

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

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**pursuant to a consent for release of information**  
**provided by the requester**

Issued to: Kevin Willis  
Director/President  
Minnesota Zoo  
13000 Zoo Boulevard  
Apple Valley, MN 55124

**RE: Gift by state agency to public officials**

**ADVISORY OPINION 441**

**SUMMARY**

The Minnesota Zoo is an agency of the State of Minnesota. A state agency is not a type of "association" under Minnesota Statutes Chapter 10A and, thus, is not included within the scope of entities that may be principals under the state's lobbying and gift prohibitions. Because the Zoo is not a principal, the gift prohibition of section 10A.071 is not applicable to the Zoo.

**FACTS**

As the Director and President of the Minnesota Zoological Garden (the Zoo), you request on the Zoo's behalf an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts that were provided in the letter requesting the advisory opinion and in documentation provided with the request.

1. The Zoo is established in Minnesota Statutes Chapter 85A. The Zoo is a state agency operated by the Minnesota Zoological Board (the Zoo Board). The Zoo Board consists of up to 30 members, 15 appointed by the Governor and 15 appointed by the Zoo Board. The Zoo's board members are public officials. The Zoo Board appoints a director to oversee the Zoo's operations. The Zoo's director, officers, and employees are state employees.
2. All receipts from parking, admission, concessions, memberships, and donations to the Zoo are deposited into the state treasury and statutorily appropriated back to the Zoo Board for the Zoo's operations. Standard admission to the Zoo for one adult for the day is \$18.00. Parking is an additional \$7.00.
3. The Minnesota Zoo Foundation (the Foundation) is a Minnesota nonprofit corporation and a public charity under Section 501(c)(3) of the Internal Revenue Code. The purpose of the Foundation is to benefit, support, and carry out the purposes of the Zoo and, more specifically, to raise funds, and advocate on behalf of the Zoo.

4. The Foundation is governed by an independent board of trustees. The Zoo's director is *ex officio* the president of the Foundation and sits on the Foundation's board but does not have voting rights.
5. In consideration of fundraising and other services provided by the Foundation, the Zoo provides furnished office space and technical support to the Foundation. The Zoo and the Foundation also share a website at [www.mnzoo.org](http://www.mnzoo.org).
6. The Foundation pays a lobbyist more than \$500 a year to represent the interests of the Zoo at the state legislature. The lobbyist works at the direction of the president of the Foundation, who is also the director of the Zoo, and in coordination with the Zoo's public affairs director, who is an employee of the Zoo. The Foundation does not direct the lobbyist's work. The lobbyist is registered with the Board and lists the Foundation as the organization represented on his registration form and lobbyist disbursement reports. These reports list the president of the Foundation (the director of the Zoo) as the contact for the principal.
7. For the past several years, the Zoo has held a Legislators' Day at the Zoo. The Zoo provides free admission to the Zoo, parking, lunch, and private tours by Zoo staff to legislators who attend this event. All legislators have been invited to the event in past years.
8. The Zoo would like to continue hosting a Legislators' Day at the Zoo and similar events for state legislators in the future.

### **ISSUE**

Does the prohibition on gifts from lobbyists and principals to legislators in Minnesota Statutes section 10A.071 prohibit the Minnesota Zoological Garden from providing free admission, parking, food and beverages, and zoo tours to legislators as part of a Legislators' Day at the Zoo or similar events?

### **OPINION**

#### **Which entity is represented by the lobbyist who is paid by the Foundation?**

The Board has previously examined situations where two related entities are involved in lobbying activities with one entity initially paying the lobbyist while the other entity directs the lobbyist's work and stands to benefit from the lobbyist's efforts. In the first such examination, the Board concluded that the entity that directed the lobbyist's work, and on whose behalf the lobbyist lobbied, was the association represented and that the lobbyist should register on behalf of that association. Advisory Opinion 292 (April 24, 1998).

More recently, the Board examined a situation in which a multi-faceted organization's public affairs department retained and directed the activities of lobbyists who lobbied on behalf of various operating units of the organization. The Board concluded that the lobbyist should register for the operating unit(s) whose interests were represented by the lobbyist. Advisory Opinion 413 (November 1, 2010).<sup>1</sup>

The facts of the present situation are similar to those previously considered. Although the Zoo does not reimburse the Foundation for the lobbyist's salary, the Foundation exists solely

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<sup>1</sup> In each of these cases, the entity whose interests were represented ultimately reimbursed the other entity for the services. However, for reasons described in this opinion, the Board does not find payment for a lobbyist's services to be controlling.

to further the goals of the Zoo. Under the facts of this opinion, the lobbyist's work is directed by the Zoo's director and its public affairs director, both of whom are employees of the Zoo. Additionally, the lobbyist advocates on behalf of the Zoo, not on behalf of the Foundation.<sup>2</sup>

The Board concludes that the approach it has previously applied to situations where a lobbyist represents the interests of one association while being paid, or even directed, by another is consistent with the plain language and intent of Chapter 10A. Thus, the Board concludes that the Zoo's lobbyist should be registered on behalf of the Zoo rather than the Foundation.

Direct payment by the Foundation for the lobbyist's services makes the Foundation an original source of funds under rule 4511.0100, subpart 5, which provides that:

"Original source of funds" means a source of funds, other than the entity for which a lobbyist is registered, paid to the lobbyist, the lobbyist's employer, the entity represented by the lobbyist, or the lobbyist's principal for lobbying purposes.

Once the lobbyist is properly registered based on the fact that he represents the Zoo's interests, it becomes clear that the Foundation is a source of funds paid to a lobbyist by an entity other than the entity for which the lobbyist is registered.

The lobbyist disbursement report should therefore show the Foundation as an original source of funds for lobbying. Although the Zoo has had a lobbyist representing its interests for several years, the Board applies this advisory opinion only prospectively and will not require amendments to lobbyist disbursements previously filed.

### **Is the Zoo a principal?**

Minnesota Statutes section 10A.071, subdivision 2, provides as follows:

A lobbyist or principal may not give a gift or request another to give a gift to an official. An official may not accept a gift from a lobbyist or principal.

Legislators are officials covered by the gift ban. *Id.*, subd. 1 (c).

Under section 10A.071, a "principal" is "an individual or association". In order to conclude that the Zoo is a principal, the Board would first have to conclude that the Zoo is an "association".

An association is "a group of two or more persons, who are not members of an immediate family, acting in concert. Minn. Stat. § 10A.01, subd. 6. The Board has previously determined that political subdivisions and public higher education systems are not associations. Advisory Opinion 224 (January 26, 1996); Advisory Opinion 297 (July 24, 1998). Advisory opinion number 224 stated that the University of Minnesota, "as a constitutionally established institution which is recognized as a unique entity of state government", was "more than an association" as that term is defined in Chapter 10A.

The Board concludes that because the Zoo is a statutorily created state agency, which is recognized as a unique entity of state government, it is not included in the scope of entities defined as "associations" in Chapter 10A and, thus, cannot be a principal. A lobbyist that registers on behalf of a governmental entity that is not a principal is still covered by the

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<sup>2</sup> In discussions with Zoo staff, it was made clear that the lobbyist does not lobby on charitable corporation issues or other issues that would be related to the Foundation and its operations. Rather, the lobbyist advocates on behalf of the Zoo and its operations.

