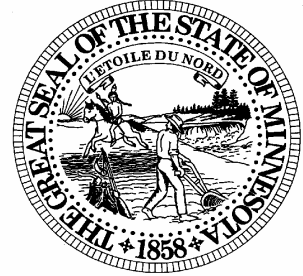


Minnesota

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: State Political Party Convention Expenses

ADVISORY OPINION 383

SUMMARY

Expenses for a candidate attending a state political party convention paid for by a principal campaign committee are reported as campaign expenditures.

FACTS

As a State Representative with a principal campaign committee registered with the Campaign Finance and Public Disclosure Board (the Board), you ask for an advisory opinion based on the following facts.

1. State legislators who are members of the Democratic Farmer Labor Party (DFL) are automatically accorded delegate status at the DFL state convention. State legislators who are members of the Republican Party of Minnesota (RPM) do not have automatic status as delegates to the RPM state convention, but are often elected to serve as a state delegate.
2. During a floor session of the Minnesota House of Representatives on May 20, 2006, a discussion occurred about using the funds in a principal campaign committee to pay the costs of a legislator attending a DFL or RPM state convention. Legislators who participated in the discussion indicated that they viewed the cost of attending a state political party convention as either a cost of serving in office or a constituent service, and therefore a noncampaign disbursement.
3. The political party endorsement for a legislative district occurs prior to the state political party convention.

ISSUE ONE

May a principal campaign committee that pays some or all of the registration, travel, meals, and lodging costs incurred by a member of the legislature to attend a political party state convention classify the costs as noncampaign disbursements?

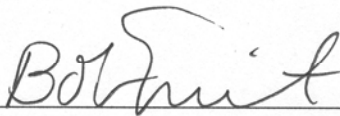
OPINION ONE

No. Minnesota Statutes, section 10A.01, subdivision 26, and Minnesota Rules 4503.0900 provide a list of expenses incurred by a principal campaign committee that may be classified as a noncampaign disbursement. Neither statute nor rule provides a category under which the costs associated with attending a political party state convention may be reasonably included.

The House of Representatives floor discussion included in the facts of this opinion suggested that because DFL legislators are automatically delegates to their party's state convention the cost of attending the DFL state convention were a "cost of serving in office"; a type of noncampaign disbursement under Minnesota Statutes, section 10A.01, subdivision 26 (9). In previous advisory opinions, (see Advisory Opinions 354, 346, and 314) the Board has limited the costs of serving in office that qualify as a noncampaign disbursement to those costs reasonably expected or required of all elected officials. Attending a state political party convention is an act to support a political party and the legislator's reelection campaign; it is not a cost of serving in office.

During the floor discussion it was also contended that the cost of attending a state political party convention was a service to constituents, and therefore a noncampaign disbursement. A state legislator who attends a state political party convention will likely find that some of the delegates are constituents. It does not follow that the cost of attending the convention is therefore "services for a constituent", a type of noncampaign disbursement provided in Minnesota Statutes, section 10A.01, subdivision 26 (6). A constituent service is a service provided to a member of the public because the legislator holds public office. Discussions held between delegates at a state convention occur because of shared political affiliation and goals. The fact that one of the delegates is a legislator does not make the conversation a constituent service.

Issued August 15, 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.

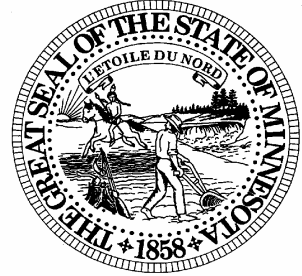
4503.0900 Noncampaign Disbursements.

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



**THIS ADVISORY OPINION IS PUBLIC DATA PURSUANT TO A
CONSENT FOR RELEASE OF INFORMATION SIGNED BY THE REQUESTER**

Issued to: Ron Berry
105 Summit Avenue
Walker, MN 56484

RE: First Time Candidate

ADVISORY OPINION 384

SUMMARY

Requesting that a canvassing board tabulate write in votes for an office at one election does not preclude a candidate at a subsequent election from the ten percent increase in the spending limit available to candidates who run for an office for the first time.

FACTS

As a candidate for State Representative with a principal campaign committee registered with the Campaign Finance and Public Disclosure Board (the Board), you ask for an advisory opinion based on the following facts.

1. You did not raise or spend any money during 2004 for election to the legislature, and you did not register a principal campaign committee with the Board in 2004.
2. You did not file an affidavit of candidacy for legislative office in 2004; therefore, your name did not appear on the primary or general election ballot. In 2004, you did submit the written request provided for in Minnesota Statutes section 204B.09, subdivision 3, which requires the canvassing board to count any write-in votes that you received for the office of State Representative, District 4B. The official canvass of the 2004 election results show that you received 84 write-in votes.
3. For the 2006 state general election, you have filed an affidavit of candidacy for State Representative, District 4B. The Public Subsidy Agreement you have signed for that office identifies you as a first time candidate.

ISSUE ONE

Did your activities in 2004 disqualify you from the ten percent increase in the campaign expenditure limit provided to candidates in Minnesota Statutes, section 10A.25, subdivision 2 (d)?

OPINION ONE

No. Minnesota Statutes section 10A.25, subdivision 2 (d), provides a ten percent increase in the campaign spending limit "...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." As provided in the facts of this opinion you did not file an affidavit of candidacy or file a nominating petition to gain access to the state primary or general election ballot in 2004. Therefore, you did not take action to qualify for nomination or election to the legislature. You also did not raise or spend money or create a principal campaign committee to accept contributions or make expenditures to further your nomination or election to office.

Requesting the counting of write-in votes is a procedure related to the tabulation of votes, not to the conduct of a campaign.

Issued August 15, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

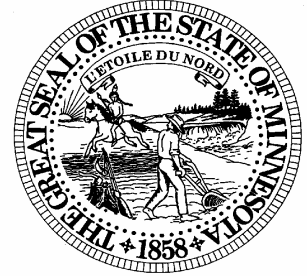
10A.25 Spending limits.

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: Candidate participation in fundraising event; use of national political committee funds
by political committee registered in Minnesota.**

ADVISORY OPINION 385

SUMMARY

Minnesota Statutes Chapter 10A does not regulate a Minnesota officeholder's participation in fundraising activities for a national association not required to register with the Board. If the fundraising activities also constitute efforts to influence the officeholders election, then the costs of participation are campaign expenditures for the officeholder's principal campaign committee and a donation of the costs would be a contribution to the principal campaign committee.

Subject to other applicable statutory requirements and prohibitions, an association can theoretically make independent expenditures for a candidate that has participated in fundraising for the association. However, whether these expenditures are made with the implied consent of or in concert or cooperation with the officeholder can only be determined by examination of the actual facts surrounding the relationships and the expenditures.

Minnesota Statutes, Section 211B.15 prohibits direct and indirect participation in the Minnesota electoral process by Corporations. Since the subject association's funds consist of individual, corporate and political committee contributions, Section 211B may prohibit donation of funds to and acceptance by a committee registered with the Board.

An unregistered association that makes contributions to a Minnesota political committee must provide with each contribution detailed disclosure of all of the association's receipts and expenditures, consistent with the requirements of Minnesota Statutes, Section 10A.20.

FACTS

Requester requests an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts which were provided by the requester or obtained by Board staff.

1. The requester is an unincorporated association (the Association) that represents officeholders affiliated with the party with which the Association is affiliated. The Association is not registered with the Minnesota Campaign Finance and Public Disclosure Board (the Board).
2. According to the requester, the mission of the Association includes assisting in the election of candidates for state office; using the talent of state officeholders to debate and shape public policy on issues affecting the states; and enabling state officeholders to represent political and policy interests at the national, state and local levels.
3. According to its internet web site, members of the Association include individuals and corporations classified into various levels who may work directly with officeholders, work in advisory capacities, or may a significant role in the fundraising activities of the Association.
5. The Association conducts extensive fundraising events throughout the country and also solicits money by other means. Money raised goes into the general accounts of the Association and is used to support the components of its mission listed above. At the time funds are solicited or raised, there is no explicit dedication of the money for the benefit of a specific candidate.
6. The Association fundraisers may have featured guests whose attendance will be attractive to Association members and potential donors. The Association regularly pays the costs associated with these featured guests. Costs typically include travel, food, lodging and communication costs associated with participating in the event.
7. The Association raises money from individuals, corporations and other political action committees.
8. The Association intends to establish a Minnesota political committee (the Minnesota political committee) which will be registered with the Campaign Finance and Public Disclosure Board. The Association states that it will also have political committees in many other states "to support candidates for certain state level offices."
9. The Association intends to fund the Minnesota political committee by direct transfers of funds from the Association to the Minnesota political committee. The Association maintains separate bank accounts for contributions from individuals and corporations and intends to make transfers to the Minnesota political committee solely out of funds raised from individuals.
10. Under the Association's proposed plan, no Minnesota officeholder or candidate will participate in the allocation, budgeting or distribution of contributions received by the Association or in the allocation, budgeting or distribution of funds transferred to the Minnesota political committee.
11. The Association desires to make expenditures in Minnesota through its Minnesota political committee and to have those expenditures classified as independent expenditures under Minnesota Statutes Chapter 10A. To facilitate this classification, the Association may establish at the national level an "independent expenditure unit" which would hire consultants to make all decisions regarding independent expenditures in Minnesota. These consultants would operate "completely independently" of the Association staff and of any candidate on whose behalf expenditures would be made.
12. The Association states that Minnesota expenditures which it intends to be independent expenditures will be made "without the express or implied consent, authorization, or cooperation of,

and not in concert with or at the request or suggestion of any Minnesota candidate or any Minnesota candidate's principal campaign committee or agent".

For the purposes of this opinion, the Board accepts as fact that the expenditures will be made without the express consent or authorization or at the request or suggestion of any Minnesota candidate or any Minnesota candidate's principal campaign committee or agent. Whether the facts of the matter result in implied consent or constitute acting in cooperation or concert with the candidate is not a fact which can be stated, but a conclusion to be drawn from the surrounding facts.

The Association presents several questions based on the above facts. For the purpose of clarity and completeness, the Board has addressed all of the issues it believes are raised by the scenario described.

ISSUE ONE

May a Minnesota candidate or officeholder attend an Association fundraising event or otherwise help the Association raise funds? As a corollary, may a Minnesota candidate or officeholder solicit funds for or on behalf of the Association from sources that would be prohibited sources for an association registered with the Board under Minnesota Statutes Chapter 10A?

OPINION

Minnesota Statutes Chapter 10A does not regulate mere attendance at or participation in a fundraising event conducted by an entity not required to be registered with the Board. Neither does Minnesota Statutes Chapter 10A prohibit a Minnesota candidate or officeholder from soliciting funds from any source for an entity not registered with the Board.

ISSUE TWO

May the Association pay the costs associated with an officeholder's attendance at Association events and have those costs excluded from reporting and other requirements of Minnesota Statutes Chapter 10A.

OPINION

The payment of costs for an officeholder to attend an Association event are excluded from reporting and other requirements of Minnesota Statutes Chapter 10A unless the purpose of the event is to influence the nomination or election of the candidate. While the Association asserts that no event is for the purpose of influencing the nomination or election of a candidate, this determination cannot be made absent specific information regarding the event itself, such as the location of the event, who the attendees will be and other details. Other considerations might include whether a purpose of the event is to provide the officeholder with the opportunity to make contacts with others who will assist in influencing the officeholder's election or to raise funds on the officeholder's own behalf.

ISSUE THREE

If the officeholder chooses to pay his or her own costs associated with attending an Association fundraising event or with raising funds on behalf of the Association, should those costs be paid for with personal or with principal campaign committee funds. If they are paid with principal campaign committee funds, how should the expenditure be reported?

OPINION

If the officeholder concludes that the purpose of the event is not to influence the election of the officeholder, the costs of the event are not permitted campaign expenditures under Minnesota Statutes, Section 10A.01, subd. 9. Neither are the expenses permitted noncampaign disbursements under Minnesota Statutes, Section 10A.01, subd. 26. In such a case, the costs should not be paid by or reported by the officeholder's principal campaign committee.

However, if the purpose of the event is to influence the nomination or election of the officeholder, the costs may be paid by the principal campaign committee and reported as a campaign expenditure. If they are paid by the officeholder under this scenario, they would be considered an in kind contribution from the officeholder to the principal campaign committee.

ISSUE FOUR

If the Association creates the Minnesota political committee as described and, using its independent expenditure unit to make decisions, makes expenditures in Minnesota to advocate the election of the subject officeholder, will those expenditures be considered independent expenditures under Minnesota Statutes Chapter 10A?

OPINION

Based on the facts, there will be no express consent or authorization for these expenditures and they will not be made at the request or suggestion of the candidate or the candidate's principal campaign committee or agent.

On the limited facts presented, the Board does not find that there is evidence of implied consent for the subject expenditures, nor does it find that they are in concert with or cooperation with the candidate. The act of assisting the Association with fundraising, without more, does not constitute giving implied consent to the later expenditures.

If the actual facts of the events as they occur reveal more, such as an understanding that later expenditures depended on the candidate's fundraising success, or other relevant communication or understandings between the Association and the candidate, the Board could reach the opposite conclusion regarding the independence of the expenditures.

ISSUE FIVE

Are there any additional restrictions on the sources of funds that the Minnesota political committee may use for independent expenditures.

OPINION

While the question asks only about independent expenditures, this response applies to all funds spent by the Minnesota Committee for any purpose. This would include funds used by the Association to establish or hire consultants for the described "independent expenditure unit", the costs of which would be an in kind contribution from the Association to the Minnesota political committee.

Although Minnesota Statutes Chapter 211B is not within the jurisdiction of the Board to interpret, the Board does comment on that chapter when issues of its applicability arise in matters that are otherwise properly before the Board.

Minnesota Statutes, Section 211B.15 prohibits corporations from making direct or indirect contributions to political committees or political funds or candidates' principal campaign committees in Minnesota. It also prohibits corporations from making independent expenditures to influence the nomination or election of a Minnesota candidate.

In the past, the Board has opined that when an association that is partially funded by corporate contributions makes a donation to a Minnesota political committee or political fund, that contribution is a corporate contribution. The Board has further opined that the fact that the donor entity has separate bank accounts for corporate and individual contributions and draws its Minnesota donation from the "individual" pool does not insulate the entity from the corporate contribution prohibition.

If applicable, 211B.15 would prohibit the donation from the Association as well as the acceptance of the contribution by the Minnesota political committee. Violation of Section 211B.15 carries substantial penalties that are listed in the statutory reference at the end of this opinion.

ISSUE SIX

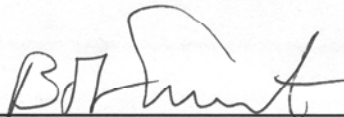
Although not raised by the requester, the Board wishes to address the Minnesota reporting requirements that would apply to the Association and its Minnesota political committee if they determine that the prohibitions of Minnesota Statutes, Section 211B.15 do not apply and they decide to proceed with the described plan.

OPINION

The Association is an unregistered association under Minnesota Statutes Chapter 10A. Section 10A.27, subd. 13, provides that a Minnesota political committee may not accept contributions in excess of \$100 from an unregistered association unless the donor association provides, along with the contribution, a written report meeting the disclosure requirements of Minnesota Statutes, Section 10A.20, including the reporting period requirements of 10A.20. Violation of this provision provides for a \$1000 fine against the donor entity and a fine of up to four times the violation amount against the Minnesota political committee.

For specific reporting requirements, the requestor is directed to Minnesota Statutes, Section 10A.20. The requester should understand that the statute requires disclosure from January 1, 2006 through the date of each contribution. Among other things, the disclosure must include: the name, address, and employment information for any donor of more than \$100 to the Association; the name and address of the payee, and the date and description of the payment for any payments totaling more than \$100 to a single payee. While these are key disclosure requirements, the statute includes substantially more and is reprinted in the citations of this opinion.

Issued August 15, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

CITED STATUTES AND ADMINISTRATIVE RULES

10A.20 Campaign reports.

...

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 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. 13. Third-party reimbursement. An individual or association filing a report disclosing an expenditure or noncampaign disbursement that must be reported and itemized under subdivision 3, paragraph (g) or (l), that is a reimbursement to a third party must report the purpose of each expenditure or disbursement for which the third party is being reimbursed. An expenditure or disbursement is a reimbursement to a third party if it is for goods or services that were not directly provided by the individual or association to whom the expenditure or disbursement is made. Third-party reimbursements include payments to credit card companies and reimbursement of individuals for expenses they have incurred.

Minnesota Statutes, Section 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 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.

Subdivision 1. Definitions. For purposes of this , "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.

Subd. 3. Independent expenditures. A corporation may not make an independent expenditure or offer or agree to make an independent expenditure to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "independent expenditure" means an expenditure that is not made with the authorization or expressed or implied consent of, or in cooperation or concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate.

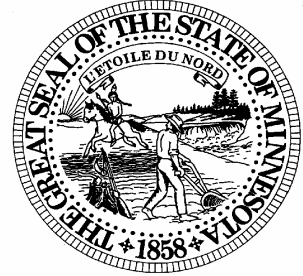
. . .

Subd. 6. Penalty for individuals. An officer, manager, stockholder, member, agent, employee, attorney, or other representative of a corporation acting in behalf of the corporation who violates this may be fined not more than \$20,000 or be imprisoned for not more than five years, or both.

Subd. 7. Penalty for corporations. A corporation convicted of violating this is subject to a fine not greater than \$40,000. A convicted domestic corporation may be dissolved as well as fined. If a foreign or nonresident corporation is convicted, in addition to being fined, its right to do business in this state may be declared forfeited.

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: Candidate running for two offices in the same election year

ADVISORY OPINION 386

SUMMARY

An incumbent legislator must pay for the end of the session report with funds from the principal campaign committee for the legislator's office. A candidate with principal campaign committees for two different legislative offices may raise funds separately for each office during an election year. A terminating principal campaign committee may transfer debt to another principal campaign committee of the same candidate. Statutory deadlines may not be extended by the Board.

FACTS

As the treasurer of an incumbent legislator who is a candidate for another Chapter 10 office with principal campaign committees registered with the Campaign Finance and Public Disclosure Board (the Board), you ask for an advisory opinion based on the following facts.

1. The candidate is an incumbent legislator who had been raising and spending money for the 2006 election cycle. The legislator has a valid public subsidy agreement and filed an Affidavit of Contributions for in June as a condition for receiving public subsidy in 2006.
2. The candidate filed an Affidavit of Candidacy for the incumbent's office but withdrew that filing prior to the close of filing. The candidate filed an Affidavit of Candidacy for another Chapter 10 office on the final day of the filing period.
3. The legislator sent a session report to voters in the district. You understand that the expenditure must be reported as 50% campaign expenditures and 50% non-campaign disbursements.
4. The incumbent's committee has existing bills and intends to raise money only to cover remaining expenses of that committee. If unable to raise funds, the committee would transfer the debts to the new committee.

5. The incumbent's committee has an outstanding loan payable to the candidate in the amount of \$1,500.
6. The candidate registered a principal campaign committee and filed a public subsidy agreement for the new office being sought.
7. The new committee will have only approximately six weeks to meet the September 1st deadline to raise necessary funds and file the Affidavit of Contributions to qualify for public subsidy payments.

ISSUE ONE

Should the cost of the 2006 session report which was printed and mailed within 60 days of the close of session be paid with funds from the incumbent's committee or funds from the new committee?

OPINION ONE

The committee that supports the incumbent's office must pay for the costs of activities associated with service in that body. Therefore, the incumbent's committee should pay for the session report and report the disbursements on the committee Report of Receipts and Expenditures due January 31, 2007. Alternatively, the incumbent's committee may terminate its registration and, at that time, transfer all debts to the new committee.

ISSUE TWO

May the existing old committee and the new committee each accept contributions during the same election year?

OPINION TWO

Yes. Minnesota Statutes, section 10A.105, subdivision 1, provides that a candidate must have a principal campaign committee for each office sought. During 2006 the candidate sought two different offices. Each committee is bound separately to the contribution limits and applicable expenditure limits for each office sought. As provided in the facts of this opinion, the incumbent's original committee will raise only those funds necessary to satisfy unpaid debts and loans.

ISSUE THREE

May the incumbent's committee transfer debts to the new committee?

OPINION THREE

Yes. Minnesota Statutes, section 10A.241, provides that debts of a terminating principal campaign committee may be transferred to another principal campaign committee of the same candidate. The committee that assumes the debt must continuously report the unpaid bills or loans until they are paid or forgiven.

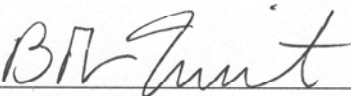
ISSUE FOUR

May the September 1st deadline to raise necessary funds and file the Affidavit of Contributions be extended?

OPINION FOUR

No. The September 1st deadline is statutory and may not be extended due to extenuating circumstances. The fact that the same candidate has raised funds for another committee has no bearing on the requirement of the new committee to raise the required funds and file the Affidavit of Contributions by September 1st.

Issued August 15, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.105 Principal campaign committee.

Subdivision 1. **Single committee.** A candidate must not accept contributions from a source, other than self, in aggregate in excess of \$100 or accept a public subsidy unless the candidate designates and causes to be formed a single principal campaign committee for each office sought. A candidate may not authorize, designate, or cause to be formed any other political committee bearing the candidate's name or title or otherwise operating under the direct or indirect control of the candidate. However, a candidate may be involved in the direct or indirect control of a party unit.

10A.241 Transfer of debts.

Notwithstanding section 10A.24, a candidate may terminate the candidate's principal campaign committee for one state office by transferring any debts of that committee to the candidate's principal campaign committee for another state office if all outstanding unpaid bills or loans from the committee being terminated are assumed and continuously reported by the committee to which the transfer is being made until paid or forgiven. A loan that is forgiven is covered by section 10A.20 and, for purposes of section 10A.324, is a contribution to the principal campaign committee from which the debt was transferred under this section.

10A.323 Affidavit of contributions.

In addition to the requirements of section 10A.322, to be eligible to receive a public subsidy under section 10A.31 a candidate or the candidate's treasurer must file an affidavit with the board stating that during that calendar year the candidate has accumulated contributions from persons eligible to vote in this state in at least the amount indicated for the office sought, counting only the first \$50 received from each contributor:

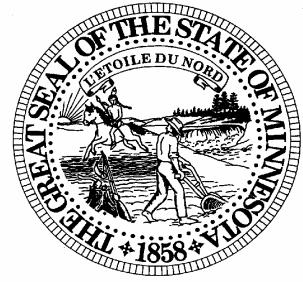
- (1) candidates for governor and lieutenant governor running together, \$35,000;
- (2) candidates for attorney general, \$15,000;
- (3) candidates for secretary of state and state auditor, separately, \$6,000;
- (4) candidates for the senate, \$3,000; and
- (5) candidates for the house of representatives, \$1,500.

The affidavit must state the total amount of contributions that have been received from persons eligible to vote in this state, disregarding the portion of any contribution in excess of \$50.

The candidate or the candidate's treasurer must submit the affidavit required by this section to the board in writing by September 1 of the general election year.

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: Costs of Credit Card Transactions

ADVISORY OPINION 387

SUMMARY

The costs of credit card transactions incurred as part of campaign fund raising activities are campaign expenditures, reportable as such, and not as “noncampaign disbursements” defined by Minnesota Statutes, section 10A.01, subdivision 26.

FACTS

As treasurer of 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 facts:

1. In campaign fund raising activities, the use of credit cards by donors has become common and their use can be expected to become still more common in the future.
2. Credit card transactions are processed by credit service bureaus which charge a fee for each transaction to pay for the service. The transaction cost occurs regardless of how the credit card number is communicated to the Committee (in writing, over the telephone, or over the Internet).
3. The Committee notes that the reporting of credit card processing fees by various candidates has been inconsistent, and that some other campaign related banking costs, such as check fees and automatic bill payment fees, are usually treated as noncampaign expenditures.

ISSUE ONE

Should the costs of credit card transactions incurred in fund raising activities be reported as noncampaign disbursements under Minnesota Statutes, section 10A.01, subdivision 26?

OPINION ONE

No. The board concludes that fees for credit card transactions are campaign expenditures, and should be reported as such under Minnesota Statutes, section 10A.20. Credit card transaction fees are not explicitly identified as a type of noncampaign disbursement under any clause of section 10A.01, subdivision 26. This statute does provide in clause (1) that a principal campaign committee's payments for accounting services are a noncampaign disbursement. Including credit card transaction fees as a type of accounting service would extend the range of clause (1) beyond its natural meaning.

Many costs related to raising funds for a principal campaign committee are campaign expenditures. For example, the cost of paper, printing, envelopes, postage, and hired fund raisers are all campaign expenditures. Credit card transaction fees, when incurred in connection with contributions to the committee, are another cost associated with fundraising, and should be categorized and reported as campaign expenditures.

The requestor notes that many principal campaign committees list bank service fees and check processing fees as noncampaign disbursements. The Board has not challenged this classification because all principal campaign committees are required to have a depository at the time of registration, and must deposit all contributions into that account. (Minnesota Statutes, sections 10A.14, subdivision 2, and 10A.15, subdivision 3). Because a banking account is required by statute the costs required to maintain that account are outside of a committee's discretion and may be reported as a noncampaign disbursement.

Issued September 15, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes

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.

10A.14 Registration.

Subdivision 1. **First registration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must register with the board by filing a statement of organization no later than 14 days after the committee, fund, or party unit has made a contribution, received contributions, or made expenditures in excess of \$100.

Subd. 2. Form. The statement of organization must include:

- (1) the name and address of the committee, fund, or party unit;
- (2) the name and address of the chair of a political committee, principal campaign committee, or party unit;
- (3) the name and address of any supporting association of a political fund;
- (4) the name and address of the treasurer and any deputy treasurers;

(5) a listing of all depositories or safety deposit boxes used; and

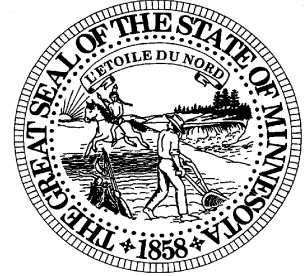
(6) for the state committee of a political party only, a list of its party units.

10A.15 Contributions.

Subd. 3. **Deposit.** All contributions received by or on behalf of a candidate, principal campaign committee, political committee, political fund, or party unit must be deposited in an account designated "Campaign Fund of (name of candidate, committee, fund, or party unit)." All contributions must be deposited promptly upon receipt and, except for contributions received during the last three days of a reporting period as described in section 10A.20, must be deposited during the reporting period in which they were received. A contribution received during the last three days of a reporting period must be deposited within 72 hours after receipt and must be reported as received during the reporting period whether or not deposited within that period. A candidate, principal campaign committee, political committee, political fund, or party unit may refuse to accept a contribution. A deposited contribution may be returned to the contributor within 60 days after deposit. A contribution deposited and not returned within 60 days after that deposit must be reported as accepted.

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: Cost of mailing informational magnet and note to constituents

ADVISORY OPINION 388

SUMMARY

Minnesota Statutes Section 10A.01, subd. 26(20), provides that the cost of producing an informational magnet that will be distributed to constituents is a noncampaign disbursement. Distribution of the magnet and an explanatory note are constituent services, the costs of which are to be reported as noncampaign disbursements or campaign expenditures depending on the time the distribution is made.

FACTS

As an incumbent legislator, you ask the Campaign Finance and Public Disclosure Board (the "Board") for an advisory opinion based on the following facts:

1. You have produced business-card sized magnets that are printed with your name and office designation, your state capitol telephone number, your e-mail address, and a statement that the magnets were prepared and printed by your committee, including the committee name and mailing address. The committee address is your home address, which is the address you use for constituent mail during the interim.
2. You plan to mail these magnets to constituents with a brief note explaining that the magnet contains your contact information which should be used if constituents need assistance with state issues. The mailing will take place in late September or early October, more than 60 days after adjournment of the legislature in a year that is an election year for you.
3. You ask the Board whether the costs of producing the magnet, printing the note, and purchasing envelopes and postage for the mailing are noncampaign disbursements under Minnesota Statutes Chapter 10A.

ISSUE ONE

Are the costs of producing an informational business card sized magnet intended to be distributed to constituents noncampaign disbursements?

OPINION

In 2006 the legislature created a specific exemption for the cost of producing a magnet containing a legislator's contact information.

Minnesota Statutes, Section 10A.01, subd. 26(20) specifically states that the cost of a magnet of less than 6" diameter may be reported as a noncampaign disbursement as long as the purpose of the magnet is for distribution to constituents. A standard business card sized magnet fits within the size definition of the statute. Under the facts of this request, the magnet will be distributed to constituents, so the cost of producing it is a noncampaign disbursement.

ISSUE TWO

Are the costs of preparing an explanatory note and the costs of distributing the note with an informational business card sized magnet to constituents campaign expenditures or noncampaign disbursements?

OPINION

Unless covered by a specific statutory exemption, the cost of distributing any item with a candidate's name and address and telephone number on it is generally considered to be a campaign expenditure. The statutory exemption for manufacture of the magnet does not extend to notes or letters explaining use of the magnet, or to costs of the magnet's distribution should a committee decide to distribute it by mail rather than using a free distribution method.

However, under the limited facts of this request, the Board concludes that the costs of producing the note and distributing the note and the magnet are noncampaign disbursements for constituent services. Because the constituent services are provided on the date of the mailing, which is more than 60 days after adjournment of the legislative session, the costs must be reported as campaign expenditures on the committee's Reports of Receipts and Expenditures.

Issued September 15, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

CITED STATUTES AND ADMINISTRATIVE RULES

10A.01 Definitions.

Subdivision 1. **Application.** For the purposes of this chapter, the terms defined in this section have the meanings given them unless the context clearly indicates otherwise.

. . .

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 . . .

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:

. . .

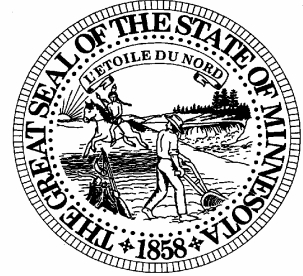
(6) services for a constituent by a member of the legislature or a constitutional officer in the executive branch, including the costs of preparing and distributing a suggestion or idea solicitation to constituents, performed from the beginning of the term of office to adjournment sine die of the legislature 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;

. . .

(20) the cost of a magnet less than six inches in diameter containing legislator contact information and distributed to constituents

Minnesota

Campaign Finance and Public Disclosure Board



**THIS ADVISORY OPINION IS PUBLIC DATA PURSUANT TO A
CONSENT FOR RELEASE OF INFORMATION SIGNED BY THE REQUESTER**

Issued to: John H. Herman
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

RE: Potential Conflict of Interest for a Public Official

ADVISORY OPINION 389

SUMMARY

A conflict of interest does not exist when a public official takes an official action related to a grant program that may eventually benefit the public official or an associated business if the actions do not directly cause the grants to be awarded.

FACTS

As a Commissioner on the Legislative-Citizen Commission on Minnesota Resources you ask for an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts.

1. A Commissioner of the Legislative-Citizen Commission on Minnesota Resources (LCCMR) is a public official as defined in Minnesota Statutes, section 10A.01, subdivision 35 (19).
2. As one of its functions the LCCMR recommends to the Legislature the funding level for a grant program administered by the Minnesota Department of Natural Resources (DNR). The Legislature approves the funding for the grant program as part of the budget process. After the grant program is funded by the Legislature the DNR awards grants to organizations for specific projects on a competitive basis.

3. Potentially, an LCCMR Commissioner may also serve on the governing board, or be a member, of an organization that will apply for and may receive a grant from the DNR.
4. In addition to serving as an LCCMR Commissioner you are employed as an attorney by a Minnesota law firm. The law firm provides services to an organization that may receive a grant from the DNR.

ISSUE ONE

Will serving as a Commissioner on the LCCMR and on the governing board of an organization that will apply for a grant from the DNR create a conflict of interest under the provisions of Chapter 10A?

OPINION ONE

No. While the LCCMR plays an important role in the development of a policy and budget for the grant program in question, it is not making the type of decisions that will affect the financial interests of the Commissioners or of organizations that may compensate its members who are also Commissioners. As presented in the facts of this request, the authority to provide a specific grant to an organization rests with the DNR, not with the LCCMR. Additional separation between the actions of the LCCMR and the awarding of a grant is provided by the Legislature which is responsible for approving the funding provided to the grant program.

The separation between the actions of the LCCMR and the awarding of a specific grant removes the potential for conflict of interest as defined in Minnesota Statutes, section 10A.07, subdivision 1. This statute provides that a public official faces a potential conflict of interest if an action or decision of the official would substantially affect the financial interests of the official or of an associated business that compensates the public official more than \$50 in any month. Here the actions of a LCCMR Commissioner are sufficiently isolated from the actions or decisions that provide financial benefit to an organization (the awarding of a grant) so as to be outside of the provisions of the statute.

ISSUE TWO

Will serving as a Commissioner of the LCCMR and being employed by a law firm that represents an organization that will apply for a grant from the DNR create a conflict of interest under the provisions of Chapter 10A?

OPINION TWO

No. As discussed in opinion one, the actions or decisions of the LCCMR are sufficiently separated from the awarding of a grant to prevent a potential conflict of interest.

Issued November 28, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

Minnesota Statutes, section 10A.01 Definitions

Subdivision 35. **Public official.** "Public official" means any:

....

- (6) member, chief administrative officer, or deputy chief administrative officer of a state board or commission that has either the power to adopt, amend, or repeal rules under chapter 14, or the power to adjudicate contested cases or appeals under chapter 14;

....

Minnesota Statutes, section 10A.07 Conflicts of interest.

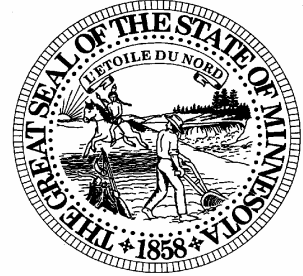
Subdivision 1. **Disclosure of potential conflicts.** A public official or a local official elected to or appointed by a metropolitan governmental unit who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is no greater than on other members of the official's business classification, profession, or occupation, must take the following actions:

- (1) prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest;
- (2) deliver copies of the statement to the official's immediate superior, if any; and
- (3) if a member of the legislature or of the governing body of a metropolitan governmental unit, deliver a copy of the statement to the presiding officer of the body of service.

If a potential conflict of interest presents itself and there is insufficient time to comply with clauses (1) to (3), the public or local official must orally inform the superior or the official body of service or committee of the body of the potential conflict.

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: Use of Principal Campaign Committee Funds

ADVISORY OPINION 390

SUMMARY

The cost of a described foreign trip is neither a campaign expenditure nor a noncampaign disbursement that may be properly paid with funds of a principal campaign committee.

FACTS

As a State Senator with a principal campaign 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 Jewish Community Relations Council has planned a trip to Israel in December of 2006. The Council has asked several Minnesota legislators to join the trip. The anticipated cost is around \$3000. To quote the letter of invitation, legislators "...will see how Israel, a tiny nation surrounded by hostile neighbors, has sustained itself through several wars of aggression, ongoing terrorism and the struggles it faces to survive."
2. Participants will learn about Israel's security measures, its battle with terrorism, its relations with the United States and its economic ties with Minnesota. Participants will visit religious and historic sites and sites of strategic significance. Participants will be briefed by government, military and community officials and leaders.
3. In accordance with Minnesota Statutes, section 10A.105, you have established a principal campaign committee that is subject to the organization, accounting, registration, reporting and other requirements of Minnesota Statutes, chapter 10A. The committee is responsible for the receipt and disbursement of campaign funds.

ISSUE ONE

Is the cost of the described foreign trip an expense that may properly be paid as a campaign expenditure from money collected for political purposes and disbursed by a principal campaign committee?

OPINION ONE

No. Minnesota Statutes, section 10A.01, subdivision 9, defines "campaign expenditure" generally as "...a payment...made or incurred for the purpose of influencing the nomination or election of a candidate...." The definition by section 10A.01, subdivision 9, excludes "noncampaign disbursements" from its scope and they are treated below as a second issue. Minnesota Statutes, section 211B.12, allows money collected for political purposes to be spent for costs reasonably related to the conduct of election campaigns and lists certain definite categories of expense in clauses (1) to (6). Clause (7) of section 211B.12 permits other expenditures reasonably related to election campaigns or the provision of information to constituents. The cost of the proposed trip is:

- (a) not incurred for the purpose of influencing the nomination or election of a candidate as allowed by section 10A.01, subdivision 9;
- (b) does not fall in any of the definite categories of section 211B.12, clauses (1) to (6), such as salaries, advertising and printing; and
- (c) does not have any specific connection to an election campaign that could bring the cost of the trip within the scope of section 211B.12, clause (7).

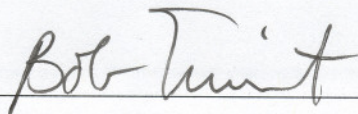
ISSUE TWO

Is the cost of the described foreign trip an expense that may properly be paid as a noncampaign disbursement from money collected for political purposes and disbursed by a principal campaign committee?

OPINION TWO

No. Noncampaign disbursements as defined by clauses (1) to (18) of section 10A.01, subdivision 26, are narrowly defined categories of expense, such as accounting and legal fees, costs of serving in office and interest on loans, that do not refer explicitly to a cost like the proposed trip and do not include any general language that might be read to refer to the cost of such a trip.

Issued November 28, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes

Minnesota Statutes, section 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.

Minnesota Statutes, section 10A.01 Definitions

Subdivision 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 Statutes, section 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.

State of Minnesota
Campaign Finance & 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: Noncampaign Disbursements for expenses of the transition of a constitutional office to a new officeholder.

ADVISORY OPINION 391

SUMMARY

Certain expenses related to the transition of a constitutional office to a newly elected official may be paid by the new official's principal campaign committee and reported as noncampaign disbursements.

FACTS

As the legal representative for the winner of the 2006 election for a constitutional office, you ask the Campaign Finance and Public Disclosure Board (the "Board"), for an advisory opinion based on the following facts:

1. The newly elected constitutional officer has assembled a transition team to prepare for the change in administration of the office to which the candidate was elected.
2. In order to be prepared to assume the new office, it will be necessary for the candidate to incur costs for staff, legal and accounting services, training, equipment, supplies and other items.
3. The officer is, by operation of the State Constitution, a member of certain state boards charged with various duties (more fully described in the non-public version of this advisory opinion). The officer would like to use principal campaign committee funds to pay the costs of attending a conference related to the constitutional duties of the office. The conference is designed to teach best practices and other subjects related to the duties and will take place in another state.
4. The state does not provide any budget for an incoming constitutional officer to pay costs associated with the transition of administration of the office.
5. The candidate's principal campaign committee, has funds available that could be used to support efforts of the transition.

INTRODUCTION

In general, the use of principal campaign committee funds is controlled by Minnesota Statutes, section 211B.12. That statute limits use of such funds to activities intended to influence elections and to those noncampaign disbursements defined in Minnesota Statutes, section 10A.01, subd. 26. The particular noncampaign disbursement that is relevant and applicable to this opinion is 10A.01, subd. 26(10), which permits use of principal campaign committee funds for payment “of the candidate’s expenses for serving in public office, other than for personal uses”.

The Board has addressed variations of the present question on at least three previous occasions.

In Advisory Opinion 253, the Board was asked whether a newly elected, non-incumbent, candidate could use principal campaign committee funds to pay for items under the noncampaign disbursement category of “expenses for serving in public office”. The Board recognized that once elected, a candidate may need to incur costs directly related to serving in office even before the actual first date of sworn service. The Board permitted the use of principal campaign committee funds for these costs as noncampaign disbursements.

The Board again considered the issue in November, 2002, in Advisory Opinion 346 which is public data pursuant to a release of information signed by the requester. In Opinion 346, the Governor-elect asked whether his transition team could use principal campaign committee funds to support the transition of the new administration into the Governor’s office. The Board opined that many of the specified costs that the Governor-elect wanted to pay with committee funds were, in fact, expenses for serving in public office under Minnesota Statutes, Section 10A.01, subd. 26(10) (note: at that time the provision was numbered as part 9).

Finally, under its authority to promulgate administrative rules, the Board gave Advisory Opinion 346 the authority of law by enacting Minnesota Rules, Part 4503.0900, subpart 1. F. to create the following new noncampaign disbursement:

“costs of running a transition office for a winning gubernatorial candidate during the first six months after election”.

While the cited rule is not directly applicable to the facts of the present Advisory Opinion, the reasoning behind the rule and the advisory opinions that preceded it is sound and is and applicable to constitutional offices beyond that of the Governor.

ISSUE ONE

May the Committee use its funds to pay for staff salaries of the transition?

OPINION

Yes. In order to transition into a new office without interruption of government services, a constitutional officer may need to employ full time staff for a wide variety of activities. Staffing costs related to establishing the candidate’s new office and assuming responsibilities from the outgoing official may be classified and reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (10). This Opinion does not sanction the use of principal campaign committee funds to pay a salary to the newly elected constitutional officer.

ISSUE TWO

May the Committee use its funds to pay for accounting and legal services of the transition?

OPINION

Yes. Costs of ensuring that the transition operates within various statutory provisions and is able to account for its expenses are necessary costs. Accounting and legal services used in the transition may be classified and reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (10). Such costs should be reported separately from any legal or accounting expenditures made for the benefit of the candidate's principal campaign committee. Costs on behalf of the principal campaign committee should be reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (1).

ISSUE THREE

May the Committee use its funds to pay for the purchase or leasing of office equipment (cell phones, computers, photocopying services, etc.) of the transition?

OPINION

Yes. To effectively transition to the new office, the candidate will need equipment sufficient to establish an operating staff and office prior to actually assuming the duties of the position. The cost of purchase or lease of office equipment used for the transition should be reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (10).

The requester should be aware that equipment purchased for the transition with principal campaign committee funds becomes the property of the principal campaign committee. Any equipment purchased and classified as a noncampaign disbursement cannot be later used for campaign purposes. The Committee may wish to lease the necessary office equipment to avoid the problems associated with tracking the use, and eventual disposal, of equipment after the transition period is concluded.

ISSUE FOUR

May the Committee use its funds to pay for books, periodicals, supplies and materials used in establishing the office and conducting operations during the transition?

OPINION

Yes, assuming that the items and materials purchased are used in the ordinary course of operation of the transition process and that the items would be considered expenses of serving in office for an official who had already taken office. The allowable costs of purchasing these items are the reasonable costs necessary to carry out the function of the transition. The costs should be reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (10).

ISSUE FIVE

May the Committee use its funds to pay for travel, lodging, and conference fees and expenses connected with the candidate attending an annual conference of area associations and another training event, both of which are specifically and closely related to the official's performance of public duties?

OPINION

Yes. Based on the information provided (which is not detailed in this public version of this Advisory Opinion), costs of attending the annual conference and of receiving the specified training are related to serving in the office to which the candidate was elected. Such costs may be paid for by the Committee and reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (10).

ISSUE SIX

May the Committee use its funds for other travel, lodging, or fees to attend events or training related to the office to which the candidate was elected?

OPINION

Yes. As long as there is no reimbursement from the state or the from the office to which the candidate was elected for the expense to be incurred, the Committee may pay the expense if the item would be considered an expense of serving in public office for a holder of that office. Such costs may be paid for by the Committee and reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (10).

GENERAL LIMITATIONS

Under normal circumstances, payment of costs for transitioning into a new office should not be required for a period of more than six months following the date of the candidate's election to the new office. The opinions expressed herein are subject to this limitation.

The Board reiterates that the noncampaign disbursement for "expenses for serving in public office" may not include expenses for personal use. This restriction applies to the Board's opinions in this matter.

Expenses of serving in office include the ordinary and reasonable expenses of those activities that are expected or required of a public official, or that enhance the official's ability to serve. That standard is equally applicable to costs to be incurred by a newly elected constitutional officer during the transition into office.

Issued November 28, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and 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;

. . .

(10) payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses;

. . .

Minnesota Rules

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:

. . .

F. costs of running a transition office for a winning gubernatorial candidate during the first six months after election.