ADVISORY OPINIONS

(Under Minn. Stat. § 10A.02, Subds. 8 and 12)

July 1, 1999 - June 30, 2000

Numbers 314, 316-320

JULY 21, 2000

MINNESOTA CAMPAIGN FINANCE & PUBLIC DISCLOSURE BOARD
Suite 190, Centennial Building
658 Cedar Street
St. Paul, MN 55155-1603

651/296-5148

ABOUT ADVISORY OPINIONS

- The Campaign Finance & Public Disclosure Board is authorized to issue advisory opinions on the requirements of the Ethics in Government Act, Minnesota Statute Chapter 10A (see Minn. Stat. § 10A.02, subd. 12), and the Hennepin County Disclosure Law (see Minn. Stat. § 383B.055). Individuals or associations may ask for advisory opinions about these laws to guide their actions in compliance with Minnesota Statute Chapter 10A and Minnesota Statute Chapters 383B.041 - 383B.058.

- A written advisory opinion issued by the Board is binding on the Board in any subsequent Board proceeding concerning the person making or covered by the request and is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless:
  ..the Board has amended or revoked the opinion before the initiating of the Board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion;
  ..the request has omitted or misstated material facts; or
  ..the person making or covered by the request has not acted in good faith in reliance on the opinion.

- A request for an advisory opinion is nonpublic data and the advisory opinion to the requester is nonpublic data. The Board may publish an opinion that does not include the name of the requester or other identifying information unless the requester consents to the inclusion. The Board provides Consent for Release of Information forms to requesters. If the requester files a Consent form, the Board seeks public comment on the request before action is taken by the Board. Advisory opinion requests are discussed in meetings open to the public.

ABOUT THE BOARD

Mission Statement

- To promote public confidence in state government decision making through development, administration, and enforcement of disclosure and public financing programs which will ensure public access to and understanding of information filed with the Board.

Members

- Six-member citizen body;
- Appointed by the governor; confirmed by a 3/5th vote of both houses of the legislature;
- Two former legislators of different political parties;
- Two individuals who have not been public officials, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding appointment to the Board;
- No more than three members of the Board shall support the same political party;
- No member of the Board may currently serve as a lobbyist.

TABLE OF CONTENTS

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

October 13, 1999

RE: Use of principal campaign committee funds

ADVISORY OPINION 314

SUMMARY

Costs of civil litigation which is not related to a candidate's election or to the candidate's principal campaign committee are not the type of legal fees that may be paid as a noncampaign disbursement. Costs of litigation are not expenses of serving in office that may be paid as a noncampaign disbursement.

FACTS

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

1. You are a state legislator with a principal campaign committee registered with the Board.

2. You commenced a civil lawsuit generally relating to the business of the state and to your rights as a legislator to participate in state decision making. Your legal action was dismissed and you have appealed.

3. You have incurred significant expenses in connection with this civil action, including filing fees, attorneys' fees, staff expenses, transcript and printing fees, and civil sanctions.

4. You suggest that the subject expenses were incurred solely in an effort to exercise your rights as a legislator. Therefore, you believe that you should be able to pay these expenses with funds from your principal campaign committee and that you should report the expenses as noncampaign disbursements.

ISSUE

Does Minn. Stat. § 10A.01, subd. 10c, which provides for payment of certain costs as noncampaign disbursements, permit use of principal campaign committee funds to pay the described legal expenses and sanctions?

OPINION

The expenses described are not noncampaign disbursements under Minn. Stat. § 10A.01, subd. 10c. Uses of principal campaign committee funds other than for noncampaign disbursements is

controlled by Minnesota Statutes Chapter 211B, which is not within the Board's jurisdiction to interpret.

Use of principal campaign committee funds for noncampaign disbursements is narrowly tailored since such uses may divert to another purpose money donated to promote the nomination or election of a candidate. The Board notes that among your political committee funds are contributions for which the donors have been reimbursed by the state under the political contribution refund program.

Only two noncampaign disbursements appear on their face to have possible application to the expenses you describe. They are Minn. Stat. § 10A.01, subd. 10c(a), which covers payment for legal fees and subd. 10c(j), which covers payment of a candidate's expenses of serving in office, other than for personal services. The Board has examined each noncampaign disbursement and concludes that neither applies in this matter.

It is the Board's opinion that use of principal campaign committee funds for legal fees under Minn. Stat. § 10A.01, subd. 10c(a) must be related to the operation of the principal campaign committee or to the election of the candidate. The costs described in this request do not meet this relationship test.

The noncampaign disbursement for expenses of serving in office include ordinary and reasonable expenses of those activities that are expected or required of a public official, or that enhance the official's ability to serve. Service in office does not include personal activities of the official that are not expected or required as a part of public service. In the present matter, the subject litigation is not an ordinary expense of serving in office, nor is it something expected or required of an official as a part of public service. Thus, the noncampaign disbursement is not applicable to the costs of this litigation.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

August 24, 1999

RE: Application of gift prohibition - definition of official

ADVISORY OPINION 316

SUMMARY

The gift prohibitions established in Minn. Stat. § 10A.071 do not apply to the director or employees of a state government office if those individuals are not "officials" as defined under the statute.

FACTS

As the manager of a state government office, you ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. The office in which you work is a part of an executive branch agency of the State of Minnesota.

2. The office is headed by a director whose position is established and defined by statute.

3. The office has relationships with businesses in Minnesota, some of which are lobbyist principals under Minn. Stat. § 10A.01, subd. 28. From time to time these businesses offer meetings or events to the director or other employees of the office. These meetings or events are usually related in general to the duties and responsibilities of the office. They may include the provision of food and beverages.

4. The director and other employees of the office do not fit any of the definitions of "public official" in Minn. Stat. § 10A.01, subd. 18. They are not employees of the legislature and are not local officials.

ISSUE

Do the gift prohibitions of Minn. Stat. § 10A.071 prevent the director or other employees of the office from accepting gifts from businesses that are lobbyist principals?

OPINION

No. Minn. Stat. § 10A.071 prohibits gifts to "officials", which include "public officials" as defined in Minn. Stat. § 10A.01, subd. 18, certain "local officials" as defined in Minn. Stat. § 10A.01, subd. 25, and employees of the legislature. The director and other employees of the office do not fall within the definition of "official" and, thus, the statutory prohibitions are not applicable to them.

The Board notes that Minn. Stat. § 43A.38, the Code of Ethics for Employees in the Executive Branch, prohibits executive branch employees from accepting gifts under certain circumstances. This statute is not under the Board's jurisdiction. You are advised to consult your own legal advisors with regard to its possible application.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

October 13, 1999

RE: Gift to officials of informational book

ADVISORY OPINION 317

SUMMARY

An informational book that is available without charge to the public has "unexceptional value" for the purposes of Minn. Stat. § 10A.071 and, thus, is not a prohibited gift when given to officials.

FACTS

As the representative of a lobbyist principal, you ask the Campaign Finance & Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. The lobbyist principal, a Minnesota corporation, is publishing a book summarizing its history and contributions to the growth of Minnesota. The book will also look at Minnesota's future and examine how the company will play a role.

2. The book will be distributed free of charge to all company employees, former employees, and shareholders; to public, educational, and media libraries and historical societies in a multi-state region; and to any interested member of the public who requests a copy.

3. The corporation would like to distribute copies of the book to officials as defined in Minn. Stat. § 10A.071.

You ask whether distribution of the book to officials is prohibited by Minn. Stat. § 10A.071. If not, you ask how the gift of the book should be reported.

ISSUE

Under Minn. Stat. § 10A.071, may a lobbyist principal give to officials an informational book that it will give without charge to any member of the public who asks for it?

OPINION

Yes, the principal may make a gift of the described book without violation of Minn. Stat. § 10A.071.

The gift prohibition of Minn. Stat. § 10A.071 includes an exception for "informational material of unexceptional value". In most cases, the proper method of valuing a gift is to ask what it would

cost the receiver or a member of the public to purchase or produce the item. However, where the item is given away free by the producer to anyone who asks for it, a different standard is applied.

Where an informational item is produced for free distribution to the public, it has "unexceptional value" for the purposes of the gift prohibition and may be given free to officials just as it is to the public.

Lobbyists must report gifts made by their principals if the value of the gift is $5.00 or more. Minn. Stat. § 10A.04, subd. 4a. It is the opinion of the Board that the gift of a book that is available free to the public has no value for lobbyist reporting purposes and need not be included on the report.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

October 13, 1999

RE: Use of principal campaign committee funds

ADVISORY OPINION 318

SUMMARY

Costs of civil litigation which is not related to a candidate's election or to the candidate's principal campaign committee are not the type of legal fees that may be paid as a noncampaign disbursement. Costs of litigation are not expenses of serving in office that may be paid as a noncampaign disbursement.

FACTS

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

1. You are a state legislator with a principal campaign committee registered with the Board.

2. You have certain complaints about your treatment by and support from the legislative body in which you serve.

3. You would like to file a lawsuit against the body in which you serve to seek a remedy for your grievances. You want to pay the legal expenses and costs of the legal action with assets of your principal campaign committee.

ISSUE

Does Minn. Stat. § 10A.01, subd. 10c, which provides for payment of certain costs as noncampaign disbursements, permit use of principal campaign committee funds to pay the anticipated expenses of litigation and legal fees for proposed legal action?

OPINION

The anticipated expenses and attorneys' fees are not noncampaign disbursements under Minn. Stat. § 10A.01, subd. 10c. Uses of principal campaign committee funds other than for noncampaign disbursements is controlled by Minnesota Statutes Chapter 211B, which is not within the Board's jurisdiction to interpret.

Use of principal campaign committee funds for noncampaign disbursements is narrowly tailored by the Board since such uses may divert to other purposes money donated to promote the nomination or election of a candidate.

The Board also notes that political contributions are often refunded to donors through the political contribution refund program. The effect of this refund is that donor money is replaced by public money. The state's public subsidy program encourages use of public money for the election of candidates. However, the fact that public money may also be used for noncampaign disbursements requires that those categories of committee spending be narrowly interpreted.

Only two noncampaign disbursements appear on their face to have possible application to the expenses you describe. They are Minn. Stat. § 10A.01, subd. 10c(a), which covers payment for legal services and subd. 10c(j), which covers payment of a candidate's expenses of serving in office, other than for personal uses. The Board has examined each noncampaign disbursement and concludes that neither applies in this matter.

Minn. Stat. § 10A.01, subd. 10c(a) provides that "legal services" incurred by the principal campaign committee are noncampaign disbursements. It seems obvious that the use of principal campaign committee funds for legal services must have some limitation beyond the mere words of the statute. One would not expect a principal campaign committee to pay for legal services that met the purely personal needs of a candidate or the candidate's family. The statute carries with it the implication that there is a relation between the services and the principal campaign committee. It is up to the Board to determine the scope of legal fees which are permitted under the statute as noncampaign disbursements.

It is the Board's opinion that legal services under Minn. Stat. § 10A.01, subd. 10c(a) are limited to legal costs, expenses, and attorneys' fees for services related to the operation of the principal campaign committee or to the election of the candidate. The costs described in this request do not meet this relationship test.

Finally, it is the Board's opinion that the noncampaign disbursement in Minn. Stat. § 10A.01, subd. 10c(j) for expenses of serving in office includes ordinary and reasonable expenses of those activities that are expected or required of a public official or that directly enhance the official's ability to serve. In the present matter, the subject litigation is not an activity that is expected or required of an official as a part of public service. Neither will a lawsuit against the body in which an official serves directly enhance the official's ability to serve in office. Thus, the noncampaign disbursement is not applicable to the costs of this litigation.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

December 14, 1999

RE: Providing on-line contribution service

ADVISORY OPINION 319

SUMMARY

A company may, consistent with Minnesota Statutes Chapter 10A, provide internet-based credit card contribution services which include credit card processing and accumulation of funds into a company account for forwarding to the beneficiary principal campaign committees. Certain recordkeeping and reporting issues arise, about which principal campaign committees should be notified. Issuance of this opinion does not constitute endorsement of the requester or of its plan.

FACTS

As the representative of a corporation, you ask the Campaign Finance & Public Disclosure Board (the Board) for an advisory opinion based on the following facts contained in your request letter or conveyed verbally to Board staff:

1. The corporation you represent (hereinafter referred to as "the Company") wants to offer fundraising services to candidates' campaign committees in Minnesota, some of which may be registered with the Board. The Company's services will include an internet-based contribution system and credit card processing. The services will be available to any committee that wants to use them.

2. The Company will create and maintain a web site which will host customized donation forms for each of its clients. Each client committee may include a link on its own web site that will move the user to the Company's contribution page for that committee. The donor can then enter information to make a contribution.

3. If the client committee does not have its own web site, it can notify potential donors of the on-line contribution page by giving out the direct link to the page. The Company's host site will also provide an index of all participating committees from which donors may access the donation page for the committee of their choice. The customized donation forms may also include a link back to the web site of the participating committee.

4. The Company will not promote the donation page of any particular candidate or candidates. If the Company does any promotion it will be generic to the concept, inviting individuals to visit the Company's site to donate to the candidate of their choice.

5. The Company will accept contributions on behalf of the participating committees. Only credit card donations will be accepted. In order to make an on-line contribution, the donor will be required to provide his or her name, address, employer, occupation, donation information, and credit card information.

6. The donation form will be programmed not to accept more than the statutory limit that the participating committee may accept from the donor. Donors will be required to check boxes which state that the donor attests that the contribution is made from the donor's own funds and that the donor is personally liable for debt on the credit card used.

7. When the donor submits the contribution, and all required information has been provided, the transaction will be transferred to an on-line credit card processing service for verification and funds transfer. The funds will be transferred to the Company's bank account.

8. The company will periodically tender to each participating committee a check for its contributions. The Company will charge a fee of 10% of all funds raised, which will be deducted from the monthly checks to participating committees. The company will also provide to the participating committees a monthly informational statement including dates and amounts of contributions and such other information as required by the Board.

The Company asks whether its plan, if implemented, would result in any violations of Minnesota Statutes Chapter 10A.

ISSUE

Does Minnesota Statutes Chapter 10A prohibit a for-profit corporation from providing an internet-based service where donors may make contributions to principal campaign committees registered with the Board, assuming that the corporation initially processes the contributions, receives the funds, and forwards the net proceeds to the committees on a monthly basis?

OPINION

The business plan developed by the requester and presented in the fact statement of this opinion does not give rise to any violations of Minnesota Statutes Chapter 10A. However, to enable recipient committees to comply with Chapter 10A, the Board suggests that the Company also follow the recommendations included herein.

This request presents the question of whether the Company's plan would result in prohibited contributions from the Company or in "bundling" under Minn. Stat. § 10A.27, which prohibits a candidate from accepting contributions " made or delivered" in excess of the amount the contribution limits set forth in the statute.

Subdivision 13 of Minn. Stat. § 10A.27 prohibits the acceptance of contributions in excess of $100 from unregistered entities and Minn. Stat. § 211B.15 prohibits corporate contributions. However transfers from the Company to its client committees are not contributions from the Company to the committees. Thus, the statutory provisions cited above are not applicable to these transfers.

It is the Board's opinion that the service of accumulating, processing, and transferring contributions from individuals to principal campaign committees is not bundling under the plan described. In reaching this conclusion, the Board recognizes the following characteristics of the plan:

1. The Company is providing services for a fee.
2. The services are available to any campaign committee that wishes to purchase them.
3. The Company is not itself engaged in solicitation of contributions. It will be up to the client committees to inform potential donors of the internet donation form and urge them to contribute.
4. If the Company provides any publicity, it will be generic in form; letting people know that they can go to the Company's site to contribute to the candidate of their choice.

The Company is providing the electronic equivalent of a mailbox into which donors may deposit contributions for forwarding to the client committees. To enable committees to accept credit card transactions without having their own credit card account, the Company processes the information and deducts its fees before forwarding the proceeds to the client committees.

All of the steps in the Company's process are currently accommodated by campaign finance law without consideration of bundling or corporate contribution issues. The postal service accepts payments or credit card information, accumulates it, and forwards it to the addressee committees. Credit card processing companies convert credit card authorizations to money, deduct fees, and forward the net to the committee, usually by direct deposit. The Board sees no difference between the Company's plan and current practice that would render the Company's plan illegal.

The Board does note that the company intends to collect certain data and enforce certain limits that are ultimately the committee treasurer's responsibility. It must be emphasized that the Company's efforts may assist the treasurer in meeting the requirements of Chapter 10A, but they do not relieve the treasurer from ensuring compliance with the statutes. In order for the Company to facilitate compliance by participating campaign committees, the Board recommends that it change its planned web implementation and reports to committees in certain ways.

The Company intends to obtain the donor's employer and occupation. This may not be sufficient for committees reporting to the Board. Board reports require two components to employment information. First, the donor must indicate whether he or she has an employer. If the donor has an employer, the name of the employer must be obtained. If the donor does not have an employer, the person is considered self-employed and must provide his or her occupation. The occupation may include commonly recognized occupations, or a statement of the person's work-related activities, such as "retired" or "unemployed".

The reports the Company provides to client committees should include the name and complete address of each donor, including street address, city, state, and zip code. They should also

include the donation date and amount, before any fees are deducted, and the employment information described above.

The Company states that it will retain these records for 3 years. Committees are required to obtain and keep this information for 4 years. The Board recommends that the Company do so as well.

The unique combination of services proposed by the Company gives rise to the question of when the participating committee "receives" the contribution for the purposes of Chapter 10A. This is significant because the date the contribution is received controls the time period in which the treasurer must deposit the contribution and, indirectly, the time in which the contribution may be returned to the contributor. It is the Board's opinion that contributions are received for reporting purposes when the committee receives the net proceeds in the mail from the Company.

It is also important that campaign committees be advised that they cannot issue a political contribution refund receipt for a contribution until it is received. Thus receipts may be issued only after the committee receives the proceeds from the Company.

The amount of each contribution for reporting purposes and for the issuance of political contribution refund receipts is the full amount contributed by the donor, before any deductions. The recipient committee would record the full amount of the contributions and at the same time record a campaign expenditure for the Company's fee. If a contribution is to be returned, the full amount, before reduction for processing fees must be returned.

CAVEAT FOR PRINCIPAL CAMPAIGN COMMITTEES

The fact that the Board finds the Company's planned services to be within the bounds of Minnesota Statutes Chapter 10A should not be construed to be an endorsement of any company intending to provide such services.

The Board has concerns about the fact that the plan results in the Company holding in its own bank account funds which are intended to be contributions to its client committees. The Board recognizes that this is necessary in order for the Company to maintain a single credit card processing account that serves multiple candidates. However, principal campaign committees are advised to assure themselves as to the security of contributions intended for the committee but maintained in the Company's account until disbursement.

Principal campaign committees are also advised thoroughly to understand and reach agreement with the Company concerning the Company's right to use or sell data gathered about the committee's donors.

This statement is not intended to be a reflection on the Company requesting this opinion. The Board has no information regarding this particular company. Rather, this statement is intended to be one of general application that should be considered by any principal campaign committee in a situation where money intended for the committee is in the possession of another entity.

The Board recommends and requests that the Company give a copy of this opinion to each committee which is considering implementing the services described herein.

THE FOLLOWING PUBLICATION DOES NOT IDENTITY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

April 11, 2000

RE: **Reporting of political expenditures**

ADVISORY OPINION 320

SUMMARY

A corporation may bundle services provided to entities registered with the Campaign Finance and Public Disclosure Board, however for reporting purposes, the recipients must allocate the costs among the actual types of underlying services provided. When engaging in joint development projects, or the reselling of data developed for other clients, a corporation and its clients must ensure that each client pays the reasonable value for the goods or services provided so that neither the corporation nor any client subsidizes the benefit received by another client.

FACTS

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

1. The corporation you represent (hereinafter referred to as "the Corporation") is a for-profit Minnesota corporation that is not organized, operated, or directed by any political party, political committee or political fund, or any group of these entities.

2. The Corporation expects to sell political campaign goods and services to its clients at package prices. That is, the Corporation may combine graphic design, printing, telemarketing and other services into a package and charge a flat fee for the comprehensive services.

3. The Corporation believes that most of its clients will be political committees or political funds registered with the Board, including party units and candidates' principal campaign committees.

4. Because of prior party affiliations of certain officers or directors of the Corporation, it is anticipated that most or all of the Corporation's business will come from affiliates of the same party or from political committees and political funds that share the views and objectives of that party.

5. The Corporation may provide services to groups of clients who participate in a project and wish to share the costs of that project.

6. The Corporation may develop themes or messages, including graphics and text, that may be incorporated into the campaigns of the clients who contracted for the development as well as others who were not a part of the development effort.

7. The Corporation may also develop data or intellectual property for one client, but retain the contractual right to re-sell the data or property to other clients on such terms and conditions as it may negotiate.

8. The Corporation wishes to be able to assist its clients in complying with the Ethics in Government Act, Minnesota Statutes Chapter 10A, by understanding how it should conduct its activities and how to charge its clients so that no inadvertent contributions from one client to another or from the Corporation to a client result.

ISSUE ONE

May the Corporation bundle various services into packages and charge a flat fee for the comprehensive services? If so, may the recipient clients report the cost as a lump sum for the bundled services?

OPINION

Minnesota Statutes Chapter 10A does not give the Board any jurisdiction over how a corporation conducts its business. Thus the Corporation may package its services as it sees fit. However, the Board is charged with providing factual information regarding Minn. Stat. § 211B.15, which may have application in this situation. Minn. Stat. § 211B.15 prohibits corporate contributions to political committees and political funds registered with the Board.

In order to avoid a contribution of in-kind services to a registered entity, the Corporation must ensure that it charges fair market value for its services.

While Chapter 10A cannot dictate how the Corporation sells its services, it does control how the registered entities purchasing those services must report their costs. Minn. Stat. § 10A.20, subd. 3(g) states that a report must disclose "the amount, date, and purpose of each expenditure". Examination of the reporting provisions of Minnesota Statutes Chapter 10A makes it clear that a primary purpose of those provisions is to provide the public with meaningful information about how registered entities are using money raised for political purposes. The Board believes that allowing potentially large packages of services to be bundled under a heading such as "campaign management services", "development services", or the like, would not provide meaningful disclosure.

The entities incurring expenses for these bundled services must allocate the costs on a reasonable basis between the various components of the packaged services. The Corporation could facilitate this allocation by providing the purchasers with appropriate dollar breakdowns of service.

Without a specific fact situation to address, the Board is not able to make a statement as to what level of detail would meet the disclosure requirements of Chapter 10A.

ISSUE TWO

What must the Corporation and its clients do to ensure that the contemplated methods of doing business and charging for services do not result in transactions that the Board would consider to be in-kind contributions between the Corporation's clients or contributions from the Corporation itself?

OPINION

When bundling goods and services for a group of clients, the only obligation of the Corporation is to charge the group as a whole the fair market value of the goods and services. The Corporation has no obligation to ensure that the purchasers themselves properly allocate the cost to ensure that no in-kind contribution results between purchasers.

An in-kind contribution between two purchasers will result if one entity pays for a higher percentage of the services than the percentage of benefit or use that entity gets from the purchase. In other words, a party unit, for example, would not ordinarily be entitled to pay for an entire package of services that would be used to benefit certain party candidates. The candidates' principal campaign committees would be required to pay in proportion to the benefit they expect to receive.

Without a specific fact situation on which to base its opinion, the Board can only state that allocation of packaged services between multiple purchasers must be on a reasonable basis. A "reasonable basis" is a one based on facts and reasonable assumptions. It is a basis that can be explained and that would be accepted by ordinary people as being reasonable.

The Board notes, on the other hand, that there may be times when a party unit would be permitted to develop certain types of intellectual property that it could allow affiliated registered entities to use without charge. For example, it is the opinion of the Board that the party could have such concepts as an election year logo or a campaign slogan developed and make the rights to use those concepts available to its affiliates without charge. The Board specifically limits this opinion to the right to use the logo concept or the slogan. Any physical goods, such as artwork, buttons or the like could not be provided without charge.

This opinion should not be interpreted as approving or disapproving the development of intellectual property concepts or products beyond logos or slogans. The Board does not consider here whether broad political campaign concepts or programs may be developed by parties for use by their affiliates without charge. Without a detailed fact situation to consider, the Board is unable to issue an opinion on specific possible scenarios.

The Corporation may create data, concepts, or other intellectual property for one entity and retain the right to resell those items to other entities. In order to avoid a corporate contribution to the original client in the form of a reduced price, the Corporation must have a commercially

reasonable basis for any reduction in the fee from that which the Corporation would charge for the work if it did not retain the right to resell the items. The Board would expect the reduction to be based on an analysis of the potential number of times the asset may be re-sold and the likely resale price. Other factors are also likely to be relevant. The underlying test will be whether the cost reduction was commercially reasonable based on all relevant information.

When reselling intellectual property to second and subsequent entities, the Corporation must ensure that it receives fair market value for the assets. Fair market value is the reasonable value of the assets sold. Factors that may be relevant would include the cost to develop the asset for a single purchaser, the number of re-sales expected, and any dilution in the value of the assets that may result from multiple sales. Ultimately, fair market value is the value at which a commercial sale would be consummated between a reasonable buyer and a reasonable seller without other influences such as the mutual desire to support specific political objectives.

The lack of specific facts prevents the Board from providing clear direction in this matter. The Board advises you or your clients to seek additional advice from the Board if you or they encounter actual situations in which the general guidance provided in this opinion is insufficient.

If a question of costs, allocations, or contributions arises concerning a transaction between the Corporation and its clients or between clients, the ultimate determination made by the Board will be whether there was, intentionally or unintentionally, a subsidy which resulted in a contribution from the Corporation to a client or from one client to another. It would then be up to the participants to be able to explain how costs and allocations were determined and why those costs and allocations did not result in one entity subsidizing another by paying for goods or services that benefited another in greater measure than the financial participation of the other entity.