

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**Findings and Order in the Matter of the Complaint by Karl Bremer
regarding The Conach Group and Mike Campbell**

Evidence Used in These Findings

On July 26, 2011, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from Karl Bremer regarding the actions of Mike Campbell and The Conach Group. The complaint alleges that Mr. Campbell is providing lobbying services for the City of Stillwater but has failed to register with the Board as a lobbyist. A search of Board records confirms that Mr. Campbell is not a registered lobbyist for the City of Stillwater, and that there is no other individual registered as a lobbyist for the city.

In support of his allegation Mr. Bremer provided a copy of an unsigned contract entitled Legislative Consultant Contract 2011. The contract provides for services to the City of Stillwater from The Conach Group. The individual to sign the contract on behalf of the Conach Group is Mike Campbell. Mr. Bremer states in his complaint that the Stillwater City Council approved the contract on April 19, 2011.

Mr. Bremer notes that the contract contains a section entitled "Nature of Work" which includes the following two services to be provided by The Conach Group:

"To secure the required support of the Federal Government, State of Minnesota, and any administrative Department of either entity for the approval and funding of the pending St. Croix River Crossing at Stillwater."

"To secure Minnesota Legislative funding for the State purchase of the MN Zephyr Railroad Right of Way as an extension of the State Trail system, support for the New Armory Project and Phase III of the Levy Wall Project."

Mr. Bremer further notes that the contract calls for the City of Stillwater to compensate The Conach Group \$1,500 a month for the work provided under the contract. As of the date of his complaint Mr. Bremer states the City of Stillwater has paid The Conach Group \$6,000 under the terms of the contract. In a section entitled "Place of Work" the contract provides "It is understood that Consultant services will be rendered largely at the Consultant's office and the State of Minnesota Capitol..."

After reviewing the terms of the contract Mr. Bremer states in his complaint that, "The work The Conach Group is doing for the City of Stillwater as described in the contract clearly falls within the definition of lobbying found in...[the] Lobbying Handbook." Mr. Bremer concludes that, "Therefore, I submit that The Conach Group and/or Mike Campbell is in violation of the State of Minnesota's Campaign Finance and Public Disclosure Laws,...registration and reporting requirements..."

Mr. Bremer also questions the role of the City of Stillwater by stating, "If the City of Stillwater knowingly entered into a contract for paid lobbying services with an unregistered lobbyist, I submit the City also may be in violation..."

Also provided with the complaint were a copy of the Stillwater City Council Minutes from April 19, 2011, at which the contract was discussed and approved, and a copy of a 2007 proposal from the

Conach Group to the City of Stillwater for legislative services. The 2007 proposal was never acted on by the City of Stillwater.

Minnesota Statutes, section 10A.03, subdivision 1, provides that an individual must register as a lobbyist within five days after becoming a lobbyist, or being engaged by a political subdivision to be a lobbyist. An individual who fails to file a lobbyist registration form with the Board within five days of becoming a lobbyist must be notified of the requirement to file by the Board. If the individual fails to register within ten business days after the notice was sent by the Board they are subject to a late filing fee.

On July 27, 2011, the Board notified Mr. Campbell of the complaint and asked specific questions on the services he provided to the City of Stillwater under the terms of the contract. On August 2, 2011, the Board received a response from Ryan Kaess, legal representative for the Conach Group regarding the complaint.

With his response Mr. Kaess provides a signed copy of the contract between The Conach Group and the City of Stillwater which contains some differences from the version provided with the complaint. However, the section of the contract on the nature of work to be provided is identical. Regarding the terms of the contract Mr. Kaess states, "I will concede that the contract is poorly drafted and significantly misrepresents the scope of what The Conach Group did and is doing for the City of Stillwater. However, it is clear, based upon the statements made by the parties that The Conach Group was not retained to lobby for the City of Stillwater, and no one from the The Conach Group actually lobbied for the City of Stillwater."

Mr. Kaess states in explanation of the work Mr. Campbell did for the City of Stillwater that, "My client provided strategic advice, research and messaging related to legislative initiatives of the City of Stillwater. He did not attempt to influence legislative or administrative action, communicate with public officials or urge others to communicate with public or local officials as defined by Minnesota Statute. At no time did my client ever have contact with any public official for the purpose of advocating a position on behalf of the City of Stillwater." Mr. Kaess acknowledges that Mr. Campbell contacted one legislative staffer and requested research information, but states that Mr. Campbell did not urge the staff member to advocate on behalf of any legislative position.

In response to a question on who provided services on behalf of The Conach Group under the terms of the contract Mr. Kaess responded that, "Mr. Campbell is the sole owner and principal consultant for the Conach Group, no other individual provided services under this contract."

With his response Mr. Kaess also provided a copy of Advisory Opinion 409, issued by the Board on August 3, 2010. This advisory opinion address questions on the type of communication with public officials that requires registration as a lobbyist and is available to the public at the Board's web site.

Because the complaint and supporting documents indicated that he was a key figure in establishing and implementing the Board notified Ken Harycki, Mayor, City of Stillwater, of the complaint on July 28, 2011. With the notification the Board asked Mayor Harycki to respond to specific questions regarding the services provided by The Conach Group. Mayor Harycki's response was received by the Board on August 5, 2011.

In response to questions on who provided the work required under the contract for The Conach Group Mr. Harycki provided that he worked directly with Mr. Campbell and that the only person from The Conach Group with whom he communicated with was Mr. Campbell.

Mayor Harycki was asked about a quote in a media story in which the Mayor attributed in part the success of obtaining funding for the Browne Creek bonding bill to the services provided by Mr. Campbell. Mayor Harycki states, "I am pleased the Browne Creek bonding was done. In a conversation subsequent to the newspaper story and preceding your letter, Mr. Campbell informed me that the budget settlement was a late night deal that he had no connection to. Throughout the legislative session he did inform me that he was tracking the bill and that we were fine."

In response to a question on whether Mr. Campbell communicated directly with public and local officials on behalf of the City of Stillwater Mayor Harycki responded, "I received daily updates as to the status of our legislation but to my knowledge; he did not communicate directly with any groups listed. That is to say at no time did he ever have a conversation by saying "I talked to Senator X and he/she informed me..."

Mayor Harycki was asked if under the duties of the contract Mr. Campbell communicated with individuals and urged them to communicate with public officials on behalf of the City of Stillwater. In response Mayor Harycki stated, "Mr. Campbell did not appear before any groups or issue any communication urging individuals to call. He simply provided me with updates on the status or legislation we were following."

Board Analysis of Allegations

Minnesota Statutes, section 10A.01, subdivision 21, defines the activities that make an individual a "lobbyist". The statute provides in part that "lobbyist" means an individual "engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials;..."

One way to determine if the allegations in Mr. Bremer's complaint are true is to turn this statutory definition into a series of three questions, or tests. It is important to note that all three questions must be answered in the affirmative in order to require Mr. Campbell to register as a lobbyist for the City of Stillwater. The questions are:

- 1.) **Question:** Was Mr. Campbell paid more than \$3,000 in a calendar year by the City of Stillwater?

Answer: Yes, at a rate of \$1,500 per month the compensation from the City of Stillwater alone has exceeded \$3,000 in 2011. The Board notes that compensation from all sources is included towards the \$3,000, but for the purposes of this investigation the payments from the City of Stillwater alone are sufficient to answer the question in the affirmative.

- 2.) **Question:** Did The Conach Group provide services to the City of Stillwater for the purpose of influencing official legislative or administrative action?

Answer: Yes, as stated in the contract the City of Stillwater had specific bonding projects and a series of goals related to the development of the proposed St. Croix River Bridge. The contact with The Conach Group, and the work provided by Mr. Campbell, was to help secure the bonding projects and forward the City's goals relative to the new bridge. Mr. Kaess's response to the complaint acknowledges that Mr. Campbell provided "strategic advice, research and messaging related to legislative initiatives of the City of Stillwater." Clearly this work would not be required if the City of Stillwater had no interest in

Relevant Statutes

Minnesota Statutes, section 10A.01, subdivision 21 - Lobbyist

(a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

(b) "Lobbyist" does not include:

(1) a public official;

(2) an employee of the state, including an employee of any of the public higher education systems;

(3) an elected local official;

(4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a metropolitan governmental unit, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of metropolitan governmental units;

(5) a party or the party's representative appearing in a proceeding before a state board, commission, or agency of the executive branch unless the board, commission, or agency is taking administrative action;

(6) an individual while engaged in selling goods or services to be paid for by public funds;

(7) a news medium or its employees or agents while engaged in the publishing or broadcasting of news items, editorial comments, or paid advertisements which directly or indirectly urge official action;

(8) a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony; or

(9) a party or the party's representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

(c) An individual who volunteers personal time to work without pay or other consideration on a lobbying campaign, and who does not spend more than the limit in paragraph (a), clause (2), need not register as a lobbyist.

Minnesota Statutes, section 10A.03, Subdivision 1 - LOBBYIST REGISTRATION.

First registration. A lobbyist must file a registration form with the board within five days after becoming a lobbyist or being engaged by a new individual, association, political subdivision, or public higher education system.