

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

Findings Regarding Elwyn Tinklenberg and The Tinklenberg Group

Summary of Allegations and Responses

On February 27, 2008, Eric Zaetsch filed a complaint with the Campaign Finance and Public Disclosure Board (“the Board”) against Elwyn Tinklenberg. Mr. Tinklenberg is the president of the Tinklenberg Group, an incorporated business that provides services to government. The complaint alleges that Mr. Tinklenberg, or by extension some employee of the Tinklenberg Group, failed to register as a lobbyist for the City of Ramsey. Mr. Zaetsch supported his complaint by providing a copy of a document from the Tinklenberg Group to the City of Ramsey entitled Ramsey Commuter Rail Station / Park and Ride Recommended Action (“the Proposal”), a Topic Report developed by City of Ramsey staff for the January 8, 2008 Ramsey City Council meeting, and a copy of Resolution #08-01-XXX which was considered and passed (and given the number 08-01-020) by the Ramsey City Council on January 8, 2008. The resolution, as passed, also accepted the work described in the Proposal.

The Proposal lists a number of tasks to be accomplished by the Tinklenberg Group to support the City of Ramsey in the formal request for, and acquisition of, a commuter rail station as a part of the Northstar Commuter Rail Service - Phase One. Among the tasks listed are; working with the City of Ramsey to formally request the Anoka County Regional Rail Authority to include the Ramsey station on the Northstar project – phase one, asking the Metropolitan Council to reallocate funds to support the proposed station, assist City of Ramsey staff in working with Anoka County to “revisit” service plans for bus service that may serve as feeders to the rail station, enlist key business owners to participate in events that show community support for the commuter station and “further influence policy makers”. The cost for the services offered in the Proposal is estimated at \$4,000 a month for four or five months.

The proposal for services from the Tinklenberg Group to the City of Ramsey was considered and adopted by Resolution #08-01-020 at a City of Ramsey Council meeting on January 8, 2008. As background for the agenda items that were considered at the city council meeting City of Ramsey staff prepared “Topic Reports”. The Topic Report entitled Northstar Commuter Rail – Ramsey Station includes the following statement “Staff has met with The Tinklenberg Group and requested a proposal for work to be performed in support of **lobbying** and planning for a Ramsey Station on the Northstar Commuter Rail. The proposal from The Tinklenberg Group is attached for Council consideration. Elwyn Tinklenberg will be present for the work session discussion regarding Northstar and the plan to request and **lobby** for a Ramsey Station.” (emphasis added).

On February 29, 2008, the Board notified Mr. Tinklenberg of the complaint and provided the opportunity to respond to the complaint in general and to specific questions from the Board on the effective date of the service agreement between the City of Ramsey and the Tinklenberg Group and timing of any payments received by the Tinklenberg Group for services provided under the agreement. On March 14, 2008, Mr. Tinklenberg responded to the complaint.

Mr. Tinklenberg states, "Based on my understanding of the activities and thresholds used to define "lobbyist", our work for the City of Ramsey as contemplated in our proposal...does not constitute lobbying". Referencing elements of the statutory definition of lobbying Mr. Tinklenberg further states, "No 'administrative action' or 'legislative action' has been proposed, nor is any foreseen. This is evidenced by the fact that no legislation has been introduced regarding this project and no legislative action is anticipated in the scope of the work outlined in our proposal. Also, there is no action being requested of any metropolitan governmental unit".

Mr. Tinklenberg contends in his response that the services to be provided to the City of Ramsey are administrative and planning activities. Specifically Mr. Tinklenberg states, "The work we are doing under the terms of the agreement is to provide our expertise to help the city understand and plan for the procedural and technical steps that will be necessary in order for it to achieve...a commuter rail station on the Northstar Commuter Rail Line...". In describing the administrative and planning activities provided under the Proposal Mr. Tinklenberg states, "This work will include... coordination with those agencies leading the Northstar effort and with their staff. ...To that end, we also help to plan, arrange and facilitate meetings at both a staff and agency official level in order to assure good and consistent communication and a clear understanding on the part of all stakeholders, including the surrounding business community, regarding the steps the city is taking."

In response to a Board staff question Mr. Tinkleneberg acknowledged that The Tinklenberg Group has been paid more than \$3,000 in 2008 for services provided under the Proposal.

On March 19, 2008, Heidi Nelson, Assistant City Administrator, City of Ramsey, submitted information for the Board's consideration of the complaint. Ms. Nelson acknowledged that the City of Ramsey has contracted with the Tinklenberg Group since 2002 for consulting services related to transportation. Ms. Nelson states, "Over the past 18 months, The Tinklenberg's Group work with the City has included work on the Northstar Corridor Commuter Rail project and securing a Ramsey Station." In explaining the use of term lobbying by the City in reference to the Proposal from the Tinkleneberg Group Ms. Nelson explains, "In the minutes of January 8, 2008, the City of Ramsey made reference to "lobbying" in the discussion of services related to The Tinklenberg contract. It is my belief that the term was used in the colloquial sense and wasn't intended to imply that The Tinklenberg Group were "lobbyists" as defined by state and/or federal regulation. In fact, the contract approved with The Tinklenberg Group does not specifically authorize "lobbying" in the formal sense on behalf of the City of Ramsey with regard to a Ramsey Station on the Northstar Commuter Rail Line."

A second letter was sent to Mr. Tinklenberg by Board staff on March 21, 2008, asking for clarification of some points in his response and in the Proposal. Board staff noted that the Proposal included tasks connected to the Metropolitan Council, Anoka County Regional Rail Authority, and Anoka County. Mr. Tinklenberg responded by letter dated April 4, 2008. In response to a question on the type of communication members of The Tinklenberg Group has initiated with these governmental units Mr. Tinklenberg states, "The Tinklenberg Group has not communicated with the Metropolitan Council or any other agency you listed in an effort to influence their actions". In specific reference to the scheduling of bus service to support a City of Ramsey commuter station Mr. Tinklenberg

contends that the decision to alter bus routes to support Northstar rail had already been made by the Metropolitan Council. Mr. Tinklenberg states, "Again, our work was not intended to influence that decision, it was to help coordinate and facilitate the implementation of that decision. The same is true of our work with Anoka County and the Northstar Corridor Development Authority. We are not authorized to nor have we engaged in, efforts to influence decisions of these bodies. Our work is strictly limited to implementation".

The Board also asked if that portion of the Proposal that called for The Tinklenberg Group to "enlist key business owners and representatives" to participate in events that show community support for the commuter station and "further influence policy makers" included urging others to communicate with public or local officials to influence decisions related to the proposed City of Ramsey commuter station. Mr. Tinklenberg replies, "No. The purpose of the formation of this group is to keep key members of the business community informed regarding the progress of the Northstar Commuter Rail project and the City's efforts to support...the Ramsey Station. The intent of these meetings are strictly informational and no advocacy role has been proposed or encouraged".

On April 11, 2008, Mr. Tinklenberg submitted a document entitled Proposed Station Development Plan prepared by the Anoka County Regional Railroad Authority, marked "Draft", and dated February 5, 2008. The document outlines the steps needed to complete commuter stations in the cities of Fridley, Foley, and Ramsey. In reference to the plan Mr. Tinklenberg states, "As I have stated in other correspondence, it was never my understanding that the City of Ramsey's intent in hiring the Tinklenberg Group was to influence the content or timing of the draft plan. As I understand it, the city is satisfied with both the plan and the proposed schedule and only wishes to assure effective coordination and implementation of ACRRRA plan as it has been drafted".

Board Analysis

For the Board to find that an individual is required to register with and report to the Board as a lobbyist requires that the actions of the individual meet all parts of the definition of "lobbyist" provided in Minnesota Statutes, section 10A.01, subdivision 21. Performing activities that only partially meet the definition of lobbying, or performing lobbying activities that do not meet a threshold set in this statute, will not trigger a lobbyist registration requirement. An individual who meets the definition of lobbyist and who fails to register after notice from the Board is subject to a late fee of up to \$100, and a civil penalty of up to \$1,000.

From the tasks listed in the Proposal it is clear that some of the work The Tinklenberg Group is doing on behalf of the City of Ramsey requires communication with the Anoka County Railroad Authority, the Metropolitan Council, and Anoka County. All three of these entities are "metropolitan governmental units" as defined in Minnesota Statutes, section 10A.01, subdivision 24. Attempting to influence the official actions of the governing body of a metropolitan governmental unit, or of "local officials" appointed or employed by a metropolitan governmental unit, is a lobbying activity. It is important to note that "local officials" include employees who are not a part of the governing body of the metropolitan governmental unit. Local officials include employees who recommend action to the governing body or who have been delegated significant authority to expend public funds. For example, the Metropolitan Council has 25 local officials in addition to

the members of the council. A listing of local officials identified by Metropolitan Governmental Units is available on the Board's web site.

It is Mr. Tinklenberg's position that the goals of the City of Ramsey delineated in the Proposal do not require attempting to influence the official decision to build the Ramsey commuter station, but rather the city needs The Tinklenberg Group to facilitate the implementation of decisions that have already been made. This position appears to be inconsistent with some of the delineated goals in the Proposal. For example, the Proposal includes asking the Metropolitan Council to reallocate funds, the Anoka Railroad Authority to include the station in phase one of the Northstar project, and Anoka County to modify bus routes. While the primary decision, to locate a commuter station in the City of Ramsey at some point in time, may have already been made, it appears to the Board that local officials, and perhaps governing bodies of metropolitan governmental units, will be asked to take official actions on behalf of the City of Ramsey's goal to build a commuter station as a part of phase one of the rail line's development.

The timing of the tasks to be performed under the Proposal is unclear. Mr. Tinklenberg states that as of the date of his second response there had been no discussions with Metropolitan Council staff. Until communication requesting an official action occurs there is not a requirement to register as a lobbyist.

Mr. Tinklenberg maintains that the work provided to the City of Ramsey by the Tinklenberg Group under the terms of the Proposal is limited to administrative and planning services that support the City of Ramsey in securing the commuter station. At several points within the Proposal there are references to The Tinklenberg Group assisting City of Ramsey staff to complete a particular task. The Proposal includes assisting city staff in discussions with Anoka County and the Metropolitan Council. The requirement to register as a lobbyist occurs, in part, when an individual is communicating with public or local officials. If the administrative and planning support of city staff does not require, and the Tinklenberg Group personnel do not directly communicate with public or local officials, or there is no attempt to influence official action when communication does occur, then Tinklenberg Group personnel are not required to register as lobbyists on behalf of the City of Ramsey. Administrative support is specifically exempted from the lobbyist registration requirement in Minnesota Statutes, section 10A.01, subdivision 21 (d). This portion of the statute states in part:

"An individual who provides administrative support to a lobbyist ... but who does not communicate or urge others to communicate with public or local officials, need not register as a lobbyist".

Mr. Tinklenberg's categorization of the work provided in the Proposal as administrative and planning is supported by the response of Ms. Nelson on behalf of the City of Ramsey. Ms. Nelson maintains that the use of the term "lobbying" in the Topic Report prepared by City of Ramsey staff and in the Ramsey City Council minutes does not imply that The Tinklenberg Group is lobbying, at least as the term is defined in statute, for the City of Ramsey. The Board assumes that the City of Ramsey is aware of the lobbyist registration requirement for employees of political subdivisions found in Minnesota Statutes, section 10A.01, subdivision 21 (b)(4), and is monitoring the time of its staff to insure that lobbyist registration occurs if the threshold set in this statute is exceeded.

Lobbyist registration is also required if an individual urges others to communicate with public or local officials to influence an official action. The Board specifically asked about that portion of the Proposal that calls for the enlistment of business owners to “influence policy makers” as this is the type of activity that may trigger a lobbyist registration requirement. However, in response Mr. Tinklenberg states that the effort is informational in nature and that “no advocacy role has been proposed or encouraged”.

The last portion of the definition of lobbying to be considered in determining if personnel of The Tinklenberg Group are required to register as a lobbyist is compensation. An individual must be compensated more than \$3,000 for lobbying services from all sources within a calendar year before registration is required. For an individual that is paid a salary that compensates for many activities, only some of which are related to lobbying, the payment for lobbying is that percentage of the individuals time spent on lobbying times the total compensation paid. The terms of the Proposal and the response from Mr. Tinklenberg show that the total compensation paid to The Tinklenberg Group is more than \$3,000. However, there is no evidence that any Tinklenberg Group personnel have been compensated more than \$3,000 for lobbying efforts.

The Board concludes that the goals of the City of Ramsey as delineated in the Proposal will require requesting official actions by local officials and perhaps by the governing bodies of Metropolitan governmental units. Such requests constitute lobbying activities under Minnesota Statutes, section 10A.01, subdivision 21. However, there is no evidence that the assistance provided by the Tinklenberg Group to the City of Ramsey to date is more than administrative support to the City of Ramsey’s effort to acquire a commuter station as part of phase one of the Northstar Commuter Rail Service. There is also no evidence that the compensation paid to any Tinklenberg Group personnel for lobbying efforts rises to the threshold that requires registration with the Board.

This matter was considered by the Board in executive session in its meetings on March 26, 2008 and April 15, 2008. The Board’s decision was based upon the evidence provided with the complaint filed by Mr. Zaetsch, the responses provided by Mr. Tinklenberg and Ms. Nelson, and Board records.

Relevant Statutes

1. **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 personnel 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.

(d) An individual who provides administrative support to a lobbyist and whose salary and administrative expenses attributable to lobbying activities are reported as lobbying expenses by the lobbyist, but who does not communicate or urge others to communicate with public or local officials, need not register as a lobbyist.

2. **Minnesota Statutes, section 10A.01, Subd. 22. Local official.** "Local official" means a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.
3. **Minnesota Statutes, section 10A.01, Subd. 24. Metropolitan governmental unit.** "Metropolitan governmental unit" means –
 - any of the seven counties in the metropolitan area as defined in section 473.121, subd. 2,
 - a regional railroad authority established by one or more of those counties under section 398A.03,
 - a city with a population of over 50,000 located in the seven-county metropolitan area,
 - the Metropolitan Council, or
 - a metropolitan agency as defined in section 473.121, subdivision 5a.
4. **Minnesota Statutes, section 10A.01, Subd. 35. Public official.** "Public official" means any:
 - (1) member of the legislature;
 - (2) individual employed by the legislature as secretary of the senate, legislative auditor, chief clerk of the house, revisor of statutes, or researcher, legislative analyst, or attorney in the Office of Senate Counsel and Research or House Research;
 - (3) constitutional officer in the executive branch and the officer's chief administrative deputy;
 - (4) solicitor general or deputy, assistant, or special assistant attorney general;

- (5) commissioner, deputy commissioner, or assistant commissioner of any state department or agency as listed in section 15.01 or 15.06, or the state chief information officer;
- (6) member, chief administrative officer, or deputy chief administrative officer of a state board or commission that has either the power to adopt, amend, or repeal rules under chapter 14, or the power to adjudicate contested cases or appeals under chapter 14;
- (7) individual employed in the executive branch who is authorized to adopt, amend, or repeal rules under chapter 14 or adjudicate contested cases under chapter 14;
- (8) executive director of the State Board of Investment;
- (9) deputy of any official listed in clauses (7) and (8);
- (10) judge of the Workers' Compensation Court of Appeals;
- (11) administrative law judge or compensation judge in the State Office of Administrative Hearings or referee in the Department of Employment and Economic Development;
- (12) member, regional administrator, division director, general counsel, or operations manager of the Metropolitan Council;
- (13) member or chief administrator of a metropolitan agency;
- (14) director of the Division of Alcohol and Gambling Enforcement in the Department of Public Safety;
- (15) member or executive director of the Higher Education Facilities Authority;
- (16) member of the board of directors or president of Minnesota Technology, Inc.;
- (17) member of the board of directors or executive director of the Minnesota State High School League;
- (18) member of the Minnesota Ballpark Authority established in section 473.755; or
- (19) citizen member of the Legislative-Citizen Commission on Minnesota Resources.

5. **Minnesota Statutes, section 10A.03. Lobbyist registration.** subdivision 1. **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.

Subdivision. 2. **Form.** The board must prescribe a registration form, which must include: (1) the name and address of the lobbyist; (2) the principal place of business of the lobbyist; (3) the name and address of each individual, association, political subdivision, or public higher education system, if any, by whom the lobbyist is retained or employed or on whose behalf the lobbyist

appears; and (4) a general description of the subject or subjects on which the lobbyist expects to lobby. If the lobbyist lobbies on behalf of an association, the registration form must include the name and address of the officers and directors of the association.

Subdivision. 3. **Failure to file.** The board must send a notice by certified mail to any lobbyist who fails to file a registration form within five days after becoming a lobbyist. If a lobbyist fails to file a form within ten business days after the notice was sent, the board may impose a late filing fee of \$5 per day, not to exceed \$100, starting on the 11th day after the notice was sent. The board must send an additional notice by certified mail to a lobbyist who fails to file a form within 14 days after the first notice was sent by the board that the lobbyist may be subject to a civil penalty for failure to file the form. A lobbyist who fails to file a form within seven days after the second notice was sent by the board is subject to a civil penalty imposed by the board of up to \$1,000.