

**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 454**

**SUMMARY**

A political party unit may lease meeting space for use by elected members of the party and other individuals who pay a membership fee for use of the facility. The payment of a membership fee is a contribution to the party unit. The value of the facility may, in part, constitute in-kind contributions to the campaign committees of elected members.

**Facts**

As a representative of a registered political party unit (the party unit), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts which were provided to the Board in a written request and through conversations with Board staff.

1. The party unit holds events for its members during the legislative session. Finding a location to hold these events, and for informal meetings by members, has been complicated by the pandemic and its related restrictions on the use of public space and the limited availability of private space.
2. The party unit intends to lease space for use by the party unit, elected members of the party, staff, and invited guests during the legislative session. The party unit will pay fair market value for use of the space.
3. The party unit views the cost of meeting space for its activities and its members as an expenditure for “office and other space” that supports the political purpose of re-electing its members.<sup>1</sup> The space will be used, in part, to support the development of legislation that supports the party’s political agenda. Passage of legislation and development of policies that are in line with the party’s goals will directly support the election of party candidates.
4. The leased space will not be open to the general public. In order to use the facility elected members of the party will be required to pay a membership fee that is specifically for access to the facility. The amount of the membership fee has not been

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<sup>1</sup> Minnesota Statutes section 211B.12 listing permitted uses of funds collected for political purposes.

determined, but any fees collected will be used for the party unit's administrative costs. The party unit does not intend to pay for the lease of the facility through the membership fees paid by elected members of the party.

5. The party unit will offer limited memberships to individuals who are not elected office holders. The limited memberships will provide access to use the facility, but will not provide any other rights or duties within the party unit. Limited memberships will be offered at the discretion of the party unit. The cost of a limited membership may be greater than the membership fee for elected members of the party unit.
6. The party unit will not allow candidates to hold fundraisers at the facility during the legislative session.
7. Food and beverages will be available for purchase at the meeting facility at fair market value. Members will be responsible for the purchase of any food or beverage items for themselves or guests.
8. The party unit and its elected members are aware of and comply with the prohibition on contributions from lobbyists during the legislative session. See Minn. Stat. § 10A.273.
9. The party unit and its elected members are aware of and comply with the gift prohibition between lobbyists and public officials. See Minn. Stat. § 10A.071.

With this background in mind, the party unit asks the following questions.

### **Issue One**

Does providing elected members with a meeting space result in a contribution from the party unit to the elected members which must be reported to the Board?

### **Opinion One**

Yes. Minnesota Statutes section 10A.01, subdivision 4, defines an approved expenditure as follows:

“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.

Minnesota Rules part 4503.0800, subpart 4, further provides, “The fair market value of shared office space or services provided to a candidate without reimbursement is a donation in kind.”

As described in the facts of the request, the membership fees paid by elected members will be applied against the administrative overhead of the party unit, and will not pay for the cost of the meeting space. For elected members, the value of the use of the facility is an approved expenditure by the party unit (a type of donation in kind) on behalf of those candidates. By definition, an approved expenditure is a contribution to the elected member's campaign committee.

The approved expenditure for use of the meeting facility is a contribution from a political party unit, and will count against the aggregate political party unit limit of the elected member's campaign committee. Because the approved expenditure counts against the political party contribution limit, if the value of the approved expenditure exceeds \$20 an elected member's campaign committee must provide a written acknowledgement to the party unit of the donation and authorizing the approved expenditure at a set amount.<sup>2</sup>

In determining the value of the meeting facility to elected members the party unit should subtract from the cost paid for the leased space and any associated costs for operating the facility the value to the party unit of holding its meetings at the location. The remaining cost is a benefit that then would be allocated among the members.

The party unit will report the value of the use of the facility as a contribution to the elected members' campaign committees. The donation will be itemized if the value of the membership is over \$200, or if the value of the membership combined with any other donation made by the party unit to the elected member during the calendar year exceeds \$200. The elected member will also report the donation in kind from the party unit on the schedule for party unit contributions, again itemizing the contribution if the value is over \$200 either individually or in aggregate with other contributions from the party unit. A donation in kind is also reported as either a campaign expenditure or a non-campaign disbursement during the same reporting period in which it is received.<sup>3</sup>

### **Issue Two**

Does the purchase of a limited membership by a non-elected individual result in a contribution to the party unit?

### **Opinion Two**

Yes. The membership dues are payments for services provided by the party unit, and the party unit is free to use the membership dues for any political purpose. The payment of dues, regardless of whether paid for by an elected or limited member, will be reported as contributions during the reporting period in which the payment is received. Itemization of the donation will occur if the member's dues exceed \$200 in a calendar year, or if the dues in combination with other contributions to the party unit exceed \$200 during the calendar year.

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<sup>2</sup> Minnesota Statutes section 10A.17, subdivision 2

<sup>3</sup> Minnesota Statutes section 10A.20, subdivision 3, (c) and (h)

The Board notes that Minnesota Statutes section 10A.271 provides that a political party unit that sells goods or services must provide notice to the purchaser that the payment for the item is a political contribution.

### **Issue Three**

If a limited membership is purchased by a registered lobbyist prior to the beginning of the legislative session, will use of the membership during the session result in a violation of the sessional contribution prohibition?

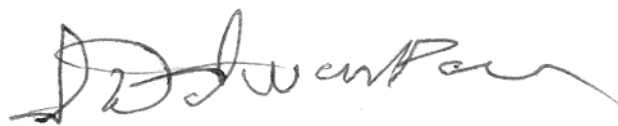
### **Opinion Three**

No. The sessional contribution prohibition applies only to soliciting or accepting a contribution from a registered lobbyist during a regular session of the legislature. A “regular session” starts at 12:00 a.m. on the first day of each annual session and ends at 11:59 p.m. on the last day of each annual session.<sup>4</sup>

Although access to the meeting facility will be provided during a regular legislative session, the contribution occurs when payment of the membership dues is physically received by the party unit, or if the party unit accepts payment of membership dues through electronic means, on the date when the lobbyist makes the contribution.<sup>5</sup>

Lobbyists who purchase limited memberships should do so with personal funds. If the association that the lobbyist represents directly pays for the membership, or reimburses the lobbyist for the membership dues, the result will either be a prohibited corporate contribution to the party unit,<sup>6</sup> or a contribution from an unregistered association that may require underlying disclosure of the source of funds used to pay the membership dues.<sup>7</sup>

Issued: October 6, 2021



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Stephen Swanson, Chair  
Campaign Finance and Public Disclosure Board

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<sup>4</sup> Minnesota Statutes section 10A.273, subdivision 3

<sup>5</sup> Minnesota Statutes section 10A.15, subdivision 2a, paragraphs (b), (c)

<sup>6</sup> Minnesota Statutes section 211B.15, subdivision 2

<sup>7</sup> Minnesota Statutes section 10A.27, subdivision 13

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**ADVISORY OPINION 455**

**SUMMARY**

A nonprofit corporation may make political contributions in Minnesota as an unregistered association if the nonprofit corporation is organized and operated consistent with requirements provided in Chapter 211B. An unregistered association may contribute more than \$200 to no more than three registered committees during a calendar year. Committees registered with the Federal Election Commission may provide a government website address in order to meet the requirement for a disclosure statement to accompany contributions of over \$200.

**Facts**

As representatives of a political committee (the Committee) registered with the Federal Election Commission (FEC), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts.

1. The Committee is registered with the FEC as a "Super PAC". Under federal law a Super PAC is a political committee that makes only independent expenditures for federal elections. A Super PAC may solicit and accept unlimited contributions from individuals, corporations, labor organizations, and other political committees.
2. The Committee has a policy to only accept contributions from individuals.
3. The Committee does not accept contributions from corporations. This includes in-kind administrative support for the Committee, which under FEC regulations and advisory opinions is a corporate contribution that may be accepted by a Super PAC.
4. The Committee has invested some of the contributions it has received and earns income from the investments. The income from the investments is reported to the FEC.
5. For liability purposes the Committee has incorporated as a nonstock corporation. The Committee is also a nonprofit corporation and is not organized or operating for the principal purpose of conducting a business. The Committee has no shareholders, and

no persons have a claim on the Committee's assets or earnings. The Committee was not established by a business corporation or a labor union.

6. The Committee files periodic reports with the FEC that are similar to reports filed by political committees under Chapter 10A in that donors, miscellaneous income from investments, and expenditures are itemized when the value of the transaction exceeds \$200 in a calendar year. Reports filed by the Committee are available for viewing on the FEC's website.

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

### **Issue One**

Is the Committee able to make political contributions in Minnesota under the exemption for certain nonprofit corporations provided in Minnesota Statutes section 211B.15, subdivision 15?

### **Opinion One**

Yes. Minnesota Statutes section 211B.15, subdivision 2, prohibits most corporations from offering or making a political contribution to a candidate committee, political party unit, political committee, or political fund (registered committees).<sup>1</sup> However, an exception to this prohibition is made in subdivision 15 of the statute for nonprofit corporations that have three characteristics. The prohibition on political contributions does not apply to a nonprofit corporation that; (1) is not organized or operating for the principal purpose of conducting a business; (2) has no shareholders or other persons who have a claim on the nonprofit's assets or earnings; and (3) was not established by a business corporation or a labor union, and has a policy to not accept significant contributions from business corporations or labor unions.

As provided in the facts of this opinion, the Committee meets all of the conditions needed in order to make political contributions as provided in Minnesota Statutes section 211B.15, subdivision 15, in that it is not organized, or operated, in order to conduct a business. The Committee was incorporated for liability protection, but has no shareholders or other persons with a claim on its assets or earnings. And finally, the Committee only accepts contributions from individuals.

The Committee has invested some of the receipts it has received, and from the investments receives income that the Committee may subsequently use to make contributions. The proceeds from the investments are not "contributions" as defined in Minnesota Statutes section 10A.01, subdivision 11, in that income from the investments is not given to the Committee for a political purpose. It is not unusual for registered committees to use interest-bearing checking accounts, savings accounts, certificates of deposit, and other investments that provide a return on money that is not immediately needed for an election. Income from the

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<sup>1</sup> The prohibition on receiving corporate contributions does not apply to independent expenditure committees and independent expenditure funds, Minnesota Statutes section 211B.15, subdivision 3.

investments are reported as miscellaneous income, and not as a contribution from the bank or institution that provided the investment instrument. The Board does not consider proceeds from these types of investments, by itself, as business activity that will prevent an unregistered association from qualifying for the nonprofit corporation exemption needed to make political contributions in Minnesota.

The Board notes that under federal law the Committee could accept contributions from corporations and labor unions. If the Committee changes its internal policy on accepting contributions from only individuals, the answers provided in this advisory opinion cannot be relied upon by the Committee.

### **Issue Two**

May the Committee make political contributions of over \$200 to up to three candidate committees, political party units, political committees, or political funds?

### **Opinion Two**

Yes. Minnesota Statutes section 10A.27, subdivisions 13-16, provide limitations on unregistered associations that wish to make contributions to registered committees. Under Minnesota Statutes section 10A.27, subdivision 13, an unregistered association, that is not otherwise barred by the prohibition on corporate contributions, may make contributions of more than \$200 in aggregate to no more than three separate registered committees during a calendar year.<sup>2</sup> The unregistered association may make multiple contributions to each of the three registered committees. With each contribution the unregistered association must provide a disclosure statement to the recipient committee if the aggregate amount given to the committee within the calendar year exceeds \$200. If an unregistered association provides contributions of over \$200 to more than three separate registered committees during a calendar year, then the unregistered association is required to register as a political committee or political fund with the Board.

### **Issue Three**

May the Committee satisfy the disclosure requirement for contributions from an unregistered association by providing a certified written statement to recipient committees that provides the URL to the FEC webpage where the Committee's filings can be viewed?

### **Opinion Three**

Yes. The disclosure statement provided by the Committee must meet the disclosure requirements found in Minnesota Statutes section 10A.20. Among the requirements is that donor contributions, expenditures, and contributions to other entities must be itemized if they exceed \$200. This is the same itemization threshold generally required of committees registered with the FEC, and largely because of that common itemization threshold, FEC reports

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<sup>2</sup> An unregistered association may make contributions to an unlimited number of independent expenditure political committees and funds and ballot question committees and funds pursuant to Minnesota Statutes section 10A.27, subdivisions 14-15, without registering with the Board.

resemble reports filed by committees registered with the Board. FEC committees report on a more frequent schedule during a non-election year than is required under Chapter 10A, and often report on a quarterly or monthly basis during much of each election year, so FEC reports sometimes do not match the reporting periods provided in Chapter 10A. Nonetheless, the Board accepts that FEC reports meet the disclosure statement requirements for unregistered associations when a contribution of over \$200 is made to a registered committee, so long as the report or multiple reports include the entire calendar year through the date the contribution was made, or if the contribution was made within the first 30 days of a calendar year, a period of at least 30 days immediately preceding the date the contribution was made.

The disclosure statement required from the Committee for contributions of over \$200 is provided to the recipient committee, which in turn forwards the statement to the Board at the next reporting period for the registered committee. Disclosure statements are often large, in particular from FEC committees. To reduce the bulk of disclosure statements forwarded to the Board, and to make the disclosure statements easier for the public to access from a computer, the legislature amended the disclosure statement requirement in 2021 so as to allow an unregistered association to either file a disclosure statement on paper, or provide the recipient committee with the address of a government website where the disclosure statement for the unregistered association may be viewed. The FEC's website is a government website, and provides access to the periodic reports filed by the Committee. If the Committee provides a statement to recipient committees certifying that the applicable report(s) filed with the FEC are true and correct, and provides the web address at which the report(s) may be viewed, it will have complied with the disclosure statement requirements of Minnesota Statutes section 10A.27, subdivision 13. If the FEC website address provides access to multiple Committee reports, then the statement should identify the specific report(s) that provide the disclosure required for the contribution.

Issued: April 6, 2022

A handwritten signature in black ink, appearing to read 'F. Rashid', written over a horizontal line.

Faris Rashid, Chair  
Campaign Finance and Public Disclosure Board