

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

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Collection of Contributions to Candidates Over the Internet

ADVISORY OPINION 369

SUMMARY

A political committee may serve as a vendor of Internet-based services to candidates. The cost of the Internet services provided by the committee must reflect the fair market value of equivalent services available to any candidate on the open market.

FACTS

As an officer of a Ballot Issue Committee (the Committee) registered with the Campaign Finance and Public Disclosure Board (the Board) you ask for an advisory opinion based on the following facts.

1. The Committee will offer, for a fee, to facilitate the collection of contributions to candidate's committees over the Internet.
2. If a candidate opts to use the service the Committee will add the candidate to a web page that will serve as an "electronic mailbox" into which individuals may contribute to a specific candidate.
3. A transaction fee will be deducted from the contribution amount prior to the contribution being transferred to the candidate's account.
4. The Committee will contract with a third party processing company to conduct the transfer of funds from the credit card of the contributor to the bank account of the candidate's committee.
5. The transaction time between when the contribution is received to when it is deposited in the candidate's account is anticipated to be a few seconds. The Committee will not be in control of the contributions to candidates other than to deduct the transaction fee prior to depositing the net proceeds in the candidate's account.

6. If the candidate has signed the Public Subsidy Agreement the Committee intends to generate an electronic version of the Political Contribution Refund (PCR) receipt that may be printed by the donor from the Internet and used to apply for the PCR from the state.
7. The Committee would number the electronic version of the PCR receipts based on paper PCR booklets obtained by the candidate from the Board. The electronic version of the PCR receipt would include an electronic candidate signature.
8. The Committee is aware of the issues described in Advisory Opinions 318 and 360, and believes that the service described in this set of facts is similar in concept to the situations described in those two advisory opinions.

ISSUE ONE

May the Committee contract with candidates to provide Internet-based collection and transfer of contributions?

OPINION ONE

Yes. As described the Committee is in effect becoming a vendor of Internet-based services to candidates who choose to participate. The fee deducted from the contribution by the Committee must be at least equivalent to the fair market value that any candidate would pay to acquire a similar service from a business. If the fee charged by the Committee is less than the fair market value of the service, the difference between the amounts is an in-kind contribution from the Committee to the candidate.

If the Committee accepts corporate contributions (Ballot Question Committees may accept corporate contributions, see Advisory Opinion 257 and 343) the Committee will be prohibited from making cash or in-kind contributions to candidates. A contribution from a Ballot Question Committee that has accepted corporate contributions to a candidate violates the prohibition on corporate contributions found in Minn. Stat. §211B.15, subd. 2.

The requestor notes similarities between the facts of this advisory opinion request and Advisory Opinions 318 and 360. As provided in those advisory opinions and reiterated here, the use of the Internet to collect contributions in no way lessens the record keeping and reporting responsibilities of the candidate's treasurer. The Internet service must provide the treasurer with the date of the contribution, the name and full address of the contributor, and if the contribution is over \$100, the employer or occupation of the contributor. If the required disclosure information is not provided the contribution will need to either be returned to the contributor or forwarded to the Board for deposit in the state elections campaign fund.

The reported value of the contribution is the full amount donated by the contributor before the fee is deducted. The fee deducted by the Committee from the contribution is a

campaign expenditure and must be reported by the candidate's committee on periodic reports to the Board.

The candidate's committee treasurer will be responsible to monitor Internet-based contributions and aggregate those contributions with any prior contributions from the individual to insure that contribution and aggregate special source limits are not exceeded. The treasurer will also need to consider Internet-based contributions when monitoring the need to submit a 48 Hour Notice of Large Contribution.

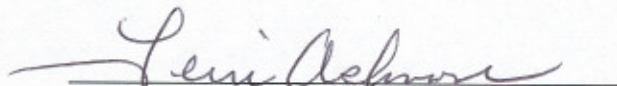
ISSUE TWO

May the Committee generate an electronic version of the PCR receipt for contributors who donate over the Internet?

OPINION TWO

The Department of Revenue administers the submission of PCR receipts as provided in Minn. Stat. §290.06, subd. 23. Although the Board may not offer an advisory opinion on a statutory provision outside of its jurisdiction, it may reference statutes that affect the administration of Chapter 10A. Section 290.06, subd. 23 provides, "A refund of a contribution is allowed only if the taxpayer files a form required by the commissioner and attaches to the form a copy of an official refund receipt form issued by the candidate or party and signed by the candidate, the treasurer of the candidate's principal campaign committee, or the chair or treasurer of the party unit, after the contribution was received". There appears to be no authority to delegate this responsibility to a third party. The Board also notes that the information on a PCR receipt is not public data.

Issued September 13, 2005



Terri Ashmore, Chair

Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

Minn. Stat. §211B.15 Corporate political contributions.

Subdivision 1. **Definitions.** For purposes of this section, "corporation" means:

- (1) a corporation organized for profit that does business in this state;
- (2) a nonprofit corporation that carries out activities in this state; or
- (3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state.

Subd. 2. **Prohibited contributions.** A corporation may not make a contribution or offer or agree to make a contribution, directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate.

Minn. Stat. §290.06

Subd. 23. **Refund of contributions to political parties and candidates.** (a) A taxpayer may claim a refund equal to the amount of the taxpayer's contributions made in the calendar year to candidates and to a political party. The maximum refund for an individual must not exceed \$50 and for a married couple, filing jointly, must not exceed \$100. A refund of a contribution is allowed only if the taxpayer files a form required by the commissioner and attaches to the form a copy of an official refund receipt form issued by the candidate or party and signed by the candidate, the treasurer of the candidate's principal campaign committee, or the chair or treasurer of the party unit, after the contribution was received. The receipt forms must be numbered, and the data on the receipt that are not public must be made available to the campaign finance and public disclosure board upon its request. A claim must be filed with the commissioner no sooner than January 1 of the calendar year in which the contribution was made and no later than April 15 of the calendar year following the calendar year in which the contribution was made. A taxpayer may file only one claim per calendar year. Amounts paid by the commissioner after June 15 of the calendar year following the calendar year in which the contribution was made must include interest at the rate specified in section 270.76.

- (b) No refund is allowed under this subdivision for a contribution to a candidate unless the candidate:

- (1) has signed an agreement to limit campaign expenditures as provided in section 10A.322;
- (2) is seeking an office for which voluntary spending limits are specified in section 10A.25; and
- (3) has designated a principal campaign committee.

This subdivision does not limit the campaign expenditures of a candidate who does not sign an agreement but accepts a contribution for which the contributor improperly claims a refund.

- (c) For purposes of this subdivision, "political party" means a major political party as defined in section 200.02, subdivision 7, or a minor political party qualifying for inclusion on the income tax or property tax refund form under section 10A.31, subdivision 3a.

A "major party" or "minor party" includes the aggregate of that party's organization within each house of the legislature, the state party organization, and the party organization within congressional districts, counties, legislative districts, municipalities, and precincts.

"Candidate" means a candidate as defined in section 10A.01, subdivision 10, except a candidate for judicial office.

"Contribution" means a gift of money.

- (d) The commissioner shall make copies of the form available to the public and candidates upon request.
- (e) The following data collected or maintained by the commissioner under this subdivision are private: the identities of individuals claiming a refund, the identities of candidates to whom those individuals have made contributions, and the amount of each contribution.
- (f) The commissioner shall report to the campaign finance and public disclosure board by each August 1 a summary showing the total number and aggregate amount of political contribution refunds made on behalf of each candidate and each political party. These data are public.
- (g) The amount necessary to pay claims for the refund provided in this section is appropriated from the general fund to the commissioner of revenue.
- (h) For a taxpayer who files a claim for refund via the Internet or other electronic means, the commissioner may accept the number on the official receipt as documentation that a contribution was made rather than the actual receipt as required by paragraph (a).

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under Minn. Stat. § 10A.02, subd. 12(b)**

**RE: Contributions to a Political Party Unit from a Principal Campaign
Committee and Multicandidate Political Party Expenditures**

ADVISORY OPINION 370

SUMMARY

A principal campaign committee may contribute funds to a political party unit with knowledge that the funds will be used on multicandidate political party expenditures. A contribution made with expressed or implied conditions on which candidates benefit from the multicandidate political party expenditure violates the prohibition on earmarking.

FACTS

As the Treasurer of a Principal Campaign Committee (the Committee), registered with the Campaign Finance and Public Disclosure Board (the Board), and as the Chair of a political party unit (the Political Party), registered with the Board, you jointly ask for an advisory opinion based on the following facts.

1. The Committee intends to make a number of substantial contributions to the Political Party.
2. The Political Party will use the contributions to fund a number of multicandidate political party expenditures as defined in Minn. Stat. §10A.275.
3. The Committee will have final authority over how its own funds are spent, including the decision on whether to make a contribution to the Political Party.
4. The Political Party will have final authority over how all Party funds are spent, including those contributed from the Committee.
5. It is expected that the officers of the Political Party and the Committee will consult with each other and develop a “coordinated” approach for the expenditures allowable under Minn. Stat. §10A.275.

ISSUE ONE

Is there any limit on the number or amount of contributions made by the Committee to the Political Party?

OPINION ONE

No. There is no provision in Chapter 10A that limits the number or amount of contributions from a candidate's principal campaign committee to a political party unit.

ISSUE TWO

How should contributions made by the Committee to the Political Party be reported to the Board?

OPINION TWO

As provided in Minn. Stat. §10A.01, subd. 26 (17), contributions from a candidate's principal campaign committee to a political party unit are noncampaign disbursements. Therefore the contributions do not count against the campaign expenditure limit established in Minn. Stat. §10A.25 for candidates who sign the public subsidy agreement.

Assuming that the contributions have a cumulative value in excess of \$100, the contributions must be itemized by both the Committee and the Political Party on periodic Reports of Receipts and Expenditures with the date and amount of each contribution made or accepted.

ISSUE THREE

May the Committee and Political Party consult on the multicandidate political party expenditures made by the Political Party with funds contributed by the Committee?

OPINION THREE

Multicandidate political party expenditures are defined in Minn. Stat. §10.275 as expenditures made "by a party unit, or two or more party units acting together". The statute does not authorize political party units and principal campaign committees to jointly make multicandidate political party expenditures, and if the consultation contemplated amounts to joint decision making, the expenditure falls outside the definition of a multicandidate party expenditure. Moreover, if the consultation amounts to an implied condition being placed on the political committee's contribution, the political party runs the risk of earmarking. (See also Response to Issue Four.)

As provided in the facts of this advisory opinion request, the Political Party will retain control of its funds and is therefore solely responsible for all expenditures made with those funds.

ISSUE FOUR

Is the Committee “earmarking” the contributions it makes to the Political Party if the Committee consults and coordinates with the Political Party on the multicandidate political party expenditures financed with the contributions?

OPINION FOUR

Minn. Stat. §10A.16 prohibits “earmarking” which is defined in part as a political party unit soliciting or accepting a contribution from any source with the express or implied condition that the contribution or any part of the contribution be directed to a particular candidate. If, during the consultation and coordination between the Committee and Political Party on multicandidate political party expenditures, the Committee places express or implied conditions that the contributions benefit specific candidates, the contributions are prohibited as earmarking.

Whether consulting with a candidate becomes earmarking depends on the nature of the consultation and the extent to which the political party’s autonomous decision making is compromised. For example, holding a fundraiser for three or more candidates without the attendance of the candidates it benefits, or providing party staff services to candidates without their knowledge, would be difficult and nonsensical. Therefore, “consulting” between candidates and political party units on such multicandidate political party expenditures is not prohibited. However, a consultation for the purpose of allocating certain campaign expenditures between the Political Party and the Committee reflects a degree of coordination that is prohibited.

The Board notes that the term “consults and coordinates” could describe a wide variety of communication between the Committee and the Political Party. The Board must evaluate each situation on a case by case basis to determine whether the consultation or coordination amounts to prohibited earmarking.

ISSUE FIVE

What type of expenditures may the Political Party make for a political party fund-raising effort?

OPINION FIVE

There is not a specific form that a political party fundraising effort under Minn. Stat. §10A.275, subd. 1(4), must take. Fundraising dinners, media solicitation, written/direct

mail solicitation, telephone solicitation, and in-person solicitation are all examples of fundraising efforts that may qualify as a multicandidate expenditure. The fundraising effort must be related to an effort to raise funds for three or more candidates who seek nomination or election as a state constitutional officer, legislator, or judge.

ISSUE SIX

Is there a limit on the amount the Political Party spends on multicandidate political party expenditures?

OPINION SIX

No. Minn. Stat. §10A.275 does not limit the amount that a party unit can spend on multicandidate political party expenditures.

ISSUE SEVEN

What is the definition of “party committee staff services” as provided in Minn. Stat. §10A.275, and what standards must Political Party staff meet in order for their activities to qualify as a multicandidate political party expenditure?

OPINION SEVEN

Party committee staff services qualify as a multicandidate political party expenditure under Minn. Stat. §10A.275 if the services encompass the nomination or election of three or more candidates for state constitutional, legislative, or judicial office. The party staff’s salaries and benefits may be a multicandidate political party expenditure if the staff is working on the campaigns of three or more state level candidates.

Minn. Stat. §10A.275 does not provide guidelines for evaluating if staff services qualify as multicandidate political party expenditures. One indication of proper classification of party staff services as a multicandidate political party expenditure is whether the services benefit three or more candidates in approximately equal amounts.

If the cost of providing staff services to three or more candidates is not approximately equal for each candidate the excess amount spent on a candidate for staff services may be a donation in kind to that candidate.

ISSUE EIGHT

Is the cost of office space, computers, computer software, computer databases, office equipment, long distance phone service, paper, and copying services provided to Political Party staff while the staff provides services to three or more candidates a multicandidate political party expenditure?

OPINION EIGHT

No. Minn. Stat. §10A.275, subd. 1 (5), provides for “expenditures for party committee staff services that benefit three or more candidates”; the term “staff services” is not inclusive of expenditures made on behalf of a candidate by party staff, or of expenditures made by the Political Party to house or equip party staff while the staff works on the campaigns of candidates.

The Political Party may pay a party staff member who goes to a candidate’s campaign office and use the candidate’s committee computer, copying machine, paper, long distance phone service, and other office services and equipment as a multicandidate political party expenditure because those services and items have been purchased by the candidate’s committee.

If the party staff uses the Political Party’s office space, computers, copying machine, paper, long distance phone service, or other office services or items to benefit a single candidate, the cost of those services and items is either an in-kind donation to the candidate from the Political Party, or an expenditure by the Political Party that will be reimbursed by the candidate’s committee. If a candidate’s committee does not reimburse the Political Party for the cost of the item or service provided, the value of the in-kind donation counts against the political party contribution limit provided in Minn, Stat, §10A.27, subd. 2., and may apply to a candidate’s campaign expenditure limit.

It should be noted that the Political Party may provide office space and the material and services listed in issue nine for the use of staff conducting the other activities permitted under Minn. Stat. §10A.275. For example, the statute provides for expenditures “for a telephone conversation including the names of three or more individuals whose names appear on the ballot”; long distance phone services used for this purpose are a multicandidate political party expenditure. However, if the same phone service is used by political party staff to place calls on behalf of one candidate the value of the phone service is then an in-kind donation or a cost to be billed to the candidate’s committee.

The Board notes that funds received by the Political Party through the political contribution check off program provided in Minn. Stat. §10A.31, subd. 5, may only be spent on multicandidate political party expenditures. The Political Party will need to insure that items or services purchased with funds from the contribution check off program are used only for the activities provided in Minn. Stat. §10A.275.

ISSUE NINE

If a candidate provides space in his or her campaign office for Political Party staff to use while performing “party committee staff services” as provided in Minn. Stat. §10A.275, how is the cost of the space allocated and reported to the Board?

OPINION NINE

If the Political Party staff is working on behalf of the candidate's campaign no allocation of the office space is required. If the Political Party's staff is working in the candidate's office on one of the other activities provided in Minn. Stat. §10A.275, then the fair market value of the office space is an in-kind donation to the Political Party.

If the candidate's committee is providing the office space as an in-kind donation to the Political Party, the candidate's committee will report the fair market value of the donation as a contribution to the Political Party. The Political Party will report the in-kind donation of the office space as both a contribution from the candidate and as an in-kind expenditure by the Political Party.

ISSUE TEN

If campaign services are provided by unpaid campaign staff or unpaid party staff, must allocations among candidates with respect to such services be made?

OPINION TEN

No. Minn. Stat. §10A.01, subd. 11 (c), provides that the term contribution "does not include services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, political fund, principal campaign committee, or party unit...". Therefore, individuals volunteering their time to a political party or a candidate are not the type of resource that must be allocated between the candidates and party units that benefit from the volunteer services.

If the unpaid staff is reimbursed for costs related to campaigning, for example the use of an automobile, the reimbursement must be allocated between the principal campaign committees and party units that benefited from the volunteer's activities. If all of the volunteers campaigning costs are reimbursed by one of the candidates, the other candidates will receive a prohibited in-kind contribution. If all of the volunteers campaigning costs are reimbursed by a party unit the candidates will receive an in-kind donation that counts against political party contribution limit.

ISSUE ELEVEN

May this advisory opinion be relied upon by the principal campaign committees of other candidates that belong to the Political Party?

OPINION ELEVEN

No. Minn. Stat. §10A.02, subd. 12, provides in part that the guidance provided in an advisory opinion is only binding on the Board concerning the activities of the person or association that asked for the advisory opinion. The Board cautions individuals who rely on advisory opinions for guidance that even a single variation in the facts of an advisory opinion may affect its applicability to their situation.

However, advisory opinions do reflect the position of the Board given the statutory guidance at the time the advisory opinion is issued. If other principal campaign committees provide the same facts and ask the same questions provided in this advisory opinion request they will receive the same guidance, assuming that applicable statutes do not change.

Issued November 22, 2005



Terri Ashmore, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.02

Subd. 12. **Advisory opinions.** (a) The board may issue and publish advisory opinions on the requirements of this chapter based upon real or hypothetical situations. An application for an advisory opinion may be made only by an individual or association who wishes to use the opinion to guide the individual's or the association's own conduct. The board must issue written opinions on all such questions submitted to it within 30 days after receipt of written application, unless a majority of the board agrees to extend the time limit.

(b) A written advisory opinion issued by the board is binding on the board in a subsequent board proceeding concerning the person making or covered by the request and is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless:

- (1) the board has amended or revoked the opinion before the initiation of the board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion;
- (2) the request has omitted or misstated material facts; or
- (3) the person making or covered by the request has not acted in good faith in reliance on the opinion.

(c) A request for an opinion and the opinion itself are nonpublic data. The board, however, may publish an opinion or a summary of an opinion, but may not include in the publication the name of the requester, the name of a person covered by a request from an agency or political subdivision, or any other information that might identify the requester, unless the person consents to the inclusion.

10A.16 Earmarking contributions prohibited.

An individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient. An individual, political committee, political fund, principal campaign committee, or party unit that knowingly accepts any earmarked contribution is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

10A.27 Contribution limits.

Subd. 2. **Political party and dissolving principal campaign committee limit.** A candidate must not permit the candidate's principal campaign committee to accept contributions from any political party units or dissolving principal campaign committees in aggregate in excess of ten times the amount that may be contributed to that candidate as set forth in subdivision 1.

The limitation in this subdivision does not apply to a contribution from a dissolving principal campaign committee of a candidate for the legislature to another principal campaign committee of the same candidate.

10A.275 Multicandidate political party expenditures.

Subdivision 1. **Exceptions.** Notwithstanding other provisions of this chapter, the following expenditures by a party unit, or two or more party units acting together, with at least one party unit being either: the state committee or the party organization within a congressional district, county, or legislative district, are not considered contributions to or expenditures on behalf of a candidate for the purposes of section 10A.25 or 10A.27 and must not be allocated to candidates under section 10A.20, subdivision 3, paragraph (g):

- (1) expenditures on behalf of candidates of that party generally without referring to any of them specifically in a published, posted, or broadcast advertisement;
- (2) expenditures for the preparation, display, mailing, or other distribution of an official party sample ballot listing the names of three or more individuals whose names are to appear on the ballot;
- (3) expenditures for a telephone conversation including the names of three or more individuals whose names are to appear on the ballot;
- (4) expenditures for a political party fund-raising effort on behalf of three or more candidates; or
- (5) expenditures for party committee staff services that benefit three or more candidates.

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**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

**RE: Unregistered Associations Reporting Obligations; Contributions from
Separate Segregated Funds as Corporate Contributions**

ADVISORY OPINION 371

SUMMARY

The 30-day minimum reporting period for unregistered associations is in addition to the reporting periods set forth in Minn. Stat. § 10A.20. A contribution from a federally-recognized separate segregated fund containing corporate contributions to a Minnesota political organization (other than a ballot question committee) constitutes a prohibited corporate contribution under Minn. Stat. § 211B.15, subd. 2. There is no provision in Chapter 10A that provides for separate accounting for corporate funds held by an organizational contributor to a Minnesota political organization.

FACTS

As a firm representing entities that wish to participate in the Minnesota political process as unregistered associations under Minn. Stat. § 10A.27, subd. 13, you request an advisory opinion based on the following:

1. The organizations you represent wish to provide monetary contributions to no more than three groups per year.
2. The organizations you represent are federally-recognized separate segregated funds.
3. The separate segregated funds may be permitted under federal law to receive start-up and administrative expenses from a corporation without those items constituting a contribution under federal law.

ISSUE ONE

Does the 30-day reporting period for unregistered associations set forth in Minn. Stat. § 10A.27, subd. 13(b) supersede the year long and staggered reporting periods in Minn. Stat. § 10A.20, subd. 4?

OPINION ONE

No. The 30-day minimum reporting period for unregistered associations is in addition to the reporting periods set forth in Minn. Stat. § 10A.20.

The general campaign reporting requirements in Chapter 10A are set forth in Minn. Stat. § 10A.20, which requires that reports be filed for all entities required to report on January 31, with additional reports due depending on the nature of the reporting entity and whether it is an election year. Subdivision 4 of this section generally requires that every report cover the period from the last day covered by the previous report to seven days before the filing date. Minn. Stat. § 10A.20, subd. 4.

Section 10A.27, subd. 13 prohibits the treasurer of a political committee, political fund, principal campaign committee or party unit from accepting a contribution over \$100 from an unregistered association unless the contribution is accompanied by a written statement “that meets the disclosure and reporting period requirements imposed by section 10A.20.” (emphasis added)

Subpart (b) of subdivision 13 requires that the written statement provided by an unregistered association cover “at least” the 30 days immediately preceding and including the date on which the contribution was made. (emphasis added).

It appears that the legislature intended unregistered associations to comply with both reporting requirements, as section 10A.27, subd. 13(a) expressly incorporates the general reporting requirements of section 10A.20, and subd. 13(b) of section 10A.27 provides that in no event would the statement cover less than 30 days preceding the donation. The minimum 30-day reporting requirement ensures that at least some contribution history is revealed by an entity that may not have a previous report on which to base the statement as described in section 10A.20, subd. 4, and that might, for example, make a single large contribution on January 1. Without the 30-day minimum reporting period, an unregistered association that makes a January 1 contribution might provide a written statement with only that contribution reported.

In sum, the plain language of section 10A.27, subd. 13, which requires an unregistered association to comply with section 10A.20, and the legislature’s use of the term “at least” with reference to the 30-day reporting requirement, indicate that the reporting obligations are not mutually exclusive. The statutes work together to impose an additional obligation on unregistered associations to ensure that each report accompanying a contribution reflects the contribution history at least 30 days prior to the contribution.

ISSUE TWO

Is corporate assistance to a federally recognized separate segregated fund a “contribution” attributable to a Minnesota political organization receiving a contribution from the separate segregated fund?

OPINION TWO

Yes. As the requestor recognizes, the Board lacks jurisdiction to interpret Minn. Stat. § 211B.15, which prohibits corporate political contributions. However the Board must acknowledge the provisions of Chapter 211B when they bear on the reporting obligations under Chapter 10A, which is the context in which the requestor raises this issue.

Federal law recognizes entities called “separate segregated funds” as political committees set up by corporations and labor organizations that may make contributions to and expenditures on behalf of federal candidates and other committees. Minnesota law differs from federal law, in that section 211B.15 prohibits a corporation from making a contribution, or offering or agreeing to make a contribution, “directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office.” Minn. Stat. § 211B.15, subd. 2. There is a limited exception to this prohibition in Minn. Stat. § 211B.15, subd. 17, which permits a nonprofit corporation to provide limited administrative assistance to one political committee or fund that is associated with the nonprofit. This limited specific exception indicates that the very broad prohibition in Minn. Stat. §211B.15, subd. 2, includes any other corporate assistance in the form of start-up and administrative expenses. Similarly, under Chapter 10A, a contribution includes money, a negotiable instrument, or a donation in kind. Minn. Stat. § 10A.01, subd. 11.

Under the facts presented, the separate segregated fund consists of corporate funds. Therefore, a contribution from the separate segregated fund to a Minnesota political organization (other than a ballot question committee) constitutes a prohibited corporate contribution. Minn. Stat. § 211B.15, subd. 2.

ISSUE THREE

If corporate assistance as described above is a contribution, should a separate segregated fund’s disclosure statement report the method of accounting and segregation used to show that corporate funds did not commingle with the funds provided to the Minnesota political organization?

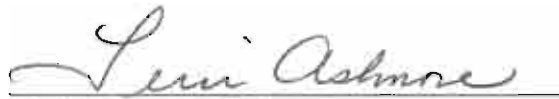
OPINION THREE

The question assumes that segregation of corporate funds by a contributor to a Minnesota political organization is permissible, which is not the case under Minnesota law. There is no provision in Chapter 10A that provides for separate accounting for corporate funds

held by an organizational contributor to a Minnesota political organization. Moreover, simply segregating such funds does not ensure that corporate funds do not indirectly benefit the Minnesota political organization. For example, if the separate segregated fund can use corporate funds for its internal administrative and personnel costs, leaving private contributions to be used for contributions to a Minnesota political organization, the corporate funds have indirectly benefited the Minnesota political organization. Because Minn. Stat. § 211B.15 includes in its prohibition indirect contributions by corporations to Minnesota political organizations, segregating corporate funds does not appear to be a permissible option.

Again, although the Board lacks jurisdiction to interpret Chapter 211B, where, as here, a question arises in the context of Chapter 10A reporting obligations, the Board must acknowledge the requirements of section 211B.15, which appear to prohibit the requestor's proposed course of action.

Issued November 22, 2005

A handwritten signature in cursive script, reading "Terri Ashmore", written in black ink over a horizontal line.

Terri Ashmore, Chair
Campaign Finance and Public Disclosure Board

10A.02

Subd. 12. **Advisory opinions.** (a) The board may issue and publish advisory opinions on the requirements of this chapter based upon real or hypothetical situations. An application for an advisory opinion may be made only by an individual or association who wishes to use the opinion to guide the individual's or the association's own conduct. The board must issue written opinions on all such questions submitted to it within 30 days after receipt of written application, unless a majority of the board agrees to extend the time limit.

(b) A written advisory opinion issued by the board is binding on the board in a subsequent board proceeding concerning the person making or covered by the request and is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless:

- (1) the board has amended or revoked the opinion before the initiation of the board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion;
- (2) the request has omitted or misstated material facts; or
- (3) the person making or covered by the request has not acted in good faith in reliance on the opinion.

(c) A request for an opinion and the opinion itself are nonpublic data. The board, however, may publish an opinion or a summary of an opinion, but may not include in the publication the name of the requester, the name of a person covered by a request from an agency or political subdivision, or any other information that might identify the requester, unless the person consents to the inclusion.

10A.20 Campaign Reports.

Subd. 2 Time for Filing

(a) The reports must be filed with the board on or before January 31 of each year and additional reports must be filed as required and in accordance with paragraphs (b) and (c).

(b) In each year in which the name of the candidate is on the ballot, the report of the principal campaign committee must be filed 15 days before a primary and ten days before a general election, seven days before a special primary and a special election, and ten days after a special election cycle.

(c) In each general election year, a political committee, political fund, or party unit must file reports 15 days before a primary and ten days before a general election.

Subd. 4 **Period of Report** A report must cover the period from the last day covered by the previous report to seven days before the filing date, except that the report due on January 31 must cover the period from the last day covered by the previous report to December 31.

10A.27 Contribution Limits

Subd. 13. Unregistered association limit; statement; **penalty.** (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:

(1) fails to provide a written statement as required by this subdivision; or

(2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.

211B.15 Corporate Political Contributions

Subd. 2. **Prohibited contributions.** A corporation may not make a contribution or offer or agree to make a contribution, directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a

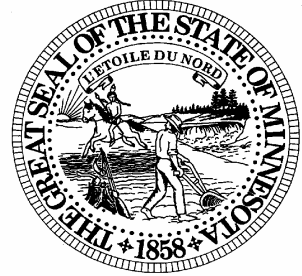
political office. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate.

Subd. 17. Nonprofit corporation political activity. It is not a violation of this section for a nonprofit corporation to provide administrative assistance to one political committee or political fund that is associated with the nonprofit corporation and registered with the Campaign Finance and Public Disclosure Board under section 10A.14. Such assistance must be limited to accounting, clerical or legal services, bank charges, utilities, office space, and supplies. The records of the political committee or political fund may be kept on the premises of the nonprofit corporation.

The administrative assistance provided by the nonprofit corporation to the political committee or political fund is limited annually to the lesser of \$5,000 or 7-1/2 percent of the expenditures of the political committee or political fund.

Minnesota

Campaign Finance and Public Disclosure Board



**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Gift Prohibition; Services to Assist in Performance of Official Duties

ADVISORY OPINION 372

SUMMARY

Lobbyist-principals may provide training in the use of specialized equipment to officials to assist the officials in the performance of official duties. Lobbyist-principals may not provide food or drink without charge to the officials who receive the training.

FACTS

As Counsel for an association that is a lobbyist principal with a lobbyist registered with the Campaign Finance and Public Disclosure Board, (the Board), you request an advisory opinion based on the following:

1. The association proposes to provide training sessions. Some of the individuals who attend the training will be subject to Minnesota Statutes, Chapter 10A. The association would rent conference space, select and pay speakers to provide the training, and give written materials to attendees.
2. The association intends to ask another association to co-sponsor the training. The second association would register attendees and provide food and drink to attendees.
3. The second association is also a lobbyist-principal and subject to the same limitations under Chapter 10A as the association that will provide the training.

ISSUE ONE

Are the training sessions described above a violation of the gift prohibition provided by Minnesota Statutes, chapter 10A?

OPINION ONE

No. The proposed training, including the written materials, is the provision of a service and property that falls within the definition of a "gift" as provided by Minn. Stat. §10A.071, subd. 1, paragraph (b), which would be prohibited unless allowed under an exception. A relevant exception is provided by Minn. Stat. §10A.071, subd. 3, clause (2), for "services to assist an official in the performance of official duties..."

ISSUE TWO

May food and drink be given without payment to officials subject to Chapter 10A who attend the training sessions?

OPINION TWO

No. The provision of food and drink is also a gift under Minn. Stat. §10A.071, subd.1, paragraph (b), and no exception is made for such a gift. A request from one lobbyist principal to another lobbyist principal to provide a gift of food or drink to officials is prohibited under Minn. Stat. §10A.071, subd. 2.

NOTE

The Board notes that Minn. Stat. §471.895, prohibits local official from accepting gifts from individuals who are not lobbyists under certain circumstances. This statute is not under the Board's jurisdiction. You are advised to consult your own legal advisors with regard to its possible application to the facts you presented.

Issued December 15, 2005



Terri Ashmore, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.071 Certain gifts by lobbyists and principals prohibited.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Gift" means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.

(c) "Official" means a public official, an employee of the legislature, or a local official of a metropolitan governmental unit.

Subd. 2. **Prohibition.** 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.

Subd. 3. **Exceptions.** (a) The prohibitions in this section do not apply if the gift is:

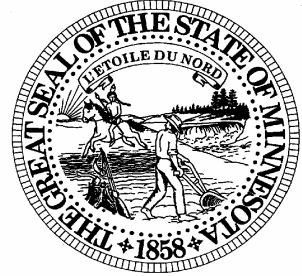
- (1) a contribution as defined in section 10A.01, subdivision 11;
- (2) services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;
- (3) services of insignificant monetary value;
- (4) a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;
- (5) a trinket or memento costing \$5 or less;
- (6) informational material of unexceptional value; or
- (7) food or a beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program.

(b) The prohibitions in this section do not apply if the gift is given:

- (1) because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group; or
- (2) by a lobbyist or principal who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.

Minnesota

Campaign Finance and Public Disclosure Board



**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Timing of Notification Required by Minnesota Statutes Section 10A.25

ADVISORY OPINION 373

SUMMARY

Candidates must provide written notification of receipts and expenditures in excess of the limits set by Minnesota Statutes, sections 10A.25 and 10A.255 as soon as the necessary facts are available.

FACTS

As representative for a principal campaign committee (the Committee) registered with the Campaign Finance and Public Disclosure Board, (the Board), you request an advisory opinion based on the following:

1. The candidate has not signed the public subsidy agreement.
2. It is possible that the Committee will exceed the expenditure or contribution thresholds that trigger a notification requirement under Minnesota Statutes Section 10A.25.
3. Section 10A.25 requires a candidate to give notice to the Board and to opponents when the candidate's receipts or expenditures reach 20 or 50 percent of a limit. Receipt of such a notice may affect an opponent's campaign expenditure limit.

ISSUE ONE

When must a candidate give notice to the board, as required by Minnesota Statutes, section 10A.25, subdivision 10, clause (b), if the candidate reaches 20 percent of the expenditure limit before the exact limit is established in March or April 2006, pursuant to Minnesota Statutes, section 10A.255, subdivision 3?

OPINION ONE

The requester correctly points out that campaign expenditure limits are adjusted each election year for offices that are on the ballot. The Board adjusts the campaign expenditure limit based on increases in the Consumer Price Index. As provided in Minnesota Statutes section 10A.255, subdivision 3, the Board will publish the campaign expenditure limits in the State Register as soon as possible, but no later than, April 15, 2006.

Notice must be given to the Board within 24 hours after the 2006 campaign expenditure limit is published in the State Register.

ISSUE TWO

When must a candidate give notice to his or her primary election opponent(s), as required by Minnesota Statutes, section 10A.25, subdivision 10, clause (b), if the candidate reaches the statutory percent of an expenditure limit before the primary election opponents have been identified?

OPINION TWO

Minnesota Statutes, section 10A.25, subdivision 10, provides that before the primary election, a candidate's "opponents" are only those candidates of the same party that will appear on the primary ballot. Notice must be given to primary election opponents within 24 hours after the close of the filing and withdraw periods for the state election. In 2006, the list of candidates at the primary election will be finalized after July 21, 2006, which is the last day for a candidate to withdraw their affidavit of candidacy.

ISSUE THREE

When must a candidate give notice to his or her general election opponent(s), as required by Minnesota Statutes, section 10A.25, subdivision 10, clause (b)?

OPINION THREE

General election opponents are identified by the results of the state primary election as certified by the appropriate county or state canvassing board. Notice must be given to the candidate's general election opponents within 24 hours after the results of the primary election are certified.

NOTE

The Board notes that Minnesota Statutes, section 10A.25, subdivision 10, provides that a candidate who has signed a public subsidy agreement and who chooses to be released from the campaign expenditure limits based on the notification received from a primary election opponent may not exceed the campaign expenditure limit prior to September 2, 2006. Exceeding the campaign expenditure limit for the office prior to September 2, 2005, will result in a violation of Minnesota Statutes, section 10A.25, subdivision 2.

Issued January 11, 2006

A handwritten signature in cursive script, appearing to read "Bob Milbert", written over a horizontal line.

Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.25 Spending limits.

Subd. 10. **Effect of opponent's conduct.** (a) After the deadline for filing a spending limit agreement under section 10A.322, a candidate who has agreed to be bound by the expenditure limits imposed by this section as a condition of receiving a public subsidy for the candidate's campaign may choose to be released from the expenditure limits but remain eligible to receive a public subsidy if the candidate has an opponent who has not agreed to be bound by the limits and has received contributions or made or become obligated to make expenditures during that election cycle in excess of the following limits:

- (1) up to the close of the reporting period before the primary election, receipts or expenditures equal to 20 percent of the expenditure limit for that office as set forth in subdivision 2; or
- (2) after the close of the reporting period before the primary election, cumulative receipts or expenditures during that election cycle equal to 50 percent of the expenditure limit for that office as set forth in subdivision 2.

Before the primary election, a candidate's "opponents" are only those who will appear on the ballot of the same party in the primary election.

- (b) A candidate who has not agreed to be bound by expenditure limits, or the candidate's principal campaign committee, must file written notice with the board and provide written notice to any opponent of the candidate for the same office within 24 hours of exceeding the limits in paragraph (a). The notice must state only that the candidate or candidate's principal campaign committee has received contributions or made or become obligated to make campaign expenditures in excess of the limits in paragraph (a).
- (c) Upon receipt of the notice, a candidate who had agreed to be bound by the limits may file with the board a notice that the candidate chooses to be no longer bound by the expenditure limits. A notice of a candidate's choice not to be bound by the expenditure limits that is based on the conduct of an opponent in the state primary election may not be filed more than one day after the State Canvassing Board has declared the results of the state primary.
- (d) A candidate who has agreed to be bound by the expenditure limits imposed by this section and whose opponent in the general election has chosen, as provided in paragraph (c), not to be bound by the expenditure limits because of the conduct of an opponent in the primary election is no longer bound by the limits but remains eligible to receive a public subsidy.

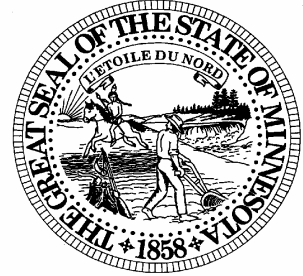
10A.255 Adjustment by Consumer Price Index.

Subdivision 1. **Method of calculation.** The dollar amounts in section 10A.25, subdivision 2, must be adjusted for general election years as provided in this section. Each general election year, the executive director of the board must determine the percentage increase in the Consumer Price Index from December of the year preceding the last general election year to December of the year preceding the year in which the determination is made. The dollar amounts used for the preceding general election year must be multiplied by that percentage. The product of the calculation must be added to each dollar amount to produce the dollar limitations to be in effect for the next general election. The product must be rounded up to the next highest \$100 increment. The index used must be the revised Consumer Price Index for all urban consumers for the St. Paul-Minneapolis metropolitan area prepared by the United States Department of Labor.

Subd. 3. **Publication of expenditure limit.** By April 15 of each election year the board must publish in the State Register the expenditure limit for each office for that calendar year under section 10A.25 as adjusted by this section. The revisor of statutes must code the adjusted amounts in the next edition of Minnesota Statutes, section 10A.25, subdivision 2.

Minnesota

Campaign Finance and Public Disclosure Board



**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: First Time Candidate Spending Limit; Value of Automobile Use

ADVISORY OPINION 374

SUMMARY

The increase in the campaign expenditure limit provided to first time candidates applies to all years of the election cycle. The use of an automobile by a principal campaign committee may be reimbursed at a set mileage rate or for the actual costs of using the automobile during the campaign.

FACTS

As Counsel for a principal campaign committee, (the Committee), registered with the Campaign Finance and Public Disclosure Board, (the Board), you request an advisory opinion based on the following:

1. The candidate has signed the public subsidy agreement, which limits the amount of campaign expenditures the Committee may make.
2. The candidate is a first time candidate as defined in Minn. Stat. §10A.25, subd. 2 (d).
3. The Committee will make use of an automobile during the course of the campaign.

ISSUE ONE

Is the ten percent increase in the campaign expenditure limit provided to first time candidates who sign the public subsidy agreement available for each year of the applicable election cycle?

OPINION ONE

Yes. The ten percent increase in the campaign expenditure limit provided in Minn. Stat. §10A.25, subd. 2 (d) applies to election and non election years of the election cycle.

ISSUE TWO

May the Committee value the use of the automobile at either the lowest rate used by the state to reimburse its employees for automobile use; or alternatively, reimburse for the actual cost of fuel, maintenance, repairs, and insurance directly related to the use of the automobile?

OPINION TWO


Yes. The rate used by the state to reimburse employees for automobile use is based on the IRS mileage rate. The IRS mileage rate is an overall average of the cost of using an automobile and is provided as a standard rate so that individuals do not have to track the cost of all items related to the use of the automobile. However, because it is an average, the IRS rate may not reflect the actual cost of using either a fuel efficient or inefficient automobile.

If the Committee wishes to reimburse the actual cost of operating the automobile for campaign related travel it may do so with the understanding that it will need to maintain records that document the basis for the reimbursement.

NOTE

If the Board intends to apply the response provided in an advisory opinion more broadly than to the individual or association to whom the opinion was issued then the Board is required under Minn. Stat. §10A.02, subd. 12a, to adopt administrative rules. As of the date of this advisory opinion the Board is in the process of adopting administrative rules that incorporate the responses provided in this advisory opinion into Minnesota Rules Chapter 4503.

Issued January 11, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.02 Board of Campaign Finance and Public Disclosure.

Subd. 12a. **Advisory opinions; rules.** If the board intends to apply principles of law or policy announced in an advisory opinion issued under subdivision 12 more broadly than to the individual or association to whom the opinion was issued, the board must adopt these principles or policies as rules under chapter 14.

10A.25 Spending limits

Subd. 2. **Amounts.** (a) In a year in which an election is held for an office sought by a candidate, the principal campaign committee of the candidate must not make campaign expenditures nor permit approved expenditures to be made on behalf of the candidate that result in aggregate expenditures in excess of the following:

- (1) for governor and lieutenant governor, running together, \$2,188,090;
- (2) for attorney general, \$364,690;
- (3) for secretary of state and state auditor, separately, \$182,350;
- (4) for state senator, \$54,740;
- (5) for state representative, \$28,400.

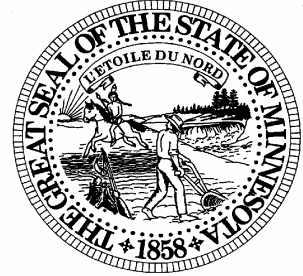
(b) In addition to the amount in paragraph (a), clause (1), a candidate for endorsement for the office of lieutenant governor at the convention of a political party may make campaign expenditures and approved expenditures of five percent of that amount to seek endorsement.

(c) If a special election cycle occurs during a general election cycle, expenditures by or on behalf of a candidate in the special election do not count as expenditures by or on behalf of the candidate in the general election.

(d) The expenditure limits in this subdivision for an office are increased by ten percent for a candidate who is running for that office for the first time and who has not run previously for any other office whose territory now includes a population that is more than one-third of the population in the territory of the new office.

Minnesota

Campaign Finance and Public Disclosure Board



**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Segregated Accounts; Registration and Reporting

ADVISORY OPINION 375

SUMMARY

The obligation of a political committee to register and report contributions and expenditures under Minnesota Statutes, section 10A.20, is not limited or otherwise altered by the use of a segregated account.

FACTS

As Counsel for a federally registered political action committee (the PAC) you request an advisory opinion from the Campaign Finance and Public Disclosure Board (the Board) to clarify its reporting obligations based on the following facts.

1. Under federal law, the PAC may use segregated accounts for receipts and disbursements for particular purposes.
2. The PAC is a political committee as defined by Minnesota Statutes, section 10A.01, subdivision 27.
3. The PAC intends to make contributions to candidates for Minnesota state office.
4. The PAC receives contributions only from individuals and other federally registered political committees.
5. The PAC cannot accept contributions from corporations
6. The PAC does not use corporate or labor organization funds for its administrative or startup costs.

7. The PAC wishes to establish a segregated account that would include only contributions of no more than \$5000 from individuals.
8. The PAC wishes to register the segregated account with the Board as a political committee and report its Minnesota activity from the segregated account.

The requestor notes the contents of Advisory Opinion 371, but believes that their situation is distinct or distinguishable from that addressed by opinions 2 and 3 of Advisory Opinion 371.

ISSUE ONE

May a segregated account established by the PAC be registered and report as a Minnesota political committee?

OPINION ONE

No. Under Minnesota Statutes, section 10A.01, subdivision 27, a “political committee” is defined as an “association” having described purposes. Section 10A.01, subdivision 6 defines an “association” as “two or more persons...acting in concert...” Although useful under federal law, a segregated account is an accounting procedure and not an association or political committee under Minnesota law. Such an account may not itself register and report as a political committee.

ISSUE TWO

Does the use of a segregated account limit or otherwise alter the reporting requirements of a political committee under Minnesota Statutes, section 10A.20 and the other provisions of chapter 10A?

OPINION TWO

No. Unlike federal law, Minnesota law does not recognize a segregated account as an entity or procedure with any special legal status. The use of such an account does not limit or otherwise alter the reporting requirements under Minnesota Statutes, section 10A.20. If the PAC makes disbursements to Minnesota candidates, the PAC must report all its contributions and expenditures as required by Minnesota Statutes, section 10A.20, regardless of the accounting procedures that it adopts.

ISSUE THREE

Does the stated fact that none of the PAC's administrative costs are discharged from corporate contributions avoid the prohibition on corporate contributions provided by Minnesota Statutes section 211B.15, subdivision 2 and discussed in Advisory Opinion 371, Opinions two and three?

OPINION THREE

As pointed out in Advisory Opinion 371, the Board does not have authority to interpret Minnesota Statutes, section 211B.15, except as the section relates to the requirements of Minnesota Statutes, chapter 10A. The use of a segregated account does not affect the reporting obligations of the PAC. Counsel for the PAC should consider that if direct or indirect corporate contributions are received by a political committee, they may not be contributed to Minnesota candidates or used to discharge administrative costs, without raising the question of the application of section 211B.15, regardless of how the contributions are reported under section 10A.20 or accounted for internally by the PAC.

Issued January 11, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.01 Definitions.

Subd. 6. **Association.** "Association" means a group of two or more persons, who are not all members of an immediate family, acting in concert.

Subd. 27. **Political committee.** "Political committee" means an association whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit.

10A.20 Campaign reports.

Subdivision 1. **First filing; duration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must begin to file the reports required by this section in the first year it receives contributions or makes expenditures in excess of \$100 and must continue to file until the committee, fund, or party unit is terminated.

Subd. 1a. **If treasurer position is vacant.** If the position of treasurer of a principal campaign committee, political committee, political fund, or party unit is vacant, the candidate, chair of a political committee or party unit, or association officer of a political fund is responsible for filing reports required by this section.

Subd. 2. **Time for filing.** (a) The reports must be filed with the board on or before January 31 of each year and additional reports must be filed as required and in accordance with paragraphs (b) and (c).

(b) In each year in which the name of the candidate is on the ballot, the report of the principal campaign committee must be filed 15 days before a primary and ten days before a general election, seven days before a special primary and a special election, and ten days after a special election cycle.

(c) In each general election year, a political committee, political fund, or party unit must file reports 15 days before a primary and ten days before a general election.

Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$100 for legislative or statewide candidates or ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in kind must be disclosed at its fair market value.

An approved expenditure must be listed as a donation in kind. A donation in kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

- (c) The report must disclose the sum of contributions to the reporting entity during the reporting period.
- (d) The report must disclose each loan made or received by the reporting entity within the year in aggregate in excess of \$100, continuously reported until repaid or forgiven, together with the name, address, occupation, and principal place of business, if any, of the lender and any endorser and the date and amount of the loan. If a loan made to the principal campaign committee of a candidate is forgiven or is repaid by an entity other than that principal campaign committee, it must be reported as a contribution for the year in which the loan was made.
- (e) The report must disclose each receipt over \$100 during the reporting period not otherwise listed under paragraphs (b) to (d).
- (f) The report must disclose the sum of all receipts of the reporting entity during the reporting period.
- (g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.
- (h) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period.
- (i) The report must disclose the amount and nature of an advance of credit incurred by the reporting entity, continuously reported until paid or forgiven. If an advance of credit incurred by the principal campaign committee of a candidate is forgiven by the creditor or paid by an entity other than that principal campaign committee, it must be reported as a donation in kind for the year in which the advance of credit was made.

- (j) The report must disclose the name and address of each political committee, political fund, principal campaign committee, or party unit to which contributions have been made that aggregate in excess of \$100 within the year and the amount and date of each contribution.
- (k) The report must disclose the sum of all contributions made by the reporting entity during the reporting period.
- (l) The report must disclose the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$100 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.
- (m) The report must disclose the sum of all noncampaign disbursements made within the year by or on behalf of the reporting entity.
- (n) The report must disclose the name and address of a nonprofit corporation that provides administrative assistance to a political committee or political fund as authorized by section 211B.15, subdivision 17, the type of administrative assistance provided, and the aggregate fair market value of each type of assistance provided to the political committee or political fund during the reporting period.

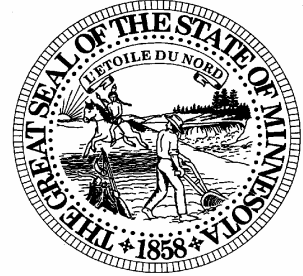
Subd. 3a. Repealed by amendment, 1999 c 220 s 23

Subd. 4. **Period of report.** A report must cover the period from the last day covered by the previous report to seven days before the filing date, except that the report due on January 31 must cover the period from the last day covered by the previous report to December 31.

Subd. 6a. **Statement of independence.** An individual, political committee, political fund, or party unit filing a report or statement disclosing an independent expenditure under subdivision 3 or 6 must file with the report a sworn statement that the disclosed expenditures were not made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of any candidate or any candidate's principal campaign committee or agent.

Minnesota

Campaign Finance and Public Disclosure Board



**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Allocation of the Cost of a Media Campaign Used for Multiple Purposes

ADVISORY OPINION 376

SUMMARY

The cost of an extended media campaign that is used for multiple purposes must be reasonably allocated among the multiple purposes and the appropriate allocated cost reported as a campaign expenditure when the purpose is to promote the election or defeat of a candidate, and as a lobbying disbursement when the purpose is to urge the public to communicate with public officials.

FACTS

As Counsel for an association (the Association) that has lobbyists registered with the Campaign Finance and Public Disclosure Board (the Board) and that is the supporting organization for a political fund (the Political Fund) registered with the Board, you request an advisory opinion based on the following:

1. The Association plans an extended public media campaign to encourage and secure support for its recommended approach to a specific issue.
2. The media campaign is intended to extend over several years. In each year, the media campaign's activities will be divided into four periods.
3. Period One of the media campaign will include advertisements to focus attention on the relevant issues, without any reference to legislation, legislators or candidates. The sole purpose of Period One is to raise specific issues as a matter of public concern. The Association does not intend to report expenditures related to this period to the Board.
4. Period Two will occur when the legislature is in session. The advertisements in Period Two will continue to state the importance of a specific issue, but will also

requests to the public to contact their legislators on the issue, and may include requests that the public contact their legislators on legislation related to the issue. All such media fund expenditures in this period will be reported by the Association on lobbyist disbursement and lobbyist principal reports.

5. Period Three will occur after the legislature has adjourned. During this period the media campaign will include advertisements of the kind provided in Period One in order to sustain the public's attention to the relevant issue and emphasize the issue's importance in the 2006 election. The media ads will not ask the public to vote for "clearly identified candidates". The media ads will ask the public to make a specific issue a priority when considering candidates for public office, but will not identify candidates that support the specific issue and will not attempt to influence the election of any particular candidate.
6. During Period Three the Political Fund will endorse candidates and promote the endorsements in mailing that will be paid for with the Political Fund's resources. The cost of the endorsement mailings will be reported to the Board by the Political Fund.
7. In Period Four, beginning in September 2006, the media campaign will include advertisements that continue to urge the public to give priority to the relevant issues in choosing candidates at the election, but the campaign will not ask the public to support specific candidates and will not identify candidates that support the relevant issue. During this period, the Political Fund will make independent expenditures to influence the election of candidates. The expenditures may use advertising elements derived from the public media campaign. The Political Fund will report the cost of the independent expenditures to the Board.
8. The media campaign may be designed and produced so that similar graphics and other media elements are used throughout, to enhance the effectiveness of all parts of the campaign through its entire existence.

ISSUE ONE

Are any of the Association's expenditures for the media campaign during any period of the campaign, "campaign expenditures" as defined by Minnesota Statutes, section 10A.01, subdivision 9, subject to the reporting requirements of Minnesota Statutes, section 10A.20 and the related provisions of Minnesota Statutes, Chapter 10A?

OPINION ONE

Yes, the costs of the parts of the media campaign that are for the purpose of influencing the election or defeat of specific candidates, including the parts that identify candidates who support the desired approach to the issue that is the focus of the media campaign, are campaign expenditures and reportable by the Political Fund.

Also, because the media campaign will be used in part to educate the public on issues, in part as a lobbying effort, and in part for independent expenditures to influence the election of candidates, the cost of planning and developing the media campaign must be allocated on a reasonable basis among these purposes and appropriately reported by the Association or its Political Fund.

With regard to lobbying disbursements, Minnesota Rules 4511.0600, subpart 4, provides that “A disbursement that is partially in support of lobbying and partially for a nonlobbying purpose must be allocated on a reasonable basis between the two purposes and the portion which is for lobbying activities must be reported”. The portion of the cost of the planning and development of the media campaign that is reasonably allocated to lobbying must be included in the lobbyist disbursements and lobbyist principal report submitted to the Board.

Similarly, if the Political Fund pays to broadcast or print advertisements that were in whole or in part developed as part of the media campaign then a portion of the cost of planning and developing the media campaign must be reasonably allocated to the Political Fund as campaign expenditures. Because the Association may not make expenditures to influence the nomination or election of a candidate, the Political Fund should reimburse the Association for the fair market value of its part of the planning and development cost of the media campaign as reasonably allocated among the campaign’s multiple purposes. The Political Fund should then report the reimbursement of the allocated cost as a campaign expenditure as provided by Minnesota Statutes, section 10A.20.

ISSUE TWO

Are the Association’s expenditures during any period of the campaign that urge the public to give priority to the relevant issues when voting for candidates, but without identifying specific candidates, “campaign expenditures” as defined by Minnesota Statutes, section 10A.01, subdivision 9, subject to the reporting requirements of Minnesota Statutes, section 10A.20 and the related provisions of Minnesota Statutes, chapter 10A?

OPINION TWO

No, to the extent that the issue refers to the expenditures made by the Association itself to broadcast or print the media campaign advertisements. Any expenditures to influence the nomination or election of an identifiable candidate must be made and reported by the Political Fund. The Association may not make expenditures to influence the nomination or election of a candidate.

As provided in Opinion One the cost of planning and developing a media campaign, must be allocated among the multiple purposes the media campaign serves. The portion that is allocated to the purpose of influencing the nomination or election of a candidate is reportable as a campaign expenditure by the Political Fund under Minnesota Statutes, section 10A.20.

ISSUE THREE

Are the opinions that answer the preceding issues in this opinion affected by the fact that the public media campaign may be produced by the same vendor and employ similar media elements throughout its existence?

OPINION THREE

No. Allocated portions of the media campaign costs are reportable because of their use for activities that require reporting. The production of the media campaign by a single vendor and its use of similar media elements throughout do not affect the opinions.

Issued February 24, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.01 Definitions

Subdivision. 9. **Campaign expenditure.** "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

An expenditure is considered to be made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services.

An expenditure made for the purpose of defeating a candidate is considered made for the purpose of influencing the nomination or election of that candidate or any opponent of that candidate.

Except as provided in clause (1), "expenditure" includes the dollar value of a donation in kind.

"Expenditure" does not include:

- (1) noncampaign disbursements as defined in subdivision 26;
- (2) services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, political fund, principal campaign committee, or party unit; or
- (3) the publishing or broadcasting of news items or editorial comments by the news media.

10A.20 Campaign reports.

Subdivision 1. **First filing; duration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must begin to file the reports required by this section in the first year it receives contributions or makes expenditures in excess of \$100 and must continue to file until the committee, fund, or party unit is terminated.

Subd. 1a. **If treasurer position is vacant.** If the position of treasurer of a principal campaign committee, political committee, political fund, or party unit is vacant, the candidate, chair of a political committee or party unit, or association officer of a political fund is responsible for filing reports required by this section.

Subd. 2. **Time for filing.** (a) The reports must be filed with the board on or before January 31 of each year and additional reports must be filed as required and in accordance with paragraphs (b) and (c).

(b) In each year in which the name of the candidate is on the ballot, the report of the principal campaign committee must be filed 15 days before a primary and ten days before a general election, seven days before a special primary and a special election, and ten days after a special election cycle.

(c) In each general election year, a political committee, political fund, or party unit must file reports 15 days before a primary and ten days before a general election.

Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$100 for legislative or statewide candidates or ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in kind. A donation in kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

(c) The report must disclose the sum of contributions to the reporting entity during the reporting period.

(d) The report must disclose each loan made or received by the reporting entity within the year in aggregate in excess of \$100, continuously reported until repaid or forgiven, together with the name, address, occupation, and principal place of business, if any, of the lender and any endorser and the date and amount of the loan. If a loan made to the principal campaign committee of a candidate is forgiven or is repaid by an entity other than that principal campaign committee, it must be reported as a contribution for the year in which the loan was made.

(e) The report must disclose each receipt over \$100 during the reporting period not otherwise listed under paragraphs (b) to (d).

(f) The report must disclose the sum of all receipts of the reporting entity during the reporting period.

(g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together

with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

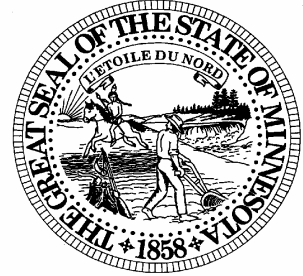
- (h) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period.
- (i) The report must disclose the amount and nature of an advance of credit incurred by the reporting entity, continuously reported until paid or forgiven. If an advance of credit incurred by the principal campaign committee of a candidate is forgiven by the creditor or paid by an entity other than that principal campaign committee, it must be reported as a donation in kind for the year in which the advance of credit was made.
- (j) The report must disclose the name and address of each political committee, political fund, principal campaign committee, or party unit to which contributions have been made that aggregate in excess of \$100 within the year and the amount and date of each contribution.
- (k) The report must disclose the sum of all contributions made by the reporting entity during the reporting period.
- (l) The report must disclose the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$100 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.
- (m) The report must disclose the sum of all noncampaign disbursements made within the year by or on behalf of the reporting entity.
- (n) The report must disclose the name and address of a nonprofit corporation that provides administrative assistance to a political committee or political fund as authorized by section 211B.15, subdivision 17, the type of administrative assistance provided, and the aggregate fair market value of each type of assistance provided to the political committee or political fund during the reporting period.

4511.0600 REPORTING DISBURSEMENTS

Subp. 4. **Disbursements which are only partially in support of lobbying.** A disbursement that is partially in support of lobbying and partially for a nonlobbying purpose must be allocated on a reasonable basis between the two purposes and the portion which is for lobbying activities must be reported.

Minnesota

Campaign Finance and Public Disclosure Board



**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Multicandidate Political Party Expenditures

ADVISORY OPINION 377

SUMMARY

Expenditures by a political party unit for party staff services and internet based fundraising efforts that benefit three or more candidates may be classified as multicandidate expenditures and are not contributions to any candidate.

FACTS

As representative for a major political party (the Party) registered with the Campaign Finance and Public Disclosure Board (the Board) you request an advisory opinion based on the following:

1. The Party may hire personnel for the 2006 election that have as a part of their job duties will engage in services that benefit three or more candidates for constitutional or legislative office.
2. The Party maintains an Internet website (Internet) on which individuals may contribute directly to candidates that are registered with the Board. Funds contributed to a candidate on the website are transferred directly into an account that is maintained and is accessible only by the candidate that receives the contribution. At no time are the contributions under the control of the Party. The website provides the option of donating to three or more constitutional or legislative candidates.

ISSUE ONE

Must a multicandidate political party expenditure for party committee staff services be provided in a way that benefits each candidate in approximately equal amounts?

OPINION ONE

No. Minnesota Statutes, section 10A.275, requires only that multicandidate political party expenditures for staff services benefit three or more candidates.

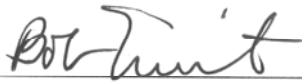
ISSUE TWO

Is the Party's Internet based fund raising effort a multicandidate political party expenditure?

OPINION TWO

Yes. As provided in the facts of this advisory opinion the Internet based fund raising effort benefits three or more candidates. Contributions made through the Party's Internet site are deposited directly into the accounts of candidates; therefore the fundraising effort is also in accordance with Minnesota Statutes, section 10A.16, which prohibits the earmarking of contributions.

Issued March 13, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

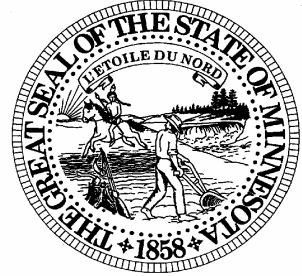
10A.275 Multicandidate political party expenditures.

Subdivision 1. **Exceptions.** Notwithstanding other provisions of this chapter, the following expenditures by a party unit, or two or more party units acting together, with at least one party unit being either: the state committee or the party organization within a congressional district, county, or legislative district, are not considered contributions to or expenditures on behalf of a candidate for the purposes of section 10A.25 or 10A.27 and must not be allocated to candidates under section 10A.20, subdivision 3, paragraph (g):

- (1) expenditures on behalf of candidates of that party generally without referring to any of them specifically in a published, posted, or broadcast advertisement;
- (2) expenditures for the preparation, display, mailing, or other distribution of an official party sample ballot listing the names of three or more individuals whose names are to appear on the ballot;
- (3) expenditures for a telephone conversation including the names of three or more individuals whose names are to appear on the ballot;
- (4) expenditures for a political party fund-raising effort on behalf of three or more candidates; or
- (5) expenditures for party committee staff services that benefit three or more candidates.

Minnesota

Campaign Finance and Public Disclosure Board



**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Constituent Services; Non Campaign Disbursement

ADVISORY OPINION 378

SUMMARY

Mileage reimbursement paid to an intern who provided constituent services for a member of the legislature may be classified as a noncampaign disbursement.

FACTS

As a candidate registered with the Campaign Finance and Public Disclosure Board (the Board) you request an advisory opinion based on the following:

1. You are a member of the Minnesota House of Representatives. During the 2005 legislative session your office engaged a college intern to assist with office functions. The intern responded to constituent requests.
2. The intern was reimbursed for mileage that occurred in driving between the State Office Building and school. The reimbursement was made from the funds of your principal campaign committee (the Committee).

ISSUE ONE

May the Committee reimburse mileage for a legislative intern who provides constituent services and classify the reimbursement as a noncampaign disbursement?

OPINION ONE

Yes. Minnesota Statutes, section 10A.01, subdivision 26, provides the purposes for purchases made by a principal campaign committee that may be classified as a noncampaign disbursement. In clause (6) this statute provides in part that “services for a constituent by a member of the legislature or a constitutional officer in the executive branch...” As a member of the legislature you may use the Committee’s funds to pay for constituent services, including costs incurred to acquire staff to provide constituent services.

The Board notes that in a year in which the legislature adjourns sine die the cost of constituent services paid for with Committee funds are fully noncampaign disbursements while the legislature is in session, fifty percent noncampaign disbursements during the sixty days after adjournment, and are campaign expenditures beyond sixty days after adjournment.

Issued March 13, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.01 Definitions.

Subd. 26. **Noncampaign disbursement.** "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, or a donation in kind received, by a principal campaign committee for any of the following purposes:

- (1) payment for accounting and legal services;
- (2) return of a contribution to the source;
- (3) repayment of a loan made to the principal campaign committee by that committee;
- (4) return of a public subsidy;
- (5) payment for food, beverages, entertainment, and facility rental for a fund-raising event;
- (6) services for a constituent by a member of the legislature or a constitutional officer in the executive branch, including the costs of preparing and distributing a suggestion or idea solicitation to constituents, performed from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held, and half the cost of services for a constituent by a member of the legislature or a constitutional officer in the executive branch performed from adjournment sine die to 60 days after adjournment sine die;
- (7) payment for food and beverages consumed by a candidate or volunteers while they are engaged in campaign activities;
- (8) payment for food or a beverage consumed while attending a reception or meeting directly related to legislative duties;
- (9) payment of expenses incurred by elected or appointed leaders of a legislative caucus in carrying out their leadership responsibilities;
- (10) payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses;
- (11) costs of child care for the candidate's children when campaigning;
- (12) fees paid to attend a campaign school;
- (13) costs of a postelection party during the election year when a candidate's name will no longer appear on a ballot or the general election is concluded, whichever occurs first;

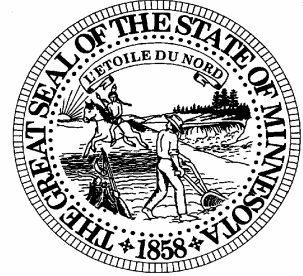
- (14) interest on loans paid by a principal campaign committee on outstanding loans;
- (15) filing fees;
- (16) post-general election thank-you notes or advertisements in the news media;
- (17) the cost of campaign material purchased to replace defective campaign material, if the defective material is destroyed without being used;
- (18) contributions to a party unit;
- (19) payments for funeral gifts or memorials; and
- (20) other purchases or payments specified in board rules or advisory opinions as being for any purpose other than to influence the nomination or election of a candidate or to promote or defeat a ballot question.

The board must determine whether an activity involves a noncampaign disbursement within the meaning of this subdivision.

A noncampaign disbursement is considered made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services.

Minnesota

Campaign Finance and Public Disclosure Board



**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Campaign Expenditures and Non Campaign Disbursements

ADVISORY OPINION 379

SUMMARY

A principal campaign committee may not pay compensation to its candidate for running for office.

FACTS

As an individual interested in recruiting candidates who will run for state office and register with the Campaign Finance and Public Disclosure Board (the Board) you request an advisory opinion based on the following:

1. The time commitment needed for a candidate to campaign for a state office is so substantial that desirable people may be discouraged from presenting themselves as candidates on an unpaid basis. You state that this is problem for legislative candidates and candidates for constitutional office.
2. You anticipate candidates will campaign at public meetings and other events so that the candidates are available to meet with voters.
3. You propose that candidates would document the time they spend campaigning by keeping a log of the meetings and events they attend along with the number of hours spent at each event.
4. You are aware of the provisions of Minnesota Statutes section 211B.12 which lists permitted expenditures that may be made with funds collected for political purposes.

ISSUE ONE

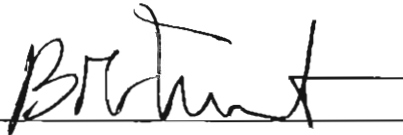
May a principal campaign committee pay its candidate for running for office?

OPINION ONE

No. All funds available to a principal campaign committee are donated to it for the purpose of influencing the nomination or election of a candidate. The funds in a principal campaign committee may be used for "campaign expenditures" as defined by Minnesota Statutes, section 10A.01, subdivision 9, or for any of the "noncampaign disbursements" defined by section 10A.01, subdivision 26 and Minnesota Rules, 4503.0900. Neither of the cited subdivisions or rule or other provisions of Chapter 10A or related administrative rules allow for the described type of expenditure by a principal campaign committee.

The requestor notes that Minnesota Statutes, section 211B.12, provides a list of legal expenditures of money collected for political purposes and allows, by clause (1), money to be used for "...salaries, wages, and fees..." Although the Board is not charged with providing opinions to interpret chapter 211B, it notes that section 211B.12 does not define the appropriate recipients of "...salaries, wages, and fees..." The Board also notes that clause (7) of section 211B.12 provides that money collected for political purposes "...may not be converted to personal use." A principal campaign committee that intends to pay wages to a candidate to run for office may wish to consider the implications of this provision and seek the advice of counsel.

Issued April 12, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.01 Definitions.

Subd. 9. **Campaign expenditure.** "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

An expenditure is considered to be made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services.

An expenditure made for the purpose of defeating a candidate is considered made for the purpose of influencing the nomination or election of that candidate or any opponent of that candidate.

Except as provided in clause (1), "expenditure" includes the dollar value of a donation in kind.

"Expenditure" does not include:

- (1) noncampaign disbursements as defined in subdivision 26;
- (2) services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, political fund, principal campaign committee, or party unit; or
- (3) the publishing or broadcasting of news items or editorial comments by the news media.

Subd. 26. **Noncampaign disbursement.** "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, or a donation in kind received, by a principal campaign committee for any of the following purposes:

- (1) payment for accounting and legal services;
- (2) return of a contribution to the source;
- (3) repayment of a loan made to the principal campaign committee by that committee;
- (4) return of a public subsidy;
- (5) payment for food, beverages, entertainment, and facility rental for a fund-raising event;
- (6) services for a constituent by a member of the legislature or a constitutional officer in the executive branch, including the costs of preparing and distributing a suggestion or idea solicitation to constituents, performed from the beginning of the

term of office to adjournment sine die of the legislature in the election year for the office held, and half the cost of services for a constituent by a member of the legislature or a constitutional officer in the executive branch performed from adjournment sine die to 60 days after adjournment sine die;

- (7) payment for food and beverages consumed by a candidate or volunteers while they are engaged in campaign activities;
- (8) payment for food or a beverage consumed while attending a reception or meeting directly related to legislative duties;
- (9) payment of expenses incurred by elected or appointed leaders of a legislative caucus in carrying out their leadership responsibilities;
- (10) payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses;
- (11) costs of child care for the candidate's children when campaigning;
- (12) fees paid to attend a campaign school;
- (13) costs of a postelection party during the election year when a candidate's name will no longer appear on a ballot or the general election is concluded, whichever occurs first;
- (14) interest on loans paid by a principal campaign committee on outstanding loans;
- (15) filing fees;
- (16) post-general election thank-you notes or advertisements in the news media;
- (17) the cost of campaign material purchased to replace defective campaign material, if the defective material is destroyed without being used;
- (18) contributions to a party unit;
- (19) payments for funeral gifts or memorials; and
- (20) other purchases or payments specified in board rules or advisory opinions as being for any purpose other than to influence the nomination or election of a candidate or to promote or defeat a ballot question.

The board must determine whether an activity involves a noncampaign disbursement within the meaning of this subdivision.

A noncampaign disbursement is considered made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services.

211B.12 Legal Expenditures.

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

- (1) salaries, wages, and fees;
- (2) communications, mailing, transportation, and travel;
- (3) campaign advertising;
- (4) printing;
- (5) office and other space and necessary equipment, furnishings, and incidental supplies;
- (6) charitable contributions of not more than \$50 to any charity annually; and
- (7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

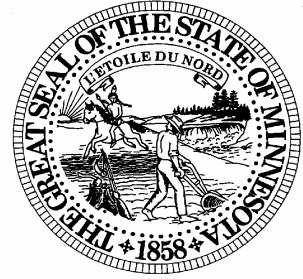
4503.0900 NONCAMPAIGN DISBURSEMENTS.

Subpart 1. **Additional definitions.** In addition to those listed in Minnesota Statutes, section 10A.01, subdivision 26, the following expenses are noncampaign disbursements:

- A. transportation, meals, and lodging paid to attend a campaign school;
- B. costs of campaigning incurred by a person with a disability, as defined in Minnesota Statutes, section 363.01, subdivision 13, and which are made necessary by the disability;
- C. the cost to an incumbent or a winning candidate of providing services to residents in the district after the general election in an election year for the office held;
- D. payment of advances of credit in a year after the year in which the advance was reported as an expenditure; and
- E. payment of fines assessed by the board.

Minnesota

Campaign Finance and Public Disclosure Board



**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Gift Prohibition; Registration Fees for an Educational Program

ADVISORY OPINION 380

SUMMARY

Lobbyist principals may provide educational programs without cost to legislators if the subject of the programs will assist the legislators in the performance of their official duties.

FACTS

On behalf of an association that is a lobbyist principal, its legal counsel asks the Campaign Finance and Public Disclosure Board (the Board) for an advisory opinion based on the following.

1. The association is holding a symposium. Persons who attend the symposium are charged a registration fee.
2. The subject matter of the forum is a subject often before the legislature, and the provision of the forum to legislators may be of service to assist them in connection with legislation and services to constituents.
3. The association is aware of Advisory Opinion 162 in which the Board advised that if a lobbyist principal waived a conference registration fee for a public official the result would be a violation of the gift ban provided in Minnesota Statutes, chapter 10A.

ISSUE ONE

Would attendance by a legislator at the planned symposium without payment of the registration fee be a violation of the gift prohibition as provided in Minnesota Statutes, section 10A.071, subdivision 2?

OPINION ONE

No. The general prohibition on gifts to public officials that is made by section 10A.071, subdivision 2, is subject to the exception provided by subdivision 3, clause (2), which allows the gift of:

“...services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents....”

That exception includes services of the kind proposed by the association. The Board has addressed this issue recently in Advisory Opinion 364, which approved the provision of similar educational sessions to legislators, noting that the lobbyist principal may not provide complimentary food or beverages to the legislators with the educational sessions. Minnesota legislation relating to the issues discussed at the symposium must be coordinated with federal law. In the present fact situation, the education provided by the symposium will assist legislators in their official duties, legislation in particular.

The Board’s older Advisory Opinion 162 did not allow participation without a fee in presentations that, in part, would have expanded the general knowledge of an official rather than having a direct bearing on issues currently under consideration.

ISSUE TWO

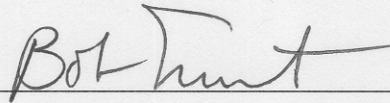
Would the gift ban be avoided if the program were sponsored by another entity that is not a lobbyist principal?

OPINION TWO

No. In view of the answer to issue one, the Board does not need to reach this question, but it notes that the definition of “principal” by Minnesota Statutes, section 10A.01, subdivision 33, refers to an association. Subdivision 6 of that section defines an “association” as persons acting in concert. To change the answer to the question, it would be necessary for the association to demonstrate:

- (1) that the other entity does not act in concert with the association;
- (2) that the other entity had not been requested to make the gift, an action prohibited by Minnesota Statutes, section 10A.071, subdivision 2.

Issued May 16, 2006

A handwritten signature in cursive script, appearing to read "Bob Milbert", is written above a horizontal line.

Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes

10A.01 Definitions.

Subd. 6. **Association.** "Association" means a group of two or more persons, who are not all members of an immediate family, acting in concert.

Subd. 33. **Principal.** "Principal" means an individual or association that:

- (1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or
- (2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.

10A.071 Certain gifts by lobbyists and principals prohibited.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

- (b) "Gift" means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.
- (c) "Official" means a public official, an employee of the legislature, or a local official of a metropolitan governmental unit.

Subd. 2. **Prohibition.** 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.

Subd. 3. **Exceptions.** (a) The prohibitions in this section do not apply if the gift is:

- (1) a contribution as defined in section 10A.01, subdivision 11;
- (2) services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;
- (3) services of insignificant monetary value;

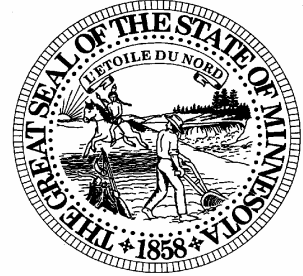
- (4) a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;
- (5) a trinket or memento costing \$5 or less;
- (6) informational material of unexceptional value; or
- (7) food or a beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program.

(b) The prohibitions in this section do not apply if the gift is given:

- (1) because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group; or
- (2) by a lobbyist or principal who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.

Minnesota

Campaign Finance and Public Disclosure Board



**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: A Web Site Provided as a Donation In Kind to Candidates

ADVISORY OPINION 381

SUMMARY

The provision of the free use of a Web site to candidates is a donation in kind that counts against contribution limits and any applicable expenditure limit.

FACTS

As legal counsel for an association considering participation in Minnesota elections, you request an advisory opinion from the Campaign Finance and Public Disclosure Board (the Board) based on the following:

1. The association is a for-profit business owned by a corporation. The association operates a Web site in Minnesota.
2. The association would like to establish on the Web site a service where state level candidates running for political office in 2006 may post short profiles, photographs, campaign contact information, information about upcoming fundraisers and other campaign events, and respond to questions predetermined by the news organization.
3. Only those candidates with political positions generally consistent with the philosophy of the association will be invited, or allowed, to participate on the Web site.
4. The association will not charge any fee to candidates that post materials on the Web site.
5. The Web site would also contain links to political parties, voter registration forms, news stories about candidates, and other groups involved in the electoral process.

ISSUE ONE

Would the Web site as described have ramifications under Minnesota Statutes Chapter 10A?

OPINION ONE

Yes. Providing the use of a Web site without charge is a donation in kind to the candidates who use the Web site (Minnesota Statutes, section 10A.01, subdivision 13). The fair market value of the donation in kind will count both against the applicable contribution limits of the candidate and against the campaign expenditure limit of any candidate who signs the public subsidy agreement.

In addition, the association would be required to register with the Board as a political committee and file periodic reports if aggregate donations in kind exceed \$100 in value. Reports required under Minnesota Statutes, section 10A.20, must provide itemization of all income and expenditures in excess of \$100.

ISSUE TWO

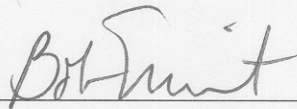
Would the operation of the described Web site violate laws pertaining to corporate campaign contributions?

OPINION TWO

Minnesota Statutes, section 211B.15, regulates corporate political activity in Minnesota. The Board is not authorized to issue opinions about the provisions of this statute and does not express an opinion as to whether the news organization is a corporation for the purposes of this statute.

The Board does note that Minnesota Statutes, section 211B.15, subdivision 2, provides in part that "...A corporation may not make a contribution or offer or agree to make a contribution, directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office."

Issued May 16, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes

10A.01 Definitions.

Subd. 13. **Donation in kind.** "Donation in kind" means anything of value that is given, other than money or negotiable instruments. An approved expenditure is a donation in kind.

10A.20 Campaign reports.

Subdivision 1. **First filing; duration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must begin to file the reports required by this section in the first year it receives contributions or makes expenditures in excess of \$100 and must continue to file until the committee, fund, or party unit is terminated.

Subd. 1a. **If treasurer position is vacant.** If the position of treasurer of a principal campaign committee, political committee, political fund, or party unit is vacant, the candidate, chair of a political committee or party unit, or association officer of a political fund is responsible for filing reports required by this section.

Subd. 2. **Time for filing.** (a) The reports must be filed with the board on or before January 31 of each year and additional reports must be filed as required and in accordance with paragraphs (b) and (c).

(b) In each year in which the name of the candidate is on the ballot, the report of the principal campaign committee must be filed 15 days before a primary and ten days before a general election, seven days before a special primary and a special election, and ten days after a special election cycle.

(c) In each general election year, a political committee, political fund, or party unit must file reports 15 days before a primary and ten days before a general election.

Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$100 for legislative or statewide candidates or ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in kind. A donation in kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

(c) The report must disclose the sum of contributions to the reporting entity during the reporting period.

- (d) The report must disclose each loan made or received by the reporting entity within the year in aggregate in excess of \$100, continuously reported until repaid or forgiven, together with the name, address, occupation, and principal place of business, if any, of the lender and any endorser and the date and amount of the loan. If a loan made to the principal campaign committee of a candidate is forgiven or is repaid by an entity other than that principal campaign committee, it must be reported as a contribution for the year in which the loan was made.
- (e) The report must disclose each receipt over \$100 during the reporting period not otherwise listed under paragraphs (b) to (d).
- (f) The report must disclose the sum of all receipts of the reporting entity during the reporting period.
- (g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.
- (h) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period.
- (i) The report must disclose the amount and nature of an advance of credit incurred by the reporting entity, continuously reported until paid or forgiven. If an advance of credit incurred by the principal campaign committee of a candidate is forgiven by the creditor or paid by an entity other than that principal campaign committee, it must be reported as a donation in kind for the year in which the advance of credit was made.
- (j) The report must disclose the name and address of each political committee, political fund, principal campaign committee, or party unit to which contributions have been made that aggregate in excess of \$100 within the year and the amount and date of each contribution.
- (k) The report must disclose the sum of all contributions made by the reporting entity during the reporting period.
- (l) The report must disclose the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$100 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.
- (m) The report must disclose the sum of all noncampaign disbursements made within the year by or on behalf of the reporting entity.

- (n) The report must disclose the name and address of a nonprofit corporation that provides administrative assistance to a political committee or political fund as authorized by section 211B.15, subdivision 17, the type of administrative assistance provided, and the aggregate fair market value of each type of assistance provided to the political committee or political fund during the reporting period.

211B.15 Corporate political contributions.

Subdivision 1. **Definitions.** For purposes of this section, "corporation" means:

- (1) a corporation organized for profit that does business in this state;
- (2) a nonprofit corporation that carries out activities in this state; or
- (3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state.

Subd. 2. **Prohibited contributions.** A corporation may not make a contribution or offer or agree to make a contribution, directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate.

Advisory Opinion 382

Withdrawn by requester.