

Advisory Opinion 416
Withdrawn by requester.

Advisory Opinion 417
Withdrawn by requester.

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

**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: Use of Information from Campaign Finance and Public Disclosure Board Records

ADVISORY OPINION 418

SUMMARY Data gathered from reports and filings submitted to the Board may be used by a nonprofit noncommercial association to distribute issue advocacy material, solicit membership in the association, and solicit contributions. An association may, for a fee, assist a nonprofit noncommercial association in the use of the data for a noncommercial purpose.

FACTS

As the legal representative of associations who wish to comply with the provisions of Minnesota Statutes Chapter 10A, you ask the Campaign Finance and Public Disclosure Board, (“the Board”), for an advisory opinion based on the following facts:

1. You represent two associations each of which wish to communicate with individuals for the purpose of providing issue advocacy communications, solicitations for memberships in the association, and solicitations for contributions to the association or to a purpose the association supports. Both associations are recognized by the Internal Revenue Service as non-profit organizations under I.R.S. Code Sections 501(c)(3) or 501(c)(4). For the purpose of this request, neither association engages in efforts to influence the nomination or election of candidates in Minnesota.
2. You represent a third association that does not typically communicate with individuals directly, but which provides services that assist other associations with their outreach and educational communications. The assistance may take the form of mailing list and database information acquisition and analysis that helps focus outreach communications to a receptive audience. The association is recognized by the Internal Revenue Service as a non-profit corporation under I.R.S. Code Section 501(c)(4).
3. The two associations described in Fact 1 have asked the association described in Fact 2 to develop information on individuals that will be used in communication and outreach efforts. The information will be extracted from a database obtained from the Board of individuals who have contributed to Minnesota political committees and funds, candidates, and political party units.
4. You are aware of the Board’s Advisory Opinion 244 which permitted the use of Board data on a revenue generating website because the website contained information about Minnesota political activity and was therefore determined by the Board to have a political

purpose. You believe that the type of communications that are listed in Fact 1 should also be viewed as having a political purpose and that the approval of the use of Board data in Advisory Opinion 244 should be extended to the purposes identified in this request.

Introduction

The requester poses a number of questions and makes several legal arguments regarding the issues raised by the request. However, the issues may be simplified and presented as two questions that will provide both the requester and other similarly situated associations with guidance on the use of data included in reports filed with the Board.

Minnesota Statutes Section 10A.35 prohibits "use" of data filed with the Board when that "use" is for a "commercial purpose." The requester essentially asks the Board to define what constitutes "use" of Board data as contemplated by the statute and, further, to determine when that use is for a "commercial purpose."

Issue One

What constitutes "use" of data from reports filed with the Board?

Opinion

The use of data acquired from reports and documents filed with the Board (Board data) is regulated by Minnesota Statutes, section 10A.35. This statute provides:

Information copied from reports and statements filed with the board, other than reports and statements filed by lobbyists and lobbyist principals, may not be sold or used by an individual or association for a commercial purpose. Purposes related to elections, political activities, or law enforcement are not commercial purposes. An individual or association who violates this section is subject to a civil penalty of up to \$1,000. An individual who knowingly violates this section is guilty of a misdemeanor.

Two approaches to the definition of "use" or "used" have been suggested. The first would result in a broad definition of the term. Under that approach, any time Board data is incorporated into a product or a form of information would be "use" of Board data. The second approach would define "use" of Board data more narrowly to mean using the names and addresses of individuals and associations that are contained within Board data for the purpose of contacting those same individuals and associations.

The Board has previously adopted the second approach to the definition of "use" of Board data. In Advisory Opinion 244, the Board permitted publication of Board data on a website for the purpose of informing the public about political contributions made in Minnesota. The website was to be supported by paid advertising and, thus, was a commercial venture. Although the Board did not articulate an analysis of the difference in between using the data to create a product and using the data to contact the subjects of the data, Advisory Opinion 244 implicitly adopted a position that including Board data in a commercial product is not "use" of the data as contemplated by Minnesota Statutes Section 10A.35.

Additional support for interpretation of the word "use" to mean use for the purpose of contacting subjects of the data is provided by the provision of the statute itemizing certain exclusions from

the prohibition on use of the data. Each of the exclusions contemplates use of the data to contact the subjects of the data.

The Board reaffirms the guidance on "use" of Board data that was first suggested in Advisory Opinion 244: Board data is "used" within the meaning of Minnesota Statutes Section 10A.35 when the names and addresses that constitute the data are used to contact subjects of the data.

Therefore, an association, including a for-profit association, may filter, improve or implement the use of Board data for a fee. Preparing or assisting in the use of Board data so that it more efficiently or effectively contacts individuals and associations does not change the use of the Board data into a commercial purpose. Similarly, if an association's use of Board data to communicate individuals or associations is not for a commercial purpose it may contract with another association, including a for-profit association, to carry out the communication.

Vendors providing enhanced Board data to associations are advised that the best practice would be for them to notify the end-users of the data of the commercial use prohibition. Use of Board data for a prohibited purpose results in a violation of Minnesota Statutes, section 10A.35, even if the end-user is unaware of the prohibition.

Issue Two

Are the uses of Board data proposed by the requestor of this opinion for a "commercial purpose" that is prohibited in Minnesota Statutes 10A.35?

Opinion

In Issue One, the Board defined use of Board data as use for the purpose of contacting the subjects of the data. In Issue Two the question becomes the type of communication that may be undertaken when Board data is used to contact individuals and associations. If the communication provided through the use of Board data is for a "commercial purpose" it will exceed the limited use of Board data provided in Minnesota Statutes, section 10A.35.

Chapter 10A does not define "commercial purpose". The word "commercial" appears more than 800 times in other Minnesota statutes not regulated by the Board. In most cases it is not defined. However, Minnesota Statutes Section 325E.26, which regulates telephone solicitations done by automatic dialing devices, is instructive. This statute provides guidance on when such contacts should be considered to be for a commercial purpose. The statute states:

"Commercial telephone solicitation" means any unsolicited call to a residential subscriber when the person initiating the call has not had a prior business or personal relationship with the subscriber, and when the purpose of the call is to solicit the purchase or the consideration of purchase of goods or services by the subscriber. Commercial telephone solicitation does not include calls initiated by organizations listed in Minnesota Statutes 2000, section 290.21, subdivision 3, clauses (a) to (e).

This definition is helpful in two respects. First, it limits commercial solicitation to those solicitations that attempt to solicit a purchase of goods or services. Second, it specifically exempts organizations listed in Minnesota Statutes 2000, section 290.21, subdivision 3, clauses (a) to (e), which are Minnesota's charitable, religious, and similar organizations.

As provided in the facts of this opinion, the associations that want to use Board data to contact individuals and associations are nonprofit organizations registered as either a social welfare advocacy organization or as an educational charity under Internal Revenue Service tax code. In this opinion, the Board will limit its guidance to the facts of the request; the associations that will use the data are organized on a nonprofit basis.

This does not mean that any use of Board data by a nonprofit association is permitted. Regardless of the status of the association, the use of Board data for a commercial purpose is prohibited. The requestor describes three reasons why the association may wish to use Board data and asks if any of the reasons are for a commercial purpose. The proposed uses of Board data are; (1) distribution of issue oriented communications, (2) to request contributions to support one or more goals of the association, and (3) to solicit individuals to join as a member of an association. Because the proposed uses of the data are distinct, the Board will evaluate each purpose separately.

Distribution of Issue Advocacy Communications

Typically an association distributes issue advocacy communications to educate the recipients on the specifics of an issue and thereby influence the recipient's opinion on that issue. Educational material is not for a commercial purpose unless a desired outcome of the issue advocacy communication is the recipient purchasing specific goods or services. As long as the issue advocacy communication is not a vehicle to sell goods or services, Board data may be used to facilitate the communication.

Request Contributions to Support a Goal of the Association

Issue advocacy communications commonly include a solicitation of a contribution to support the association's efforts on behalf of the issue. This type of solicitation is functionally no different than the requests for contributions that accompany the candidate, political party, and political committee communications that are specifically excluded from "commercial purpose" in Minnesota Statutes, section 10A.35.

A contribution made in response to a request to support the goal(s) of an association, candidate, political party, or political committee is an expression of support by the contributor. The contribution does not constitute the purchase of any discernible goods or service, therefore requesting a contribution in the circumstances described in this opinion is not for a commercial purpose.

The Board notes that requesting and collecting contributions for a purpose may, in certain circumstances, create a requirement for the association to register and report with the Board. For example, if the contributions are used for the purpose of influencing the actions of public officials, the association may become a principal under Minnesota's lobbying statutes with reporting obligations to the Board. If the purpose supported by the association is the defeat or passage of a constitutional amendment, the association may be governed by the political committee or fund registration and reporting requirements of Chapter 10A.

Solicitation of Membership in an Association

The solicitation to become a member of an association serves as another opportunity for the recipient of the communication to make a contribution in support of the goals of the association. The only real distinction is that membership in an organization creates an ongoing relationship between the individual and the association where a onetime contribution may not.

Paying for membership in an issue-oriented association may in the broadest sense provide a “service” to the individual if the association provides members with a way to receive information and communicate with other individuals who share similar views, concerns, and goals. In the Board’s opinion this type of membership service does not constitute the sale of a service that would constitute a commercial transaction. Because the solicitation of membership by, and the payment of dues to, the issue-oriented associations described in the facts of the request does not in itself result in the commercial purchase of goods or services, the use of Board data in making the solicitation is not a prohibited commercial purpose.

In some cases membership in a nonprofit association may result in the commercial purchase of defined services. For example, in Minnesota, nonprofit health care providers deliver to “members” services in exchange for payment in what are clearly commercial transactions. For the purposes of this opinion, the associations who request the use of Board data to contact potential members are limited to advocacy organizations or educational charities, and will not be providing the type of defined service benefit to members that could be seen as having a commercial purpose.

Issued October 4, 2011

/s/ John Scanlon

John Scanlon, Chair
Campaign Finance and Public Disclosure Board

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requester

RE: Disclosure related to ballot question committees

To: John Helmberger, Chairman
Minnesota for Marriage
2355 Fairview Ave N, Box 301
Roseville, MN 55113

ADVISORY OPINION 420

SUMMARY

Minnesota Statutes, Chapter 10A, provides for underlying source disclosure when a political committee accepts a contributions meeting certain statutory thresholds from an association not registered with the Campaign Finance and Public Disclosure Board. This opinion describes the statutory requirements under various scenarios presented by the requester.

FACTS

As the representative of Minnesota for Marriage ("MFM"), you ask for an advisory opinion based on the following facts:

1. Minnesota for Marriage is a broad coalition of leaders, both inter-faith and people outside the religious community, who support the Minnesota Marriage Amendment ("the Marriage Amendment") and asked the Legislature to place it on the ballot. These leaders have assembled a campaign to ensure this amendment passes.
2. MFM will engage in educational activities to promote and support the ballot issue. MFM has registered a political committee to receive contributions and make expenditures in support of the Marriage Amendment.
3. Although not stated explicitly in your request, the Board assumes the following fact for the purposes of this opinion: Minnesota For Marriage will not make contributions to candidates' principal campaign committees, will not make approved expenditures in coordination with candidates, will not make contributions to party units, and will not make contributions to political committees or funds other than those that limit their activity to making independent expenditures, ballot question expenditures, and those expenditures specified in Minnesota Statutes section 10A.121.

4. Although not stated explicitly in your request, the Board assumes the following fact for the purposes of this opinion: The donors described in the questions you pose are not registered political committees and do not have political fund accounts registered with the Board.

Based on the above statement of facts, you ask several questions about the disclosure required by Chapter 10A of Minnesota statutes as it applies to Minnesota For Marriage. The questions are listed as Issues in the opinion below.

Issue One

If MFM receives a contribution in excess of \$100 from a for-profit corporation, is MFM required to obtain and report additional information regarding the underlying source(s) of the funds contributed to MFM? If so, what is MFM required to obtain and report?

Opinion

The Board has recognized that a political committee that exists to promote or defeat a ballot question is included in the definition of an independent expenditure political committee created by the legislature in 2010. An independent expenditure political committee is a political committee that makes only independent expenditures and other expenditures specified in §10A.121. Section 10A.121 permits an independent expenditure political committee to make any expenditure other than (1) contributions to candidates or party units or (2) contributions to political committees or funds that themselves make contributions to candidates or party units. Thus an independent expenditure political committee may exist solely to promote or defeat a ballot question.

Minnesota Statutes Section 10A.27, subd. 14, provides that an association that uses revenue from the operation of a business to make contributions to an independent expenditure political committee may do so without providing any underlying source disclosure to the recipients of those contributions. For the purposes of this opinion, the Board assumes that the contribution from the for-profit corporation referenced in your question is money that constitutes revenue from the operation of a business. Thus, the corporate donor may make unlimited contributions to MFM without any underlying source disclosure.

The Board recommends that MFM secure from the for-profit corporate donor a statement that the contribution is made from revenue from the operation of a business, in order to ensure that the contribution falls under §10A.17, subd. 14. However, this recommendation is not a statutory requirement and any documentation obtained by MFM in this regard is part of its own records and is not filed with the Board.

Issue Two

If MFM receives a contribution in excess of \$100 but less than \$1,000 from a nonprofit, tax exempt organization established under Section 501(c)(4) of the Internal Revenue Code, is MFM required to obtain and report additional information regarding the underlying source(s) of the funds contributed to MFM? If so, what is MFM required to obtain and report?

Opinion

Under the assumed facts, the nonprofit corporate donor is an association not registered with the Board (an "unregistered association").

Minnesota Statutes section §10A.27, subd. 15, provides that an unregistered association that does not contribute \$5,000 or more to political committees or funds that exist to support a particular ballot question is not required to provide any disclosure of the sources of money it uses to make the contributions. If MFM receives a contribution from a nonprofit corporation, it will be required to ask the donor whether the donor has made contributions aggregating \$5,000 or more in a calendar year to political committees or funds that are established to promote or defeat the particular ballot question. If the nonprofit corporation has not made \$5,000 or more in such contributions, no disclosure of the nonprofit corporation's sources of money used to make the contribution is required.

If the nonprofit corporation has made aggregate contributions of \$5,000 or more in the calendar year to political committees or funds to promote or defeat a ballot question, it is required to provide to MFM with disclosure related to the sources of money it used to make the contribution to MFM. The disclosure statement must include itemized underlying sources, if any, and a total representing the amount attributable to sources for which itemization is not required.

To determine if any underlying source(s) of funding for the nonprofit corporation's contribution to MFM must be itemized, the donor may:

(1) Determine on a pro-rated basis, compared to the total membership dues, fees, and/or donations received by the association during the calendar year, each donor's share of the association's contribution to MFC. "Donor" in the context of this requirement means an individual or association that has paid dues or membership fees or made donations to the nonprofit corporation.

If no donor's pro-rated share is \$1,000 or more, then no itemization of underlying sources is required.

If the pro-ration method is used and if there are donors to the nonprofit corporation whose pro-rated share of the contribution to MFM is \$1,000 or more, the nonprofit corporation must itemize those donors as underlying source(s) of funding for its contribution to MFM.

(2) In the alternative, the nonprofit corporation may instead choose to allocate its contribution to MFM to specific donors to the nonprofit corporation. If it uses this method, it may select from its donors and allocate to its contribution to MFM all or part of each selected donor's dues, fees, and/or donations paid to the nonprofit corporation.

If a donor's dues, fees, and/or donations paid to the nonprofit corporation during the calendar year and allocated to the contribution to MFM total \$1,000 or more, the individual must be itemized as an underlying source.

Under either method of identifying underlying sources, it is possible that all or most of the nonprofit corporation's contribution to MFM will result from sources that are not required to be itemized. If that is the case, the donor corporation must indicate the amount of the contribution to MFM that is attributed to non-itemized underlying sources.

The Board provides a form which may be used by the donor corporation to provide MFM with the required underlying source disclosure statement.

The underlying source disclosure must be provided to MFM prior to the due date for the next report on which MFM will disclose the nonprofit corporate donor's contribution. MFM must provide the Board with the statement when it files the report including that contribution.

Issue Three

If MFM receives a contribution of \$1,000 or more from a nonprofit, tax exempt organization established under Section 501(c)(4) of the Internal Revenue Code, is MFM required to obtain and report additional information regarding the underlying source(s) of the funds contributed to MFM? If so, what is MFM required to obtain and report?

Opinion

As explained in the discussion of Issue Two, underlying source disclosure is not triggered by the amount donated to MFM, but by the total amount donated by the subject donor to all political committees or funds that are registered to promote or defeat the same ballot question. Thus, the response to Issue Two addresses this question as well.

Issue Four

If MFM receives a contribution in excess of \$100 but less than \$1,000 from a church or church organization established under Section 501(c)(3) of the Internal Revenue Code or, alternatively, an unincorporated association, is MFM required to obtain and report any additional information regarding the underlying source(s) of the funds contributed to MFM? If so, what is MFM required to obtain and report? Does it make a difference if the church is not incorporated?

Opinion

Unregistered association status applies to any association not registered with the Board without regard to its nonprofit status or lack thereof under the federal Internal Revenue Code. Thus, a nonprofit corporation operating under Internal Revenue Code section 501(c)(3) or an unincorporated association are both unregistered associations under Chapter 10A. As a result, these unregistered associations are subject to the same requirements as other unregistered associations. The response to Issue Two above also applies to the associations specified in the question posed in Issue Four.

Issue Five

If MFM receives a contribution of \$1,000 or more from a church or church organization established under Section 501(c)(3) of the Internal Revenue Code or, alternatively, an unincorporated association, is MFM required to obtain and report any additional information regarding the underlying source(s) of the funds contributed to MFM? If so, what is MFM required to obtain and report?

Opinion

For the reasons stated in response to Issues Three and Four above, the response to Issue Two also applies to those unregistered associations that are the subject of the question posed in Issue Five.

Issue Six

What legal liability does MFM have, under the Board's various Statements of Guidance issued at its various meetings in 2011, to obtain and report donors to donors, underlying sources of contributions, allocation(s) of contributions by donors, and other similar information referenced in the Board's Statements of Guidance?

Opinion

The Board's Statements of Guidance are not law; but they explain how the Board will apply Chapter 10A. Thus, MFM has no legal liability under the Statements of Guidance. Any legal obligation arises under the applicable provisions of Chapter 10A.

The reporting structure for independent expenditure political committees or funds, which is available to independent expenditure political committees or funds, provides penalties for failure to comply with the underlying source disclosure requirements of §10A.27, subd. 15 and 16. Under §10A.27, subd. 17, the a penalty of up to \$25,000 may be imposed on both the donor and the recipient for an unintentional violation of the requirements to provide underlying source disclosure. If the failure to provide the required underlying source disclosure is intentional, there is no maximum penalty for failure to comply.

Comment

In the Background section of your request, you make the following statement:

Prior to 2011 and the recent Guidance(s) issued by the Board, MFM could receive contributions to its political fund from corporations and would report the corporate name and address and the amount of the corporate contribution if in excess of \$100.

Your assessment of the requirements of Chapter 10A prior to the Board's recent guidance states only part of a political committee's reporting requirement. Prior to new legislation enacted in 2010, Minnesota Statutes Section 10A.27, subd. 13, specified the disclosure that a political committee must obtain from the donor when accepting money from an association not registered with the Board. In addition to reporting the donor information as you indicate in your statement, a political committee was required to provide the §10A.27, subd. 13, disclosure with the report disclosing the unregistered association contribution.

Under the 2010 legislation ballot question political committees or funds may provide underlying source disclosure under the new provisions of §10A.27, subd. 15, in lieu of under 10A.27, subd. 13.

Issued December 8, 2011

/s/ John Scanlon

John Scanlon, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.01 DEFINITIONS

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Subd. 18a. **Independent expenditure political committee.** “Independent expenditure political committee” means a political committee that makes only independent expenditures and disbursements permitted under section 10A.121, subdivision 1.

10A.121 INDEPENDENT EXPENDITURE POLITICAL COMMITTEES AND INDEPENDENT EXPENDITURE POLITICAL FUNDS

Subdivision 1. **Permitted disbursement.** An independent expenditure political committee or an independent expenditure political fund, in addition to making independent expenditures, may:

- (1) pay costs associated with its fund-raising and general operations;
- (2) pay for communications that do not constitute contributions or approved expenditures; and
- (3) make contributions to other independent expenditure political committees or independent expenditure political funds.

10A.27 CONTRIBUTIONS

...

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

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

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

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

Subd. 14. **Contributions of business revenue.** An association may, if not prohibited by other law, contribute revenue from the operation of a business to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13.

Subd. 15. **Contributions of dues or contribution revenue.** (a) An association may, if not prohibited by other law, contribute revenue from membership dues or fees, or from contributions received by the association to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13. Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed \$5,000 or more in aggregate to independent expenditure political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address, and amount attributable to each individual or association that paid the association dues or fees, or made contributions to the association that, in total, aggregate \$1,000 or more of the contribution from the association to the independent expenditure political committee or fund. The statement must also include the total amount of the contribution from individuals or associations not subject to itemization under this section. The statement must be certified as true and correct by an officer of the donor association.

(b) To determine the membership dues or fees, or contributions made by an individual or association that exceed \$1,000 of the contribution made by the donor association to the independent expenditure political committee or fund, the donor association must:

- (1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or
- (2) as provided in paragraph (c), identify the specific individuals or associations whose dues, fees, or contributions are included in the contribution to the independent expenditure political committee or fund.

(c) Dues, fees, or contributions from an individual or association must be identified in a contribution to an independent expenditure political committee or fund under paragraph (b), clause (2), if:

- (1) the individual or association has specifically authorized the donor association to use the individual's or association's dues, fees, or contributions for this purpose; or
- (2) if the individual's or association's dues, fees, or contributions to the donor association are unrestricted and the donor association designates them as the source of the subject contribution to the independent expenditure political committee or fund. After a portion of an individual's or association's dues, fees, or contributions to the donor association have been designated as the source of a contribution to an independent expenditure political committee or fund, that portion of the individual's or association's dues, fees, or contributions to the donor association may not be designated as the source of any other contribution to an independent expenditure political committee or fund.

(d) For the purposes of this section, "donor association" means the association contributing to an independent expenditure political committee or fund that is required to provide a statement under paragraph (a).

Subd. 16. **Treasurer to submit disclosure statements.** The treasurer of a political committee or political fund receiving a statement required under subdivision 15, must file a copy of the statement before the deadline for the committee or fund's next report filed with the board under section 10A.20, subdivision 2 or 5, after receiving the statement.

Subd. 17. **Penalty.** (a) An association that makes a contribution under subdivision 15, and fails to provide the required statement within the time specified is subject to a civil penalty of up to four times the amount of the contribution, but not to exceed \$25,000, except when the violation was intentional.

(b) An independent expenditure political committee or an independent expenditure political fund that files a report without including the statement required under subdivision 15, is subject to a civil penalty of up to four times the amount of the contribution for which disclosure was not filed, but not to exceed \$25,000, except when the violation was intentional.

(c) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requester

RE: Disclosure related to ballot question committees

To: John Helmberger, CEO
Minnesota Family Council
2855 Anthony LN S, Suite 150
Minneapolis, MN 55418

ADVISORY OPINION 421

SUMMARY

Minnesota Statutes, Chapter 10A, provides for disclosure by associations that register political funds with the Board. This opinion describes the statutory requirements under various scenarios presented by the requester.

FACTS

As the representative of the Minnesota Family Council ("MFC"), you ask for an advisory opinion based on the following facts:

1. Minnesota Family Council is a tax exempt, not for profit corporation, recognized by the IRS as a 501 (c)(4) social welfare, grassroots lobbying and policy organization. MFC is actively engaged in supporting the Minnesota Marriage Amendment to be voted on in next year's General Election.
2. MFC has registered a political fund, the Minnesota Family Council Marriage Protection Fund, ("MFC Political Fund") for purposes of financially supporting the Marriage Amendment.

Based on the above statement of facts, you ask several questions about the disclosure required by Chapter 10A of Minnesota statutes as it applies to Minnesota Family Council. The questions are restated below as issues. In some cases ambiguous language has been modified to more precisely state the question.

Introductory Statement

The issues raised in this request relate in part to the concept of a political fund and the association that supports it. It is important to understand that a political fund, as defined in Minnesota Statutes section 10A.01, subd. 28, is simply an accumulation of money collected or expended for statutorily specified purposes. In the case of the requester, its political fund consists of the money collected or expended to promote or defeat a ballot question.

An association's political fund is not an entity separate from the association. Rather, it is an accumulation of money that is tracked and reported on using an accounting mechanism of the association's choosing. Thus references to a "transfer" or an "allocation" of money by an association to its political fund mean nothing more than the recording of an accounting record of the fact that an association's general treasury money has been used for purposes which, by statutory definition, make it a part of the association's political fund.

Throughout this opinion, the terms "general treasury money" or "general treasury funds" mean money that the association collects from dues, membership fees, or donations for its general purposes. These terms exclude "contributions" as that term is defined in Chapter 10A, which, in the present context, is money received by an association for the specific purpose of promoting or defeating a ballot question.

Issue One

How does the Board's recent guidance apply as a practical matter when MFC transfers funds from its general treasury to the MFC Political Fund? Is the record of the 'allocation' of donors of less than \$1,000 maintained solely by MFC or is it to be provided or reported to the Board? If it is not reported to the Board at the time of the transfer, if a complaint is filed against MFC and/or the MFC Political fund, will the Board seek to obtain the allocation ledger? If the ledger must be provided to the Board, isn't that subject to being obtained by the public as a public record and, if so, how does that protect against disclosure of underlying source(s) of MFC general treasury donors of less than \$1,000?

Opinion

In 2010, the legislature recognized independent expenditure political committees or funds as vehicles for making independent expenditures and other expenditures that do not constitute contributions to candidates or party units. In its recent guidance, the Board recognized that this new legislation was broad enough to also apply to an association that made only ballot question expenditures. This recognition allows ballot question political committees or funds the option of reporting under the new independent expenditure political committee or fund disclosure statutes rather than under the disclosure statutes that existed prior to 2010.

Prior to 2010, Minnesota Statutes section 10A.12, subd. 5, allowed an association to account for general treasury funds through a political fund account that it established and reported through. Under that section, the association was required to report to the Board with its political fund report the name of any individual whose donations to the association constituted more than \$100 in aggregate of the money that the association accounted for through its political fund.

Under the independent expenditure political fund disclosure requirements, no underlying source disclosure is required until the association has allocated \$5,000 or more in a year to its political fund account. Once allocations of \$5,000 or more have been made by an association, underlying source disclosure is required, which may or may not result in the disclosure of itemized sources.

Section 10A.27, subd. 15, under which ballot question political funds may operate, provides that an association may allocate its transfer to a political committee or fund registered with the Board either by identifying from its donors those to whom it wants to allocate the transfer or by prorating the transfer over all of its donors. After applying either method, if the amount of the transfer allocated to an individual source is \$1,000 or more, the name and address of that

source must be itemized on a statement of underlying sources.

If MFC uses general treasury funds to promote or defeat a ballot question, it must prepare a statement of underlying sources and file it with the Board along with its next regular Report of Receipts and Expenditures.

The underlying calculations resulting in the allocation, including information related to the choice of allocation method, is retained with the donor association and not provided to the Board at any time.

In the event of a Board investigation of a complaint related to the allocation, it is possible that records of the calculation of the allocation could be requested by the Board. However, it is the Board's intention that in such a case, the donor association providing the records would substitute numbers for the actual names and addresses of the general treasury donors whose donations were part of the allocation. This would prevent the identification of donors whose names are not required to be itemized under §10A.27, subd. 15.

Issue Two

If MFC makes contributions from its general funds to Minnesota for Marriage (MFM), a registered ballot question committee promoting the Minnesota Marriage Amendment, must those contributions be made from the MFC Political Fund or can MFC contribute to MFM directly from its general treasury funds? Are there different reporting and disclosure requirements depending on whether the contributions to MFM are made from MFC general treasury funds or MFC Political Fund? What are the reporting and disclosure differences as they relate to the underlying source(s) of the contributions?

Opinion

Because MFC has registered a ballot question political fund with the Board, it may make contributions to MFM by allocating general treasury funds to its own political fund and then making a contribution to MFM that will be reported through its political fund account. In the alternative, MFC may make contributions to MFM directly using its general treasury funds. In either case, the underlying source disclosure requirements of §10A.27, subd. 15, apply. In the case of the transfer to MFC's own political fund account, MFC would create an underlying source disclosure statement and file it with its next political fund account report. In the case of a direct contribution from general treasury funds to MFM, MFC would create an underlying source disclosure statement and provide it to MFM for filing with MFM's next report.

If MFC donates directly to MFM, MFM will report the contribution received from MFC, along with any required underlying source disclosure. The MFC Political Fund will have no reporting obligation with respect to the transaction.

If MFC donates to MFM by first allocating general treasury funds to the MFC Political Fund, then the MFC Political Fund will report the allocation to it of MFC general funds, along with any required underlying source disclosure. MFC Political Fund will also report the contribution to MFM. MFM will report the receipt of a contribution from the MFC Political Fund, but would not receive or report any underlying source disclosure because the contribution would be coming from an association that has a political fund registered with and reporting to the Board.

Issue Three

If MFC makes expenditures to promote the Marriage Amendment, may those expenditures be made from MFC general treasury funds or must the expenditures be made from the MFC Political Fund?

Opinion

A "political fund," as defined by §10A.01, subd. 28, is an accumulation of money by an association, such as MFC, whose major purpose is something other than to influence the nomination or election of candidates or to promote or defeat a ballot question. This accumulation of money consists of money "collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question."

Thus, once MFC makes expenditures to promote the Marriage Amendment, the money used for those expenditures becomes a part of this accumulation of money used to promote or defeat a ballot question or, in other words, a part of its political fund. This characterization occurs automatically by virtue of the statutory definition. A political fund account is an accounting mechanism used for reporting, not an entity separate from the association that accumulates and spends the money that constitutes its political fund.

The question's implication that an association's political fund and its general treasury are mutually exclusive does not accurately reflect the nature of political funds. Money from an association's general treasury, once used to promote or defeat a ballot question, must be tracked through the association's political fund accounting mechanism for reporting purposes. While many associations establish a separate depository account for money that constitutes its political fund, it is not the separate account that makes an association's money part of its political fund; it is the purpose for which the money was raised or used.

Issue Four

If MFC makes expenditures from its general treasury funds to promote the Marriage Amendment, is MFC required to report such expenditures? Is it required to disclose all MFC donors over \$100 during the calendar year? How must such expenditures be reported? May they be reported as in-kind contributions to MFC?

Opinion

As indicated in the response to Issue Three, MFC's political fund consists of money collected or expended to promote or defeat a ballot question. Thus, once general treasury funds are used to promote or defeat a ballot question, they must be tracked through MFC's political fund accounting mechanism and reported on the Report of Receipts and Expenditures related to that account. Expenditures that aggregate more than \$100 in a calendar year to a single payee must be itemized on a report. Other expenditures are reported as a lump-sum unitemized total.

Donors to MFC's general treasury are not itemized except, potentially, as underlying sources as described in Issue Two. However, "contributions" to MFC as that word is defined in Chapter 10A and applied through the Board's guidance means money that is given for the purpose of influencing a ballot question. "Contributions" must be itemized through the political fund account if they aggregate more than \$100 in a calendar year from a single source.

Minnesota Statutes section 10A.27, subd. 15, provides a mechanism for associations to

contribute or transfer money to registered political committees or funds. However, neither that provision nor any other provides for making expenditures without registering and reporting through a political fund if the threshold for doing so is met. MFC has already registered a political fund. Any expenditures MFC makes to promote or defeat a ballot question must be reported through its political fund account. They may not be reported as in-kind donations to MFM.

Issue Five

What must MFC Political Fund disclose to the Board as the result of an allocation of MFC general treasury funds to it?

Opinion

MFC Political Fund is an accounting mechanism. As such, MFC will record transfers or allocations to its political fund account under either of two options. First, MFC may decide to allocate specific amounts from time to time to be used to promote or defeat a ballot question. Under this option, it would record an accounting entry documenting the allocation to the political fund each time it makes such an allocation.

Alternatively, MFC may account for its general treasury funds in its general treasury account until such time as funds are actually used for an expenditure to promote or defeat a ballot question. Under this option, when a ballot question expenditure is made, MFC would record an accounting entry documenting both the allocation of general treasury funds to the political fund and the corresponding use of the funds to promote or defeat a ballot question.

Associations using *only* their own general treasury funds to make ballot question expenditures may use a more abbreviated accounting mechanism. These associations must report to the Board ballot question expenditures, but are not required to report each allocation of general treasury funds used to make reportable expenditures. Because these associations are using only their own general treasury funds, the Board assumes an equal corresponding allocation of general treasury funds for each reported expenditure. Under this reporting option, the association would provide underlying source disclosure based on the total reportable expenditures because the total would result from the same amount of general treasury funds allocations to the association's political fund account.

Prior to the time each of its periodic reports must be filed, MFC must prepare a statement of underlying sources of general treasury funds used to promote or defeat a ballot question. The statement will cover all general treasury money used since the most recent previous report filed for the same calendar year. MFC will file the statement with its periodic political fund report.

The type of accounting mechanism that MFC must use to record the use of money to promote or defeat a ballot question is not specified in statute. The Board has recognized that it may be any accounting mechanism that results in keeping accurate records.

Issue Six

MFC receives donations, both large and small, to its general fund, possibly including anonymous gifts and contributions. How does the Board's Guidance apply to the allocation of funds from MFC to the MFC Political Fund where some of the funds allocated include donations to MFC from donors whose identity is unknown?

Opinion

The Board takes the statement in this question literally; that is, it refers to general treasury funds for which the donor is actually unknown, as opposed to funds for which the donor wishes to remain anonymous to the public. This opinion also assumes that there has been no effort to turn known donors into "anonymous" donors by suggesting, implying, or otherwise influencing them to make their donations anonymously. Such actions could constitute circumvention of the disclosure provisions of Chapter 10A.

However, in the case of an association using its general treasury funds to promote or defeat a ballot question, the immediate source of the funds is the association. Donors to the association's general treasury are underlying sources.

The Board declines to apply the anonymous donor prohibition further than to the immediate source of funds being used to promote or defeat a ballot question. If an anonymous donor is an underlying source of those funds that would be itemized on a statement of underlying sources, the donor should be listed as "Anonymous donor #1" with additional anonymous donations being numbered sequentially.

Issue Seven

Is an expenditure by MFC of general treasury funds to promote the Marriage Amendment an in-kind contribution to the MFC Political Fund, subject to reporting by MFC Political Fund? Or alternatively an in-kind contribution to MFM subject to reporting by MFM?

Opinion

An expenditure by MFC will never be an in-kind contribution to the MFC Political Fund. Because the fund is merely the accounting of all money raised or used to promote or defeat a ballot question, an MFC general treasury funds expenditure to promote or defeat a ballot question is, by definition, a part of its political fund account which will be reported when MFC files its political fund report.

MFC may not report its expenditures as in-kind contributions to MFM. As indicated in Issue Four above, Chapter 10A does not provide a means by which an association may make an expenditure that is not reported through its own political fund if the registration and reporting threshold has been met. The registration and reporting threshold that will be applied by the Board is reached when the association has received contributions or made expenditures of more than \$5,000 to promote or defeat a ballot question.

Issue Eight

When MFC writes in its regular publications such as its newsletter, or on its website, or in other educational materials regarding the importance of passage of the Marriage Amendment, may MFC pay such costs as part of its normal program budget or must those costs all be paid by the MFC Political Fund?

Opinion

The question is not whether these costs may be paid from one account or another. As has been explained in other sections of this Opinion, money becomes a part of an association's political fund when it is *used* to promote or defeat a ballot question. So whether the money is in

one budget or another or one depository or another is not relevant.

The board assumes that the intent of the question is to ask whether the costs of the subject communications must be reported on the association's political fund report. Although the question provides little detail, it appears that the subject communications are for the purpose of promoting a ballot question. Thus, the costs of the communications are ballot question expenditures and must be reported on MFC's political fund report.

Issue Nine

The Minnesota Family Institute ("MFI") is a 501(c)(3) subsidiary/affiliate of MFC. If MFI makes expenditures from its general funds for research and policy papers promoting the importance of marriage in Minnesota, describing the social and economic toll on our state resulting from the breakdown of traditional marriage, and encourages people to support the Marriage Amendment, must the MFI report those expenditures to the Board as in-kind contributions? Do such expenditures trigger any additional disclosure(s) to the Board from MFI regarding MFI donors and, if so, what are those disclosures and reporting obligations?

Opinion

MFI is a separate corporation from MFC and is subject to the same Chapter 10A requirements as any other association. If MFI makes expenditures of more than \$5,000 to promote or defeat a ballot question, it has two options for complying with Chapter 10A. First, it may register its own political fund with the Board and report its expenditures through that account. Under this option, MFI will provide disclosure of *its* underlying sources used to make ballot question expenditures in the same way that other associations do. Second, it may donate money from its general treasury funds to political committees registered with the Board or to the political fund account of associations that have political funds registered with the Board.

As explained in Issue Four, an association that makes expenditures to promote or defeat a ballot question in excess of the threshold must register a political fund account with the Board and report its expenditures through that account.

Issue Ten

If MFI transfers general funds to MFC's general fund, and MFC subsequently uses its general funds to promote the Marriage Amendment, would MFI's transfer to MFC trigger any additional disclosure(s) to the Board from MFI regarding MFI donors and, if so, what are those disclosures and reporting obligations?

Opinion

As a subsidiary/affiliate of MFC, the Board assumes that MFI is directly or indirectly controlled by MFC or that MFC closely coordinates its financial activities with those of MFI.

If that is the case, then transfers from MFI to MFC that are later used to promote or defeat a ballot question are considered to be "contributions" under Chapter 10A. A "contribution" is a transfer of money for the purpose of promoting or defeating a ballot question. Treatment of the transfer as a contribution results in the requirement that MFI provide underlying source disclosure pursuant to §10A.27, subd. 15. In other words, because of the commonality of

control of the two corporations, MFI cannot be considered to be merely another underlying source for MFC's general treasury funds used to promote or defeat a ballot question.

Issue Eleven

Are all contributions to MFC or MFI over \$100 subject to reporting to the Minnesota Campaign Finance Board by virtue of references to the Marriage Amendment in solicitations as one of the projects and activities in which MFC and MFI are involved, even if not solicited specifically to promote the Marriage Amendment and if each solicitation clearly stipulates that no contributions may be designated or earmarked for any purpose?

Opinion

The word "contributions" is specifically defined in Chapter 10A and limits on its application have been provided in Board guidance. The Board interprets the question as referring to "donations" to MFC or MFI rather than to "contributions" as the word is defined in Chapter 10A. This is not to say, of course, that donations to MFC or MFI may not also be contributions under Chapter 10A. This is, in fact, the issue raised by the question.

On October 14, 2011, the Board adopted the following Statement of Guidance regarding the application of the Chapter 10A definition of "contribution":

1. Money designated for ballot question expenditure purposes

Money received by an association is a contribution if the contributor specified that the money was given to support the association's campaign to promote or defeat the ballot question.

2. Money given in response to a solicitation including an express request

Money given in response to a solicitation that requests money for the express purpose of supporting the association's campaign to promote or defeat the ballot question is a contribution.

An express request is a request that asks for money and states that the money is sought to support the ballot question campaign.

3. Money given in response to a solicitation that is the functional equivalent of an express request.

Money given in response to a solicitation that meets the all of the following criteria is a contribution:

- A) The solicitation is made after the date of final enactment by the legislature of the bill placing the subject ballot question on the general election ballot;
- B) The solicitation clearly identifies the subject ballot question; and
- C) The solicitation is susceptible to no reasonable interpretation other than that money given as a result of the solicitation will be used to promote or defeat the subject ballot question.

For the purpose of determining whether a solicitation clearly identifies the ballot question, the "solicitation" includes:

- A) For a mailed solicitation: the solicitation itself and any material included in the same mailing;
- B) For an electronically transmitted solicitation: the electronic communication itself and any attachments to the communication. An electronic solicitation also includes material accessed directly by a hyperlink in the solicitation or its attachments. Intermediate hyperlinks inserted merely to subvert the direct link requirement will not be considered when examining whether the solicitation directly links to a page that refers to the subject ballot question;
- C) For a website based solicitation: the solicitation form itself and all other pages of the association's website.

Limitation

It is the Board's intention that the definitions of "contribution" set forth in this Guidance be applied in favor of excluding transfers of money from the definition of "contribution" in any case where it is not clear that all of the specified criteria have been met.

From the facts provided in your statement of the issue, it is clear that parts 1 and 2 of the definition of "contribution" do not apply to the transactions about which you inquire.

With respect to the application of the definition of "contribution" in part 3 of the guidance, requirements A and B are met. That is, the question has already been placed on the ballot by the legislature and, according to the premise of the question, the solicitation will identify the subject of the ballot question.

However, part C of the definition requires that the solicitation be "susceptible to no reasonable interpretation other than that money given as a result of the solicitation *will be used* to promote or defeat the subject ballot question." (Emphasis added.)

Without specific text or specific web pages to examine, the Board's evaluation of the fact situation must be, as the fact situation is itself, somewhat hypothetical. However, the Board has made it clear that when determining whether money given is a "contribution" its guidance is to be applied in favor of excluding transfers where the requirements of the definition are not clearly met.

Under the facts presented, the solicitation suggests that money raised could be used for any of a range of the association's various projects and activities. While donors may "assume" that some or even all of their donation will be used to promote or defeat a ballot question, and the association may actually end up using it for that purpose, disclosure requirements are not based on assumptions.

The Board concludes that the hypothetical solicitation is subject to interpretations other than that any donations resulting from it *will*, in fact, be used to promote or defeat a ballot question. Thus, funds received as a result of the hypothetical

Relevant Statutes

10A.01 DEFINITIONS

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Subd 18b. **Independent expenditure political fund.** "Independent expenditure political fund" means a political fund that makes only independent expenditures and disbursements permitted under section 10A.121, subdivision 1.

...

Subd. 28. **Political fund.** "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

10A.12 POLITICAL FUNDS.

...

Subd. 5. **Dues or membership fees.** An association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Under section 10A.20, the treasurer of the fund must disclose the name of any member whose dues, membership fees, and contributions deposited in the political fund together exceed \$100 in a year.

10A.121 INDEPENDENT EXPENDITURE POLITICAL COMMITTEES AND INDEPENDENT EXPENDITURE POLITICAL FUNDS

Subdivision 1. **Permitted disbursement.** An independent expenditure political committee or an independent expenditure political fund, in addition to making independent expenditures, may:

- (1) pay costs associated with its fund-raising and general operations;
- (2) pay for communications that do not constitute contributions or approved expenditures; and
- (3) make contributions to other independent expenditure political committees or independent expenditure political funds.

10A.27 CONTRIBUTIONS

...

Subd. 14. **Contributions of business revenue.** An association may, if not prohibited by other law, contribute revenue from the operation of a business to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13.

Subd. 15. **Contributions of dues or contribution revenue.** (a) An association may, if not prohibited by other law, contribute revenue from membership dues or fees, or from contributions received by the association to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13. Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed \$5,000 or more in

aggregate to independent expenditure political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address, and amount attributable to each individual or association that paid the association dues or fees, or made contributions to the association that, in total, aggregate \$1,000 or more of the contribution from the association to the independent expenditure political committee or fund. The statement must also include the total amount of the contribution from individuals or associations not subject to itemization under this section. The statement must be certified as true and correct by an officer of the donor association.

(b) To determine the membership dues or fees, or contributions made by an individual or association that exceed \$1,000 of the contribution made by the donor association to the independent expenditure political committee or fund, the donor association must:

(1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or

(2) as provided in paragraph (c), identify the specific individuals or associations whose dues, fees, or contributions are included in the contribution to the independent expenditure political committee or fund.

(c) Dues, fees, or contributions from an individual or association must be identified in a contribution to an independent expenditure political committee or fund under paragraph (b), clause (2), if:

(1) the individual or association has specifically authorized the donor association to use the individual's or association's dues, fees, or contributions for this purpose; or

(2) if the individual's or association's dues, fees, or contributions to the donor association are unrestricted and the donor association designates them as the source of the subject contribution to the independent expenditure political committee or fund. After a portion of an individual's or association's dues, fees, or contributions to the donor association have been designated as the source of a contribution to an independent expenditure political committee or fund, that portion of the individual's or association's dues, fees, or contributions to the donor association may not be designated as the source of any other contribution to an independent expenditure political committee or fund.

(d) For the purposes of this section, "donor association" means the association contributing to an independent expenditure political committee or fund that is required to provide a statement under paragraph (a).

Subd. 16. Treasurer to submit disclosure statements. The treasurer of a political committee or political fund receiving a statement required under subdivision 15, must file a copy of the statement before the deadline for the committee or fund's next report filed with the board under section 10A.20, subdivision 2 or 5, after receiving the statement.

Subd. 17. Penalty. (a) An association that makes a contribution under subdivision 15, and fails to provide the required statement within the time specified is subject to a civil penalty of up to four times the amount of the contribution, but not to exceed \$25,000, except when the violation was intentional.

(b) An independent expenditure political committee or an independent expenditure political fund that files a report without including the statement required under subdivision 15, is subject to a civil penalty of up to four times the amount of the contribution for which disclosure was not filed, but not to exceed \$25,000, except when the violation was intentional.

(c) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.

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: Disclosure related to ballot question committees

ADVISORY OPINION 422

SUMMARY

Minnesota Statutes Chapter 10A requires certain disclosure when an association accepts contributions or uses its money for expenditures to promote or defeat a ballot question. This opinion describes the statutory requirements under various scenarios presented by the requester.

FACTS

As the representative of an association ("the Association") you ask the Campaign Finance and Public Disclosure Board ("the Board") for an advisory opinion based on the following facts:

1. The Association will engage in educational activities to promote and support the Minnesota ballot question related to the definition of marriage, which is on the ballot in November, 2012 ("the Minnesota ballot question").
2. The Association may create a ballot question political fund to receive contributions and make expenditures in support of the Minnesota ballot question.
3. The Association expects to receive contributions from other associations, including religious organizations such as churches, synagogues, mosques, or similar associations. These associations may be incorporated or unincorporated. They are collectively referred to in this opinion as "religious organizations."

The Association presents a number of questions to clarify how it should inform the leaders of potential organization donors regarding their activities, solicitations, and expenditures in support of the Minnesota ballot question. In addition, the Association wants to understand its obligations regarding the reporting and disclosure of underlying sources of money used to promote the Minnesota ballot question.

Questions 1 and 2

(1) If the Association's ballot question political fund receives a contribution in excess of \$100 but less than \$1,000 from a religious organization, established under Section 501(c)(3) of the Internal Revenue Code or, alternatively, an unincorporated association, is the Association required to obtain and report any additional information regarding the underlying sources of funds contributed to the Association? If so, what is the Association required to obtain and report.

(2) If the Association's ballot question political fund receives a contribution in excess of \$1,000 from a religious organization, established under Section 501(c)(3) of the Internal Revenue Code or, alternatively, an unincorporated association, is the Association required to obtain and report any additional information regarding the underlying sources of funds contributed to the Association? If so, what is the Association required to obtain and report.

Opinion

Based on the wording of the question, the Board assumes that transactions under consideration result from donations of money from religious organizations to the Association specifically for the purpose of promoting the passage of the Minnesota ballot question. As such, these transfers are "contributions" under Minnesota Statutes Chapter 10A and are part of the accumulation of money that constitutes the Association's political fund.

The Internal Revenue Code classification and the presence or absence of a corporate structure do not control disclosure requirements under Chapter 10A. Religious organizations, whether incorporated or not, as well as other associations not registered with the Board are all "unregistered associations" and are subject to the same disclosure requirements, including the requirement to disclose underlying sources of money given to other associations to promote or defeat a ballot question.

When a unregistered association makes a contribution to an association that has a political fund, that contribution is reported on the political fund report as coming from the donor association. In addition, Chapter 10A requires certain additional disclosure from the unregistered association donor.

Prior to 2010, the only provision that permitted an association with a political fund to accept money from a unregistered association was 10A.27, subd. 13. (Section 10A.12, subd. 5, covers the same subject, but is applicable only when an association uses its own general treasury money for political fund purposes.) Section 10A.27, subd. 13, requires that an unregistered association donor that contributes more than \$100 to an association for political fund purposes, must provide specified disclosure with the contribution.

In 2010, the legislature enacted statutes applicable to associations that make only independent expenditures. In its statements of guidance, the Board has recognized that these new provisions are written broadly enough to permit their use by associations that make only ballot question expenditures. The Board's recognition that this additional group of associations may elect to provide underlying source disclosure under §10A.27, subd. 15, instead of under §10A.27, subd. 13, provides a second option which the Board will accept as meeting the statutory underlying source disclosure requirements. An association proceeding under §10A.27, subd. 15, is not also required to disclose under §10A.27, subd. 13.

If the Association elects to provide underlying source disclosure under §10A.27, subd. 15, it will need to ask each religious organization or other unregistered association donor to its political fund account if it has, during the current calendar year, made contributions of \$5,000 or more to all associations engaged in activities to promote the Minnesota ballot question. If the answer to this question is "no", then no underlying source disclosure is required from the contributing religious organization or other unregistered association.

If the religious organization or other unregistered association contributor has made \$5,000 or more in contributions to promote the Minnesota ballot question, it must provide to the Association a statement of underlying sources as specified in Minnesota Statutes section 10A.27, subd. 15. the Association must include this statement with the report on which it discloses the contribution received from the unregistered association.

Question 3

In the scenarios identified in questions 1 and 2, above, what is the donor association required to report to the Campaign Finance Board? What if the donor association's contribution to a ballot question political fund exceeds \$5,000?

Opinion

As explained in response to Question 1, if the donor association's contributions to all ballot question political committees or funds related to the Minnesota ballot question is \$5,000 or more, it must provide a statement of underlying sources to the Association, which will file the statement with its Report of Receipts and Expenditures. Under this scenario, the statement of underlying source disclosure is provided to the Board by the Association. The donor religious organization itself is not required to report anything to the Board.

Question 4

If a religious organization leader speaks at a meeting or service to the members of the organization about the importance of marriage and supporting the Minnesota ballot question, takes an offering at that meeting or service, and then forwards the receipts to the Association for the support of the Minnesota ballot question, what underlying donor disclosure is required from the religious organization and what is the threshold for triggering the disclosure?

Opinion

The answer to this question depends on whether or not the leader of the religious organization informs the members of the religious organization that the proceeds of the collection will be given to the Association to be used to promote the Minnesota ballot question.

The Board first examines the scenario where the religious leader specifically informs religious organization members that the proceeds of the collection will be given to the Association and used to promote the Minnesota ballot question.

Under this scenario, the religious leader's informing members that the collection will be transferred to the Association to be used to promote the Minnesota ballot question results in a solicitation specifically for money to promote the Minnesota ballot question. As a result, the donations made in response to the solicitation are "contributions" as that word is defined in Chapter 10A, which regulates disclosure of money used to promote or defeat a ballot question.

In this scenario, the religious leader would be acting as a fundraiser on behalf of the Association. The contributions from the religious organization's members would be considered to be contributions to the Association and would become part of the Association's political fund.

Because donations received under this scenario constitute "contributions", other requirements of Chapter 10A also apply. Specifically, under §10A.15, subd 2, an association may not accept a contribution from an individual of more than \$20 unless the name and address of the donor is collected and recorded. If the amount of the contribution is more than \$100, the association must also collect, record, and report employment information for the donor under §10A.20, subd. 3(b). Individual contributions of \$20 or less may be accepted without obtaining any information from the donor.

Under the scenario you have proposed, the religious leader should inform religious organization members that if they wish to donate more than \$20, they should do so by means of a check made payable to the Association with their name and address on it or they should provide their name and address by some other means. The religious leader should also inform religious organization members that if they wish to donate more than \$100, the Association will not be able to accept the amount over \$100 unless they also provide employment information. It will be up to the religious leader and the Association to determine the method of obtaining this additional required information.

the Association will report the contributions on its political fund report, itemizing contributions from any donor of more than \$100. The Association will need to aggregate contributions from the same donor in order to determine if itemization is required.

The Board next examines the situation where the funds forwarded to the Association are from the religious organization's general offering taken at a meeting or service. In this case, the religious leader has not informed the religious organization members that the offering will be used for any specific purpose or that it is any different than offerings taken up at other meetings or services.

Under this scenario, the donations from individual religious organization members are not "contributions" to the Association, but are donations to the religious organization. If the religious leader transfers all or part of the collection to the Association, the transfer constitutes a contribution by the religious organization to the Association, which will be accounted for by the Association through its political fund account.

Because the religious organization is not itself an entity registered with the Board, it may be required to provide disclosure of the underlying sources of the money it contributes to the Association. If the total amount that the religious organization contributes to the Association and other associations to promote the Minnesota ballot question in a calendar year is less than \$5,000, no disclosure of underlying sources is required. If \$5,000 or more is contributed, underlying source disclosure as specified in Minnesota Statutes section 10A.27, subd. 15, is required.

Question 5

If a religious leader includes an article in it's a membership bulletin or newsletter about the importance of supporting the Minnesota ballot question and the cost of producing the communication exceeds \$100, is there a reporting or disclosure obligation triggered by the

expenditure by the religious organization? If so, what is the reporting obligation?

Opinion

The facts on which this response is based relate to an article that either expressly advocates for the adoption of the ballot question or is subject to no reasonable interpretation other than as advocacy for adoption of the question. Thus, publishing the article is a communication to promote the Minnesota ballot question. The costs of communications to promote or defeat a ballot question are ballot question expenditures under Chapter 10A.

Although Chapter 10A states that an association that makes more than \$100 in expenditures to promote or defeat a ballot question must do so through a political fund, the Board has determined that it will take no action and impose no penalty for an association that fails to register as long as that association registers once it has raised or spent more than \$5,000 to promote or defeat a ballot question.

If the total cost of communications by the religious organization during a calendar year to promote the Minnesota ballot question exceeds \$5,000, the religious organization will be required to register a political fund account with the Board and to track and disclose its ballot question expenditures using its political fund accounting mechanism.

An association reporting through a political fund account must file periodic disclosure reports as specified in Minnesota Statutes section 10A.20.

Question 6

If an anonymous donor contributes funds to a religious organization, directing the funds to be spent in support of the Minnesota ballot question, may the religious organization forward the funds to the Association for use through its political fund? What is the reporting requirement attendant to such a contribution? May the contribution be received by the Association for its political fund for support of the marriage amendment if it is more than \$100?

Opinion

The religious organization may accept and forward to the Association an anonymous donation to support the Minnesota ballot question if the donation does not exceed \$20. Anonymous contributions of more than \$20 to promote or defeat a ballot question are prohibited by Minnesota Statutes section 10A.15, subd. 1.

Because anonymous donations may not exceed \$20 in amount, they are reported in the total amount of unitemized contributions on the recipient's schedule of contributions received.

Question 7

If a religious leader plans a series of discussions or other religious organization educational events discussing the importance of marriage as the union of one man and woman to the spouses, children, and society from both a religious and secular perspective between now and the November, 2012, general election, but does not specifically urge religious organization members to vote for the Minnesota ballot question, is there any potential that any expenses incurred by the religious organization are subject to reporting as expenditures in support of the Minnesota ballot question?

Opinion

Minnesota Statutes section 10A.01, subd. 9, defines "expenditure" as, among other things, money spent "for the purpose of promoting or defeating a ballot question."

The Board has issued guidance on how associations may decide whether expenditures they make should be treated as "expenditures" or not.

The guidance provides:

An expenditure to promote or defeat a ballot question (a ballot question expenditure) is an expenditure:

(a) that expressly advocates the adoption or defeat of a ballot question measure, or

(b) that is susceptible of no reasonable interpretation other than as an appeal to vote for or against a ballot question measure.

Under the facts presented in the question, it is clear that clause (a) above is not applicable. On December 6, 2011, the Board provided further guidance on the application of clause (b). In that guidance, the Board stated:

(i) A communication is presumed to be a communication to promote or defeat a ballot question if it (1) mentions the issue that is the subject of the ballot question; (2) states a position on that issue; and (3) mentions the ballot question that addresses the issue, mentions voting on the issue, or otherwise indicates that people will be able to vote on the issue.

(ii) A communication that discusses an issue that is the subject of a ballot question but does not mention the ballot question that addresses the issue; does not mention voting on the issue; and otherwise does not indicate that people will be able to vote on the issue is presumed to be excluded from the definition of ballot question expenditure under Chapter 10A.

If the scenario presented in this question meets the requirements of clause (b)(ii) above, the religious organization will have the benefit of the presumption that the associated costs are not ballot question expenditures. The religious organization should recognize that this presumption is not absolute. It is possible that the presumption could be rebutted by other facts surrounding the activities of the religious organization.

Question 8

If the religious leader in question 7 does call for the members of the religious organization to vote for the Minnesota ballot question, does the express advocacy trigger reporting or disclosure obligations by the religious organization?

Opinion

This question presents a scenario that falls within clause (a) of the guidance quoted in the

Relevant Statutes

10A.01 DEFINITIONS.

...

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

...

Subd. 28. **Political fund.** "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

...

10A.13 ACCOUNTS THAT MUST BE KEPT.

Subdivision 1. **Accounts; penalty.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must keep an account of:

(1) the sum of all contributions, except any donation in-kind valued at \$20 or less, made to the committee, fund, or party unit;

(2) the name and address of each source of a contribution made to the committee, fund, or party unit in excess of \$20, together with the date and amount of each;

...

10A.20 CAMPAIGN REPORTS.

Subdivision 1. **First filing; duration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must begin to file the reports required by this section in the first year it receives contributions or makes expenditures in excess of \$100 and must continue to file until the committee, fund, or party unit is terminated. The reports must be filed electronically in a standards-based open format specified by the board. For good cause shown, the board must grant exemptions to the requirement that reports be filed electronically.

...

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,

...

10A.27 CONTRIBUTIONS

...

Subd. 13. **Unregistered association limit; statement; penalty.** (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and

correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

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

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

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

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

Subd. 14. Contributions of business revenue. An association may, if not prohibited by other law, contribute revenue from the operation of a business to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13.

Subd. 15. Contributions of dues or contribution revenue. (a) An association may, if not prohibited by other law, contribute revenue from membership dues or fees, or from contributions received by the association to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13. Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed \$5,000 or more in aggregate to independent expenditure political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address, and amount attributable to each individual or association that paid the association dues or fees, or made contributions to the association that, in total, aggregate \$1,000 or more of the contribution from the association to the independent expenditure political committee or fund. The statement must also include the total amount of the contribution from individuals or associations not subject to itemization under this section. The statement must be certified as true and correct by an officer of the donor association.

(b) To determine the membership dues or fees, or contributions made by an individual or association that exceed \$1,000 of the contribution made by the donor association to the independent expenditure political committee or fund, the donor association must:

(1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or

(2) as provided in paragraph (c), identify the specific individuals or associations whose dues, fees, or contributions are included in the contribution to the independent expenditure political committee or fund.

(c) Dues, fees, or contributions from an individual or association must be identified

in a contribution to an independent expenditure political committee or fund under paragraph (b), clause (2), if:

(1) the individual or association has specifically authorized the donor association to use the individual's or association's dues, fees, or contributions for this purpose; or

(2) if the individual's or association's dues, fees, or contributions to the donor association are unrestricted and the donor association designates them as the source of the subject contribution to the independent expenditure political committee or fund. After a portion of an individual's or association's dues, fees, or contributions to the donor association have been designated as the source of a contribution to an independent expenditure political committee or fund, that portion of the individual's or association's dues, fees, or contributions to the donor association may not be designated as the source of any other contribution to an independent expenditure political committee or fund.

(d) For the purposes of this section, "donor association" means the association contributing to an independent expenditure political committee or fund that is required to provide a statement under paragraph (a).

Subd. 16. **Treasurer to submit disclosure statements.** The treasurer of a political committee or political fund receiving a statement required under subdivision 15, must file a copy of the statement before the deadline for the committee or fund's next report filed with the board under section 10A.20, subdivision 2 or 5, after receiving the statement.

Subd. 17. **Penalty.** (a) An association that makes a contribution under subdivision 15, and fails to provide the required statement within the time specified is subject to a civil penalty of up to four times the amount of the contribution, but not to exceed \$25,000, except when the violation was intentional.

(b) An independent expenditure political committee or an independent expenditure political fund that files a report without including the statement required under subdivision 15, is subject to a civil penalty of up to four times the amount of the contribution for which disclosure was not filed, but not to exceed \$25,000, except when the violation was intentional.

(c) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requester

Mr. Jon Pratt
Executive Director
Minnesota Council of Nonprofits
2314 University Ave. S., Suite 20
St. Paul, MN 55114

Advisory Opinion 423

Summary: Chapter 10A provides that associations may make donations in-kind to ballot question political committees or funds. This opinion discusses the various types of transactions likely to be encountered and explains the reporting requirements for each.

As the representative of an association whose members are nonprofit corporations, you ask for an advisory opinion on behalf of your organization's members based on the following facts:

1. The organization you represent is itself comprised of a number of associations, some of which have an interest in constitutional amendment questions that may appear on the ballot in November of 2012.
2. Some of your members may wish to establish political funds and register them with the Board for the purpose of influencing a ballot question.
3. The response to Question Four in recently published Advisory Opinion 421 appears to your members to say that an association may not make a ballot question expenditure and treat that expenditure as an in-kind contribution to a registered ballot question political committee or fund.
4. To clarify the Campaign Finance and Public Disclosure Board's advice on that question, your members ask a series of questions, which are reproduced below.

Opinion

Background

A "contribution" is money or anything else of value that is given to a registered political committee or fund. When something other than money is given, the contribution is referred to in statute as a "donation in-kind." In practice, the phrase "in-kind contribution" is used interchangeably with the phrase "donation in-kind". Both phrases can refer to either the transaction from the perspective of the donor who makes an in-kind contribution or from the perspective of the recipient who receives an in-kind contribution.

For clarification, the Board has restated your questions in the issue sections below.

Question One

Does the discussion in Issue Seven of Advisory Opinion 421 mean that associations with registered ballot question political funds may not make in-kind contributions to other ballot question political committees or funds? If not, how is an in-kind contribution different from the expenditures described in Issue Seven of Advisory Opinion 421?

Opinion

In Issue Seven of Advisory Opinion 421, an association asked if an expenditure to promote or defeat a ballot question should be reported as an in-kind contribution to its own political fund or as an in-kind contribution to a political committee that supports the same ballot question. The question did not suggest that the expenditure was made for the benefit of, or coordinated with, another political committee or fund.

In Opinion 421, the Board concluded that the transaction in question constituted an expenditure that must be reported on the association's political fund report schedule of ballot question expenditures. This Opinion, on the other hand, considers transactions where goods or services are either transferred to a recipient political committee or fund, or used on behalf of a recipient committee or fund.

Advisory Opinion 421 did not conclude that an association that has registered a political fund is prohibited from making in-kind contributions to other associations. Under Chapter 10A, associations may make in-kind contributions to other associations regardless of whether the donor has registered a political fund or not.

Question Two

How should an association that has registered its own political fund report an in-kind contribution that it makes to another political committee or fund?

Opinion

Reporting the use of association services

It is common for associations that have registered political funds to make use of association staff or resources for their own political fund purposes. It is also common for such associations to make staff or other resources available to other political committees or funds for ballot question purposes. Chapter 10A requires disclosure for both types of resource use. The disclosure is slightly different depending on whether the association making the resources available uses them for its own political fund purposes or transfers control to some other association for its purposes.

Regardless of whether an association will use its resources through its own political fund or transfer the use of the resources to some other association, the first transaction that must be disclosed is the allocation of the resources by the association to its own political fund account. This allocation is reported on the appropriate contribution schedule, depending on whether the source of the allocation is business revenue or general treasury money. The Board recognizes that an association's use of its own money to promote or defeat a ballot question is not

technically a "contribution" to the association's political fund. However, such an allocation is disclosed with other contributions to provide citizens with a simple means to examine all money and resources that have been made available to the association for ballot question purposes.¹ If statutory thresholds are met, the association must provide the Minn. Stat. §10A.27, subd. 15, underlying source disclosure for an allocation of resources to its political fund account.

In addition to documenting the allocation of resources on its schedule of contributions received, the donor association must account for the use of the resources. If the association maintains control of the resources and uses them for its own activities to promote or defeat a ballot question, the use of the resources is disclosed as an in-kind expenditure. If the association surrenders control and use of the resources to some other association, the use of the resources is reported as an in-kind contribution to the recipient committee or fund.

Underlying source disclosure requirements apply when the association allocates the resources to its political fund account. Thus, any underlying source disclosure statement will be retained by the original association and filed with its political fund report. If use of the resources is transferred to some other committee or fund as an in-kind contribution, an underlying source disclosure statement is not required because the in-kind contribution is from a registered ballot question fund. The recipient association must report the value of the resources as a donation in-kind received from the registered political fund of the donor association. The recipient association must also account for the use of the resources by recording a corresponding in-kind expenditure.

Reporting the use of purchases made for the use and benefit of another association.

The Board recognizes that, in their efforts to promote or defeat a ballot question, associations may collaborate and that a lead, or "umbrella" association, may coordinate the work of other associations. In this context one association may agree to pay vendors or service providers for goods or services that are specifically for the benefit of, and coordinated with, another association, such as an umbrella association.

Regardless of the relationships and agreements between associations, Chapter 10A requires disclosure that will reflect the actual transactions between the associations and the vendors or service providers involved.

This section of this Opinion considers reporting requirements when an association that has registered a political fund ("the donor association") enters into a prior agreement with another association that is a registered political committee or has registered a political fund ("the recipient association") under which the recipient association agrees to accept the benefit of a purchase and to report it as an in-kind contribution from the donor association. Under this scenario, the recipient association will approve the content, medium, timing, and other aspects of the goods or services purchased so that the transaction also constitutes an in-kind expenditure by the recipient association.

The Board recognizes that the above transaction occurs in the same manner as a Chapter 10A "approved expenditure" except for the fact that approved expenditures are expenditures for the benefit of candidates. An approved expenditure transaction uses a more streamlined reporting procedure for the donor, which the Board will also permit in the ballot question context.

¹ In addition to the disclosure method described in this opinion, the Board has recognized a streamlined reporting method for associations that use *only* their own money to promote or defeat a ballot question. That method is still available to those associations who meet the requirements for its use.

For transactions that fit the scenario described in this section of this Opinion, the donor association may report the entire transaction as a single entry on the schedule of contributions made. The contribution entry will identify the recipient committee or fund that benefited from the expenditure. The amount paid to the vendor or service provider must be listed in the "cash" column, since the payment reduces the donor fund's cash on hand. The donor association must also indicate that the donation was in the form of a payment to a vendor, listing the vendor's name and address and describing the goods or services provided that were used for the donation in-kind.

The recipient committee or fund will report the receipt of an in-kind contribution of goods or services from the donor association and a corresponding in-kind expenditure. Reporting the receipt of an in-kind contribution requires describing the goods or services received.

Question Three

May an association that does not have a political fund registered with the Board pay for goods and services as an in-kind contribution to a ballot question political committee or fund under Minnesota Statutes section 10A.27, subd. 14 or 15? If so, what reporting is required?

Opinion

In 2010, the legislature enacted statutes that allow corporations and other associations to make independent expenditures either by making their own independent expenditures, which will be reported through a political fund account, or by contributing money to an existing registered political committee or fund. In a recent statement of guidance, the Board indicated that it would allow ballot question political committees or funds to register and report under the 2010 legislation.

The option of contributing money to a registered political committee or fund makes it possible for associations to make monetary contributions to promote or defeat a ballot question without being required to register with the Board. If statutory thresholds are met, these donor associations must provide specified disclosure of the underlying sources of money used to make their contributions.

The provisions that allow an association to make contributions without registering are found in §10A.27, subds. 14 and 15, both of which refer to contributions of "revenue", which in its ordinary sense, means money. The Board interprets your question as asking whether an association may also donate staff services and association resources, or pay for vendors on behalf of a recipient association without registering its own political fund.

Both the legislative history and the language of subdivisions 14 and 15 make it clear that the 2010 disclosure options were enacted to provide alternatives to §10A.27, subd. 13. That section provides a mechanism for making both monetary and in-kind contributions without registering. Because subdivisions 14 and 15 are alternatives to subdivision 13, the Board construes them as being applicable to the same scope of transactions; that is, to "contributions" in general; not only to monetary contributions. The reference in the 2010 statutes to contributions of "revenue" is interpreted to mean contributions of revenue or of goods or services paid for with the type of revenue specified in the respective subdivision.

This interpretation results in the conclusion that an association that has not registered a political fund account with the Board may make in-kind contributions to registered political committees or funds under the provisions of Minn. Stat. §10A.27, subs. 14 and 15, and will not be required to register its own political fund.

Typical in-kind contributions consist of staff services, office space, phone banks, mailing lists and similar services. However, the additional question raised in this request is whether an association that does not have a political fund registered with the board may make purchases from outside vendors or service providers and report those purchases as in-kind contributions to a registered political committee or fund.

Past Board filings provide evidence of the practice of unregistered associations coordinating with registered political committees or funds to pay vendors and report the payment as a contribution to the registered political committee or fund rather than as an expenditure that would require the unregistered association to register. However, the Board has not previously addressed this practice in a formal way.

An association that makes more than \$5,000 in Chapter 10A "expenditures" to promote or defeat a ballot question must register with and report to the Board. An association that does not make "expenditures" or accept Chapter 10A "contributions" is not required to register. Therefore, it is important to recognize the distinction between making in-kind contributions that result from the payment for goods and services and making "expenditures", as the latter may trigger a registration requirement.

When an association retains final authority to decide on the content, medium, timing, and other aspects of the purchase of goods or services to promote or defeat a ballot question, the transaction results in a Chapter 10A expenditure.

A purchase of goods or services may be reported as an in-kind contribution to a registered political committee or fund if the following conditions are met:

1. The association making the purchase (the donor association) has not registered a political fund account with the Board and is not required to do so;
2. The donor association has entered into a prior agreement with an association that is a registered political committee or an association that has registered a political fund (the recipient association) under which the recipient association agrees to accept the benefit of the purchase and to report it as an in-kind contribution from the donor association; and
3. The recipient association has final authority to approve the content, medium, timing, and other aspects of the goods or services purchased.

When the donor association makes an in-kind contribution, either of its own services or resources, or by the purchase of goods or services as described above, the donor association must provide to the recipient association any underlying source disclosure required under Minnesota Statutes section 10A.27, subd. 15. The recipient association must file the underlying source statement with its Report of Receipts and Expenditures that includes the in-kind contribution.

The recipient association must report the transaction as the receipt of an in-kind contribution of goods or services from the donor association and must report a corresponding in-kind expenditure. Reporting the receipt of an in-kind contribution requires describing the goods or services received. If the donated goods or services result from the donor association's payment to a vendor or service provider, the description of the goods and services must also include the name and address of the vendor or service provider from whom they were purchased by the donor association.

An association not registered with the Board that makes in-kind contributions consistent with this advisory opinion is operating under the provisions of Minn. Stat. §10A.27, subd. 14 or 15, and is not required to register with or report to the Board.

Issued February 14, 2012

/s/ Greg McCullough

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

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.

. . .

Subd. 11. **Contribution.** (a) "Contribution" means money, a negotiable instrument, or a donation in-kind that is given to a political committee, political fund, principal campaign committee, or party unit.

. . .

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.

. . .

Subd. 28. **Political fund.** "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

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.

. . .

(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.

. . .

(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.

. . .

10A.26 CONTRIBUTIONS

. . .

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

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

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

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

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

Subd. 14. **Contributions of business revenue.** An association may, if not prohibited by other law, contribute revenue from the operation of a business to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13.

Subd. 15. **Contributions of dues or contribution revenue.** (a) An association may, if not prohibited by other law, contribute revenue from membership dues or fees, or from contributions received by the association to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13. Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed \$5,000 or more in aggregate to independent expenditure political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address, and amount attributable to each individual or association that paid the association dues or fees, or made contributions to the association that, in total, aggregate \$1,000 or more of the contribution from the association to the independent expenditure political committee or fund. The statement must also include the total amount of the contribution from individuals or associations not subject to itemization under this section. The statement must be certified as true and correct by an officer of the donor association.

(b) To determine the membership dues or fees, or contributions made by an individual or association that exceed \$1,000 of the contribution made by the donor association to the independent expenditure political committee or fund, the donor association must:

(1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or

(2) as provided in paragraph (c), identify the specific individuals or associations whose dues, fees, or contributions are included in the contribution to the independent expenditure political committee or fund.

(c) Dues, fees, or contributions from an individual or association must be identified in a contribution to an independent expenditure political committee or fund under paragraph (b), clause (2), if:

(1) the individual or association has specifically authorized the donor association to use the individual's or association's dues, fees, or contributions for this purpose; or

(2) if the individual's or association's dues, fees, or contributions to the donor association are unrestricted and the donor association designates them as the source of the subject contribution to the independent expenditure political committee or fund. After a portion of an individual's or association's dues, fees, or contributions to the donor association have been designated as the source of a contribution to an independent expenditure political committee or fund, that portion of the individual's or association's dues, fees, or contributions to the donor association may not be designated as the source of any other contribution to an independent expenditure political committee or fund.

(d) For the purposes of this section, "donor association" means the association contributing to an independent expenditure political committee or fund that is required to provide a statement under paragraph (a).

Subd. 16. **Treasurer to submit disclosure statements.** The treasurer of a political committee or political fund receiving a statement required under subdivision 15, must file a copy of the statement before the deadline for the committee or fund's next report filed with the board under section 10A.20, subdivision 2 or 5, after receiving the statement.

Subd. 17. **Penalty.** (a) An association that makes a contribution under subdivision 15, and fails to provide the required statement within the time specified is subject to a civil penalty of up to four times the amount of the contribution, but not to exceed \$25,000, except when the violation was intentional.

(b) An independent expenditure political committee or an independent expenditure political fund that files a report without including the statement required under subdivision 15, is subject to a civil penalty of up to four times the amount of the contribution for which disclosure was not filed, but not to exceed \$25,000, except when the violation was intentional.

(c) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requester

Issued to: Georgeann Hall, Treasurer
Mindy Greiling Volunteer Committee
385 Transit Avenue
Roseville, MN 55113

ADVISORY OPINION 424

SUMMARY

Costs paid by a principal campaign committee for a reception given in honor of a candidate's retirement from public office may be reported as noncampaign disbursements.

FACTS

You ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. You are the treasurer of the Mindy Greiling Volunteer Committee (the Committee), which is the principal campaign committee of Representative Greiling. Representative Greiling has served for twenty years as a state representative.
2. The office of state representative is up for election in 2012. However, Representative Greiling has announced that she will retire at the end of her current term and will not seek reelection to the House of Representatives or to any other elected office in 2012.
3. The filing period for candidates who wish to run for office closes on June 5, 2012.
4. The Committee would like to use some committee funds, approximately \$1,000 to \$1,500, to host a reception for Representative Greiling. The reception will be used to honor and thank Representative Greiling for her years of public service. The reception would occur on June 16, 2012.
5. No candidate seeking office in 2012 will be promoted, or will be speaking, at the event.

ISSUE

May the Committee pay for the cost of the reception to honor Representative Greiling for her years of public service?

OPINION

The Board only has authority to provide an opinion on the appropriate use of noncampaign disbursements. Expenditure made by a principal campaign committee that are not noncampaign disbursements must be for the purposes provided in Minnesota Statutes 211B.12, which is a statute not regulated by the Board. Therefore, in order for the Board to determine that principal campaign committee funds may be used to pay for the reception, the Board must conclude that the event qualifies as a noncampaign disbursement.

Noncampaign disbursements are expenditures by a principal campaign committee which are for one of the purposes listed in Minnesota Statutes, section 10A.01, subdivision 26. There are currently twenty-three purchases or payments made with principal campaign committee funds that are recognized as noncampaign disbursements by this statute. The statute also gives the Board authority to determine if a purchase or payment not listed in the statute may be classified as a noncampaign disbursement.

Noncampaign disbursements do not count against the campaign expenditure limit placed on a candidate who signs a public subsidy agreement. Noncampaign disbursements are either for a purpose unrelated to the nomination or election of a candidate, or are for a purpose only tangentially related to conducting a campaign. The Board uses its authority to recognize new noncampaign disbursements with caution so that campaign expenditure limits are not undermined. The purpose of the new noncampaign disbursement must also be consistent with existing classifications.

There are similarities between the event described in the facts of this opinion and Minnesota Statutes, section 10A.01, subdivision 26 (13), which provides that a principal campaign committee may pay as a noncampaign disbursement the "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." This noncampaign disbursement category is not directly applicable because the reception is not a "postelection party" as Representative Greiling will not file for office and therefore will not be appearing on either the primary or general election ballot.

However, the reception will serve a purpose similar to a postelection party in that both are social gatherings of the candidate and the candidate's supporters. Whether the election was won or lost, a postelection party is primarily an opportunity for the candidate to express gratitude and appreciation to those who worked on the campaign. A reception for a candidate who is not seeking reelection is primarily an opportunity for the candidate to express gratitude and appreciation to those who worked on prior campaigns and those who worked with the candidate in carrying out the duties of public service.

For a postelection party to qualify as a noncampaign disbursement, the party must occur at a time when it is no longer possible to influence voting for the candidate. A similar effect is achieved by the proposed reception because it will occur after the deadline for filing for office has passed, which precludes the possibility of influencing the nomination or election of the candidate. Further, the requester has stipulated that the reception will not be used to promote any other candidate who might be running for office in 2012, so the cost of the reception will not be an in-kind donation to influence the election of any other candidate.

The Board was asked for an opinion on a similar set of facts in Advisory Opinion 285. In that opinion, an incumbent office holder who had decided not to run for reelection also wished to use principal campaign committee funds to pay the cost of a party to thank staff and other individuals who worked with the incumbent over the years. The Board authorized the use of principal campaign committee funds to pay for the party as a noncampaign disbursement conditioned on the party occurring after the November general election. As explained above, the objective of insuring that the reception will not influence voting for the candidate is achieved by holding the event after the close of filing for office. If the candidate is precluded from appearing on the ballot, the Board sees no useful purpose in requiring the requester to wait until November to hold the reception.

The Mindy Greiling Volunteer Committee may use its funds to pay for the reception described in the facts of this opinion. The funds spent on the event should be categorized as noncampaign disbursements on the Committee's Report of Receipts and Expenditures.

The noncampaign disbursement purpose described in Minnesota Statutes, section 10A.01, subdivision 26 (13), and the additional noncampaign disbursement recognized by this opinion, may be used for only a single event, which must occur during an election year for the office for which the candidate created the principal campaign committee.

Issued: April 3, 2012

_____/s/ Greg McCullough_____
Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes, section 10A.01

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: ...

(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; ...

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

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: Creation and operation of a conduit fund by a union

ADVISORY OPINION 425

SUMMARY

A “conduit fund” organized and administered by a union, but otherwise in accordance with the express and implied provisions of Minnesota Statutes section 211B.15, subdivision 16, is not a political committee or political fund under Minnesota Statutes Chapter 10A, and is not required to register with the Board. A union may contract with an individual for the administration of its sponsored conduit fund.

FACTS

As the representative of the a Minnesota local trade union (the Union), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts:

1. The Union is organized as the local branch of an international union.
2. The Union is aware of the right of corporations to establish conduit funds as recognized under Minnesota Statutes section 211B.15, subdivision 16.
3. The Union wishes to form a fund that would comply with all of the express and implied provisions of Minnesota Statutes section 211B.15, subdivision 16.
4. It is the desire of the Union that the fund it establishes as a result of this request not be a political committee or political fund that would be required to register and report under Minnesota Statutes Chapter 10A.
5. The Union may wish to contract with an outside individual to perform the administrative functions associated with the conduit fund including soliciting the Union's members, receiving and recording member deposits, and making transfers to candidates at the direction of the contributing members.

Issue One

Is a fund established by a union rather than by a corporation, but otherwise operating under the terms of Minnesota Statutes section 211B.15, subdivision 16, and the Board's Advisory Opinions 6 and 406 a political committee or a political fund that is required to register and report under Minnesota Statutes Chapter 10A?

Opinion

The question of corporation-sponsored employee contribution programs was first addressed by the Board in Advisory Opinion 6 in 1974. At that time, Minn. Stat. § 211B.15, subd. 16, had not been enacted, but the concept of a conduit fund existed in federal law. In Advisory Opinion 6, the Board concluded that a corporation may establish a nonpartisan conduit plan to solicit voluntary contributions from employees if the individual employee making the contribution retains sole control over the disposition of the employee's accumulated funds.

The Board's opinion did not establish the authority of corporations to create employee conduit funds. Rather, the central conclusion of the opinion was that under the proposed terms of operation, these newly recognized conduit funds would not constitute political committees or political funds that would be required to register and report under Chapter 10A. Years after the adoption of Advisory Opinion 6, the legislature enacted the concept of the corporate conduit fund into law as Minn. Stat. § 211B.15, subd. 16.

The Board more recently addressed the same question, again at the request of a corporation, in Advisory Opinion 406. There, the Board reaffirmed that a properly formed and managed employee contribution fund would not constitute a political committee or fund under Chapter 10A and, thus, would not be required to register with or report to the Board.

Because the 1974 advisory opinion was requested by a corporation, the resulting opinion was limited to corporate conduit funds. Similarly, because the subsequent legislation codified the earlier advisory opinion, it was also limited in scope to corporate conduit funds. The present request asks the Board to revisit the 1974 question from the perspective of a local labor union.

The request asks, in essence, whether there is some set of policies and procedures by which the union could establish a member contribution fund similar to the conduit funds recognized in Advisory Opinion 6 and 406 and in Minn. Stat. § 211B.15, subd. 16, so that the member contribution fund would not constitute a political committee or political fund under Chapter 10A.

The previous advisory opinions as well as the corporate conduit fund statute all identify the most important characteristics required for a contribution fund to be excluded from the definitions of political committee and political fund. These characteristics are (1) the fund is nonpartisan; (2) any contribution into the fund comes from an individual who is solely responsible for the decision to contribute to the fund; (3) any contribution from the fund to a candidate must be at the sole direction of the individual whose money will be used to make the candidate contribution; and (4) the individual contributor to the fund remains the owner of the money the individual placed in the fund.

The Board's previous opinions that a corporate conduit fund is not covered by the registration and reporting requirements of Chapter 10A were based on the criteria under which the fund would operate. A political committee is a group of two or more people operating in concert. A conduit fund consists of individuals acting individually, each making their own decisions about their political contribution activities. Thus, a conduit fund is not a political committee. A political

fund is an accumulation of an association's money that is used for specified political purposes. A conduit fund consists of money that belongs to the individual participants. The association sponsoring the conduit fund has no ownership or control over each individual's deposits into the conduit fund. Thus, a conduit fund is not a political fund.

Considering the factors that exclude a conduit fund from the definitions of political committee and political fund, the Board finds no legal basis on which to distinguish for Chapter 10A purposes a corporate conduit fund from a similar fund established by a local union for its members. Thus, the Board concludes that a fund operated by a local union and meeting the requirements of a nonpartisan conduit fund, as further described below, is not a political committee or a political fund and is not required to register or report under Chapter 10A.

Based on the concepts established in Advisory Opinions 6 and 406 and recognized in Minn. Stat. § 211B.15, subd. 16, a union member contribution conduit fund may operate without becoming a Chapter 10A political committee or political fund if it complies with the following requirements.

1. All solicitations for contributions to the fund that are directed to union members by the local union must be in writing, must be informational and nonpartisan in nature, and must not be promotional for any particular candidate or group of candidates.
2. The solicitation must consist only of a general request to participate in the fund and must state that there is no minimum contribution and that a contribution or lack thereof will in no way impact the participant's union membership or status.
3. The solicitation must also state that the union member must direct the contribution to candidates of the member's choice, and that any response by the member shall remain confidential and shall not be directed to the member's supervisors or managers or to union leaders. This means that the individual who administers the fund may not be a local, state, or national leader of the union or a union steward.
4. The fund is established and operated by a single local union and only members of that local union are permitted to participate in the fund.
5. The fund must maintain members' contributions in a depository separate from any other depository.
6. Contributing members must direct the distribution to candidates of their contributions to the fund. The local union sponsor may not be involved directly or indirectly in the determination of the recipients of a member's contributions to the fund.
7. When contributions to candidates are made through the fund, the amount of each individual contribution as well as the name and address of the contributor must be provided to the recipient of the contribution.
8. Implicit in the concept of a conduit fund is the member's retention of control over the member's contributions to the fund. In order to fully implement this requirement, a member must be able to withdraw all of the member's contributions to the fund that have not previously been designated by the member for a specific candidate and have not been actually paid to that candidate. Any solicitation of transfers to the fund must include a statement of this right.

Issue Two

May a local union that has a conduit fund organized and administered under the terms of this opinion retain and pay with union funds an individual to handle some or all of the administrative aspects of the fund, including solicitation of the union's members, receiving and recording member deposits, receiving direction from members with regard to making contributions to candidates with the member's funds, and making the transfers to candidates at the direction of the contributing members?

Opinion

If a local union conduit fund meets the requirements set forth in this Opinion under Issue One, the fund's status with respect to Chapter 10A is not altered by the union's decision to pay an individual to administer the fund rather than undertaking that administration with union employees or volunteers. Even if administration of the fund is contracted to another entity, the union retains the responsibility for operation of the fund consistent with this Opinion.

Issued May 1, 2012

/s/ Greg McCullough

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Statutory Citations

211B.15 CORPORATE POLITICAL CONTRIBUTIONS.

. . .

Subdivision 16. **Employee political fund solicitation.** Any solicitation of political contributions by an employee must be in writing, informational and nonpartisan in nature, and not promotional for any particular candidate or group of candidates. The solicitation must consist only of a general request on behalf of an independent political committee (conduit fund) and must state that there is no minimum contribution, that a contribution or lack thereof will in no way impact the employee's employment, that the employee must direct the contribution to candidates of the employee's choice, and that any response by the employee shall remain confidential and shall not be directed to the employee's supervisors or managers. Questions from an employee regarding a solicitation may be answered orally or in writing consistent with the above requirements. Nothing in this subdivision authorizes a corporate donation of an employee's time prohibited under subdivision 2.

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

**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: Disclosure related to ballot question committees

ADVISORY OPINION 426

SUMMARY

Minnesota Statutes Chapter 10A, provides for disclosure by associations that register political funds with the Board. This opinion describes the statutory requirements under various scenarios presented by the requester.

FACTS

As the representative of an association (the Requester), you ask for an advisory opinion based on the following facts:

1. The Requester is a social welfare, grassroots lobbying, and policy organization with qualified nonprofit corporation status under Internal Revenue Code section 501 (c)(4).
2. The Requester plans on establishing and registering a political fund in Minnesota for the purpose of supporting the constitutional amendment that will be on the November general election ballot and would, if enacted, place a definition of marriage in the Minnesota Constitution. The proposed amendment is referred to as "the Minnesota ballot question" in this opinion.
3. You are aware of previous Board advisory opinions on the subject of ballot question disclosure. However, because Minnesota statutes provide that an advisory opinion may be relied on only by the person making or covered by the request, you wish to confirm that your client may rely on principles articulated in previous opinions.

Based on the above statement of facts, you ask several questions about the disclosure required by Chapter 10A of Minnesota statutes as it applies to the Requester.

Introductory Statement

The issues raised in this request relate in part to the concept of a political fund and the association that supports it. It is important to understand that a political fund, as defined in Minn. Stat. § 10A.01, subd. 28, is simply an accumulation of money collected or expended for statutorily specified purposes. In the case of the requester, its political fund will consist of the

money collected or expended to promote or defeat a ballot question.

An association's political fund is not an entity separate from the association. Rather, it is an accumulation of money that is tracked and reported on using an accounting mechanism of the association's choosing. Thus references to a "transfer" or an "allocation" of money by an association to its political fund mean nothing more than the recording of an accounting record of the fact that an association's general treasury money has been used for purposes that, by statutory definition, make it a part of the association's political fund.

Throughout this opinion, the terms "general treasury money" or "general treasury funds" mean money that the association collects from dues, membership fees, or donations for its general purposes. These terms exclude "contributions" as that term is defined in Chapter 10A, which, in the present context, is money received by an association for the specific purpose of promoting or defeating a ballot question.

Question One

If The Requester were to make expenditures in excess of \$100 from its general treasury funds in support of the Minnesota ballot question, would The Requester then be required to publicly report all donors who contributed over \$100 regardless of the fact that their support is not or was not designated for the Minnesota ballot question?

Opinion

This question relates to the use of general treasury funds, which, as noted above, consist of both voluntary donations to the association and money that the association characterizes as membership dues or fees. By definition, general treasury funds do not arise from "contributions" as that word is defined in Chapter 10A. This section of this opinion does not apply to money raised by The Requester that would constitute Chapter 10A contributions.

Receipts of general treasury funds are not subject to the reporting requirement applicable to contributions, which requires itemization of any contribution of more than \$100. However, under Minn. Stat. § 10A.27, subd. 15, if The Requester uses \$5,000 or more of its general treasury money for expenditures to promote or defeat a ballot question, it must file a statement of underlying sources with its political fund report.

A statement of underlying sources may result in itemization of donors, but at a \$1,000-or-more threshold rather than at the more-than-\$100 threshold applicable to contributions.

Question Two

Practically, what must The Requester do when it transfers funds from its general treasury to its political fund? Is the record of the allocation of donors of less than \$1,000 maintained solely by The Requester or is it to be provided or reported to the Board? If it is not reported to the Board at the time of the transfer, are there circumstances when the Board would seek to obtain the allocation ledger? If the ledger must be provided to the Board, is there any protection for the disclosure of underlying source(s) of donors of less than \$1,000?

Opinion

In 2010, the legislature recognized independent expenditure political committees or funds as vehicles for making independent expenditures and other expenditures that do not constitute contributions to candidates or party units. In its recent guidance, the Board recognized that this

new legislation was broad enough to also apply to an association that made only ballot question expenditures. This recognition allows ballot question political committees or funds the option of reporting under the new independent expenditure political committee or fund disclosure statutes rather than under the disclosure statutes that existed prior to 2010.

Prior to 2010, Minn. Stat. § 10A.12, subd. 5, allowed an association to account for general treasury funds through a political fund account that it established and reported through. Under that section, the association was required to report to the Board with its political fund report the name of any individual whose donations to the association constituted more than \$100 in aggregate of the money that the association accounted for through its political fund.

Under the independent expenditure political fund disclosure requirements, no underlying source disclosure is required until the association has allocated \$5,000 or more in a year to its political fund account. Once allocations of \$5,000 or more have been made by an association, underlying source disclosure is required, which may or may not result in the disclosure of itemized sources.

Minnesota Statutes section 10A.27, subdivision 15, under which ballot question political funds may operate, provides that an association may allocate its transfer to a political committee or fund registered with the Board either by identifying from its donors those specific donors to whom it wants to allocate the transfer or by pro-rating the transfer over all of its donors. After applying either method, if the amount of the transfer allocated to an individual source is \$1,000 or more, the name and address of that source must be itemized on a statement of underlying sources.

If The Requester uses general treasury funds to promote or defeat a ballot question, it must prepare a statement of underlying sources and file it with the Board along with its next regular Report of Receipts and Expenditures.

The underlying calculations resulting in the allocation, including information related to the choice of allocation method, is retained with the donor association and not filed with the Board.

In the event of a Board investigation related to the activities of an association to promote a ballot question in Minnesota, it is possible that records of the calculation of the allocation could be requested by the Board. However, it is the Board's intention that in such a case, the association providing the records would substitute numbers for the actual names and addresses of the general treasury donors whose donations were part of the allocation. This would prevent the identification of donors whose names are not required to be itemized under § 10A.27, subd. 15.

Question Three

If The Requester wishes to contribute to a registered ballot question political committee, must those contributions be made from The Requester's political fund, or can The Requester contribute to a ballot question political committee directly from its general treasury funds? Do the reporting and disclosure requirements change based on the source of the contribution?

Opinion

Because The Requester will have registered a ballot question political fund with the Board, it may make contributions to registered ballot question political committees by allocating general treasury funds to its own political fund and then making a contribution to the recipient ballot question political committee that will be reported through The Requester's political fund account.

In the alternative, The Requester may make contributions to a registered ballot question political

committee directly using its general treasury funds. In either case, the underlying source disclosure requirements of Minn. Stat. § 10A.27, subd. 15, apply. In the case of the allocation to The Requester's own political fund account, The Requester would create an underlying source disclosure statement and file it with its next political fund account report. In the case of a direct contribution from general treasury funds to a registered ballot question political committee, The Requester would create an underlying source disclosure statement and provide it to the recipient ballot question political committee for filing with the recipient's next report.

If the Requester donates directly to a registered ballot question political committee, the recipient political committee will report the contribution received from the Requester, along with any required underlying source disclosure. The Requester Political Fund will have no reporting obligation with respect to the transaction.

If the Requester donates to a ballot question political committee by first allocating general treasury funds to the Requester political fund, then the Requester political fund will report the allocation to it of The Requester general treasury funds, along with any required underlying source disclosure. The Requester political fund will also report the contribution to the recipient ballot question political committee. The recipient political committee will report the receipt of a contribution from the Requester political fund, but would not receive or report any underlying source disclosure because the contribution would be coming from an association that has a political fund registered with and reporting to the Board.

Question Four

If The Requester writes in its regular publications such as its newsletter, or on its website, or in other educational materials regarding the importance of the Minnesota ballot question, may The Requester pay such costs as part of its normal program budget or must those costs all be paid by the political fund?

Opinion

The question is not whether these costs may be paid from one account or another. As has been explained in other sections of this Opinion, money becomes a part of an association's political fund when it is *used* to promote or defeat a ballot question. So whether the money is in one budget or another or one depository or another is not relevant.

The board assumes that the intent of the question is to ask whether the costs of the subject communications must be reported on the association's political fund report. Although the question provides little detail, it appears that the subject communications are for the purpose of promoting a ballot question. Thus, the costs of the communications are ballot question expenditures and must be reported on The Requester's political fund report.

Question Five

If, in a solicitation, The Requester references the Minnesota ballot question as one of the projects in which it is involved, are all resulting contributions to The Requester over \$100 subject to reporting to the Board by virtue of such references, even if not solicited specifically for the purpose and if each solicitation clearly stipulates that no contributions may be designated or earmarked for any purpose?

Opinion

The word "contributions" is specifically defined in Chapter 10A, and limits on its application have been provided in Board guidance. The Board interprets the question as referring to "donations"

to The Requester rather than to "contributions" as the word is defined in Chapter 10A. This is not to say, of course, that donations to The Requester may not also be contributions under Chapter 10A. This is, in fact, the issue raised by the question.

On October 14, 2011, the Board adopted the following Statement of Guidance regarding the application of the Chapter 10A definition of "contribution":

1. Money designated for ballot question expenditure purposes

Money received by an association is a contribution if the contributor specified that the money was given to support the association's campaign to promote or defeat the ballot question.

2. Money given in response to a solicitation including an express request

Money given in response to a solicitation that requests money for the express purpose of supporting the association's campaign to promote or defeat the ballot question is a contribution.

An express request is a request that asks for money and states that the money is sought to support the ballot question campaign.

3. Money given in response to a solicitation that is the functional equivalent of an express request.

Money given in response to a solicitation that meets the all of the following criteria is a contribution:

- A) The solicitation is made after the date of final enactment by the legislature of the bill placing the subject ballot question on the general election ballot;
- B) The solicitation clearly identifies the subject ballot question; and
- C) The solicitation is susceptible to no reasonable interpretation other than that money given as a result of the solicitation will be used to promote or defeat the subject ballot question.

For the purpose of determining whether a solicitation clearly identifies the ballot question, the "solicitation" includes:

- A) For a mailed solicitation: the solicitation itself and any material included in the same mailing;
- B) For an electronically transmitted solicitation: the electronic communication itself and any attachments to the communication. An electronic solicitation also includes material accessed directly by a hyperlink in the solicitation or its attachments. Intermediate hyperlinks inserted merely to subvert the direct link requirement will not be considered when examining whether the solicitation directly links to a page that refers to the subject ballot question;

C) For a website based solicitation: the solicitation form itself and all other pages of the association's website.

Limitation

It is the Board's intention that the definitions of "contribution" set forth in this Guidance be applied in favor of excluding transfers of money from the definition of "contribution" in any case where it is not clear that all of the specified criteria have been met.

From the facts provided in your statement of the issue, it is clear that parts 1 and 2 of the definition of "contribution" do not apply to the transactions about which you inquire.

With respect to the application of the definition of "contribution" in part 3 of the guidance, requirements A and B are met. That is, the question has already been placed on the ballot by the legislature and, according to the premise of the question, the solicitation will identify the subject of the ballot question.

However, part C of the definition requires that the solicitation be "susceptible to no reasonable interpretation other than that money given as a result of the solicitation *will be used* to promote or defeat the subject ballot question." (Emphasis added.)

Without specific text or specific web pages to examine, the Board's evaluation of the fact situation must be, as is the question itself, somewhat hypothetical. However, the Board has made it clear that when determining whether money given is a "contribution" its guidance is to be applied in favor of excluding transfers where the requirements of the definition are not clearly met.

Under the question presented, the solicitation suggests that money raised could be used for any of a range of the association's various projects and activities. While donors may assume that some or even all of their donation will be used to promote or defeat a ballot question, and the association may actually end up using it for that purpose, disclosure requirements are not based on assumptions.

The Board concludes that the hypothetical solicitation is subject to interpretations other than that any donations resulting from it *will*, in fact, be used to promote or defeat a ballot question. Thus, funds received as a result of the hypothetical solicitation presented in the question would not be "contributions" under Chapter 10A. While the donors may be subject to underlying source disclosure as discussed in other sections of this opinion, the donations are not reportable as "contributions," which must be itemized when they are more than \$100.

Issued May 1, 2012

/s/ Greg McCullough

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.01 DEFINITIONS

...

Subd 18b. **Independent expenditure political fund.** "Independent expenditure political fund" means a political fund that makes only independent expenditures and disbursements permitted under section 10A.121, subdivision 1.

...

Subd. 28. **Political fund.** "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

10A.12 POLITICAL FUNDS.

...

Subd. 5. **Dues or membership fees.** An association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Under section 10A.20, the treasurer of the fund must disclose the name of any member whose dues, membership fees, and contributions deposited in the political fund together exceed \$100 in a year.

10A.121 INDEPENDENT EXPENDITURE POLITICAL COMMITTEES AND INDEPENDENT EXPENDITURE POLITICAL FUNDS

Subdivision 1. **Permitted disbursement.** An independent expenditure political committee or an independent expenditure political fund, in addition to making independent expenditures, may:

- (1) pay costs associated with its fund-raising and general operations;
- (2) pay for communications that do not constitute contributions or approved expenditures; and
- (3) make contributions to other independent expenditure political committees or independent expenditure political funds.

10A.27 CONTRIBUTIONS

...

Subd. 14. **Contributions of business revenue.** An association may, if not prohibited by other law, contribute revenue from the operation of a business to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13.

Subd. 15. **Contributions of dues or contribution revenue.** (a) An association may, if not prohibited by other law, contribute revenue from membership dues or fees, or from contributions received by the association to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13. Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed \$5,000 or more in aggregate to independent expenditure political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address,

and amount attributable to each individual or association that paid the association dues or fees, or made contributions to the association that, in total, aggregate \$1,000 or more of the contribution from the association to the independent expenditure political committee or fund. The statement must also include the total amount of the contribution from individuals or associations not subject to itemization under this section. The statement must be certified as true and correct by an officer of the donor association.

(b) To determine the membership dues or fees, or contributions made by an individual or association that exceed \$1,000 of the contribution made by the donor association to the independent expenditure political committee or fund, the donor association must:

(1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or

(2) as provided in paragraph (c), identify the specific individuals or associations whose dues, fees, or contributions are included in the contribution to the independent expenditure political committee or fund.

(c) Dues, fees, or contributions from an individual or association must be identified in a contribution to an independent expenditure political committee or fund under paragraph (b), clause (2), if:

(1) the individual or association has specifically authorized the donor association to use the individual's or association's dues, fees, or contributions for this purpose; or

(2) if the individual's or association's dues, fees, or contributions to the donor association are unrestricted and the donor association designates them as the source of the subject contribution to the independent expenditure political committee or fund. After a portion of an individual's or association's dues, fees, or contributions to the donor association have been designated as the source of a contribution to an independent expenditure political committee or fund, that portion of the individual's or association's dues, fees, or contributions to the donor association may not be designated as the source of any other contribution to an independent expenditure political committee or fund.

(d) For the purposes of this section, "donor association" means the association contributing to an independent expenditure political committee or fund that is required to provide a statement under paragraph (a).

Subd. 16. Treasurer to submit disclosure statements. The treasurer of a political committee or political fund receiving a statement required under subdivision 15, must file a copy of the statement before the deadline for the committee or fund's next report filed with the board under section 10A.20, subdivision 2 or 5, after receiving the statement.

Subd. 17. Penalty. (a) An association that makes a contribution under subdivision 15, and fails to provide the required statement within the time specified is subject to a civil penalty of up to four times the amount of the contribution, but not to exceed \$25,000, except when the violation was intentional.

(b) An independent expenditure political committee or an independent expenditure political fund that files a report without including the statement required under subdivision 15, is subject to a civil penalty of up to four times the amount of the contribution for which disclosure was not filed, but not to exceed \$25,000, except when the violation was intentional.

(c) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.