

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: Reporting of Lobbying Disbursements

ADVISORY OPINION 392

SUMMARY

Compensation paid to a lobbyist is not included in the calculation of lobbying disbursements and is not separately disclosed in a Lobbyist Disbursement Report.

FACTS

As a lobbyist registered with the Campaign Finance and Public Disclosure Board (the Board), the requestor asks for an advisory opinion based on the following facts:

1. Registered lobbyists are required to either file Lobbying Disbursement Reports for each association or individual they represent, or designate a “reporting lobbyist” who will be responsible for reporting the lobbying disbursements for the lobbyists registered for a particular association or individual. Lobbying Disbursement Reports require the lobbyist to indicate if the lobbyist or the lobbyist’s employer has been paid more than \$500 in the calendar year in salary or fees as compensation for lobbying.
2. Lobbyist Disbursement Reports contain a “Schedule A” for the disclosure of total lobbying disbursements by nine specific categories. As of the date of this advisory opinion line one of Schedule A is “Preparation and distribution of lobbying materials”. The requestor believes that there is an ambiguous relationship between this disbursement category and the question of whether the lobbyist or the lobbyist’s employer was paid more than \$500 in a calendar year in salary or fees as compensation for lobbying. In order to accurately report lobbying disbursements to the Board the requestor asks the following questions.

ISSUE ONE

Is the declaration by the lobbyist as to whether the lobbyist or their employer was paid more than \$500 in salary or fees as compensation for lobbying in the calendar year related to that portion of Schedule A which requires the reporting of lobbying disbursements for the preparation and distribution of lobbying materials?

OPINION

No. The purpose for determining if the lobbyist or the lobbyist's employer was paid more than \$500 as compensation for lobbying in the calendar year is to determine if the lobbyist is representing a "lobbyist principal". A lobbyist principal is defined in Minnesota Statutes, section 10A.01, subdivision 33, in part as an individual or association that spends more than \$500 in any calendar year to engage a lobbyist, compensate a lobbyist, or authorizes the expenditure of money by a lobbyist.

Lobbyist principals do not register with the Board. Lobbyist principals are identified through lobbyist registrations and reports. Once identified as a lobbyist principal, the individual or association is notified of the requirement to file the Annual Report of Lobbyist Principal which discloses the total amount spent by the principal on lobbying activities in the preceding year.

ISSUE TWO

Should the total amount of lobbying disbursements for "preparation and distribution of lobbying material" disclosed on the two yearly Lobbyist Disbursement Reports equal the lobbying salary paid to the lobbyist during the year?

OPINION

No. The compensation paid to a lobbyist for the lobbyist's own services are excluded from the amount disclosed in any lobbying disbursement category. Minnesota Rules 4511.0700, subpart 1, provides that "Compensation paid to a lobbyist for lobbying is not reportable by the lobbyist as a lobbyist disbursement".

The compensation paid to a lobbyist for lobbying services is included in the total amount spent on lobbying as reported by the lobbyist principal on the Annual Report of Lobbyist Principal. (Minnesota Rules 4511.0700, subpart 2)

ISSUE THREE

Does the disclosure of lobbying disbursements for "preparation and distribution of lobbying material" in Schedule A apply only to payments made to outside vendors (not for work performed by the lobbyist or the lobbyist support staff)?

OPINION

No. The amount spent on the disbursement category “Preparation and distribution of lobbying materials” includes the entire cost of preparation and distribution of lobbying materials including the cost of materials, internal staff time, outside vendor fees, and any other assorted costs other than compensation paid to the lobbyist for lobbying. The inclusive nature of all disbursement categories in Schedule A is provided in Minnesota Rules 4511.0100, subpart 4, which states: “Lobbyist’s disbursements” include all disbursements for lobbying made by the lobbyist, the lobbyist’s employer or employee, or any person or association represented by the lobbyist, but do not include compensation paid to the lobbyist.”

ISSUE FOUR

Is the salary or fees paid to a lobbyist as compensation for lobbying reportable as a lobbyist disbursement?

OPINION

No. As provided in the opinions under issues two and three, lobbyist compensation is not reportable as a disbursement.

ISSUE FIVE

Are the terms “lobbying” and “lobbyist’s disbursements” as used by the Board defined?

OPINION

Yes. The terms are defined in Minnesota Rules 4511.0100, subparts 3 and 4. The disclosure reports provided to the lobbying community and Board publications provided to the public rely on and reflect the definitions provided in both Statute and Administrative Rule. Pursuant to Minnesota Statutes, section 14.38, adopted administrative rules have the force and effect of law.

ISSUE SIX

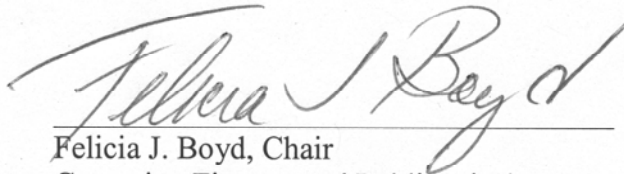
Lobbyist principals report expenditures in \$20,000 increments. If a lobbyist principal spends, for example, \$5,000 on lobbying in a given year should the lobbyist principal round the expenditure up to \$20,000 on the Annual Report of Lobbyist Principal?

OPINION

No. Minnesota Statutes, section 10A.04, subdivision 6, provides in part that a principal must report "... the total amount, rounded to the nearest \$20,000, spent by the principal during the preceding calendar year..." The reporting requirement is to round to the nearest \$20,000, not necessarily the next highest \$20,000.

Principals that wish to disclose a more precise statement of their lobbying activity may report the actual amount spent on lobbying without rounding to the nearest \$20,000.

Issued August 21, 2007

A handwritten signature in cursive script, reading "Felicia J. Boyd", written over a horizontal line.

Felicia J. Boyd, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.01 Definitions.

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.04 Lobbyist reports.

Subd. 6. **Principal reports.** (a) A principal must report to the board as required in this subdivision by March 15 for the preceding calendar year.

- (b) The principal must report the total amount, rounded to the nearest \$20,000, spent by the principal during the preceding calendar year to influence legislative action, administrative action, and the official action of metropolitan governmental units.
- (c) The principal must report under this subdivision a total amount that includes:
 - (1) all direct payments by the principal to lobbyists in this state;
 - (2) all expenditures for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns related to legislative action, administrative action, or the official action of metropolitan governmental units in this state; and
 - (3) all salaries and administrative expenses attributable to activities of the principal relating to efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units in this state.

4511.0100 DEFINITIONS.

Subp. 3. **Lobbying.** "Lobbying" means attempting to influence legislative action, administrative action, or the official action of a metropolitan governmental unit by communicating with or urging others to communicate with public officials or local officials in metropolitan governmental units. Any activity that directly supports this communication is considered a part of lobbying.

Subp. 4. **Lobbyist's disbursements.** "Lobbyist's disbursements" include all disbursements for lobbying made by the lobbyist, the lobbyist's employer or employee, or

any person or association represented by the lobbyist, but do not include compensation paid to the lobbyist.

4511.0600 REPORTING DISBURSEMENTS.

Subp. 5. **Specific disbursement categories.** Disbursements must be reported based on the categories in items A to I.

A. "Lobbying materials" includes the cost of production, purchase, or other acquisition of materials that directly support lobbying.

B. "Media costs" includes the cost of media space or time used for lobbying activities. The cost of preparation of materials for use in the media is reported in the lobbying materials category.

C. "Telephone and communications" includes costs for local and long-distance telephone services, electronic mail, pagers, cellular telephones, facsimile distribution services, telegraph, and other communications services.

D. "Postage and distribution" includes costs of postage from the United States Postal Service as well as other distribution costs associated with lobbying activities.

E. "Fees and allowances" includes fees for consulting or other services as well as expenses associated with those services.

F. "Entertainment" includes costs of all entertainment associated with any situation where lobbying activities take place.

G. "Food and beverages" includes costs of all food and beverages associated with any situation where lobbying activities take place.

H. "Travel and lodging" includes costs of all travel and lodging associated with any lobbying activity, excluding the costs of the lobbyist's own travel to accomplish the lobbying activity.

I. "Other disbursements" includes general administration and overhead and any other lobbyist disbursements not reported in other categories.

4511.0700 REPORTING COMPENSATION PAID TO LOBBYIST.

Subpart 1. **Reporting by lobbyist.** Compensation paid to a lobbyist for lobbying is not reportable by the lobbyist as a lobbyist disbursement.

Subp. 2. **Reporting by principal.** Compensation for lobbying paid by a lobbyist principal to a lobbyist or to the employer of a lobbyist must be included when determining the spending level categories for reporting by the lobbyist principal.

State of Minnesota
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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: Application of Gift Prohibition to Random Drawings

ADVISORY OPINION 393

SUMMARY

A public official who is a member of a formal group, the majority of whose members are not officials, may enter a random drawing offered by a lobbyist principal.

FACTS

As a public official you ask for an advisory opinion from the Campaign Finance and Public Disclosure Board (the Board), based on the following facts:

1. The state agency in which you serve is a member of a national organization. The national organization has a formal organization with officers, a mission, a protocol for becoming a member of the organization, and membership from across the country.
2. The national organization holds an annual conference. The public officials from Minnesota who attend the annual conference are a minority of the total membership in attendance.
3. The conference provides areas for vendors to set up display booths for the products and services they offer. Many of the vendors provide the opportunity for conference attendees to enter a random drawing for a prize at the display booth. The conference attendees may enter the drawing by placing their business card in a container, filling out an entry slip, or other similar methods. Any conference attendee may enter the drawing. The prize given to the person selected in the drawing varies from nominal value (pen, golf balls, etc.) to items with substantial value (personal electronics, etc.).
4. Some of the vendors who maintain display booths and offer the random drawings for prizes may be a lobbyist “Principal”, as defined in Minnesota Statutes, section 10A.01, subdivision 33. The officials who attend the conference may not know if a vendor is a lobbyist principal in Minnesota.

ISSUE ONE

May a public official enter a random drawing held by a lobbyist principal while attending the conference described in the facts of this opinion?

OPINION

Yes. While gifts from lobbyists and lobbyist principals to public officials are generally prohibited Minnesota Statutes, section 10A.071, subdivision 3 (b)(1), provides an exception for gifts that are given because of the official's membership in a group. This statute further provides that to qualify for the exception the majority of members of the group must not be "officials" as defined in Chapter 10A, and that an equivalent gift is given to the other members of the group.

In prior opinions (see Advisory Opinions 220, 273, 335 and 361) the Board has provided that to qualify for this exception to the gift prohibition a group must have a formal organization and purpose and a membership that is well defined and not self selecting. As provided in the facts of this advisory opinion the nature of the national organization and its membership meet this standard.

While formulating this opinion the Board considered whether a drawing was an equivalent gift given to all members of the group. While it is unlikely that all members of the group in attendance at the conference will enter any given drawing the opportunity to do so is extended to all attendees. As originally provided in Advisory Opinion 273 and restated here, making a gift available to all members of the group is sufficient to meet this requirement, it is not necessary for all members to accept the gift. The "gift" offered by the vendor is the benefit of entering a drawing with the potential right to receive a prize if selected.

As with all advisory opinions issued by the Board this opinion applies only to the fact situation provided by the requestor. The gift prohibition would apply, for example, for an official winning a prize from a drawing held by a lobbyist principal at a trade show where the attendees are not members of any formal group, or where the majority of the members of a group are public officials.

ISSUE TWO

Does the value of the potential chance to win change the answer to Issue One?

OPINION

No. The exception to the gift prohibition provided for membership in a group provided in Minnesota Statutes, section 10A.071, Subdivision 3 (b)(1) is not limited to gifts of a particular value.

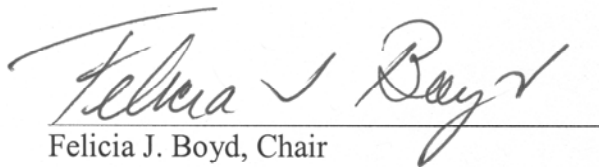
ISSUE THREE

If an official wins a prize from a random drawing while attending a conference in an official capacity does the official or the governmental entity that the official represents own the prize?

OPINION

Minnesota Statutes Chapter 10A does not contain provisions that relate to this issue. Therefore, the Board has no opinion on Issue Three. The requestor may wish to confer with their legal counsel on other state statutes that may apply.

Issued October 9, 2007

A handwritten signature in cursive script that reads "Felicia J. Boyd". The signature is written in dark ink and is positioned above a horizontal line.

Felicia J. Boyd, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.01 DEFINITIONS.

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.

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**THE FOLLOWING ADVISORY OPINION, ORIGINALLY ISSUED AS NON-PUBLIC DATA, HAS
BEEN RELEASED AS PUBLIC DATA PURSUANT TO A CONSENT FOR RELEASE OF
INFORMATION SIGNED BY THE REQUESTER**

**RE: Payment of Public Official's Expenses of Participation in Television or Radio
Messages**

ADVISORY OPINION 394

SUMMARY

The production and broadcast of a public service announcement or paid message featuring a public official does not constitute a contribution to the official's principal campaign committee where the purpose of the message is not to influence the nomination or election of the official. Payment by a lobbyist principal of transportation, meals, or lodging for an official to participate in the production of a television or radio announcement is a prohibited gift to the official unless consideration of equal or greater value is received by the lobbyist principal.

State of Minnesota
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THIS ADVISORY OPINION IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued to: Karen Janisch, General Counsel to the Governor
Office of Governor Tim Pawlenty
130 State Capitol
75 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

RE: Public Official's Participation in Public Service Announcements

ADVISORY OPINION 394

SUMMARY

Where consideration of equal or greater value is received by a provider of services, those services do not constitute a gift to the recipient. The production and broadcast of a public service announcement or paid educational message featuring a public official does not constitute a contribution to the official's principal campaign committee where the purpose of the message is not to influence the nomination or election of the official.

FACTS

As the legal representative for Governor Tim Pawlenty, you ask the Campaign Finance and Public Disclosure Board (the "Board"), for an advisory opinion based on the following facts presented in the request or in subsequent communication with Board staff:

1. As a public official, the Governor receives requests to appear in public service announcements or other types of radio or television spots produced and aired by non-state entities.
2. These requests may ask the Governor to participate in a public service announcement related to a charitable cause or to appear in a television or radio spot promoting education or awareness about a matter of public concern or a public policy issue. The spots that are produced may be aired without charge as public service announcements or may require payment to the media outlet and air as paid messages. The messages produced are referred to hereinafter as "spots" or "production(s)" whether they are public service announcements or paid messages.
3. The requests for the Governor's participation are made to the Governor's official office. All activity related to the Governor's participation would be handled by the Governor's office without direction or control from the Governor's principal campaign committee.

4. The Governor's participation in these spots is in his capacity as Governor of Minnesota, not in his capacity as a private citizen.
5. If the Governor is required to travel to the location of the production, the Governor's office attempts to schedule the production at a time when the Governor will already be at the location on other business. However, it is possible that the Governor could accept a request to appear in a production that would require travel solely for that purpose.
6. It is the policy of the Governor's Office that the state not incur any expenses directly related to the Governor's appearance in a production. For that reason, if such expenses are incurred, the producer is required to pay them, either directly to the providers of the services or by means of reimbursement to the Office of the Governor.
7. The producers do not pay any expenses of the Governor not directly related to the Governor's appearance in the production.
8. No honoraria or appearance fee is paid either to the Governor or the state for the Governor's appearance in a production.

INTRODUCTION

You present three scenarios for Board consideration. With respect to each scenario, you ask the Board's opinion on the following questions:

1. Does any aspect of the transaction result in a contribution to the principal campaign committee of the Governor?
2. If the producer of the spot is a lobbyist or lobbyist principal, does the producer's payment of the Governor's expenses of participating in the production constitute a prohibited gift under Minnesota Statutes, Section 10A.071?
3. Does the described activity raise other issues or potential violations under Minnesota Statutes Chapter 10A?

SCENARIO ONE

Public Service Announcements for a Charitable Cause

The Governor receives requests from charitable non-profit groups asking that he appear in television or radio public service announcements. The Governor's reason for appearing in such spots would be to promote matters such as volunteerism, charitable actions, and public awareness or action relating to public issues. The decision to create the spot, its subject matter, and the airing of the spot would be determined by the charitable organization and the media outlets it uses.

If the Governor's office agrees to participate, the Governor would be made available to record the spot and approve or otherwise prepare the script for the spot. All production costs or costs related to airing the spot, if any, would be borne by the requesting entity and/or the media outlets airing the public service announcement.

SCENARIO TWO

Request to a National Organization to Have the Public Official Participate in Radio or Television Spots Providing Education on Public Policy Issues.

The Governor is the leader of a national organization of state officials. As part of his leadership duties he is pursuing a national initiative to promote clean energy actions across the states. A commercial cable television group has approached the national organization with a request that the Governor participate in a series of public service announcements that tie in with the Governor's initiative. For example, the announcements might include educational spots on clean energy options, energy conservation, or environmentally friendly lifestyle choices.

The commercial television channel will pay all production costs and the spots will be aired on the groups cable channels. The content will be determined by the producers, the national organization, and the Governor.

SCENARIO THREE

Request to Participate in an Environmental Public Policy Advertisement.

A national non-profit environmental group wishes to produce one or more television spots, each of which would feature governors of various states from both major political parties. These spots would not be public service announcements, but would be paid-for advertisements sponsored and paid for by the group. The spots would promote state level legislative action and federal legislative action on environmental issues, climate change, clean energy, alternative fuels, and similar subjects.

The group engages in federal lobbying but does not presently conduct any Minnesota lobbying, as defined in Minnesota Statutes Chapter 10A.

The national group would produce the spots and provide the content, subject to input from the participating governors, and would decide when and where the spots will run. The spots may be run in several states, including Minnesota and states not represented by the participating governors.

The Governor's intent in participating would be to promote the issues of public concern and raise awareness that state level actions can create positive changes for all states. It is possible that a spot might ask listeners to contact their legislators concerning legislative action supporting the subjects being promoted.

Introduction

The requestor presents three scenarios and asks three questions about each scenario, all as described above. Although the three scenarios present variations on the same theme, the Board does not find any differences in them that would result in a different legal conclusion under Minnesota Statutes Chapter 10A, the Ethics in Government Act, which the Board administers. Therefore, the Board considers the three scenarios together.

In each scenario, the Governor will participate in the production of a form of advocacy message that may involve charitable, environmental, or policy issues. In no case is the Governor's principal campaign committee involved.

For the purposes of this Opinion, the Board assumes the following to be true in each case:

- (1) the costs of reasonable travel, lodging, and meals for the Governor directly related to and required for his participation the production are paid by the producer, either directly to the providers or by reimbursement to the state;
- (2) the producer does not pay any expenses of the Governor beyond those reasonable expenses directly related to and required for his participation in the production; and
- (3) in no case does the state or the Governor receive any payment or honorarium for the Governor's participation in the production.

Issue One

Does any aspect of the transaction result in a contribution to the principal campaign committee of the Governor?

Services paid for by a third party that benefit a candidate may under certain circumstances be an "approved expenditure" under Minnesota Statutes Chapter 10A. An approved expenditure is a donation in kind to the candidate's principal campaign committee.

An "approved expenditure" is an expenditure made by a third party for the benefit of a candidate with the approval of the candidate. Minn. Stat. §10A.01, subd. 4. Because an approved expenditure is a specific type of "expenditure" or "campaign expenditure", it must meet the requirements of that definition as well.

Minnesota Statutes, Section 10A.01, subd. 9, defines "Campaign expenditure" or "expenditure" as a payment or purchase "made or incurred for the purpose of influencing the nomination or election of a candidate . . .".

The spots under consideration include those designed to promote charitable goals such as volunteerism or general charitable actions. They may involve educational messages or calls to action on matters such as the environment or energy issues. They may discuss public policy or public issues of the day and may advocate for those issues. They may even urge listeners to contact public officials in regard to these issues.

Nothing in the general or specific descriptions of the various spots, the production process, or the relationship of the parties suggests that the purpose of the spots is to influence the nomination or election of the Governor to any state office.

The Board recognizes that any positive public exposure may have some effect on an individual's chance of being elected. However, this possible collateral effect under the facts presented is not sufficient bring the productions within the scope of speech that is considered to be for the purpose of influencing the nomination or election of a candidate.

Issue Two

If the producer of the spot is a lobbyist or lobbyist principal, does the producer's payment of the Governor's expenses of participating in the production constitute a prohibited gift under Minnesota Statutes, Section 10A.071?

Opinion

Minnesota Statutes, Section 10A.071, generally prohibits gifts from lobbyists and lobbyist principals to Minnesota public officials, including the Governor. In determining whether any set of facts results in a prohibited gift to an official, the Board considers whether the item in question is a gift and, if so, whether any exceptions to the general prohibition of §10A.071, remove it from the prohibition.

In the scenarios under review, the gift, if there is one, is the provision of transportation, meals, and lodging required to enable the Governor to participate in production of public service announcements or paid informational announcements. Section 10A.071 includes “services” among the items that may be gifts. Minn. Rules, Chapter 4512, section 4512.0100, subp. 3, clarifies that meals may also be a gift. The Board concludes that the services of travel and lodging and the provision of meals are items which may be prohibited under Section 10A.071.

Items that may constitute gifts, nevertheless, are not gifts if the giver receives consideration of equal or greater value in return for the item.

Consideration and its value are often not subject to mathematical calculations and that holds true for the consideration in the scenarios presented in this opinion. Part of the consideration given by the official is the official’s time to travel to the location of the production rather than require the production team to come to the official’s location. Another part of the consideration is the value of the right, granted by the official to the producer, to use the official’s image, likeness, and voice in the production and, implicitly, to lend the official’s personal reputation in support of the message.

In a bona fide transaction (which application of this opinion requires) a non-profit or charitable organization is likely to weigh the benefit it expects to obtain – either in terms of public response or of accomplishing its mission – against the costs. If it does not expect the benefit of the official’s participation to outweigh the cost, the transaction is not likely to be completed.

Under the facts presented, and as further limited in the caveats discussed below, the Board concludes that sufficient consideration is provided by the Governor to remove the provision of transportation, lodging, and meals from the 10A.071 gift prohibition.

The Board recognizes that there is also an exception to the §10A.071 gift prohibition for services to assist a public official in the performance of his or her official duties. Having determined that the services described herein are removed from the definition of a gift by the transfer of consideration, the Board does not reach the question of whether the “official duties” exception would be applicable.

Issue Three

Do the transactions described in the scenarios, or the official’s participation in the resulting radio or television spots raise other issues or potential violations under Minnesota Statutes Chapter 10A?

Opinion

The Board typically limits its advisory opinions to questions of specific statutory compliance based on a given fact situation. The immediate opinion addresses compliance with the

Issue Three

Do the transactions described in the scenarios, or the official's participation in the resulting radio or television spots raise other issues or potential violations under Minnesota Statutes Chapter 10A?

Opinion

The Board typically limits its advisory opinions to questions of specific statutory compliance based on a given fact situation. The immediate opinion addresses compliance with the campaign finance and gift prohibition provisions of Minnesota Statutes Chapter 10A. The Board does not note any potential violations of those provisions that are not discussed herein.

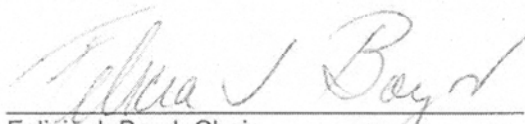
Neither does the Board note any obvious potential violations of other Chapter 10A provisions with respect to the requester. However a conclusive opinion as to whether such potential violations could occur cannot be made without reference to specific statutory provisions, which would allow the Board to obtain additional facts which may be relevant to those provisions.

This opinion does not consider the effect of any federal law or of any provision of Minnesota statutes other than those found in Chapter 10A.

Limitation

As with all advisory opinions issued by the Board, this opinion is strictly limited to the facts specified herein. Any change in the facts could result in a different opinion.

Issued October 29, 2007



Felicia J. Boyd, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Rules

10A.01 DEFINITIONS.

. . .

Subd. 4. **Approved expenditure.** "Approved expenditure" means an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the expenditure 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 the candidate, the candidate's principal campaign committee, or the candidate's agent. An approved expenditure is a contribution to that candidate.

. . .

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.

. . .

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.

. . .

Chapter 4512.

4512.0010 SCOPE.

This chapter applies to the prohibition of certain gifts pursuant to Minnesota Statutes, section 10A.071.

4512.0100 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to this chapter and Minnesota Statutes, section 10A.071. The definitions in chapter 4501 and in Minnesota Statutes, chapter 10A, apply to this chapter.

. . .

Subp. 3. **Gift.** In addition to those categories specified in Minnesota Statutes, section 10A.071, subdivision 1, the following are included within the definition of gift:

A. meals and entertainment;

. . .

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: Activities Related to a Promoting or Defeating a Ballot Question; Political Fund
Registration Requirement**

ADVISORY OPINION 395

SUMMARY

A statement identifying a constitutional amendment ballot question and explaining reasons that passage of the amendment would benefit the state of Minnesota is an action to promote a ballot question. If an organization spends more than \$100 to promote a ballot question, it must register a political fund with the Board and make its ballot question expenditures through that fund.

FACTS

As the representative of a non-profit corporation registered in Minnesota ("the Organization"), you ask the Campaign Finance and Public Disclosure Board (the "Board"), for an advisory opinion based on the following facts:

1. The board of the Organization recently voted to support a constitutional amendment that will be on the general election ballot this year.
2. The Organization's board has approved a statement of the reasons the board believes passage of the amendment would benefit Minnesota.
3. Neither the board's resolution voting to support the amendment nor the statement it approved expressly urges voters to vote for the amendment.
4. The Organization plans to put the statement on its internet site and to publish the statement in its newsletter.
5. The newsletter would be distributed based on its regular distribution list.

Introduction

A constitutional amendment is an item that will be on the general election ballot and may be voted on by all voters in the state. As such, it falls within the definition of a “ballot question” under Minnesota Statutes, Section 10A.01, subd. 7.

The Organization is an association under Minnesota Statutes, Section 10A.01, subd. 6, and, as such, is within jurisdiction of statutes governing political activities of associations. Under Minnesota Statutes, Section 10A.12, an association may not “make any . . . expenditure to promote or defeat a ballot question unless the . . . expenditure is made from a political fund.”

This Advisory Opinion request presents two questions which are addressed separately below.

Issue One

Do the actions proposed to be undertaken by the Organization constitute actions for the purpose of promoting a ballot question?

Opinion

Where the words of a statute are clear, the Board interprets them according to their common meaning. The phrase “to promote or defeat a ballot question” as applied to the purpose of an expenditure is clear. An action to promote a ballot question is an action intended to make it more likely that the ballot question will pass when voted on in the general election.

Although the Board does not have the specific text of the statement that the Organization proposes to publish, sufficient facts have been presented to characterize the statement.

It appears that the statement will reference the constitutional amendment ballot question and the fact that voters will be able to vote on the measure in the November elections. The statement will also indicate that the Organization’s board is in favor of passage of the amendment. Finally, the statement will explain why the Organization’s board believes that passage of the measure would benefit Minnesota.

Taken as a whole, the proposed statement is clearly intended to positively influence the chances for the ballot question to pass. This constitutes promotion of the ballot question and brings the activities within the jurisdiction of Chapter 10A. Express words such as “vote for” are not required in order to make a statement of a type that promotes a ballot question.

Issue Two

Do the actions proposed to be undertaken by the Organization require it to organize and register a political fund under Minnesota Statutes Chapter 10A?

Minnesota Statutes, Section 10A.12, states that “any” ballot question expenditure by an association must be made through a political fund. However, under Minnesota Statutes, Section 10A.14, a political fund is not required to register with the Board until after it has received contributions or made expenditures in excess of \$100.

The Board has never assumed jurisdiction over an association or its related political fund until the fund has met the statutory threshold requiring registration with the Board. However, once

an association spends more than \$100 to promote a ballot question, it must register a political fund and the Board's jurisdiction is established. Thus, the Organization's obligation to register and report depends on whether it has made expenditures in excess of \$100 to produce the proposed statement and to publish it online and in the Organization's newsletter.

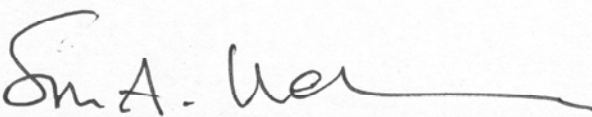
When considering the level of expenditures required to trigger a registration requirement, the actual cost incurred by an entity is examined.¹ The value of time spent by unpaid volunteer board members of the Organization is not included in the cost. The cost of paid staff time in preparation and board adoption of the statement is included. Additionally, a reasonable portion of the cost of publishing the Organization's web site and its newsletter must be attributed to the total cost of publication of the statement.

The facts do not provide a sufficient basis on which to render an opinion as to whether the Organization's proposed activities will meet the expenditure threshold that would require it to register a political fund with the Board. It will be up to the Organization to make that determination.

The Board notes that most corporate political activity is prohibited by Minnesota Statutes, Section 211B.15. However, corporate activity related to ballot questions is specifically permitted under that statute. The Board has stated its opinion in the past that the 211B authorization for this corporate ballot question activity does not relieve a corporation from the Chapter 10A requirements regarding formation of a political fund to conduct ballot question activities. The Board sees no basis for a different conclusion in the immediate matter.

¹ The Board recognizes that when considering the value of an in-kind donation provided by one registered entity to another, a different valuation analysis is used; based on the fair market value of the benefit received by the recipient of the in-kind donation.

Issued April 15, 2008



Sven Wehrwein, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and 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. 7. **Ballot question.** "Ballot question" means a question or proposition that is placed on the ballot and that may be voted on by all voters of the state. "Promoting or defeating a ballot question" includes activities related to qualifying the question for placement on the ballot.

10A.12 POLITICAL FUNDS.

Subdivision 1. **When required.** An association other than a political committee or party unit may not contribute more than \$100 in aggregate in any one year to candidates, political committees, or party units or make any approved or independent expenditure or expenditure to promote or defeat a ballot question unless the contribution or expenditure is made from a political fund.

. . .

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.

. . .

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.

. . .

Subd. 4. **Ballot question.** A corporation may make contributions or expenditures to promote or defeat a ballot question, to qualify a question for placement on the ballot unless otherwise prohibited by law, or to express its views on issues of public concern. A corporation may not make a contribution to a candidate for nomination, election, or appointment to a political office or to a committee organized wholly or partly to promote or defeat a candidate.

. . .

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RE: Gift to officials of a commercially available digital video disk

ADVISORY OPINION 396

SUMMARY

Minnesota Statutes, Section 10A.071 prohibits a lobbyist principal from providing to officials a commercial digital video disk that sells to the public at a retail price of approximately \$19.

FACTS

As a registered lobbyist and the representative of a lobbyist principal ("the organization") as defined in Minnesota Statutes, Section 10A.01, subd. 33, you ask the Campaign Finance and Public Disclosure Board ("the Board"), for an advisory opinion based on the following facts:

1. The organization conducts an annual lobby day during which participants visit the state capitol and engage in conversations with legislators.
2. The organization has become aware of a commercially available documentary produced in digital video disk format (DVD) that focuses on issues that are of concern to the organization. The organization was not involved in the production of the DVD.
3. The disk containing the documentary may be purchased by the organization in bulk quantities for \$11.00 or by consumers on the internet for approximately \$19. The organization proposes to make copies of the documentary disk available to its members, lobby day participants, or other interested persons who could then offer them to legislators and to the Governor.
4. The documentary focuses on experiences of families that are dealing with issues that are the subject of the organization's lobbying and legislative agenda. According to the organization, it examines the issues in-depth and helps expose the underpinnings of the problems the organization seeks to address through the legislative process.
5. The organization's stated purpose in distribution of the documentary is to assist elected officials in making decisions about legislation affecting groups for which the organization advocates and in preparing for votes on that legislation.

Issue

May a lobbyist principal provide to its members and others for distribution to officials a commercial documentary digital video disk to assist those officials in making decisions about legislation and in voting on that legislation?

Opinion

The transfer a digital video disk (DVD) to officials as described in the facts is a gift requested by a lobbyist principal and is prohibited unless it falls within one of the exceptions to the general gift prohibition.

Two exceptions are potentially applicable. The first exception (the “services exception”) is stated in Minnesota Statutes, Section 10A.071, subd. 3(2), which provides an exception for:

“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”.

The overriding requirement of the §10A.07, subd. 3(2) services exception is that it is for providing “services”. To constitute the “service” of providing information, it is necessary that that the lobbyist or principal have a significant role in the creation, development, or production of the information. Giving official an informational item purchased in the public marketplace is not a service within the meaning of the exception and is, thus, a prohibited gift.

The second exception is in Minnesota Statutes, Section 10A.071, subd. 3(6), which provides an exception for :

“informational material of unexceptional value”.

The Board has previously addressed the exception for informational materials of “unexceptional value” and under that exception has permitted a calendar valued at \$3.50 and an audio tape valued at \$4 - \$6.

The Board notes that when the legislature amended a similar exception to remove the words “insignificant value”, it replaced the words with: “costing \$5 or less”. In the 2008 session when the legislature made an exception for plaques, the exception was limited to items that had a resale value of \$5 or less.

Although “unexceptional value” has not yet been specifically defined, the Board concludes that a gift with a retail cost of approximately \$19 exceeds the upper limit for gifts of unexceptional value.

The gift proposed by the requester is does not fall within an exception to the general prohibition of Minnesota Statutes, Section 10A.071 and is, thus, prohibited.

Issued June 17, 2008

/s/ Sven A. Wehrwein
Sven A. Wehrwein, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and 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;

. . . .

(5) a trinket or memento costing \$5 or less;

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RE: Eligibility for spending increase for candidate running for office for the first time

ADVISORY OPINION 397

SUMMARY

Candidate is entitled to increase in spending limit for candidates running for office for the first time where candidate's prior activities were so insignificant as to not constitute "running for office".

FACTS

As the chair of a principal campaign committee registered with the Campaign Finance and Public Disclosure Board ("the Board"), you ask the Board for an advisory opinion on behalf of the principal campaign committee's candidate (" the Requester") based on the following facts provided by the Requester and Board Records:

1. Less than two weeks before the close of filings for office, the incumbent legislator in the Requester's district announced that the incumbent would not run for re-election.
2. The district called a special endorsing convention to endorse a candidate for the November election which was held the night before filings for election closed.
3. The Requester appeared at the endorsing convention seeking the party's endorsement. However, the party endorsed another candidate.
4. Two days before the convention the Requester's father spent \$263.22 for signs and printed materials to use at the convention. The only other expenditures by the Requester during the election cycle were \$48.61 for checks and bank service charges.
5. At the time of the convention, the Requester did not have a principal campaign committee registered with the Board. The principal campaign committee was registered within the 14 days that a candidate has to register after raising or spending more than \$100.
6. The Requester raised \$\$200 through two contributions from a relative and \$200 through a contribution from the political fund of the local union of which the Requester is a member.

7. Because he had not received the party's endorsement, the Requester did not file for office and did not engage in fundraising or spending other than as indicated in paragraphs 4 and 6 above.
8. The Requester now wishes to run for the House of Representatives in another district and asks if he is eligible for the campaign expenditure limit increase available to candidates running for office for the first time.

Issue

Does the Requester's raising of \$400 and spending less than \$265 on signs for an endorsing convention for a seat in the legislature constitute a previous run for that office that will disqualify the Requester from the ten percent increase in the campaign expenditure limit for candidates who are running for an office for the first time?

Opinion

Minnesota Statutes, Section 10A.25, subd. 2(d) provides that:

"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."

Among the offices for which the subdivision specifies campaign expenditure limits is the office of state representative.

The Requester registered a principal campaign committee for the office sought in a different district during the previous election cycle, but never filed for office or sought the support of the general voting public.

In the previous election cycle, the Requester met the definition of a "candidate" under Minnesota Statutes Chapter 10A since he raised and spent more than \$100 to influence his nomination at the endorsing convention. However, the statutory language that qualifies a person for a campaign expenditure limit increase is not based on whether an individual has been a "candidate" for the office before, but whether the person has "run for office" previously. Meeting the minimal financial threshold for becoming a candidate does not necessarily constitute running for office.

In determining whether a candidate ran for office in a previous election cycle, the Board examines a number of relevant factors. Among these factors are (1) if the candidate sought and did not receive party endorsement, did the candidate, nevertheless, file for election to that office; (2) did the candidate incur any campaign expenditures during the election cycle after the endorsing convention; (3) what was the scope and timing of the candidate's prior fundraising efforts; (4) what was the dollar level of the candidate's fundraising during the prior election cycle; (5) what was the candidate's overall level of campaign expenditures and noncampaign disbursements during the prior election cycle?

Examining these factors in view of the facts presented, the Board notes that the requester did seek his party's endorsement in the previous election cycle. He could not have made the

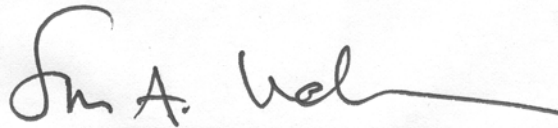
decision to do so until the incumbent announced the intention not to run again; less than two weeks before filings for office closed. The Requester's only expense, which was incurred prior to the endorsing convention, was for less than \$265 for signs for the convention. After the convention, the Requester had no further campaign spending activity.

The Requester did not engage in general fundraising. His minimal fundraising efforts were directed to a relative and the political fund of the union of which he was a member. Because the Requester spent more than \$100 in 2006 to influence his nomination, he was required to register a principal campaign committee with the Board.

The Requester's efforts were directed solely toward influencing his nomination as the party's candidate at its endorsing convention. He spent no money and engaged in no efforts to influence voters in the general election. This is not to say that every candidate who loses the endorsement and does not file for office will be found eligible for the campaign expenditure limits increase for a person who has not previously run for office. Each matter must be evaluated on its own merits using the factors listed above as well as any other factors relevant to the particular facts.

Considering all of the facts, the activities of the Requester do not constitute "running for office" as that phrase is used in Minnesota Statutes, Section 10A.25, subd. 2(d). The Requester is eligible for the spending increase prescribed in the statute.

Issued May 16, 2008

A handwritten signature in black ink, appearing to read "Sven A. Wehrwein". The signature is written in a cursive style with a long horizontal stroke at the end.

Sven A. Wehrwein, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Rules

10A.25 SPENDING LIMITS.

Subdivision 1. **Limits are voluntary.** The expenditure limits imposed by this section apply only to a candidate who has signed an agreement under section 10A.322 to be bound by them as a condition of receiving a public subsidy for the candidate's campaign.

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, \$2,393,800;
- (2) for attorney general, \$399,000;
- (3) for secretary of state and state auditor, separately, \$199,500;
- (4) for state senator, \$59,900;
- (5) for state representative, \$30,100.

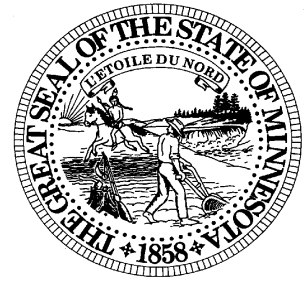
(b) In addition to the amount in paragraph (a), clause (1), a candidate for endorsement for the office of lieutenant governor at the convention of a political party may make campaign expenditures and approved expenditures of five percent of that amount to seek endorsement.

(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*



Date: August 17, 2010

To: Advisory Opinion Files
Opinion 398

From: Gary Goldsmith, Executive Director

Telephone: 651-296-1721

The analysis and opinions set forth in Advisory Opinion No. 398, regarding the interpretation of “express advocacy” and “independent expenditure”, were superseded by the Board’s subsequent decision in *Matter of the Complaint of Novack regarding Minnesota Majority*, which is available at:

http://www.cfboard.state.mn.us/bdinfo/investigation/120208MN_Majority.pdf

Accordingly, the analysis and opinions in Advisory Opinion No. 398, regarding the interpretation of “express advocacy” and “independent expenditure”, are no longer effective.

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

RE: Actions to influence the nomination or election of candidates; requirement to establish a political fund.

ADVISORY OPINION 398

Note concerning the public version of this opinion

Information that would identify the requester of this opinion has been eliminated from this public version. Additionally, minor issues that might identify the requester and were not part of the main subject of the opinion have been omitted.

SUMMARY

Whether actions taken by an organization will trigger a requirement that the organization establish a political fund and report the costs of those actions to the Board through the fund depends on whether the actions are to influence the nomination or election of candidates. This determination is fact-based and can be made only with reference to the specific facts describing the subject actions of the organization. The request describes activities that would clearly not be considered to be for the purpose of influencing the nomination or election of candidates and others which would clearly be to influence the nomination or election of candidates. It also describes actions in more general terms for which a specific determination of purpose cannot be made based on the information available.

FACTS

As the representative for an association (“the Organization”) that is not registered with the Campaign Finance and Public Disclosure Board (“the Board”), you request an advisory opinion based on the following facts:

1. The Organization intends to form a working group of its members to monitor and comment on campaign conduct for the purposes of encouraging responsible campaign behavior, assisting voters in reaching informed decisions, and supporting appropriate conduct by individuals running for office.
2. The Organization plans to participate in several activities to educate the public on the importance of issues with which it is concerned and also to influence campaign conduct of candidates.

Introduction

The Organization's advisory opinion request includes a number of scenarios describing possible activities in which the Organization might engage. The scenarios are presented as issues below, with the facts stated in each issue supplementing the general fact statement above.

Each issue scenario raises in a different way the question of whether the Organization's costs of the described actions constitute campaign expenditures (which include both independent expenditures and approved expenditures related to a candidate) or are of an informational or educational nature outside the regulation of Minnesota Statutes Chapter 10A.

The characterization of the expenditures is important because the Organization must register a political fund if it makes independent expenditures or approved expenditures of more than \$100.

A "campaign expenditure" or "expenditure" is 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.

An "independent expenditure" is an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent.

An "approved expenditure" is 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 that is made in with the cooperation or approval of the candidate.

Issue One

Will the Organization be required to create a political fund if the Organization educates the public about candidate qualifications without naming any candidate specifically, and about issues in general and the importance of those issues by:

1. Holding symposiums with the general public to provide an informational overview of the topics?
2. Issuing a news release or holding of a press conference to disseminate information to the public about campaign conduct practices and the importance of the issues it advocates?
3. Making use of paid media sources to provide information to the general public about campaign practices and the importance of the issues it advocates?

Opinion

The efforts described in this scenario do not involve mentioning a named candidate, which is the first threshold for both a campaign expenditure and an independent expenditure. Therefore, the efforts do not constitute the making of independent expenditures or expenditures to influence the nomination or election of a candidate.

Based on the fact that they do not constitute campaign expenditures or independent expenditures, the costs of the Organization's efforts for the described activities do not trigger a requirement that the Organization register a political fund with the Board.

Issue Two

Will the Organization be required to create a political fund if the Organization educates the public about the qualifications and experience of various candidates for office by:

1. Holding symposiums with the general public to provide an informational overview of the qualifications of each of the candidates?
2. Issuing a news release or holding a press conference to disseminate information to the public about the various candidates for office?
3. Making use of paid media sources to provide information to the general public about the qualifications of the various candidates for office?

Opinion

In this scenario, the Organization moves from the general discussions of Issue One to a more specific discussion of the qualifications and experience of named candidates.

If an organization spends more than \$100 to influence the nomination or election of candidates, the organization must register a political fund with the Board and make all of its campaign expenditures through that fund. Essentially, the Organization asks in this issue whether the described communications will be considered by the Board to be for the purpose of influencing the nomination or election of candidates.

Whether a symposium, news release, press conference or paid media advertisement is to influence the nomination or election of a candidate can only be determined by examination of the communication itself. Under the facts that are provided, no such examination is possible. Therefore, the Board can only state the general rule.

It is well established that a communication expressly advocating the nomination or election (or defeat) of a clearly identified candidate is a communication to influence the nomination or election of a candidate. However, when a communication clearly identifies a candidate, it is not necessary that the communication use specific words of express advocacy, such as "vote for", "elect", "support" or others for it to be for the purpose of influencing the nomination or election of a candidate. A communication that omits the specific words of express advocacy may, nevertheless, be found to be for the purpose of influencing to influence the nomination or election of a candidate based on an examination of the communication.

Without access to the actual communication, the Board is unable to render a more specific opinion.

Issue Three

Will the Organization be required to create a political fund if the Organization (a) prepares and distributes a pledge relating to issues it believes are important (“the Pledge”); (b) asks all candidates to sign the Pledge; and (c) engages in any of the following activities:

1. Issues a news release or holds a press conference to disseminate information to the public about which candidates have or have not signed the Pledge?
2. Making use of paid media sources to provide information to the general public about which candidates have or have not signed the Pledge?
3. Monitors compliance with any Pledge signed by a candidate and makes public statements regarding the adherence to the Pledge by specific candidates?
4. If any of the foregoing activities trigger registration and reporting requirements, will the political fund be required to report the costs incurred in the preparation and distribution of the Pledge or only the costs incurred in conducting the activities listed above?

Opinion

The Organization has developed a Pledge document (“the Pledge”). In the Pledge, the Organization lists a number of qualifying clauses, some of which state facts and some of which state the Organization’s positions. By signing the Pledge candidates affirm these clauses and agree to govern their conduct in accordance with the terms of the Pledge.

This Issue presents essentially the same question as Issue Two: Do the communications described in sections 1 through 3 of the Issue constitute actions to influence the nomination or election of a candidate? The answer, likewise is the same as that expressed in Issue Two and would require reference to the actual communications to be conclusive.

However, the statement of this issue includes more facts than the previous issue statements. In order to have a meaningful communication piece, the Organization will need to explain that it prepared and circulated the Pledge. This clarifies the Organization’s own position with regard to the issues covered by the Pledge. The Organization will also name specific candidates and indicate which of them signed the Pledge to abide by the Organization’s conditions and which did not.

Without the benefit of the actual communications pieces that may be produced in this scenario, it is not possible to definitively conclude whether they have some purpose other than to influence the nomination or election of candidates. However, given the facts that are known, it would appear that the cost of the described communications would be expenditures that would trigger a registration requirement.

Once an endeavor of an organization becomes an effort to influence the nomination or election of candidates, the entire cost of the endeavor is reportable. Thus, if the communications described in this Issue are to influence the nomination or election of candidates, then the cost of preparation and distribution of the Pledge are also reportable.

Issue Four

Will the Organization be required to create a political fund if the Organization recommends that individuals contact candidates and ask them to sign and abide by the Pledge if this recommendation is communicated through:

1. The issuance of a news release or holding of a press conference to make the recommendation?
2. Making use of paid media sources to communicate the recommendation?

Opinion

Communications that do not list any candidates but include a general call to contact all candidates regarding the Pledge would not constitute actions to influence the nomination or election of candidates. The same conclusion would likely be reached if the communication lists all candidates without any indication as to which have and which have not signed the Pledge, although the specific facts of the communications could change that result.

If the communications include a list only of those candidates who have not signed the Pledge, or the communications name one or more specific individual candidates who have not signed and urge individuals to contact these candidates, the communication could be an activity to influence the nomination or election of a candidate. As with the previous scenarios, a definitive answer cannot be given due to the lack of specific facts.

Issue Five

Will the Organization be required to create a political fund if the Organization recommends that voters not support candidates who do not abide by the Pledge if such recommendation is communicated through:

1. The issuance of a news release or holding of a press conference to make the recommendation?
2. Making use of paid media sources to communicate the recommendation?

Opinion

This scenario presents the clearest case of campaign spending: communications expressly advocating the election or defeat of clearly identified candidates. This conclusion assumes that the communication identifies those candidates who do not abide by the Pledge. If the total cost of the suggested communications exceeds \$100, registration of a political fund will be required.

Issue Six

Will the Organization be required to create a political fund if the Organization communicates with candidates about compliance with the Pledge or complaints received with respect to whether or not a candidate's actions are consistent with the Pledge by meeting with candidates, investigating complaints and communicating the results of such investigation through:

1. The issuance of a news release or holding of a press conference to report the findings?

2. Making use of paid media sources to communicate the findings;

Opinion

Confidential communication with candidates about their lack of compliance or the investigation of complaints of non-compliance with the Pledge are not activities to influence the nomination or election of a candidate.

However, the publication of the results of an investigation would be subject to the same examination as described in the previous Issues to determine if the purpose of the communication is to influence the nomination or election of candidates. Without specific facts, the Board cannot issue a definitive opinion. However, for the reasons described in Issue three, it would appear that there is a strong potential that the described communications would be to influence the nomination or election of candidates.

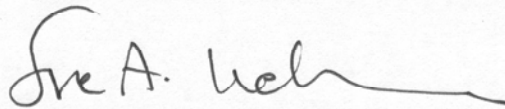
Issue Seven

In the event that any of the foregoing activities related to the Pledge require registration as a political fund, will the distribution of the Pledge to the candidates, without more, destroy the "independent" status of the expenditure under Minnesota Statutes section 10A.01, subd. 18?

Opinion

No. Mere distribution of the Pledge and follow-up to obtain the signed copies or the candidate's position not to sign the Pledge would not constitute the type of coordination necessary to make the associated costs an approved expenditure on behalf of the candidate.

Issued June 17, 2008



Sven A. Wehrwein, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and 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. 4. **Approved expenditure.** "Approved expenditure" means an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the expenditure 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 the candidate, the candidate's principal campaign committee, or the candidate's agent. An approved expenditure is a contribution to that candidate.

. . .

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.

. . .

Subd. 18. **Independent expenditure.** "Independent expenditure" means an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent. An independent expenditure is not a contribution to that candidate.

10A.12 POLITICAL FUNDS.

Subdivision 1. **When required.** An association other than a political committee or party unit may not contribute more than \$100 in aggregate in any one year to candidates, political committees, or party units or make any approved or independent expenditure or expenditure to promote or defeat a ballot question unless the contribution or expenditure is made from a political fund.

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: Contribution to Political Party Unit

ADVISORY OPINION 399

SUMMARY

Payment by an individual for services provided by a vendor to a political party unit is a donation in kind from the individual making the payment to the party unit.

FACTS

As the representative of a political party unit (“the Party Unit”) registered with the Campaign Finance and Public Disclosure Board, (“the Board”), you ask for an advisory opinion based on the following facts:

1. The Party Unit wishes to conduct an issue-oriented polling project in several areas of Minnesota. The polling will not mention any individual candidates.
2. An individual donor has agreed to pay for a large portion of the polling project with a payment directly to the polling firm.

You ask the two questions, as stated in the issues below.

Issue One

Should the individual donor’s payment be reported as an in-kind contribution to the political party unit?

Opinion

According to the facts, payment for the polling will not be made in the form of a direct contribution to the Party Unit, but by means of a payment on behalf of the party unit to the polling organization. It is apparent from the facts that the Party Unit is collaborating with the individual donor in this project and that if the project moves forward, payment by the donor will be with the approval of the Party Unit and the benefit will be accepted by the Party Unit.

A "donation in kind" is anything of value that is given to an entity registered with the Board, other than money. Donations in kind include donations of physical goods as well as of services that are either provided by the donor or paid for by the donor. The facts describe a donation in kind from the individual donor in the form of services for which the donor will pay.

Donations in kind, also often referred to as in-kind contributions, are reported as such on the schedule of contributions received by the Party unit. Nothing in the facts suggests that this in-kind contribution should be treated differently.

Issue Two

Does the transaction described in the facts raise any other concerns that might result in violations of Minnesota Statutes Chapter 10A?

Opinion

The limited facts stated do not give rise to other potential Chapter 10A violations.

However, if there is a relationship between the polling organization and the individual donor, the transaction described may not be entirely at arms length. In such a case, it would be important to be certain that the total compensation paid to the polling organization by the Party Unit and the individual donor represents the full fair market value of the services provided. If less than full compensation is paid and the polling organization is a corporation, a violation of Minnesota Statutes, Section 211B.13 (a statute not in the Board's jurisdiction to administer) might result.

This opinion is based on the limited facts as stated. If relevant facts are omitted or the fact situation that exists when the actual transaction occurs is different than stated above, the Board's opinion could be different. For example, if revised facts suggested that the donor's payment for the polling services was actually intended to benefit specific candidates, a different opinion might result.

Issued June 17, 2008



Sven Wehrwein, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and 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. 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.