am sending you a copy of the current draft of the proposed Lobbyist Rules and Regulations.

The Board will be reviewing this draft at their next meeting on Tuesday, July 18, 1978, commencing at 11:00 a.m., in room 14, State Office Building, St. Paul, Minnesota.

We would appreciate your review of the proposed rules and any comments you wish to submit. If you should care to testify, you are welcome to do so at the next meeting of the Board, or if you should wish to discuss them with me, I would be happy to do so.

Sincerely yours,

Elsa Carpenter

Elsa Carpenter
Assistant Administrator

EC:cg
enc.

STATE OF MINNESOTA

COUNTY OF RAMSEY

- - - - - - - - - - - - - - - - - -

In the matter of the Proposed Adoption of Lobbyist Rules and Regulations to be promulgated by the State Ethical Practices Board

AFFIDAVIT OF MAILING

- - - - - - - - - - - - - - - - - -

JoAnn Hill, BEING FIRST DULY SWORN deposes and says:

That on the 30th day of Oct., 1978, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

JoAnn Hill

Subscribed and sworn to before me this 30th day of Oct., 1978.

Jeanne McBride

NOTARY PUBLIC - MINNESOTA
DAKOTA COUNTY
My Commission Expires Oct. 24, 1984.

6

CHAPTER THREE: EC 200 - EC 212

RULES AND REGULATIONS FOR LOBBYIST REGISTRATION AND REPORTING

EC 200 Purpose of the Rules. The purpose of Rules EC 200 - 212 is to implement the lobbyist registration and reporting provisions of Minnesota Laws 1974, Chapter 470 (Minnesota Statutes, 1974, Sec. 10A.01 - 10A.34), hereinafter "the Act"

EC 200 Definitions

(a) "Address" means street and number (Post Office box or rural route, if appropriate), room number (if any), city, state and zip code.

(b) "Association" means business, corporation, firm, partnership, committee, labor organization, club or any other group of two or more persons, which includes more than an immediate family, acting in concert. Minn. Stat. 10A.01, subd. 3 (1974)

(c) "Attempt to influence" means any effort to persuade a public official to support or oppose proposed legislation or to direct the outcome of an administrative action in a particular way.

(d) "Disbursement" means any payments or expenditures made by the lobbyist, or any employer or employee of the lobbyist, for lobbying purposes.

(e) "Employee of the lobbyist" means a person employed by the lobbyist to assist him in his lobbying activities.

(f) "Employer of the lobbyist" means the person or association by whom he is employed for the purpose of lobbying.

(g) "File", "Filed" and "Filing" means delivery to the Minnesota State Ethics Commission by midnight of the prescribed date for filing, or deposit as certified mail in a U.S. Post Office, postage prepaid, no later than midnight two days before the prescribed filing date.

(h) "Lobbying" means to attempt to influence legislative or administrative actions by communicating with public officials. For purposes of these rules "administrative action" means making rules or regulations, or cases of rate setting or power plant siting. For purposes of these rules "communicating" means any written or oral contact by a lobbyist with a public official. Lobbying does not include a request for information or interpretation.

(i) "Lobbyist" means:

(1) Any individual who is engaged for pay or other consideration, or who is authorized by another person to spend money, for the purpose of attempting to influence legislative or administrative action by communicating with public officials.

(2) Any official designated representative of any person or association which has as a major purpose the influencing of legislative or administrative action by communicating with public officials. An officially designated

representative is a person authorized by another to lobby on the latter's behalf.

(3) Any individual who spends more than $250, not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating with public officials.

"Lobbyist" does not include:

(4) A public official, or employee of the state or any of its political subdivisions or public bodies, acting in his official capacity.

(5) Parties and their representatives appearing or acting in any proceeding before a state board, commission or agency of the executive branch other than rule-making proceedings or cases of rate-setting or power plant siting.

(6) Individuals in the course of selling goods or services to be paid for by public funds.

(7) News media or their employees or agents, but only while acting in the ordinary course of business of publishing or broadcasting news items, editorials or other comments or paid advertisements which directly or indirectly urge official action.

(8) Paid expert witnesses whose testimony is requested by the body before which they are appearing or by one of the parties to a proceeding, but only while acting in the ordinary course of preparing or delivering testimony.

Minn. Stat. 10A.01, subd. 11 (1974).

(j) "Occupation and principal place of business" means, if self-employed, type of work or profession and city and state where self-employed; or, if employed by another, the type of work or title, name of employer or employing organization, and city and state of employment.

(k) "Public Official" means:

(1) Any member of the legislature;

(2) Any person holding a constitutional office in the executive branch and his chief administrative deputy;

(3) Any member of a state board or commission with rule-making authority as provided in **Minn. Stat. 15.0411**, subd. 3;

(4) Any person employed by the legislature as secretary of the senate, chief clerk of the house, revisor of statutes, legislative auditor, or researcher or attorney in the office of legislative research;

(5) Any person employed by the executive branch in a position specified in Minn. Stat. 15A.081;

(6) Any member of the metropolitan council, metropolitan transit commission, metropolitan sewer board or metropolitan airports commission.

Minn. Stat. 10A.01, subd. 18 (1974).

EC 202 Obligation to Register. Each lobbyist must register with the

Commission by filing the Lobbyist Registration Form (EC Form 4) within five days after lobbyist activity has commenced by the lobbyist. No lobbyist shall be required to register before January 15, 1975.

EC 203 Required Registration Information

(a) The Lobbyist Registration Form (EC Form 4) shall include the following information:

(1) Name and address of the lobbyist.

(2) Principal place of business of the lobbyist, if any.

(3) Name and address of each person or association, if any, by whom the lobbyist is retained or employed, or on whose behalf the lobbyist appears.

(4) The names and addresses of the officers and directors of each association the lobbyist represents.

(5) A general description of the subject or subjects on which the lobbyist expects to lobby, which general description shall include a listing of the categories of legislative or governmental activity concerning which the person expects to lobby.

(b) Each person or association on whose behalf a lobbyist is required to report shall provide the information required in EC 203 (A) and EC 205 to the lobbyist no later than five days before each prescribed filing date.

EC 204 Obligation and Time to Report

(a) Each person who is a lobbyist at any time during a calendar year shall file a Lobbyist Disbursement Report (EC Form 5) which shall include all disbursements made during the applicable reporting period as provided in EC 205. No Lobbyist Disbursement Report (EC Form 5) shall cover any activities or disbursements made prior to January 1, 1975.

(b) After filing the Lobbyist Registration Form (EC Form 4), each lobbyist must file Lobbyist Disbursement Reports (EC Form 5) on the following dates of each year, beginning with the first such date which occurs 15 days or more after commencement of lobbying:

February 15;
March 15;
April 15;
June 15; and
October 15.

(c) The first Lobbyist Disbursement Report (EC Form 5) shall include disbursements subject to reporting under EC 205 which are made from the day lobbying commences to the day 15 days immediately preceding the current filing date. Each subsequent Lobbyist Disbursement Report (EC Form 5) shall include reportable disbursements made from the end of the period covered by the preceding report to the day 15 days immediately preceding the current filing date

(d) A lobbyist who testifies at only one legislative committee hearing, or at one proceeding of a state board, commission or agency, and who is not otherwise engaged in lobbying, shall register as required by Rule EC 202, but may terminate his requirement to file a Lobbyist Disbursement Report

(EC Form 5) by identifying on the Lobbyist Registration Form (EC Form 4) the date, place, and forum of the single appearance as a lobbyist, and by stating (1) that no reportable disbursements were made in connection with the appearance such as to require reporting by the lobbyist, or (2) the name of the person or association reporting any reportable disbursements made in connection with the appearance.

(e) Except as provided in EC 304 (D), a lobbyist who terminates his activities as a lobbyist may terminate his duty to report by indicating on a Lobbyist Disbursement Report (EC Form 5) the fact that his activities as a lobbyist have terminated. If such person subsequently renews lobbyist activity, then he must re-register in accordance with Rule EC 202 and file reports as required by Rule EC 204.

EC 205 Required Reporting Information

(a) **Disbursements.** The lobbyist shall report the following information on the Lobbyist Disbursement Report (EC Form 5):

(1) All information required on the Lobbyist Registration Form (EC Form 4) by EC 203 (A), (1-4), and a general description of the subject or subjects on which the lobbyist has lobbied, which general description shall include a listing of the categories of legislative or administrative activity concerning which the person has lobbied during the reporting period.

(2) Total disbursements by the lobbyist, or any employer or employee of the lobbyist, for lobbying purposes in each of the following categories:

(aa) **Preparation and distribution of lobbying materials.** This category shall include any disbursements for preparation and distribution of any printed material, publication, film, slide, recording, video tape, or other communication material specifically prepared by or for a lobbyist, or any employer or employee of the lobbyist, and which advocates, promotes or supports the special interests and concerns of an individual or association, and which is used to attempt to influence the action of any public official.

(bb) **Media Advertising**

(cc) **Telegraph and telephone**

(dd) **Postage**

(ee) **Fees and allowances.** This category shall include disbursements for consulting fees, or other fees, for services done or to be done, as well as expenses incurred in rendering such services. This category shall not include compensation paid to the lobbyist by his employer for services rendered as a lobbyist on behalf of the employer.

(ff) **Entertainment.** This category shall include disbursements for entertainment including but not limited to sporting, theatrical and musical events, made on behalf of any public official, as well as for the lobbyist, or employer or employee of the lobbyist, when in the company of any public official.

(gg) **Food and Beverages.** This category shall include disbursements for food and beverages for any public official, as well as food and beverages for the lobbyist, or any employer or employee of the lobbyist, when in the company of any public official.

(hh) **Travel and Lodging.** This category shall include all disbursements for travel and lodging of the lobbyist, any employer or employee of the lobbyist, or of any public official, except those incurred for the purpose of enabling the lobbyist, or any employer or employee of the lobbyist, to attend a meeting of or to appear before a committee of the legislature, or a state board, commission or agency.

(ii) **Gifts.** This category shall include the cost of anything of value given or paid voluntarily to a public official without full and adequate consideration, and which is not reported in categories (a) - (h) but shall not include contributions to candidates. For purposes of these rules, "contribution to a candidate" shall include any contribution made for the purpose of influencing the nomination for election or election of a candidate to office.

(jj) **Other disbursements.** This category shall include all disbursements not reported in categories (a) - (i), but shall not include nonreimbursed, ordinary and necessary office expenses including clerical expense.

(3) Total disbursements reported to date during the calendar year in each of the categories listed in EC 205 (A) (2).

(b) **Gifts, Loans, Honorariums, Items or Benefits.** The lobbyist shall report on the Lobbyist Disbursement Report (EC Form 5) the name and address of each public official receiving any gift, honorarium, loan, item or benefit from the lobbyist, or any employer or employee of the lobbyist, equal in value to $20 or more, excluding contributions to candidates, and date on which it was received, whether or not it was given for lobbying purposes, in the following categories:

(1) **Gifts.** This category shall include anything of value, other than an item or benefit, given or paid voluntarily by the lobbyist, or any employer or employee of the lobbyist, to a public official without the public official providing full and adequate consideration.

(2) **Loans.** This category shall include anything of value given or paid voluntarily by the lobbyist, or any employer or employee of the lobbyist, to a public official which the public official agrees to return at some future time or to repay with something of value, except a loan from an institution engaged primarily in the business of making loans when made in the ordinary course of business on substantially the same terms as those prevailing for comparable transactions with other persons.

(3) **Honorariums.** This category shall include anything of value given or paid voluntarily by the lobbyist, or any employer or employee of the lobbyist, to a public official for services for which there is no obligation to make payment, for example, a speech, an article, or similar service.

(4) **Items or Benefits.** This category shall include entertainment, food and beverages, travel and lodging

The name and address of the public official and the date of the transaction shall be reported only when the value of the gift, honorarium, loan, item or benefit provided to a public official in a single transaction is equal in value to $20 or more. Whenever a disbursement for a gift, item or benefit for a public official is reported under EC 205 (A) (2), the name and address of the public official must also be reported under EC 205 (B)

if the value of such gift, item or benefit is equal in value to $20 or more. The lobbyist is not required to report any item or benefit given or paid to a part-time, non-elected public official by the lobbyist's employer, if it is given or paid to such public official in his non-official capacity by a person other than the lobbyist, without any participation by the lobbyist in the transaction, in connection with a specific business activity unrelated to lobbying.

(c) **Original Source of Funds.** The lobbyist shall report on the Lobbyist Disbursement Report (EC Form 5) the following information as to the "original source of funds" in excess of $500 in the calendar year used for the purpose of lobbying: The name, address and employer, or if self-employed, the occupation and principal place of business, of each original source of funds in excess of $500. It shall not include the amount paid. For reporting purposes, original source of funds shall mean any person or association who disburses $500 or more in any year directly to the lobbyist, or to any employer of the lobbyist, to be used for purposes of lobbying, including fees or salary paid to a lobbyist as compensation.

EC 206 Lobbyist Retained by More Than One Employer. A lobbyist retained by or representing more than one employer shall submit a separate Lobbyist Registration Form (EC Form 4), and a separate Lobbyist Disbursement Report (EC Form 5), for each employer by whom he is retained. If disbursements have been made on behalf of more than one employer, the lobbyist may report such disbursements on one Lobbyist Disbursement Report (EC Form 5) as a joint disbursement together with a statement reasonably allocating disbursements among the several employers.

EC 207 Employers Which Employ More Than One Lobbyist. If the same person or association employs or is represented by more than one lobbyist, each lobbyist must register separately. However, one registered lobbyist may report all the disbursements for lobbying purposes made by all lobbyists representing a common employer, person or association. In such case, each lobbyist shall file a certified report on his Lobbyist Disbursement Report (EC Form 5) stating the name of the employer, person or association which the lobbyists represent in common. The reporting lobbyist shall certify the names of the lobbyists for whom the Lobbyist Disbursement Report is made. Each other lobbyist shall certify on his Lobbyist Disbursement Report to the accuracy of the single report of his disbursements by the reporting lobbyist.

EC 208 Place to Obtain and File Forms. All Lobbyist Registration Forms (EC Form 4) and Lobbyist Disbursement Reports (EC Form 5) shall be on forms issued by the Minnesota State Ethics Commission and shall be filed with the Minnesota State Ethics Commission.

EC 209 Changes and Corrections. Any material changes in information previously submitted, and any corrections to a Lobbyist Registration Form (EC Form 4) or Lobbyist Disbursement Report (EC Form 5), shall be filed in writing with the Commission within ten days following the date of the event prompting the change or the date upon which the person filing became aware of the inaccuracy. The change or correction shall identify the form and the paragraph containing the information to be changed or corrected, and shall be signed and certified to be true by the person filing.

EC 210 Contingent Fees Prohibited. No person or association shall employ a lobbyist for compensation which is dependent upon the result or

outcome of any legislative or administrative action. Any person or association violating these provisions is guilty of a gross misdemeanor.

EC 211 Failure to Report. The Commission must notify by registered mail any lobbyist who fails to register or report within five days after the required filing date. A lobbyist who knowingly fails to register or make such periodic reports within seven days after receiving notice from the Commission is guilty of a misdemeanor

EC 212 Penalty for False Statements. Any registration form or report required by these rules shall be signed and certified to be true by the person required to file the report. Any person who signs and certifies to be true a report or statement which he knows contains false information or who knowingly omits required information is guilty of a felony.

Filed December 31, 1974.

STATE OF MINNESOTA

COUNTY OF RAMSEY

AFFIDAVIT OF ACQUISITION

OF MAILING LIST

ELSA CARPENTER, being first duly sworn upon oath, deposes and says:

1. That she is the Assistant Administrator in the Office of the State Ethical Practices Board for the State of Minnesota.

2. That on the 12th day of October, 1978, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. 15.0412.

3. That on the 12th day of October, 1978, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Elsa M. Carpenter

ELSA M. CARPENTER

Subscribed and sworn to before me
this 30th day of October,
1978.

Jeanne McGree

JEANNE McGREE
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
My Commission Expires Oct. 24, 1984.

STATE OF MINNESOTA

COUNTY OF RAMSEY

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In the matter of the Proposed Amendment of Rules of the State Ethical Practices Board Governing Lobbyist Registration and Reporting (9MCAR 1.0200 - 1.0209

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STATEMENT OF NEED

Introduction

The Ethics In Government Act, Minn. Stat. Chapter 10A, which was originally passed in 1974, authorized the Ethical Practices Board, hereinafter referred to as the Board, to provide for and administer a statewide program of registration and reporting of lobbyists to begin in 1975. The above captioned rules are amendments to existing rules EC 200 - EC 215 which were adopted on December 7, 1974.

Minn. Stat. Chapter 10A has been amended in both 1976 and 1978. Those amendments redefined a lobbyist, exempted certain individuals from inclusion as lobbyists, extended lobbying to include rate setting, and urging others to communicate with public officials and authorized the Board to levy late filing fees.

The need to amend these rules arises in order to enable the Board to implement the lobbyist registration and reporting requirements of Minn. Stat. 10A (1974) as amended in 1976 and 1978, and in order to provide both the public and lobbyists with information regarding the scope of Minn. Stat. 10A.03 et seq.

These rules are necessary in order that lobbyists may register with the Board, as required by Minn. Stat. 10A.03, and may provide the Board with such information concerning their activities as is required by Minn. Stat. 10A.04.

These rules are further necessary in order that the Board may provide forms for registration and reporting.

The following describes the need for and reasonableness of each rule or section thereof that is being proposed or amended:

9MCAR 1.0200 PURPOSE OF THE RULES

9MCAR 1.0201 DEFINITION

The amendment strikes definitions which repeat the law or whose meaning was superseded by changes in the law in 1976 or 1978; redefines "lobbyist" to conform with changes in Minn. Stat. 10A.01; and defines "urges/urging others to communicate" which language was added in 1976 to the definition of a lobbyist in Minn. Stat. 10A.01, subd. 11. (1978) This language extends the scope of the statute beyond the original language. In order not to have either a chilling effect upon communication between a public official and his constituency or in any way violate the first amendment, the Board seeks both to narrow and clarify the language of the statute by confining such actions to those which advocate a particular position on a legislative or administrative action.

The definition of "file", "filed", and "filing" has been changed to bring it into conformance with accepted administrative procedures.

9MCAR 1.0202 OBLIGATION TO REGISTER

Language has been struck which repeats the statute, Minn. Stat. 10A.03.

Definitions necessitated by changes in the law in 1976 are included for clarifying the statute for individuals who may find themselves covered by lobbyist provisions.

9MCAR 1.0203 OBLIGATION TO FILE

Has been struck as repetitious of the law, Minn. Stat. 10A.04 subd. 2, or superseded by new law in 1976 or 1978. The amendment seeks to clarify Minn. Stat. 10A.04 subd. 4a. (1978)

9MCAR 1.0204 LOBBYIST DISBURSEMENT REPORTS

A. ~~(1)~~ Strikes a requirement which was removed from the statute in 1976.

1. Clarifies that information required under 9MCAR 1.0206 must be reported.

2. An original list of names, addresses and titles of officers and board members accompanies the registration form of a lobbyist who represents an association, necessitating requiring continuing updating by the lobbyist in the least burdensome way.

3. Rephrases stricken language in ~~(2)~~.

(1) Defines 3a.

(2) Clarifies common allocation problem.

b. Relates media disbursements to a lobbying purpose.

e. In adding "salaries", the amendment clarifies the requirement in the reporting of expenses incurred.

f. Rewords existing rule.

g. and h. Relates food, beverage, travel and lodging disbursements to a lobbying purpose.

Provides a consistent means of reporting direct costs of providing food, beverage, travel and lodging to a public official.

H. (3) Expands travel and lodging to include disbursements incurred for urging others to communicate with public officials.

(4) Clarifies Minn. Stat. 10A.01 subd. 11(e) as related to reporting requirements.

~~(ii)~~ This section has been struck eliminating reporting of disbursements in the category of gifts. Minn. Stat. 10A.04 Subd. 4(a) authorizes the Board to determine categories of lobbying disbursements to be reported.

~~(3)~~ This rule has been struck as unduly burdensome.

Remainder of changes and additions in this rule are attempts to correct grammar and clarify without changing.

9MCAR 1.0205 LOBBYIST RETAINED BY MORE THAN ONE EMPLOYER

Language clarification only - meaning unchanged.

9MCAR 1.0206 EMPLOYERS WHICH EMPLOY MORE THAN ONE LOBBYIST

Language clarification only - meaning unchanged.

9MCAR 1.0207 LOBBYIST DISBURSEMENTS FOR ADMINISTRATIVE ACTIONS

This language was added to differentiate expenses incurred in lobbying so that the media and the public will understand that some lobbyist disbursements are done for hearings before administrative agencies and some disbursements are for legislative matters.

9MCAR 1.0208 AGENCY SOLICITATION OF OUTSIDE OPINIONS

This amendment clarifies the status of the lobbyist when agencies solicit opinions in the State Register prior to actually engaging in rulemaking since such opinions are made part of the official record if rules are

subsequently proposed.

EC 209

Language was struck as repetitive of the law, Minn. Stat. 10A.23.

9MCAR 1.0209 LATE FILING FEE

A new rule to clarify Minn. Stat. 10A.04 subd. 5 as amended in 1978, for lobbyists required to register and report under Minn. Stat. 10A.03 and 10A.04.

EC 210, EC 211, EC 212

These rules have been struck as repetitive of Minn. Stat. 10A.06, 10A.04 subd. 5, and 10A.10.

Dated: November 6, 1978.

MINNESOTA STATE ETHICAL PRACTICES BOARD

By Roger Moeller
Roger [illegible], Chair

9MCAR 1.0204A 3 (i) - Other Disbursements - The board proposes to require the reporting of non-reimbursed, ordinary and necessary office expenses, including clerical expenses incurred for the purpose of lobbying. Such requirement for reporting office expense and clerical expense is consistent with the public's right to the total costs associated with efforts to influence public policy.

SUMMARY STATEMENT CONCERNING

PROPOSED EPB RULE 9MCAR 1.0204 A 3 i

This is a Summary of Reasonableness and Need for reporting office expenses presented on December 7, 1978, by Minnesota Ethical Practices Board. A full text of the oral statement is available at the Ethical Practices Board.

1. Minn. Statute 10A.04, subd. 4a establishes the categories of lobbyist disbursement disclosure, to include other expenses.

2. In 1976, legislative amendments to the law altered the disclosure reporting purpose to include those disbursements associated with indirect communications with a public official.

3. The board considers the public purpose of the law to be disclosure. Office expenses related to efforts to influence public policy are one of several elements which convey to the public information on the monetary costs of private interest efforts to influence public policy.

4. The board concedes the proposed rule may require additional language, such as reasonable estimated expense. Such allocations are a reasonable effort to mitigate individual lobbyist's concerns in this area.

5. Pursuant to Minn. Stat. 10A.03, subd. 12, the board can issue advisory opinions tailored to the unique circumstances of a particular lobbyist when applying the proposed rule to his or her situation.

STATE OF MINNESOTA

DEPARTMENT ETHICAL PRACTICES BOARD

Office Memorandum

TO : Allan Klein, Hearing Examiner

DATE: April 4, 1979

Elsa M. Carpenter

FROM : Elsa M. Carpenter
Assistant Administrator

296-1722

SUBJECT: Proposed Lobbyist Rules 9MCAR 1.0200 - 1.0209

Attached is a copy of the Lobbyist Rules including the technical amendments proposed by the agency presented to you in hearings on December 7 and December 28, 1978.

EMC:cg

MINNESOTA STATE ETHICAL PRACTICES BOARD

PROPOSED LOBBYIST RULES AND

REGULATIONS INDEX

9MCAR 1.0200 Purpose of the Rules

9MCAR 1.0201 Definitions

9MCAR 1.0202 Obligation to Register

9MCAR 1.0203 Obligation to File Disbursement Report or Termination Report

9MCAR 1.0204 Lobbyist Disbursement Reports and Reporting

9MCAR 1.0205 Lobbyist Retained by More Than One Employer

9MCAR 1.0206 Employers Which Employ More Than One Lobbyist

9MCAR 1.0207 Lobbyist Disbursements for Administrative Actions

9MCAR 1.0208 Agency Solicitation of Outside Opinions

9MCAR 1.0209 Late Filing Fees

~~EG-200~~ 9MCAR 1.0200 PURPOSE OF THE RULES. The purpose of Rules ~~EG-200-212~~ 9MCAR 1.0200-1.0209 is to implement the lobbyist registration and reporting provisions of Minnesota ~~Laws-1974,-Chapter-470-(Minnesota~~ Statutes~~,-1974~~, Sec. 10A.01-10A.34)~~,~~ ~~hereinafter-"the-Act"~~

~~EG-201~~ 9MCAR 1.0201 DEFINITIONS.

~~(a)--"Address"-means-street-and-number-(Post-Office-box-or-rural-route,-if appropriate),-room-number-(if-any),-city,-state-and-zip-code.~~

~~(b)--"Association"-means-business,-corporation,-firm,-partnership,-committee, labor-organization,-club-or-any-other-group-of-two-or-more-persons,-which-includes more-than-an-immediate-family,-acting-in-concert.--Minn.-Stat.-10A.01,-subd.-3-(1974)~~

~~(c)--"Attempt-to-influence"-means-any-effort-to-persuade-a-public-official to-support-or-oppose-proposed-legislation-or-to-direct-the-outcome-of-an-administrative-action-in-a-particular-way.~~

~~(d)--"Disbursement"-means-any-payments-or-expenditures-made-by-the-lobbyist, or-any-employer-or-employee-of-the-lobbyist,-for-lobbying-purposes.~~

~~(e)--"Employee-of-the-lobbyist"-means-a-person-employed-by-the-lobbyist-to assist-him-in-his-lobbying-activities.~~

~~(f)--"Employer-of-the-lobbyist"-means-the-person-or-association-by-whom-he-is employed-for-the-purpose-of-lobbying.~~

~~(g)~~ A. "File", "Filed" and "Filing" means ~~delivery-to-the-Minnesota-State Ethics-Commission-by-midnight-of-the-prescribed-date-for-filing,-or-deposit-as certified-mail-in-a-U.S.-Post-Office,-postage-prepaid,-no-later-than-midnight-two days-before-the-prescribed-filing-date.~~ date of postmark or personally delivered to the Ethical Practices Board by the close of a business day.

~~(h)--"Lobbying"-means-to-attempt-to-influence-legislative-or-administrative actions-by-communicating-with-public-officials.--For-purposes-of-these-rules~~

~~"administrative action" means making rules or regulations, or cases of rate setting or power plant siting. For purposes of these rules "communicating" means any written or oral contact by a lobbyist with a public official. Lobbying does not include a request for information or interpretation.~~

~~(1)~~ B. "Lobbyist" means~~:~~ an individual as set forth in Minn. Stat. 10A.01; subd. 11. Lobbyist does not include an individual who merely communicates with a public official to obtain information or request an interpretation of a law, rule or agency action.

~~(1) Any individual who is engaged for pay or other consideration, or who is authorized by another person to spend money, for the purpose of attempting to influence legislative or administrative action by communicating with public officials.~~

~~(2) Any official designated representative of any person or association which has as a major purpose the influencing of legislative or administrative action by communicating with public officials. An officially designated representative is a person authorized by another to lobby on the latter's behalf.~~

~~(3) Any individual who spends more than $250, not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating with public officials.~~

~~"Lobbyist" does not include:~~

~~(4) A public official, or employee of the state or any of its political subdivisions or public bodies, acting in his official capacity.~~

~~(5) Parties and their representatives appearing or acting in any proceeding before a state board, commission or agency of the executive branch other than rule making proceedings or cases of rate setting or power plant siting.~~

~~(6) Individuals in the course of selling goods or services to be paid for by public funds.~~

~~(7)--News-media-or-their-employees-or-agents,-but-only-while-acting-in the-ordinary-course-of-business-of-publishing-or-broadcasting-news-items,-editorials or-other-comments-or-paid-advertisements-which-directly-or-indirectly-urge-official action.~~

~~(8)--Paid-expert-witnesses-whose-testimony-is-required-by-the-body before-which-they-are-appearing-or-by-one-of-the-parties-to-a-proceeding,-but-only while-acting-in-the-ordinary-course-of-preparing-or-delivering-testimony.~~

~~Minn.-Stat.-10A.01,-subd.-11-(1974).~~

C. "Urging/Urges others to communicate" means any written or oral communication by a lobbyist which requests that an individual or association advocate a particular position to a public official concerning any legislative action or administrative action, or which requests an individual or association to advocate a public official initiate any particular legislative or administrative action. The term does not include mere presentation of factual material without comment.

~~(j)--"Occupation-and-principal-place-of-business"-means,-if-self-employed, type-of-work-or-profession-and-city-and-state-where-self-employed;-or,-if-employed by-another,-the-type-of-work-or-title,-name-of-employer-or-employing-organization, and-city-and-state-of-employment.~~

~~(k)--"Public-Official"-means:~~

~~(1)--Any-member-of-the-legislature;~~

~~(2)--Any-person-holding-a-constitutional-office-in-the-executive-branch and-his-chief-administrative-deputy;~~

~~(3)--Any-member-of-a-state-board-or-commission-with-rule-making-authority as-provided-in-Minn.-Stat.-15.0411,-subd.-3;~~

~~(4)--Any-person-employed-by-the-legislature-as-secretary-of-the-senate, chief-clerk-of-the-house,-revisor-of-statutes,-legislative-auditor,-or-researcher or-attorney-in-the-office-of-legislative-research;~~

~~(5)--Any-person-employed-by-the-executive-branch-in-a-position-specified-in~~

~~Minn. Stat. 15A.081;~~

~~(6) Any member of the metropolitan council, metropolitan transit commission, metropolitan sewer board or metropolitan airports commission.~~

~~Minn. Stat. 10A.01, subd. 18 (1974).~~

~~EG-202~~ 9MCAR 1.0202 OBLIGATION TO REGISTER. ~~Each lobbyist must register with the Commission by filing the Lobbyist Registration Form (EG-Form-4) within five days after lobbyist activity has commenced by the lobbyist. No lobbyist shall be required to register before January 15, 1975.~~ An individual shall register as a lobbyist as required by Minn. Stat. 10A.03, Minn. Stat. 10A.01, subd. 11, and as follows:

A. Attendance at Legislative or Administrative Hearings. For purposes of determining time calculation necessary to require registration as lobbyist, mere attendance at a public hearing without testifying or communicating with a public official shall not be considered time spent attempting to influence a legislative or administrative action.

B. Paid Expert Witness Registration. An individual who is hired or paid by a lobbyist as an expert witness and whose testimony is requested by a legislative committee, or an agency defined by Minn. Stat. 15.0412, subd. 2, or a state hearing examiner, shall not be required to register as a lobbyist if the committee, agency, or hearing examiner, by order, resolution, recorded vote or other formal means requests such expert testimony. This exclusion is applicable only to the extent of preparing or delivering the requested testimony.

~~EG-203 REQUIRED REGISTRATION INFORMATION~~

~~(a) The Lobbyist Registration Form (EG-Form-4) shall include the following information:~~

~~(1) Name and address of the lobbyist.~~

~~(2) Principal place of business of the lobbyist, if any.~~

~~(3) Name and address of each person or association, if any, by whom the~~

~~lobbyist is retained or employed, or on whose behalf the lobbyist appears.~~

~~(4) The names and addresses of the officers and directors of each association the lobbyist represents.~~

~~(5) A general description of the subject or subjects on which the lobbyist expects to lobby, which general description shall include a listing of the categories of legislative or governmental activity concerning which the person expects to lobby.~~

~~(b) Each person or association on whose behalf a lobbyist is required to report shall provide the information required in EG-203 (A) and EG-205 to the lobbyist no later than five days before each prescribed filing date.~~

~~EG-204~~ 9MCAR 1.0203 ~~OBLIGATION AND TIME TO REPORT~~ OBLIGATION TO FILE DISBURSEMENT REPORT OR TERMINATION REPORT.

~~(a) Each person who is a lobbyist at any time during a calendar year shall file a Lobbyist Disbursement Report (EG Form 5) which shall include all disbursements made during the applicable reporting period as provided in EG-205. No Lobbyist Disbursement Report (EG Form 5) shall cover any activities or disbursements made prior to January 1, 1975.~~

A. A lobbyist shall file a lobbyist disbursement report on each reporting date indicating whether or not the lobbyist has any reportable disbursements during a reporting period.

~~(b) After filing the Lobbyist Registration Form (EG Form 4), each lobbyist must file Lobbyist Disbursement Reports (EG Form 5) on the following dates of each year, beginning with the first such date which occurs 15 days or more after commencement of lobbying:~~

~~February 15;~~

~~March 15;~~

~~April 15;~~

~~June 15; and~~

~~October 15.~~

~~(c) The first Lobbyist Disbursement Report (EC Form 5) shall include disbursements subject to reporting under EC 205 which are made from the day lobbying commences to the day 15 days immediately preceding the current filing date. Each subsequent Lobbyist Disbursement Report (EC Form 5) shall include reportable disbursements made from the end of the period covered by the preceding report to the day 15 days immediately preceding the current filing date~~

~~(d) A lobbyist who testifies at only one legislative committee hearing, or at one proceeding of a state board, commission or agency, and who is not otherwise engaged in lobbying, shall register as required by Rule EC 202, but may terminate his requirement to file a Lobbyist Disbursement Report (EC Form 5) by identifying on the Lobbyist Registration Form (EC Form 4) the date, place, and forum of the single appearance as a lobbyist, and by stating (1) that no reportable disbursements were made in connection with the appearance such as to require reporting by the lobbyist, or (2) the name of the person or association reporting any reportable disbursements made in connection with the appearance.~~

B. Termination Report. ~~(e) Except as provided in EC 304 (D), a~~ A lobbyist who terminates his ~~activities as a lobbyist may terminate his duty to report by indicating on a Lobbyist Disbursement Report (EC Form 5) the fact that his activities as a lobbyist have terminated.~~ registration as a lobbyist prior to a reporting date shall file a Lobbyist Disbursement Report through the date of termination. If ~~such person~~ an individual subsequently renews lobbyist activity, ~~then he~~ the individual ~~must~~ shall re-register ~~in accordance with Rule EC 202 and file reports~~ as required by ~~Rule EC 204.~~ Minn. Stat. 10A.03, subd. 1.

~~EG-205~~ 9MCAR 1.0204 ~~REQUIRED REPORTING INFORMATION~~ LOBBYIST DISBURSEMENT REPORTS AND REPORTING.

~~(a)~~ A. Disbursements. Reports. ~~The lobbyist shall report the following information on the Lobbyist Disbursement Report (EG Form 5):~~

~~(1) All information required on the Lobbyist Registration Form (EG Form 4) by EG 203 (A), (1-4), and a general description of the subject or subjects on which the lobbyist has lobbied, which general description shall include a listing of the categories of legislative or administrative activity concerning which the person has lobbied during the reporting period.~~

1. A lobbyist shall identify the names and, if known, the registration numbers of other lobbyists for whom he is reporting.

~~(2) Total disbursements by the lobbyist, or any employer or employee of the lobbyist, for lobbying purposes in each of the following categories:~~

2. On January 15th of each year a lobbyist shall file a current list of names and addresses of directors and officers of the association that he represents if there have been changes in the membership of said boards during the preceding calendar year.

3. A lobbyist disbursement report shall include the total disbursements for the reporting period by the lobbyist, and any employer or employee of the lobbyist, for lobbyist activities in each of the following categories:

~~(aa)~~ a. Preparation and distribution of lobbying materials. This category shall include ~~any~~ all disbursements for preparation and distribution of ~~any~~ printed material, publication, film, slide, recording, and video tape. ~~or other communication material specifically prepared by or for a lobbyist, or any employer or employee of the lobbyist, and which advocates, promotes and supports the special interests and concerns of an individual or association, and which is used to attempt to influence the action of any public official.~~ Lobbying material means any material, except media advertising, which is prepared or purchased by a

lobbyist for a lobbying purpose.

(1) Preparation of research material and reports. The cost of researching and writing reports from which data is used in preparing lobbying materials is not reportable as a lobbyist disbursement even if the individual preparing the research material is a registered lobbyist.

(2) Newsletters and publications. The cost of preparation, printing and distribution of a newsletter or other publication, including but not limited to, prorata office expenses and compensation paid to employees for the preparation of such a publication or a portion of the publication shall be reported as a lobbyist disbursement if used for a lobbying purpose. Only the cost of that portion of a newsletter or publication which is lobbying material shall be reported as a lobbyist disbursement.

~~(bb)~~ b. Media Aadvertising. This category shall include only lobbyist disbursements for billboards, newspapers, radio and television time purchased for a lobbying purpose. The term does not include mere presentation of factual material without comment.

~~(cc)~~ c. Telegraph and telephone.

~~(dd)~~ d. Postage.

~~(ee)~~ e. Fees and allowances. This category shall include disbursements for consulting fees, or other fees, for services done or to be done, as well as expenses incurred in rendering such services. This category shall not include compensation paid to the lobbyist by his employer for services rendered as a lobbyist on behalf of the employer.

~~(ff)~~ f. Entertainment. This category shall include lobbyist disbursements for entertainment provided to public officials including but not limited to sporting, theatrical and musical events, ~~made on behalf of any public official,~~ as well as the cost of entertainment for the lobbyist, ~~or~~ and the employer or employee of the lobbyist, when in the company of ~~any~~ the public official-

for a lobbying purpose.

~~(gg)~~ g. Food and Bbeverages. This category shall include:

(1) All disbursements for food and beverages ~~for any~~ provided to public officials, as well as food and beverages for the lobbyist, ~~or~~ and any employer or employee of the lobbyist, when in the company of ~~any~~ a public official for a lobbying purpose.

(2) All disbursements for food and beverages provided to public officials who are invited to conferences, conventions, banquets, legislative days or other similar functions for a lobbying purpose.

(3) The cost of food and beverages provided by a lobbyist, the employer or employee of the lobbyist, at meetings or conferences for the purpose of urging others to communicate with public officials.

(4) The cost of food and beverages provided to expert witnesses by a lobbyist, the employer or employee of the lobbyist, when paid expert witnesses are brought to testify before legislative committees or in hearings conducted pursuant to Minn. Stat. 15.0412, if the paid expert witness does not register as a lobbyist.

~~(hh)~~ h. Travel and Llodging. This category shall include:

(1) All disbursements for travel and lodging of the lobbyist, any employer or employee of the lobbyist, or ~~of any~~ those provided to a public official, for a lobbying purpose, except those incurred for the purpose of enabling the lobbyist, or any employer or employee of the lobbyist, to attend a meeting of or to appear before a committee of the legislature, or a state board, commission or agency.

(2) The cost of travel and lodging for the lobbyist, the employer or employee of the lobbyist when in the company of a public official for a lobbying purpose.

(3) The cost of travel and lodging paid by a lobbyist, the employer or employee of the lobbyist when urging others to communicate with public officials.

(4) The cost of travel and lodging paid by a lobbyist, the employer or employee of the lobbyist, to bring paid expert witnesses to testify before legislative committees or in hearings conducted pursuant to Minn. Stat. 15.0412, if the paid expert witness does not register as a lobbyist.

(5) The cost of travel and lodging paid by a lobbyist to transport individuals for the purpose of lobbying.

~~(ii) Gifts. This category shall include the cost of anything of value given or paid voluntarily to a public official without full and adequate consideration, nd which is not reported in categories (a) (h) but shall not include contributions to candidates. For purposes of these rules, "contribution to a candidate" shall include any contribution made for the purpose of influencing the nomination for election or election of a candidate to office.~~

~~(jj)~~ i. Other disbursements. This category shall include all disbursements not reported in categories (a)-~~(i)~~(h)~~, but shall not include~~ including nonreimbursed, ordinary and necessary office expenses, including clerical expenses~~.~~ incurred for the purpose of lobbying.

~~(3) Total disbursements reported to date during the calendar year in each of the categories listed in EG205 (a)(2).~~

~~(b)~~ B. Disclosure of Gifts, Loans, Honorariums, Items or Benefits. The lobbyist shall report ~~on the Lobbyist Disbursement Report (EG Form 5)~~ the name and address of each public official receiving any gift, honorarium, loan, item or benefit from the lobbyist, or any employer or employee of the lobbyist, equal in value to $20 or more~~,~~ in a single transaction, ~~excluding contributions to candidates, and~~ to include the amount, the date on which it was received, and a description of the transaction, whether or not it was given for lobbying purposes, in the following categories:

~~(i)~~ 1. Gifts~~,~~ or benefits. This category shall include, ~~anything of value, other than an item or benefit,~~ but not be limited to, entertainment, food,

beverage, travel and lodging as defined in 9MCAR 1.0204, given or paid voluntarily by the lobbyist, or any employer or employee of the lobbyist, to a public official without the public official providing full and adequate consideration. This category shall not include campaign contributions.

~~(2)~~ 2. Loans. This category shall include ~~anything of value~~ loans, given or paid voluntarily by the lobbyist, or any employer or employee of the lobbyist, to a public official which the public official agrees to return at some future time or to repay with something of value, except a loans from an financial institutions ~~engaged primarily in the business of making loans when~~ made in the ordinary course of business on substantially the same terms as those prevailing for comparable transactions with other persons.

~~(3)~~ 3. Honorariums. This category shall include ~~anything of value~~ a payment ~~given or~~ paid voluntarily by the lobbyist, or ~~any~~ the employer or employee of the lobbyist, to a public official for services for which there is no obligation to make repayment~~,~~; for example, honorariums paid for a speeches, an articles~~,~~ or similar services.

~~(4) Items or Benefits. This category shall include entertainment, food and beverages, travel and lodging~~

~~The name and address of the public official and the date of the transaction shall be reported only when the value of the gift, honorarium, loan, item or benefit provided to a public official in a single transaction is equal in value to $20 or more. Whenever a disbursement for a gift, item or benefit for a public official is reported under E6 205 (A)(2), the name and address of the public official must also be reported under E6 205 (B) if the value of such gift, item or benefit is equal in value to $20 or more. The lobbyist is not required to report any item or benefit given or paid to a part time, non elected public official by the lobbyist's employer, if it is given or paid to such public official in his non official capacity by a person other than the lobbyist, without any participation by the~~

~~lobbyist in the transaction, in connection with a specific business activity unrelated to lobbying.~~

~~(c)~~ C. Original Source of Funds. The lobbyist shall report ~~on the Lobbyist Disbursement Report (EG Form 5)~~ the following information as to the "original source of funds" in excess of $500 in the calendar year used for the purpose of lobbying: The name, address, and employer, or if self-employed, the occupation and principal place of business, of each original source of funds in excess of $500. It shall not include the amount paid. For reporting purposes, original source of funds shall mean any ~~person~~ individual or association who disburses $500 or more in any year directly to the lobbyist, or to any employer of the lobbyist, to be used for purposes of lobbying, including fees or salary paid to a lobbyist as compensation.

~~EG 206~~ 9MCAR 1.0205 LOBBYIST RETAINED BY MORE THAN ONE EMPLOYER. A lobbyist retained by or representing more than one employer shall submit a separate Lobbyist Registration Form ~~(EG Form 4),~~ and a separate Lobbyist Disbursement Reports ~~(EG Form 5),~~ for each employer by whom he the lobbyist is retained. If a disbursements ~~have~~ has been made on behalf of more than one employer, the lobbyist ~~may~~ must report ~~such disbursements on one Lobbyist Disbursement Report (EG Form 5) as a joint disbursement together with a statement reasonably allocating disbursements among the several employers.~~ a reasonable allocation for each employer.

~~EG 207~~ 9MCAR 1.0206 EMPLOYERS WHICH EMPLOY MORE THAN ONE LOBBYIST. If the same person or association employs or is represented by more than one lobbyist, each lobbyist must register separately. However, one registered lobbyist may report all the disbursements for lobbying purposes made by all lobbyists representing a common employer, person or association. In such case, ~~each~~ the lobbyist ~~shall file a certified report on his Lobbyist Disbursement Report (EG Form 5) stating the name of the employer, person or association which the lobbyists represent in common. The reporting lobbyist shall certify the names of the~~

~~lobbyists for whom the Lobbyist Disbursement Report is made. Each other lobbyist shall certify on his Lobbyist Disbursement Report to the accuracy of the single report of his disbursements by the reporting lobbyist.~~ reporting all the disbursements must indicate the names of the other lobbyists for whom disbursements are being reported. A lobbyist, so represented, must file Lobbyist Disbursement Reports specifying the name of the lobbyist who will report total disbursements on behalf of the joint employer.

9MCAR 1.0207 LOBBYIST DISBURSEMENTS FOR ADMINISTRATIVE ACTIONS. A lobbyist who does both legislative and administrative lobbying may file separate reports for the purpose of segregating those disbursements which were incurred for administrative lobbying from those disbursements incurred for legislative lobbying. Unless separate reports are filed the Board will treat all disbursements as legislative lobbying disbursements.

~~EG-208--PLACE TO OBTAIN AND FILE FORMS. All Lobbyist Registration Forms (EG Form 4) and Lobbyist Disbursement Reports (EG Form 5) shall be on forms issued by the Minnesota State Ethics Commission and shall be filed with the Minnesota State Ethics Commission.~~

9MCAR 1.0208 AGENCY SOLICITATION OF OUTSIDE OPINIONS. For purposes of registration and reporting lobbyist activity, an administrative action commences in administrative rulemaking when a state agency publishes a notice in the State Register, as required by Minn. Stat. 15.0412, subd. 6, or takes such other formal action provided by law to commence the rulemaking process.

~~EG-209--CHANGES AND CORRECTIONS. Any material changes in information previously submitted, and any corrections to a Lobbyist Registration Form (EG Form 4) or Lobbyist Disbursement Report (EG Form 5), shall be filed in writing with the Commission within ten days following the date of the event prompting the change or the date upon which the person filing became aware of the inaccuracy. The change or correction shall identify the form and the paragraph containing the information~~

~~to be changed or corrected, and shall be signed and certified to be true by the person filing.~~

9MCAR 1.0209 LATE FILING FEES

A. The Board shall grant a waiver of late filing fees for sickness or injury of the filer, or other compelling reason when a written request for waiver is submitted not later than the fifth business day following the day of filing the late statement or report.

B. A late filing fee shall not be assessed for Saturday, Sunday or legal holidays.

C. The late filing fee shall commence the eighth day following receipt of a late filing notice, unless the eighth day falls on Saturday, Sunday, or a legal holiday. The late filing fee shall then commence the next business day.

D. A late filing fee shall be charged through the business day preceding the day of filing of a late statement or late periodic report.

E. A certified letter returned to the Board by the U. S. Post Office marked "refused" shall be deemed to have been received by the addressee on the date of refusal. The late filing fee shall commence the first business day following the seventh day after refusal.

F. Except as provided in 9MCAR 1.0209 E, a certified letter returned to the Board by the U. S. Post Office undelivered for any reason shall be forwarded by first class mail to the lobbyist, addressed to the lobbyist at the address shown on his latest registration statement or disbursement report. The late filing fee shall then commence the first business day following the seventh day after deposit in First Class U. S. mail.

~~EG-210--CONTINGENT FEES PROHIBITED.--No person or association shall employ a lobbyist for compensation which is dependent upon the result or outcome of any legislative or administrative action.--Any person or association violating these provisions is guilty of a gross misdemeanor.~~

~~EC-211--FAILURE-TO-REPORT.--The-Commission-must-notify-by-registered-mail-any lobbyist-who-fails-to-register-or-report-within-five-days-after-the-required filing-date.--A-lobbyist-who-knowingly-fails-to-register-or-make-such-periodic reports-within-seven-days-after-receiving-notice-from-the-Commission-is-guilty of-a-misdemeanor.~~

~~EC-212--PENALTY-FOR-FALSE-STATEMENTS.--Any-registration-form-or-report-required by-these-rules-shall-be-signed-and-certified-to-be-true-by-the-person-required to-file-the-report.--Any-person-who-signs-and-certifies-to-be-true-a-report-or statement-which-he-knows-contains-false-information-or-who-knowingly-omits required-information-is-guilty-of-a-felony.~~

~~Filed-December-31,-1974.~~

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE ETHICAL PRACTICES BOARD

- - - - - - - - - - - - - - - - -

In the matter of the Proposed Adoption of Rules of the State Ethical Practices Board Governing Lobbyist Registration and Reporting (9MCAR 1.0200 -1.0209)

ORDER FOR HEARING

- - - - - - - - - - - - - - - - -

To effectively implement Minnesota Laws, 1974, as amended in 1976 and 1978, the Minnesota State Ethical Practices Board deems it necessary to consider adoption of the proposed amendments to existing rules (EC 200 - EC 215) captioned above pursuant to the authority vested in the Board by Chapter 463, 1978.

NOW THEREFORE, IT IS ORDERED this 16th day of October, 1978, that a public hearing on the proposed rules captioned above be held in Room 57, State Office Building, Saint Paul, Minnesota, on December 7, 1978, commencing at 9:30 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

IT IS FURTHER ORDERED, that notice of said hearing will be published in the State Register at least 30 days before the date of the hearing.

STATE OF MINNESOTA
ETHICAL PRACTICES BOARD

By Roger Noreen
Roger Noreen
Chairperson

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
FOR THE STATE ETHICAL PRACTICES BOARD

In the Matter of the Proposed)
Amendment of Rules of the State)
Ethical Practices Board Governing)
Lobbyist Registration and Report-)
ing (9 MCAR §§ 1.200-1.209))

REPORT OF
HEARING EXAMINER

The above-entitled matter came on for hearing before Allan W. Klein, duly appointed Hearing Examiner, on December 7, 1978 and December 28, 1978, at the State Office Building, St. Paul, Minnesota.

This was a rules hearing pursuant to Minn. Stat. Ch. 15 held to determine whether proposed amendments to existing rules should be adopted.

Representing the State Ethical Practices Board (hereinafter the "Board") were B. Allen Clutter, III, Executive Director; Elsa M. Carpenter, Assistant Administrator and Assistant Executive Director; and LeRoy Paddock, Special Assistant Attorney General.

Twenty-one persons signed the register at the hearing on December 7. The hearing continued until all persons had an opportunity to be heard. A motion was made, and granted, that the hearing be recessed until December 28, 1978, pursuant to Minn. Rule 9 MCAR § 2.104. The hearing reconvened on that date, at which time all interested persons were again given the opportunity to be heard. The record remained open until January 12, 1979.

Pursuant to Minn. Stat. § 15.0412, Subd. 4, this report shall be available to all affected persons for review for at least five working days before the Board takes any final action on the rule.

Thereafter, the Board shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat.

§ 15.0412 within ten calendar days. The Board will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On September 26, 1977, the Board published a Notice of Intent to Solicit Outside Opinion at 2 State Register 682.

2. On October 18, 1978 the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.
(e) The Certificate of Commission's Adoption of Rules Resolution.

3. On October 30, 1978, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On November 6, 1978 a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 926.

5. On November 7, 1978 the Board filed the Statement of Need, which was available for inspection at the office of Hearing Examiners from the date of filing to the date of hearing.

6. On November 20, 1978, the Board filed the following documents:

(a) The Notice of Hearing as mailed
(b) The Secretary of State's Certificate
(c) The Affidavit of Mailing to the Secretary of State's list

7. On December 4, 1978, the Board filed the names of Board personnel who would represent it at the hearing.

8. On December 7, 1978, at the hearing, the Board introduced into the Record the above-listed materials, as well as those materials (not previously filed) which had been received by the Board pursuant to the Notice of Intent to Solicit Outside Opinion.

9. Although certain of the above enumerated documents were not filed within the 25 day period prescribed by Minn. Rule 9 MCAR § 2.105, the only requests for inspection and copying came with respect to the Statement of Need,

which was filed in a timely manner. Therefore, there is no reason to believe that any member of the public was prejudiced by the delays in filing.

BACKGROUND AND UNCONTESTED MATTERS

10. These rules amend a set of rules which went into effect in December of 1974 (formerly Minn. Rule EC 200-212). Since those rules became effective, the Legislature has amended the underlying statutue (Minn. Stat. Ch. 10A) twice: once in 1976 and once in 1978. The effect of those two amendments was to render many of the 1974 rules either duplicative of the statute or contradictory to the statute. The primary purpose of the proposed rule amendments is to bring the rules into conformance with the amended statute. Many of the amendments are thus self-explanatory, and none of the oral or written public comments addressed them. For this reason, they will not be reviewed here, and readers are directed to the statutory amendments (Laws of Minnesota 1976, Ch. 307 and Laws 1978, Ch. 463), Statement of Need (EPB Ex. 5), or the Board's opening statement (EPB Ex. 9) for an understanding of those changes. Readers should also be aware of an errata sheet, EPB Ex. 10, which makes grammatical and technical changes to the proposed rules as published.

STATUTORY AUTHORITY

11. The statutory authority of the Board to adopt these rules comes principally from Minn. Stat. § 10A.02, Subd. 13 (1978) which provides as follows:

> The provisions of Chapter 15 apply to the Board. The Board may promulgate rules to carry out the purposes of sections 10A.01 to 10A.34.

Section 10A.02, Subd. 8(b) directs the Board to "Prescribe forms for statements and reports required to be filed under sections 10A.01 to 10A.34 . . ." and section 10A.04, subd. 4 states that the lobbyist reports "shall include such information as the Board may require from the registration form. . ."

CONTESTED MATTERS: REPORTING OF "OTHER DISBURSEMENTS"

12. The vast majority of the testimony, both oral and written, focused on one proposed amendment to the existing rules. Existing rule 9 MCAR 1.205 a.2 requires a lobbyist to report total disbursements in a number of categories, such as preparation of lobbyist materials, media advertising, telephone and telegraph, postage, entertainment, and:

> (jj) Other disbursements. This category shall include all disbursements not reported in categories (a) - (i), but shall not include nonreimbursed, ordinary and necessary office expenses including clerical expenses.

It is the proposal of the Board that this rule be essentially reversed, so that a lobbyist would have to report, in addition to the other specified categories, the following:

> (i) Other disbursements. This category shall include all disbursements not reqported in categories (a) - (h) including nonreimbursed, ordinary and necessary office expenses, including clerical expenses incurred for the purpose of lobbying.

The effect of this proposed change is to create two tests which must be applied by a lobbyist in determining what to report:

1. Is the expense a "nonreimbursed ordinary and necessary office expense".

2. Is the expense "incurred for the purpose of lobbying".

This proposed rule was attacked by a number of commentators, who essentially argued that the reporting requirement was not needed, was not reasonable, consistuted an impermissible delegation of authority by the Board to the public, and, finally, that it was so vague that it would be found to be void in light of the fact that Minn. Stat. 10A. 10 (1978) provides a criminal penalty for false or incomplete reporting.

The Board's justification for the proposed amendment can be found in oral statements made at the hearing and an oral amendment to its Statement of Need and Reasonableness.[1] The essence of the Board's position is that ordinary and necessary office expenses are a part of the overall lobbying cost, and that the public has a right to know the amount of those expenses, just as it has a right to know the amount of moneys spent in any of the other categories (food, entertainment, travel, etc.) set forth in the statute and rules.

In response to the various criticisms raised by the public, the Board pointed out that the term "other expenses" is contained in a statutory list of reportable items [Sec. 10A. 04, Subd. 4(a)], that the existing rule had not generated any requests for clarification or an advisory opinion, and that allocating certain expenses has been required in other Board rules since 1974 (see 9 MCAR 1.206) and has not created problems.

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[1]This oral amendment was made after the Examiner ruled that the Board's written Statement was inadequate because it gave no justification for the proposed change. The Examiner also recessed the hearing to allow opponents of the proposal to digest the oral amendment, which was subsequently transcribed and made available to interested persons prior to the reconvening of the hearing. The transcript of the Board's justification is included as a part of the record.

Given this background, can it be said that the Board has demonstrated that the proposed rule is needed, reasonable, and within its statutory authority? The Board has made a policy determination that the public has the right to know the ordinary and necessary office expenses spent in lobbying, and thus, it argues, this rule is needed to achieve that end. The opponents state that the figure which would be supplied would be virtually meaningless because of the lack of specificity regarding what consititutes an ordinary and necessary expense, and the de minimus nature of the figure. The de minimus argument is particularly a legislative, or "policy" argument, in which the Board has made its decision. Neither side has come forward with any examples of the amounts that might be reportable under this proposal, so it would be speculative to say that in all cases, the amounts would be minor. One could make the same argument with respect to the amounts reported by some lobbyists for food and beverage supplied to a public official, or for postage used in contacting public officials. The cost of such items is likely to be minor as well, yet no one argued that they ought not to be reported.

13. The more substantial argument regarding need, relating to the vagueness of the rule, was also used extensively in connection with reasonableness, and so the two will be lumped together here in order to examine the argument more thoroughly.

Arthur Gillen, who represents the Minnesota Dental Association and the Municipal Finance Council before the Legislature, is an attorney in the private practice of law. He estimated that the expense section of his law firm's income statement contained approximately 40 different entries. He stated:

> For example, take simple items such as our rent and insurance costs. How would I allocate a reasonable part of this or any part of it under any kind of a formula to lobbying purposes? Assume I am sitting down, filling out the lobbyist form. In our office, we have five lawyers who are partners, two who are associate lawyers, one or two law clerks, five or six secretaries and a receptionist. I might spend one hour on a given day reviewing Phillips Legislative Reports and mail in my office. I might spend a couple hours another day at a hearing such as a committee of the Legislature. I might spend another hour or two on another day in the office dictating some letters to legislators. How do I allocate a reasonable amount of rent or insurance costs between myself, the other lawyers and employees who utilize the space, taking into consideration the amount of time I am in and out of the office. It appears totally unreasonable and undoubtedly this is why the original language excluded these types of items. The rationale, of course, is that the rent or these items do not increase or decrease and depending upon how active you get in the lobbyist situation and do not represent any new or additional

or increased expenditures. If, however, I were to rent an extra room with phones and someone to do the calling on a specific bill we were concerned with, this would represent special expenses that would be covered under other sections of the lobbyist rule.

Gillen urged that the existing rule be readopted without any change.

Others raised the problem with interpretation of the data which would be generated by the disclosure. For example, if Lobbyist A reported office expenses of $72,000 and Lobbyist B reported $36,000, what does that mean? That A spent more time lobbying? Not necessarily. It may only mean that A has a much smaller office (with fixed overhead expenses apportioned among a smaller number of activities) than does B, although both spent exactly the same amount of time lobbying. Equal time spent in lobbying activities would probably generate about equal office expenses, but unless A and B both keep detailed records in their offices, they will probably elect to report a straight percentage of their total overhead. This will result in substantially smaller expense for the larger office than for the smaller one, given equal lobbying activity.

A second problem in comparing A's report and B's report arises, opponents alledge, because of the lack of specificity in the rule. Just what expenses fall within the category of "nonreimbursed ordinary and necessary office expenses"? The only one specified in the rule is "clerical expenses". Remembering that any expense must alo meet the test of having been incurred "for the purpose of lobbying", one could take Mr. Gillen's 40-item expense statement and raise a number of questions. For example, what of his professional liability insurance? If he were not also a practicing attorney, he would not incur that expense. But he does incur it. Is a share of its cost reportable? It would take a substantial amount of time and effort to determine whether such insurance extended to errors or omissions in his activities as a lobbyist. What about a sophisticated computer-based word processing machine and record keeping system? He might use it to type letters to public officials and keep billing records for his trade association clients. Is a portion of its cost reportable? What is likely to occur in these, and many other cases, is that arbitrary and inconsistent decisions will be made by lobbyists as to whether to report such items, with one lobbyist choosing the "safe" route and including a portion of all office expenses, while Lobbyist B examines each one carefully, including some and excluding others.

As Wendy Borscheim of the Minnesota Retail Merchants Association suggested:[2]

> Depending on the interpretation given to the proposed rule, the recordkeeping requirements it imposes would be unduly burdensome for the information the rule would produce. It may be necessary for a lobbyist to keep a record of all hours he lobbys in Minnesota and, in addition, to keep a record of all hours he works on all types of work. It may be necessary to keep a record of all telephone calls made so that telephone expense resulting from calls used in lobbying may be pro-rated to Minnesota lobbying. The same requirement may be required of other types of office equipment and supplies such as duplicating machines, dictating equipment, stationery and postage and typewriters. Clearly, the more accurate the estimate of office expenses used on Minnesota lobbying, the more detailed the recordkeeping requirements will be.
>
> In addition to the fact that certain, if not all, general office expenses are unrelated to the effectiveness of lobbying, any allocation of office expenses to lobbying must be done at least, in part, on an arbitrary basis. To the extent that the allocation is arbitrary, the reported expenses become meangingless. Any steps taken to reduce the arbitrariness of the allocation of office expenses necessarily involve burdensome recordkeeping.

Although the amounts reported by A and B would be significantly different, one might ask how would anyone be hurt by such a disparity. Both David Locey of Carter Locey & Associates and Michael Ahern representing the Administrative Law Section of the Minnesota State Bar Association pointed out that in the emotionally charged atmosphere surrounding some legislative activities (abortion, powerlines, BWCA, etc.) persons might use lobbyists' reports to gain an advantage for their own position, without understanding or pointing out the factors which influence the expenses reported. The bare dollar amounts reported give little understanding of the complex decisions made by A and B to arrive a their reportable expenses, and the bare numbers imply a consistency and precision to those figures which is not a reality.

Finally, the objectors argued that virtually all of the other rules relating to the various expense items took the statutory terms (such as "travel" or "entertainment") and defined which costs were reportable and which were not, sometimes in great detail. In the case of "other expenses", however, the proposed rule is open ended, giving little guidance to the persons who must prepare the report. Not only does this lead to the potential for vast inconsistencies noted above, but it also leaves a person open to a criminal charge for failure

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[2]This public comment was received well after the close of the record. It is used here for illustrative purposes only, as it was one of the most concise statements of the problems raised by the Board's proposal. All of the concepts stated by Ms. Borscheim, however, were also stated in a number of different public comments which were received before the close of the record.

to report an expense which he or she ought to have reported but, through a good faith misinterpretation of a vague rule, failed to report.

This argument, essentially one of vagueness, applies to two separate issues, both of which were raised by objectors: (1) that the vagueness of the proposed rule makes it unreasonable, and (2) that the vagueness of the proposed rule violates due process.

It is a well settled concept of administrative law that the power to enact rules is limited so as to permit only the enactment of reasonable rules. Lee V. Delmont, 228 Minn. 101, 36, NW 2d 530, 539 (1949); Juster Bros. v. Christgau, 214 Minn. 108, 7 NW 2d 501 (1943). In addition to this common-law precept, Minn. Stat. Chapter 15 (1978) contains an Administrative Procedure Act which governs the enactment of rules. Sec. 15.0412, subd. 4 states that the agency must demonstrate, by an affirmative presentation of facts, the need for and reasonableness of a proposed rule. Sec. 15.052, subd. 3 directs the Examiner to specifically note, in his Report, the degree to which the Agency has done so.

In light of the discussions above, the Examiner finds that the Board has failed to meet its statutory burden, with respect to both need and reasonableness, and further, that it would be extremely difficult, if not impossible, for the Board to do so with the rule in its present form. Before such a rule could be adopted, it would have to be made far more specific than this version. While the Examiner is wary of interposing his judgement for that of the Board with respect to its policy decision to require such disclosure, the Board's inability to specify what it wants disclosed[3] requires that this amendment not be adopted in its present form.

It is found that the Board failed to demonstrate both the need for and reasonableness of proposed rule 9 MCAR § 1.0204.A.3.i.

OTHER ISSUES RAISED

14. The majority of the Board's proposals drew no comment, and apart from the issue discussed above, few other issues were raised. Those which were raised will be discussed below.

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[3]At the first hearing, in an attempt to elicit some clarification of the proposed rule, the Examiner asked the Board's representative whether it was the Board's intention to use the same tests for "ordinary and necessary" expenses as are used for income tax purposes. The representative replied that he did not know if that was the intent, and could not offer any other test to guide lobbyists in completing their reports. He did, however, note that persons could seek advisory opinions from the Board. As the Administrative Law Section noted, such a procedure is "an unusual approach to rule making" when violation of the rule could lead to criminal action.

15. Arthur Gillen, Norbert McCrady (representing the Independent Bankers of Minnesota), and Robert Flom (representing the Minnesota Medical Association) favored a change in proposed rule 9 MCAR § 1.0204 A.3.a.2, which deals with newsletters and publications. They would insert the words "a reasonable estimate of" before the words "pro rata office expenses" in the provision which requires an allocation of costs for newsletters which include some lobbying material and some non-lobbying material. There was no opposition with respect to this suggestion, the Board's representative indicating that it might be an improvement. The proposal is reasonable, and is recommended for adoption, but at the option of the Board. The rule can not be said to be unreasonable without it, but it would be an improvement. It would not be a substantial change.

16. Gillen, Locey and Flom also recommended that proposed 9 MCAR § 1.0204 A.3.g.3 be amended to indicate that food and beverages provided at meetings or conferences be reportable only if the "primary" purpose of the meeting or conference is a lobbying purpose. This would be accomplished by inserting the word "primary" before the word "purpose" in the rule. As Flom indicated:

> Many meetings sponsored by the MMA give rise to <u>incidental</u> questions on legislative issues. Such queries may provoke commentary about a bill or proposed rule and result in persons being urged to communicate with public officials.

The rule as proposed by the Board is reasonable. However, the suggestion is also reasonable, and makes some sense. The Board may adopt it, or not, as it sees fit. It would not be a substantial change.

17. The only other change suggested was the insertion of a definition of either "lobbying" or "lobbying purpose". The suggestions all came in conjunction with the "other disbursement" rule discussed at length above. Thus, the addition of the definition is unnecessary if the Board adopts the Examiner's recommendation to leave the rule as it is. However, if the Board does not do so, then the comments of John Jackson, Arthur Gillen, and the Administrative Law Section should be examined with respect to such a definition.

Based upon the foregoing Findings, the Examiner hereby makes the following:

CONCLUSIONS OF LAW

1. Due, timely and adequate legal notice of the hearing was properly served and published by the Board.

2. The Board did not comply with the requirements of 9 MCAR § 2.104 (Statement of Need and Reasonableness) and § 2.105 (25 day filing). However, the first defect was remedied by the oral amendment and the recessed hearing, while the second relates only to the timeliness of certain filings with the Hearing Examiner. No member of the public asked to see the documents which were not timely filed, and no prejudice has been either alledged or shown.

3. With the exception of proposed 9 MCAR § 1.0204.A.3.i, "Other disbursements", the Board has demonstrated the need for, reasonableness of and statutory authority to adopt the proposed rules.

Based upon the foregoing Conclusions, the Examiner hereby makes the following:

RECOMMENDATIONS

1. That the rules be adopted as proposed by the Board, with the exception of proposed 9 MCAR § 1.0204 A.3.i, which is recommended for retention in its existing form.

2. That the Board consider adopting the two suggestions noted in the Findings.

Allan W. Klein

Dated this 14th day of February, 1979

Allan W. Klein
Hearing Examiner

ADMIN. 1000A (REV. 8/76)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ETHICAL PRACTICES BOARD

TO : Lee Sheehy
G-25 Administration Building

DATE: May 16, 1979

FROM : Elsa Carpenter
Assistant Administrator

PHONE: 296-1720

SUBJECT: 9MCAR 1.0200 - 1.0209 - Lobbyist Rules
Technical Amendments

I am enclosing a complete listing of the agency technical amendments added at the time of hearing to the proposed lobbyist rules which may not have been included in the copy submitted to you on May 1, 1979.

EC:cg
Enc.

RECEIVED
MAY 17 19
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PROPOSED LOBBYIST RULES HEARING - DECEMBER 7, 1978

9MCAR 1.0200 - 1.0209

AGENCY TECHNICAL CHANGES

Page 2
Lines 19-21

9MCAR 1.0201 B.
Strike lines 19-21 which are repetitive of lines 6-8.

Page 3
Line 12

9MCAR 1.0201 C.
Insert after the word "requests" the word "that"; and strike the word "to" after the word "association", for grammatical clarification.

Page 4
Line 20

9MCAR 1.0202
Strike the words "shall be" and insert the word "is".

Page 8
Lines 19-20

9MCAR 1.0204 A. 3. e.
Strike proposed new word "salaries". Inclusion is repetitive of 9MCAR 1.0204 A. 3. a. (2), page 8, lines 6-10 and 9MCAR 1.0204 A. 3. i., page 10, lines 13-16, and could lead to multiple reporting of a single item.

Page 9
Line 19

9MCAR 1.0204 A. 3. h. (1)
Insert before the word "provided" the word "those" for grammatical purposes.