

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

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

Issued to: Dr. Kathryn Pearson
University of Minnesota
1414 Social Sciences Building
267 – 19th Ave. S.
Minneapolis, MN 55455

RE: Gift of meal to public officials

ADVISORY OPINION 451

SUMMARY

Providing meals to public officials is not a prohibited gift as long as the funding for the meals is from an association that is not a principal in Minnesota, and the meals were not provided to the public officials at the request of a lobbyist or principal.

FACTS

As a professor at the University of Minnesota, Department of Political Science, you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts which were provided to the Board in a written request and through conversations with Board staff.

1. You and other political scientists are preparing to conduct a research study entitled, "Can Breaking Bread Build Bipartisanship? Social Interactions and Cosponsorship Behavior?" All Minnesota state legislators will be invited to participate in the study. Participation in the study is voluntary.
2. The political scientists who are conducting the study will select legislators to pair with one or more legislators from the opposing party. The paired legislators will be asked to have lunch together three times during the first month of the legislative session. The study will pay for the cost of the meals.
3. The research records generated from the study will be stored securely, and any report that results from the study will not identify legislators who participated. A legislator's decision to participate, or not to participate, in the study will not affect a legislator's relationship with the University of Minnesota.
4. The study is currently funded by a research grant from the University of California, San Diego. Additional funding has been applied for from other universities and a charitable foundation. The current and potential sources of funding for the study are not lobbyist principals in Minnesota.

ISSUE ONE

May the study provide meals to Minnesota legislators without violating the gift prohibition in Minnesota Statutes section 10A.071?

OPINION ONE

Minnesota Statutes section 10A.071 generally prohibits a principal or lobbyist from giving a gift to a public official. A meal is included within the definition of a prohibited gift.¹ However, the prohibition is limited to situations where the gift is provided by a principal or a lobbyist, or at the request of a principal or a lobbyist.

The current source of funding for the study, and the additional potential sources of funding, are not represented by any registered lobbyists in Minnesota, and do not otherwise meet the definition of “principal” as provided in Minnesota Statutes section 10A.01, subdivision 33. Further, the meals are not being provided at the request of any lobbyist or principal. Therefore, providing meals to legislators as a part of the study described in this opinion is not a prohibited gift under Minnesota Statutes section 10A.071.

The Board notes that the University of Minnesota is not listed as a current or potential source of funding for the study. If circumstances change, and the University of Minnesota does provide funding for the study, the meal provided in the study is still not a prohibited gift because the University of Minnesota, as a public higher education system, is not a principal even though it is represented by registered lobbyists.²

Issued: January 3, 2020

/s/ Robert Moilanen
Robert Moilanen, Chair
Campaign Finance and Public Disclosure Board

¹ Minnesota Rules 4512.0100, subpart 3.

² Advisory Opinion 224 (January 26, 1996). https://cfb.mn.gov/pdf/advisory_opinions/AO224.pdf

**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)**

ADVISORY OPINION 452

SUMMARY

Committees may jointly purchase services and products from a commercial vendor without the use of a third-party intermediary.

Facts

As a representative of a committee registered with the Board, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion to clarify the guidance found in Advisory Opinion 436.¹ In particular, the answer provided to question 2 of Advisory Opinion 436 gives direction on how political committees may jointly purchase services from a commercial vendor without making an inadvertent in-kind contribution, or a prohibited contribution, between the committees that are making the purchase. The facts from Advisory Opinion 436 that are relevant to question 2, and needed to understand the basis of this opinion, are as follows.

1. The vendor is a commercial corporation that operates a research and opinion polling service that provides its customers with information which helps their election related activities in Minnesota.
2. The vendor's customers include candidate committees, political party units, political committees and funds, and independent expenditure committees and funds registered with the Board.
3. The vendor has in place policies and procedures that prohibit its customers from discussing their election related plans, including how the customer will use polling and research information, with employees of the vendor.
4. The vendor sells discrete research and polling projects in response to specific requests received from customers. The vendor charges either an hourly rate or a flat fee for these services. Both the hourly rate and the flat fee will reflect a rate the vendor reasonably believes will exceed the cost to produce the work requested.
5. If two or more customers jointly ask the vendor to work on a discrete research or polling project, the vendor will charge the same hourly rate or flat fee as it would if only one customer were purchasing the product. The cost of the project will be divided between the customers so that each customer pays an equal and proportionate share of the total project cost.

In addition, for the purposes of this opinion, the Board provides this definition.

¹ Advisory Opinion 436 (Nov. 5, 2013) https://cfb.mn.gov/pdf/advisory_opinions/AO436.pdf

6. "Bona fide use" means that each committee has an authentic, genuine, and real need for the services provided by the vendor that is autonomous of the needs of other committee(s) that jointly purchase the services.

Background

Advisory opinions issued by the Board provide safe harbor to a requestor who follows the advice given in the opinion. Political committees often refer to advisory opinions that were not issued to them for guidance on their behavior and for an understanding of how the Board interprets a given statutory requirement. In this opinion, the requestor asks for clarification on Advisory Opinion 436, which it has used for guidance when making joint purchases of services with other registered political committees.

Advisory Opinion 436 was issued to a commercial vendor that provides issue and candidate related research and polling services for use in political campaigns. The vendor was willing to sell its products to two or more committees that jointly purchased the products at the same rate or flat fee that would be charged to a single committee purchasing their products. Question 2 and the opinion provided in Advisory Opinion 436 are as follows:

Question 2: If two or more registered committees or funds evenly share the cost of purchasing a specific set of research or polling services, will the registered committees or funds have made in-kind contributions to each other equal in value to the amount each committee or fund saved by not purchasing the services alone?

Opinion: No, as long as all parties that are a part of the joint purchase have a bone fide use for the services purchased and the share each party pays is equivalent to the proportionate benefit each party expects to receive from the service. Registered committees and funds, like any other consumer, try to derive the best value possible for their money. As long as all of the parties in a joint purchase of services have a legitimate use for the services, and the joint purchase is a way to buy needed services at a reduced cost, then the joint purchase is not an in-kind contribution.

If, however, a participant in a joint purchase has no need for the services acquired, then the purpose of the joint purchase changes. A party to a joint purchase of services that has no bona fide use for the services is partially subsidizing the services used by the other participants in the purchase. In this scenario the cost paid by the party that had no use for the service is an in-kind contribution to any registered committee that received the service through the joint purchase. An in-kind contribution is not necessarily prohibited, but as pointed out by Advisory Opinion 410, an in-kind contribution between an IEPC and any other type of registered committee, is a violation of Chapter 10A.

An in-kind contribution may also occur if the cost paid by a party to a joint purchase is significantly disproportionate to the parties' use of the service. In such a case, the parties must allocate the cost of the service in proportion to the benefit they received from it....

To this point in Advisory Opinion 436 the guidance is clear, a joint purchase by committees of research and polling services does not create an in-kind contribution between the committees as long as 1) each committee has a bona fide use for the services, and 2) each committee pays an equal or proportionate share of the cost of the services.

However, the vendor in Advisory Opinion 436 stated that it had policies prohibiting its employees from discussing with customers their use of purchased services and the customers' election related plans. The Board noted in the opinion that these policies would prevent the vendor from ensuring that each committee involved in a joint purchase had a bona fide use for the services, and also would prevent the vendor from knowing if each committee was paying an equal or equitable share of the cost of the services. In the opinion, the Board provided that it "... may investigate to determine if all parties to the purchase had a bona fide need for the information acquired and that the amount paid in a joint purchase was appropriate."

The requestor believes that committees have tried to comply with the guidance of Advisory Opinion 436 in part by using a third-party vendor to act as a conduit between the vendor providing the services and the committees that are purchasing the services. Presumably the third-party vendor determines that each committee that participates in the joint purchase has a bona fide use for the product, and that each committee is paying an equal or equitable share of the cost.

With this background in mind, the requestor asks the following questions.

Issue One

Is a third-party vendor required to properly execute a joint purchase of bona fide services from a commercial vendor?

Opinion One

No, the use of a third-party vendor is not required. The committees that jointly purchase the services are ultimately responsible for complying with the provisions of Chapter 10A. Committees that agree to make a joint purchase, and wish to avoid making an in-kind contribution, will need to determine beforehand that all committees have a bona fide use for the services and that each committee pays for an equal or proportionate share of the services. As documentation of their compliance the Board recommends that the participating committees keep as records the calculations and relevant communications used to determine that an in-kind contribution did not occur.

Issue Two

May committees directly contract with a vendor for services and split the costs, provided the other necessary conditions are met?

Opinion Two

Yes, both this opinion and Advisory Opinion 436 acknowledge that committees may jointly purchase services assuming that no unreported or impermissible in-kind contributions occur. The use of a third-party vendor to purchase the services is permissible, but not required.

Issue Three

If committees do contract directly with a vendor, does the administrative work of the committee acting as point of contact with the vendor constitute an in-kind contribution from that group to the other committees?

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

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

Issued to: Senator Karla Bigham
PO Box 18
Cottage Grove, MN 55016

RE: Podcast as a constituent service

ADVISORY OPINION 453

SUMMARY

A legislator may produce or participate in a podcast to discuss public policy and current events and may pay for the podcast with personal funds. Whether the podcast expenses must be accounted for through the legislator's principal campaign committee depends on the content of the podcast.

FACTS

As a state senator who is a declared candidate for reelection, you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts which were provided to the Board in a written request and through conversations with Board staff.

1. You plan to develop and launch a podcast. You will be the host of the podcast.
2. You will pay the cost of producing the podcast and the costs for making the podcast available online with personal funds. At some point you may ask for donations or accept sponsorships to help cover the costs of producing and distributing the podcast. You do not intend to use funds from your principal campaign committee for the podcast.
3. The podcast will focus on public policy, organizations in your community, and current events in that community.
4. The podcast will feature guests that may include local elected officials, fellow colleagues in the legislature, elected officials on a federal level, business professionals, community members, and other relevant guests depending on the topic.
5. Depending on the guest and the subject matter of the podcast the discussion may be considered partisan in nature.

6. Neither you as the host nor any guest will ask for votes, contributions for any political campaign or political organization, or assistance or support for any political campaign.
7. The podcast will have its own email, webpage, and social media accounts.

ISSUE ONE

May a legislator who is a candidate for re-election produce and host a podcast that is not paid for by the official's principal campaign committee?

OPINION ONE

Yes. A legislator who is a candidate for re-election may produce and host a podcast that is not paid for by the legislator's principal campaign committee. However, whether the podcast must be accounted for by the legislator's principal campaign committee is determined by the content of the podcast. Candidates and elected officials have commercial, professional, and personal interests that may be the basis for a podcast that would clearly be outside the scope of the regulation and reporting requirements of Chapter 10A. Therefore, the costs of those podcasts would not need to be accounted for by a principal campaign committee.

However, based on the facts presented for this advisory opinion, the subject podcast will focus on discussions of public policy, local organizations, and current events that are of importance to the Senator's community. The purpose of the podcast is therefore to provide a service in the form of information that is relevant to the Senator's constituents. A constituent service is a noncampaign disbursement under Minnesota Statutes section 10A.01, subdivision 26.

The Board has long recognized that some services provided by a legislator to constituents are not for the purpose of influencing the nomination or election of the legislator. In Advisory Opinions 19 and 24¹ the Board recognized the holding of informational hearings, speaking at meetings in the legislator's district, and sending legislative questionnaires and legislative reports as constituent services. Advisory Opinion 19 explained as follows:

One of the functions of a legislator is to report to his constituents on possible legislative action and to obtain their opinions on matters which come before the Legislature so that he may represent them during the session. Any activities designed to enable him to fulfill that function are legitimate constituent services, even though they may have an incidental effect on the legislator's chances for re-election.

Notably both advisory opinions were issued prior to the legislature creating the definition for the term "noncampaign disbursement," which included constituent services, in 1978.²

¹ Advisory Opinion 19 (April 18, 1975). Advisory Opinion 24 (August 5, 1975). While these two opinions provide insight into the Board interpretation of Chapter 10A, opinions issued by the Board prior to 1994 have lapsed, and no longer provide safe harbor to the requester.

² Laws of 1978, Chapter 463, section 10.

More recently the Board provided in Advisory Opinion 365³ that the cost of producing a cable television program on which legislators may serve as hosts and "... be interviewed for perspectives on current issues and matters occurring in the legislature" may be reported as a constituent service "[i]f the purpose of the candidate appearing on the program was to provide constituents with information on issues facing the state..."

Advisory Opinion 403⁴ also acknowledged information on issues and legislative action as a constituent service when it provided:

The Board has extended the concept of constituent services to cover annual reports of legislators to their constituents. While such a service is not requested by the recipient, there is a long tradition and expectation that part of what a legislator does for his or her constituents is to keep them informed.

While the use of a podcast as the medium to distribute information to constituents is a new fact for the Board to consider, both the nature of the information provided on the podcast and the role of a legislator leading a discussion of the issues are consistent with the advisory opinions discussed above. The Board therefore concludes, based on the facts provided, that the podcast is a constituent service under Chapter 10A.

Because a constituent service could provide value to the reelection campaign of a legislator, Minnesota Statutes section 10A.173, subdivision 1, paragraph (a), establishes a period of time in which one-half of a constituent service is a campaign expenditure and a period of time in which the entire cost of those services is a campaign expenditure. The period where one-half of the constituent service is a campaign expenditure begins when the legislature adjourns sine die in a year when the legislator is on the ballot, and continues for 60 days. After the 60-day period expires through election day, the entire expense is a campaign expenditure.

In this case, the cost of producing and distributing a podcast episode must be divided between noncampaign disbursement and campaign expenditure if the episode is released during the 60 days following adjournment sine die in any year in which the Senate is on the ballot. The cost of producing and distributing a podcast episode after 60 days following the adjournment of the legislature sine die is counted entirely as a campaign expenditure.

The Board notes that the Senator plans to develop a website and use email and other social media to promote and distribute the podcast. The costs of the website, email, and other social media platforms used to promote the podcast are distribution costs of the podcast and must also be divided between noncampaign disbursement and campaign expenditure as described above.

Services for constituents are a type of noncampaign disbursement only available to incumbent legislators and constitutional officers because only incumbents have constituents. A podcast produced by a candidate who is not an incumbent could not be classified as a constituent service, and would therefore be evaluated differently than the podcast that is the subject of this opinion.

³ Advisory Opinion 365 (February 22, 2005).

⁴ Advisory Opinion 403 (March 3, 2009).

ISSUE TWO

Does the above-described podcast constitute an in-kind contribution to the campaign committee?

OPINION TWO

Up to the point at which the cost of producing and distributing a constituent service must be divided between noncampaign disbursement and campaign expenditure a legislator has the option of paying for the constituent service with either personal funds or the funds of his or her principal campaign committee. Minnesota Rules 4503.0950, subpart 1, provides:

Constituent services which a principal campaign committee would report as noncampaign disbursements under Minnesota Statutes, section 10A.01, subdivision 26, clause (6), and which are paid for with the personal funds of an incumbent are not reportable.

However, once a constituent service is at least in part a campaign expenditure it must be paid for by the legislator's principal campaign committee, or if the cost is paid for by the legislator, the cost must be reported as an in-kind donation from the legislator to the principal campaign committee.

ISSUE THREE

May the podcast accept individual donations to offset capital and ongoing operational costs?

OPINION THREE

Yes, but donations from individuals that are used to pay for noncampaign disbursements, including constituent services, must be deposited in the account of the principal campaign committee of the candidate. Money donated to a principal campaign committee is a contribution⁵ to the committee, and is subject to the source and contribution limits provided in Chapter 10A. Because donations for the podcast must be deposited in the principal campaign committee's account, the solicitation of donations to pay for the podcast would in effect be soliciting contributions to the principal campaign committee.

ISSUE FOUR

May the podcast be sponsored by a business or other association? If yes, are there any required disclaimers?

OPINION FOUR

A corporation is prohibited from making contributions to a principal campaign committee, and principal campaign committees are prohibited from accepting contributions from corporations.⁶ For the purposes of this advisory opinion the term "sponsorship" is

⁵ Minnesota Statutes section 10A.01, subdivision 11, defines "contribution."

⁶ Minnesota Statutes section 211B.15.

differentiated from a contribution in that with a sponsorship the business or association pays for the cost of the podcast in exchange for advertising time in the podcast. Presumably a sponsor of the podcast would receive marketing exposure of at least equal value to the cost of producing and distributing the podcast. The sponsorship would in theory not be a contribution to the principal campaign committee, but instead something similar to a business transaction.

However, principal campaign committees are not established to operate as businesses. Chapter 10A does not contemplate principal campaign committee making income from providing services to constituents. More importantly, if the Board were to allow business sponsorship of noncampaign disbursements it would defeat contribution limits and allow access to sources of funding, primarily to incumbent legislators, otherwise prohibited by Chapter 10A. The Board concludes therefore that corporations and other associations may not sponsor noncampaign disbursements, including a podcast provided as a constituent service.⁷

ISSUE FIVE

If at some future time the podcast was used for campaign purposes, what should be reported to the Board?

OPINION FIVE

As noted in opinion one, the cost of producing and distributing any podcast released after the adjournment of the legislature sine die must be divided between noncampaign disbursements and campaign expenditures as provided in Minnesota Statutes section 10A.173, subdivision 1. The portion of costs for the podcasts that are campaign expenditures are reported to the Board and count against the legislator's spending limit.

ISSUE SIX

Would the podcast be required to have a disclaimer that the podcast is not related to a political campaign?

OPINION SIX

No, a podcast that is entirely a constituent service when it is released does not require the disclaimer set forth in Minnesota Statutes section 211B.04 because it is not campaign material. However, Minnesota Statutes section 10A.173, subdivision 1 (c), provides:

A communication prepared as a service for a constituent must include the disclaimer required by section 211B.04 when the communication is disseminated after adjournment sine die of the legislature in the election year for the office held.

⁷ The Board announced in the Findings and Order in the Matter of a Contribution to the 23rd Senate District DFL from the Maschka, Riedy & Ries Law Firm that a business may not sponsor fundraising events in part because of the enforcement problems listed in issue four.

If the content of the podcast changes from a constituent service to campaign material then the standard campaign disclaimer provided in section 211B.04 is required at the time the content of the podcast changes.

ISSUE SEVEN

If a guest is an elected official, are there any required disclaimers?

OPINION SEVEN

No, having a guest on the podcast who is an elected official does not require additional campaign disclaimers for the elected officials. The facts of the opinion provide that neither the host of the podcast nor any guest will ask for votes, contributions for any political campaign or political organization, or assistance or support for any political campaign. Minnesota Rules 4503.1000, subpart 1, provides:

Campaign materials, including media advertisements, produced and distributed on behalf of one candidate which contain images of, appearances by, or references to another candidate, but which do not mention the candidacy of the other candidate or make a direct or indirect appeal for support of the other candidate, are not contributions to, or expenditures on behalf of that candidate.

As explained in opinion six, when the podcast is a constituent service a campaign disclaimer is not required. When the podcast is a campaign expenditure on behalf of the legislator because of adjournment sine die or because of a change in the content of the podcast, a campaign disclaimer for the legislator's committee is required. However, as provided in the above rule the appearance of another candidate in the podcast will not be a campaign expenditure for that candidate if there is no direct or indirect appeal for support for the other candidate. If the podcast is not campaign material for the other candidate, then a disclaimer for the other candidate's campaign is not required.

ISSUE EIGHT

Can the podcast discuss legislation that is sponsored or supported by the host? Additionally, can the host promote, support, or oppose legislation on the podcast?

OPINION EIGHT

Yes, the podcast may discuss legislation that is sponsored or supported by the host, and the podcast may also be used to promote, support, or oppose legislation. As noted in the facts of the opinion the discussion of issues and legislation may at times be considered partisan. Information provided as a constituent service does not have to be neutral or nonpartisan in nature. However, a podcast that advocates for the election or defeat of candidates because of their position on legislation is not a constituent service.

Issued: June 3, 2020

/s/ Gary Haugen
Gary Haugen, Vice Chair
Campaign Finance and Public Disclosure Board