

ADVISORY OPINIONS

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

July 1, 2000 – June 30, 2001

Numbers 321 – 326, 328

JULY 18, 2001

MINNESOTA CAMPAIGN FINANCE & PUBLIC DISCLOSURE BOARD

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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. 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.

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TABLE OF CONTENTS

<u>Number</u>	<u>Program</u>	<u>Subject</u>	<u>Page</u>
321	Campaign Finance	Use of campaign funds to rent, lease, or purchase an automobile; Legality of anonymous contributions; and Authority of deputy treasurer	5
322	Campaign Finance	Definition of first time candidate	9
323	Campaign Finance	Use of principal committee campaign funds on behalf of a federal candidate	11
324	Campaign Finance	Limits for candidates who register a principal campaign committee after a state general election	13
325	Conflict of Interest	Potential conflict of interest for legislator	15
326	Lobbyist	Definition of lobbyist	17
327		Alternate Disposition – Requester withdrew request	19
328	Campaign Finance	Use of campaign funds for legal expenses	21

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)

Issued: August 8, 2000

RE: Use of campaign funds to rent, lease, or purchase an automobile, legality of anonymous contributions, and authority of deputy treasurer.

ADVISORY OPINION 321

SUMMARY

Principal campaign committees that use campaign funds to purchase, lease, or rent a vehicle must allocate the cost of using the vehicle for both campaign activities and noncampaign activities in order to accurately report to the Board. Anonymous contributions of over \$20 must be forwarded in their entirety to the Campaign Finance and Public Disclosure Board. Deputy treasurers who are delegated authority by a principal campaign committee may submit reports and filings to the Board.

FACTS

As the campaign chair for a candidate exploring the possibility of running for office, you ask the Campaign Finance and Public Disclosure Board (the Board) for an advisory opinion based on the following facts:

1. You represent a potential candidate that will be covered by the provisions of Minnesota Statutes Chapters 10A and 211B.
2. You ask for clarification of the terms "travel and transportation" as used in Minnesota Statutes 211B.12, as well as specific information on the legality of using campaign funds to lease, rent, or purchase an automobile.
3. You ask for clarification of the provisions for accepting anonymous contributions as provided in Minnesota Statutes 10A.15.
4. You ask what responsibility a principal campaign committee can delegate to a deputy treasurer.

ISSUE ONE

May campaign funds be used to rent, lease, or purchase an automobile for use in campaign related functions?

OPINION

Minnesota Statutes 211B.12 provides a listing of permitted campaign expenditures that may be made by candidates for state office and prohibits the conversion of campaign funds to personal

use. The Board has no authority to issue an opinion interpreting this statute, or any statute outside of Chapter 10A. You may wish to confer with legal counsel to determine what constraints this statute places on the use of campaign funds, and in particular the meaning of "travel and transportation" as used in the statute.

If you determine that Minnesota Statutes 211B.12 allows for the use of campaign funds to purchase, lease, or rent a vehicle you will need to report all expenditures of campaign funds for that purpose to the Board. If an automobile is rented, the committee will need to ensure that either the vehicle is used only for campaign related purposes, or provide a system to accurately monitor the cost of using the vehicle for non-campaign related purposes. This monitoring is necessary to ensure that campaign funds are not converted to personal use.

For a related issue the Board has established in Minnesota Rules 4503.0500, subpart 8, that contributing the use of an automobile to a campaign is an in kind contribution valued at the lowest rate used by the state of Minnesota to reimburse its employees for automobile use. (As of the date of this opinion that rate is 23 cents per mile.) The Board believes that this rate should be used to determine a fair cost when billing an individual for personal use of a vehicle rented by the committee. Money paid to the committee for non-campaign related use of the vehicle would be reported to the Board as miscellaneous income.

The price paid for renting, leasing, or purchasing a vehicle should be no less than the fair market value that would be paid by any private individual not associated with the campaign. If the price paid for use of the vehicle by the principal campaign committee is less than fair market value, the vendor will have made an in kind contribution to the principal campaign committee. The value of the in kind contribution will equal the difference between fair market value and actual cost. In kind contributions of over \$100 must be reported to the Board.

A committee receiving a in kind contribution from a vendor should be aware that if the vendor is a corporation, the contribution is prohibited under Minnesota Statutes 211B.15, subdivision 2.

If a committee leases a vehicle for campaign use, the issues related to reporting the expenditures incurred and monitoring the use of the vehicle are the same as those described above when renting an automobile.

If a committee purchases a vehicle for campaign use, the issues related to reporting the expenditures incurred and monitoring the use of the vehicle are the same as those described above when renting an automobile. In addition, a vehicle purchased by a principal campaign committee is an asset of the committee that must be accounted for upon the sale of the vehicle, or the termination of the committee. The method of disposing of the vehicle and the amount the vehicle is sold for must be reported to the Board. A principal campaign committee is responsible to ensure that all physical assets of the committee, including a vehicle, are either used for campaign purposes or the committee is reimbursed at an appropriate rate for their use. This responsibility does not end when a given campaign or election cycle is complete.

ISSUE TWO

Are all anonymous contributions prohibited, or only those in excess of \$20?

OPINION

Minnesota Statutes 10A.15, subdivision 1, provides in part that "A...principal campaign committee...may not retain an anonymous contribution in excess of \$20,". Therefore, an anonymous contribution which does not exceed \$20 may be retained by a committee. A contribution of over \$20 may be retained if the contributor's name, address, amount of contribution, and date of receipt are known and recorded by the committee. In addition, a committee that receives aggregate contributions from an individual of over \$100 must collect and retain information on the contributor's employer or occupation.

ISSUE THREE

Can a deputy treasurer for a Principal Campaign Committee sign the reporting documents required by the Board?

OPINION

Minnesota Statutes 10A.11, subdivision 3, provides in part that a principal campaign committee may appoint one or more deputy treasurers. To be recognized by the Board, a deputy treasurer must be identified on the Principal Campaign Committee Statement of Registration and Organization. It is the opinion of the Board that a deputy treasurer can sign and file required reports and statements with the Board. However the treasurer of a principal campaign committee remains responsible for the accuracy and timeliness of reports submitted by a deputy treasurer. Ultimately the candidate is responsible for the candidate's principal campaign committee's compliance with Minnesota Statutes Chapter 10A. (Minnesota Rules 4503.0200 subp. 2).

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)

Issued: September 21, 2000

RE: Definition of first time candidate.

ADVISORY OPINION 322

SUMMARY

First time candidate status is lost if the candidate has previously received contributions or made expenditures in excess of \$100 for an office whose territory contains more than one third of the population of the office currently sought.

FACTS

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

1. You are a candidate for the office of state senate, and have registered a principal campaign committee with the Board for that office. The Public Subsidy Agreement filed for that office identifies you as a first time candidate.
2. In 1998 you registered a principal campaign committee for a house seat that represents more than 1/3 of the population in the territory for the office you are currently seeking. The Public Subsidy Agreement filed for that office identifies you as a first time candidate.
3. The previous committee (referred to herein as the "House Committee") filed with the Board on March 9th, 1998. For calendar year 1998 the House Committee raised \$1440 in contributions and disbursed \$235.31 on campaign expenditures.
4. The House Committee terminated on April 27th, 2000.
5. You did not receive the party endorsement for the house seat in 1998. You did not file for the office, therefore your name did not appear on either the primary or general election ballot.

ISSUE

If an individual did not file for office and did not appear on the primary or general election ballot, were they a "candidate" for purposes of determining eligibility for the 10% increase in the expenditure limit given to first time candidates?

OPINION

Yes, an individual who seeks nomination or election to an office without appearing on the ballot may be a "candidate" for purposes of determining first time candidate eligibility.

Minn. Stat. § 10A.01 subd. 10, defines "candidate" for the purposes of Chapter 10A. It defines a candidate as an individual who seeks nomination or election as a constitutional officer, legislator, or judge. An individual is deemed to seek nomination or election to an office if they have received contributions or made expenditures in excess of \$100. In the previous House campaign, your House Committee exceeded the \$100 limit in both contributions and expenditures. Because that House seat contains territory with more than one third of the population of the Senate seat you now seek, you do not qualify as a first time candidate and are not eligible to receive a 10% increase in your expenditure limit under the provisions of Minn. Stat. § 10A.25, subd. 2(d).

THIS ADVISORY OPINION IS PUBLIC DATA PURSUANT TO A
CONSENT FOR RELEASE OF INFORMATION SIGNED BY THE REQUESTER

Issued to: The Honorable Irv Anderson
909 13th Street
International Falls, MN 56649

Issued: October 17, 2000

RE: Use of principal committee campaign funds on behalf of a federal candidate.

ADVISORY OPINION 323

SUMMARY

A principal campaign committee may not use its funds to make approved or independent expenditures on behalf of a candidate for federal office.

FACTS

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

1. You have a principal campaign committee registered with the Board for an office covered by the provisions of Minnesota Statutes Chapter 10A.
2. You would like to use funds from your principal campaign committee to make either approved or independent expenditures on behalf of a candidate for federal office.
3. If allowed, you plan to report any expenditure by your committee on behalf of a federal candidate as a campaign expenditure.

ISSUE ONE

May a principal campaign committee make an independent expenditure on behalf of a candidate for federal office?

OPINION

No, independent expenditures may only be made for candidates running for state level office.

For the purposes of Chapter 10A "candidate" is defined by Minn. Stat. § 10A.01 subd. 10 as an individual who seeks nomination or election as a state constitutional officer, legislator, or judge. Federal offices are not a part of this definition, and therefore would not be included in any reference to "candidate" in Chapter 10A. Therefore, the statutory authority for principal campaign committees to make independent expenditures contained in Minn. Stat. § 10A.01 subd. 18, extends only to candidates for state level office.

ISSUE TWO

Can a principal campaign committee make a contribution to a candidate for federal office?

OPINION

No, a principal campaign committee is prohibited from making a direct contribution to a federal candidate by Minn. Stat. § 10A.27 subd. 9 (b). The prohibition in this statute applies to all contribution types, including approved expenditures.

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)

Issued: December 12, 2000

RE: Limits for candidates who register a principal campaign committee after a state general election.

ADVISORY OPINION 324

SUMMARY

A candidate who registers with the Board during an election year for the office the candidate is seeking is entitled to the election year contribution limits for the entire election year. A candidate who signs and files a Public Subsidy Agreement with the Board is entitled to the contribution limits for that year and the office sought regardless whether the candidate's name appears on the primary or general election ballots. A candidate may issue Political Contribution Refund receipts only for contributions received after the candidate signs and files a Public Subsidy Agreement. An Affidavit of Contributions must be submitted in the year that a candidate appears on the ballot.

FACTS

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

1. You will register a principal campaign committee for the office of state senator, on or about November 15th, 2000.
4. You will sign a Public Subsidy Agreement during calendar year 2000.
5. The office of state senator was on the 2000 state general election ballot.
6. You will be a candidate for the office of State Senate in the year 2002.

ISSUE ONE

Do the election year contribution limits for an office expire on general election day?

OPINION

No, election year contribution limits are in effect for the entire calendar year that an office is on the state general election ballot. Election year contribution limits expire on December 31 of the state election year.

ISSUE TWO

What is the aggregate election year contribution limit for a candidate who registers a principal campaign committee after the state general election?

OPINION

The election year contribution limits for individual, political party, political committee, political fund, and aggregate contributions for that year are available to a candidate regardless of the date that the candidate registers a principal campaign committee with the Board.

For the office of state senate the 2000 election year aggregate contribution limit is \$10,126.

ISSUE THREE

May a principal campaign committee that registers with the Board after the state general election participate in the Political Contribution Refund (PCR) program?

OPINION

A candidate who has registered a principal campaign committee with the Board and who has signed and filed a spending limit agreement is eligible to issue PCR receipts. Only contributions received after the agreement is filed with the Board are eligible for a PCR refund.

The Board notes that a spending limit agreement expires at the end of an election year in which the office sought by the candidate appears on the ballot. The expiration of the spending limit agreement applies to all candidates for that office, whether or not the candidate filed for office or their name appeared on the ballot. When a spending limit agreement expires, a new agreement must be signed and filed with the Board prior to the issuance of PCR receipts for contributions received in the following year.

ISSUE FOUR

When may an Affidavit of Contributions be filed with the Board?

OPINION

An Affidavit of Contributions must be filed with the Board no later than November 1st of a general election year. The Affidavit states that the required contributions were received during the calendar year in which the public subsidy is paid. Minn. Stat. § 10A.323. Therefore, contributions received in previous years do not count towards the required contribution level for an office.

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)

Issued: February 20, 2001

RE: Potential conflict of interest for legislator.

ADVISORY OPINION 325

SUMMARY

A specific vote, action, or decision by a legislator may create a conflict of interest under Minn. Stat. §10A.07. The occupation or profession of a legislator does not in itself create a conflict of interest.

FACTS

As a legislator, and therefore a public official as defined in 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. In addition to being a legislator, you hold an appointed position with a Minnesota municipality.
2. You serve as the Chair of a legislative committee that may deal with issues or appropriations that directly affect your financial interests, or those of your employer.
3. Hypothetically, a specific issue or appropriation could benefit you or your employer more than other individuals in the same occupation, and therefore create a potential conflict of interest under Minn. Stat. §10A.07.

ISSUE

Does the potential conflict of interest provision in Minn. Stat. § 10A.07 prevent a public employee from serving in the state legislature?

OPINION

No. Any potential conflict of interest is created by specific votes, actions, or decisions that a legislator may need to take in regard to a given piece of legislation. Potentially the occupation or affiliated business of any legislator may create a conflict of interest under Minn. Stat. § 10A.07. The statute does not try to preempt potential conflicts of interest by preventing the members of certain occupations or professions from serving in the legislature. A legislator employed by a local unit of government, in either an appointed or civil service capacity, will need to make the same

specific evaluations of potential conflicts of interest when acting on legislation that a legislator employed in any other profession must make.

It is important to note that under Minn. Stat. § 10A.07 a potential conflict of interest arises only when a public official's votes, actions, or decisions would affect the financial interests of the official, or those of an associated business, in a manner that is greater than the effect on other members of the same occupation or profession. If a potential conflict of interest does occur, Minn. Stat. §10A.07 requires written disclosure of the conflict to the appropriate presiding officer of the body of service. At the legislator's request the body of service may excuse the member from voting or taking other action on the legislation in question.

This opinion is limited to interpretation of the conflict of interest provisions of Minn. Stat. § 10A.07. Your request indicates that you have concerns about the possibility of ethical issues or conflicts of interest in other statutes or rules. Questions not related to Chapter 10A are not within the purview of the Board, and the Board may not express any opinion on them.

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)

Issued: May 22, 2001

RE: Definition of Lobbyist.

ADVISORY OPINION 326

SUMMARY

FACTS

You ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion concerning issues related to the following facts:

1. You are an attorney who represents clients in civil litigation with metropolitan government units, and the State of Minnesota.
2. In the course of representing your clients you communicated with elected local officials, petitioned for specific action from a state board, and testified before a metropolitan governmental unit, all in an effort to prompt a specific official action by a metropolitan governmental unit. When these communications were unsuccessful, you filed a lawsuit on behalf of your clients.
3. In the course of communicating with local metropolitan governmental units you sent copies of letters to state and county elected officials.
4. You have not spent more than five hours in any month nor more than \$250 in a year on behalf of your clients attempting to influence official actions of metropolitan governmental units. However the cost to your clients for your services in this matter exceeds \$250.

ISSUE ONE

Does communication that asks for a specific official action by a metropolitan governmental unit constitute lobbying if the communication is a part of an overall litigation strategy?

OPINION

Yes. Communications with public or local officials that attempt to influence the official action of a metropolitan governmental unit constitute lobbying. The fact that you filed a lawsuit when your efforts did not produce the desired result does not change the nature of the communication.

ISSUE TWO

Is sending copies of your communications with local government officials to a county commissioner and state legislators whose districts include your clients residences an act that qualifies as lobbying under Minn. Stat. §10A.01 Subd. 21?

OPINION

No. As stated in your request, the purpose of the copies of the communications were to inform the county commissioner and state legislators of a situation in their district, and did not attempt to influence the recipient to take any particular action.

ISSUE THREE

Should my fees as an attorney be included in determining if I have spent more than \$250 in any year for the purpose of influencing the official action of a metropolitan governmental unit?

OPINION

No. Minnesota Rules 4511.0100 Subp. 4 provides in part that the compensation paid to a lobbyist is not a lobbying disbursement.

ISSUE FOUR

Have my activities, as described in the facts of this opinion, made me a lobbyist and triggered an obligation to register with the Board?

OPINION

No. In the facts you have provided the Board as a basis for this opinion you state that you have not spent more than five hours in any month in communicating with public or local officials on behalf of your clients, and you have not spent over \$250 in a year for those communications.

However, you should continue to be aware of the five hour and \$250 triggers for lobbyist registration. Additionally please note that metropolitan governmental units have the authority under Minnesota Rules 4501.0400 to determine which employees are "local officials". You may wish to contact the metropolitan governmental units with which you are communicating to receive a definitive list of individuals classified as local officials in order to accurately track your lobbying time and expense.

ADVISORY OPINION REQUEST 327

This advisory opinion request was withdrawn by the requester prior to the Board's issuance of an opinion.

The request is nonpublic data under Minn. Stat. § 10A.02, subd. 12(b).

THIS ADVISORY OPINION IS PUBLIC DATA PURSUANT TO A
CONSENT FOR RELEASE OF INFORMATION SIGNED BY THE REQUESTOR

Issued to: Bart Ward
Treasurer, James Abler Volunteer Committee
2408 4th Avenue North
Anoka, MN 55303

Issued: June 26, 2001

RE: Use of Campaign Funds for Legal Expenses

ADVISORY OPINION 328

SUMMARY

Under certain circumstances funds from a principal campaign committee may be used to pay for legal services if the services relate to the candidate's chances of election, and the candidate does not personally benefit from the services.

FACTS

You ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion concerning issues related to the following facts:

1. You are the treasurer of a principal campaign committee registered with the Board. The candidate of your committee was elected to state office.
2. The candidate recently responded to allegations that related to actions made by the candidate during the course of serving in office. The allegations had the potential to affect the future service of the candidate as an elected official and the public perception of the integrity of the candidate.
3. The official has incurred legal expenses while responding to the allegations.
4. You ask if you may pay the legal fees with funds from the principal campaign committee.

ISSUE ONE

May the described legal expenses be paid for with funds from the principal campaign committee of the elected official?

OPINION

Minn. Stat. 10A.01, subd. 26, provides a list of valid noncampaign disbursements that can be made with funds from a principal campaign committee. In particular the statute provides that

there are limitations to this provision, for instance the funds of a principal campaign committee could not be used for legal services of a candidate if the services were for the personal benefit of the candidate. Additionally, in reviewing legal services claimed as a noncampaign expenditure, the Board looks for a relationship between the services provided and either the operational needs of the principal campaign committee, or the election of the candidate.

The legal costs described in this request did not benefit the candidate as an individual. The allegations made relate directly to actions taken by the candidate while serving as an elected official. If the candidate had not run for, and been elected to office, there would have been no need for the described legal services and their associated cost. The benefit of the legal services was to defend the candidate's role as an elected official.

The types of allegations found in this request do not occur in a vacuum. The media and public follow the issue, and are aware of the outcome. It seems clear that legal services used to defend a candidate's actions while serving in office affect not only the ability of the candidate to function as an elected official, but also directly relates to the viability of the candidates reelection aspirations. It is the Board's opinion that the legal costs described in this request do relate to the election of the candidate, and therefore the costs may be paid for with principal campaign funds. The costs should be identified as a noncampaign disbursement when reported to the Board.