

020479

## ADVISORY OPINIONS

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

July 1, 2001– June 30, 2002  
Numbers 329 – 341

June 24, 2002

### MINNESOTA CAMPAIGN FINANCE and 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. 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

<u>Number</u>	<u>Program</u>	<u>Subject</u>	<u>Page</u>
329	Campaign Finance	Use of campaign funds for travel expenses related to a legislative special session.	5
330	Gift Prohibition	A public official's presence at a party paid for by a lobbyist principal.	7
331	Campaign Finance	Reporting of contributions to a political party.	9
332	Lobbyist	Disclosure of fees related to lobbying.	13
333	Campaign Finance	Definition of first time candidate.	15
334	Campaign Finance/ Lobbyist	Definition of political committees and funds, reporting requirements of lobbyists.	17
335	Gift Prohibition	Gifts to groups that may contain public officials.	21
336	Campaign Finance/ Lobbyist	Use of specific words or phrases in campaign expenditures, independent expenditures, or lobbying communications and disclosure of funds used for lobbying purposes.	23
337	Gift Prohibition	Gift of coffee mug to officials.	27
338	Campaign Finance	Definition of the term agent in relation to independent expenditures.	29
339	Campaign Finance	Use of e-mail and websites in political campaigns.	33
340	Campaign Finance	Public subsidy payments potentially available to minor party or independent candidates	39
341	Campaign Finance	Providing the services of an employee to a candidate is an in-kind contribution from the employer.	41



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: July 24, 2001

**RE: Use of Campaign Funds for Travel Expenses Related to a Legislative Special Session**

### **ADVISORY OPINION 329**

#### **SUMMARY**

Under certain circumstances funds from a principal campaign committee may be used to pay for travel expenses incurred by a candidate in order to participate in work group and conference committee meetings related to a special session of the legislature

#### **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 a state legislator with a principal campaign committee registered with the Board.
2. You are a member of a work group/conference committee that met before and during the 2001 special legislative session. Your attendance at work group/conference committee meetings is required in order to fulfill your duties as a member of the legislature.
3. When not serving in the legislature you work at an establishment that is not within the boundary of your legislative district. The legislature will reimburse you only for the cost of travel from your legislative district to St. Paul. The legislature will not reimburse you for the cost of travel between your legislative district and the location of your employment.
4. You ask if you may pay for the travel expenses between your place of employment and your legislative district with funds from your principal campaign committee.

#### **ISSUE ONE**

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

#### **OPINION**

Yes, the cost of travel for a legislator in order to carry out official duties such as those described in the facts of this opinion is a cost of serving in office. Minn. Stat. 10A.01, subd. 26, (9), provides

that "payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses;" is a noncampaign disbursement. Noncampaign disbursements may be paid with funds from a candidate's principal campaign committee.

The costs you describe are directly related to your service as an elected official. You would not incur these costs if you were not a member of the legislature; therefore the cost of travel is not for personal use. The timing of a legislative special session is by its nature unpredictable, it would not be reasonable in this set of circumstances to expect a legislator to schedule work commitments in anticipation of a special session, and in some way circumvent the conflict between serving in the legislature and your personal career. The Board views these travel expenses as an unavoidable and necessary cost of your serving in office. The principal campaign committee should report the travel costs to the Board as noncampaign disbursements.

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

**Issued to:** Jan Malcolm  
Commissioner  
Department of Health  
PO Box 64882  
St. Paul, MN 55164-0882

**Issued:** August 28, 2001

**RE: A public officials presence at a party paid for by a lobbyist principal.**

**ADVISORY OPINION 330**

**SUMMARY**

A public official may attend a party paid for by a lobbyist principal without violating the gift law by, 1) directly reimbursing the lobbyist principal for the official's fair share of the expenses incurred by the lobbyist principal in hosting the party; or, 2) contributing to the party some item or items whose value is equal to or greater than the official's fair share of the value of the party.

**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 a public official as defined in Minn. Stat. 10A.01, subd. 35, and therefore subject to the restriction on gifts provided in Minn. Stat. 10A.071.
2. Before accepting your current position you were employed by a corporation that is a lobbyist principal (an entity that employs lobbyists) in the state of Minnesota.
3. Your former employer paid for a farewell party in your honor after you had assumed your duties as a public official.
4. You made remarks expressing gratitude at the party.
5. You brought an item of value (wine) to the party.

**ISSUE ONE**

Was partaking in food or beverage or entertainment at the farewell party a prohibited gift under the provisions of Minn. Stat. 10A.071?

## OPINION

Yes, as provided in the facts a lobbyist principal paid for the cost of the party, and you were a public official at the time the party occurred. Furthermore, Minn. Rules 4512.0100, subp. 3, defines meals and entertainment as a prohibited gift. The Board has recognized in previous opinions that the gift prohibition statute does not make a distinction or exception for gifts given at occasions, or with motives, that are purely social in nature. Therefore, the Board concludes that the gift prohibition extends to situations that might be seen as common courtesy if the individual receiving the gift was not a public official.

## ISSUE TWO

Did your remarks at the party qualify as one of the exceptions to the gift prohibition?

## OPINION

No. Minn. Stat. 10A.071, subd. 3 (a)(7), provides an exception to the gift prohibition for food or beverage provided to public officials that make a speech or answer questions as part of a program. The Board has held in previous opinions, and continues to understand, that this exception is narrow. The exception is intended only for events at which there is a formal program centered, at least in part, on the presentation made by the public official. Remarks made by a public official that are informal, even if there is a social expectation that they are made, are not of the type that qualifies as an exception to the gift prohibition.

## ISSUE THREE

Could you partake in food or beverage or entertainment at the party without violating the gift prohibition if you contributed an item of equal or greater value to the fair value of the goods and services you consumed at the party?

## OPINION

Yes. Minn. Stat. 10A.071, subd. 1, defines a gift in part as something "...received without the giver receiving consideration of equal or greater value in return." Consequently, if the value of the wine you provided is at least equal to the fair market worth of the goods and services you received while at the party, then attending the party was a transaction and not a prohibited gift. One way of determining the fair market value of the goods and services you were provided would be to total the cost of the food, beverage, entertainment, decoration, and wait staffing provided by the lobbyist principal, and dividing that amount by the number of individuals that attended the party. If the fair value of your proportional share of attending the party is greater than your contribution, you should reimburse the difference to the lobbyist principal.

Although not included as a fact in this opinion request, the Board notes that any present provided to a public official cannot be added to the calculation used to determine the fair market value of attending the party. The public official must reimburse the full value of any present paid for by a lobbyist or lobbyist principal in order to avoid a violation of the gift prohibition.

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 25, 2001

**RE: Reporting of Contributions to a Political Party**

**ADVISORY OPINION 331**

**SUMMARY**

Customers of an Internet Service Provider (ISP) that opt to pay a portion of income earned through their use of the ISP to a political party are making individual contributions to that party. The disclosure and reporting requirements for individual contributions apply to contributions received through membership in the ISP.

**FACTS**

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

1. You represent a political party (Party) registered with the Board.
2. You wish to have your Party affiliated with an Internet Service Provider (ISP) that will rebate a portion of the income earned by the ISP from advertising and sales back to their members.
3. As a means to expand their customer base, the ISP will pay the Party, or any other organization, that recruits or "sponsors" new members a percentage of the income earned by the new members. The percentage of income paid to the sponsoring member or organization depends on the number of new members recruited by the organization, and subsequently the number of additional members that are recruited by the new members.
4. The ISP will provide the Party with a monthly report that lists the name, e-mail address, and income generated by sponsored members who use the ISP.
5. The ISP will track memberships, collect revenue from sales and advertising, calculate income earned by sponsoring members and organizations, and make payments to qualifying members.
6. The Party recognizes that specific federal and state laws apply to the promotion of referral or chain referral sales. The Party is not asking the Board to issue an opinion on the business plan of the provider, or in specific on the relevance of Minnesota Statutes 325F.69 to the referral method of recruiting new members to the ISP.

You have asked if your Party may join the ISP with the goal of using the revenue generated by ISP members as a means of party fundraising. The Board has determined that your request is composed of three separate issues.

### **ISSUE ONE**

Does money received by the Party from the ISP represent contributions from individuals, or is the ISP compensating the Party for generating membership for the ISP?

### **OPINION**

Individual members may join the ISP and refer their membership to any number of organizations or individuals, or may join the ISP without a referral. A member will not receive any additional benefits from using the Party as a referral. The Board concludes from this that members who join the ISP voluntarily elect to have a portion of the income they earn given to their sponsoring organization. Therefore, the Board view is that income received from a sponsored member is a contribution from that individual. The role of the ISP is to deduct and forward contributions to the Party from the earnings of individual members.

### **ISSUE TWO**

Does the administrative cost and overhead of the ISP represent a prohibited corporate contribution to the Party?

### **OPINION**

The statutory prohibition on most corporate contributions to candidates and political parties is contained in Minnesota Statutes 211B.15. The authority of the Board to interpret statutes is limited to Chapter 10A. The Board's duty is to inform its clients of the existence of the statute, and its regulation of corporate contributions. Therefore, the Board cannot advise whether administrative costs provided by the ISP are a prohibited corporate contribution to the Party.

### **ISSUE THREE**

How should the Party report contributions received through the ISP to the Board?

### **OPINION**

ISP members who in aggregate contribute to the Party no more than \$100 of their earnings within a calendar year are reported to the Board as un-itemized contributions. ISP members who in aggregate contribute to the Party more than \$100 in a calendar year are reported to the Board as itemized contributions. Itemized contributions are reported by disclosing the date and amount of each contribution, along with the contributor's name, address, and employment information. (Minnesota Statutes 10A.13 and 10A.20).

The Board notes that if the Party cannot convince the ISP member to provide the Party with their address the entire amount of the contribution is classified as an anonymous contribution. Anonymous contributions must be forwarded to the Board for deposit in the General Account of the State Election Fund. If employment information cannot be obtained for contributors of over \$100, the Party will be in violation of reporting requirements for that contribution and may need to return the contribution to the ISP member.

#### **CAVEAT**

The Board's opinion is limited to defining the revenue received through Party membership in the ISP as contributions from individuals, and providing guidance on how such contributions must be reported to the Board. The request presents potential issues that may be within the jurisdiction of the federal government and or other Minnesota Statutes. The Board expresses no opinion on whether the business plan of the ISP complies with relevant requirements on commerce and consumer protection. Additionally, the Board cannot provide an opinion on subjects regulated by Minnesota Statutes Chapters 211A and 211B, in specific the Board offers no opinion on whether the ISP is providing a corporate contribution to the Party.

In correspondence with the Board, the Party asked for guidance on the form of the disclaimer the Party should use in notifying new referrals that they are contributing to a political party. This question is outside of the scope of Chapter 10A. The Board suggests that the Party refer this issue to its legal council.



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 25, 2001

**RE: Disclosure of Fees Related to Lobbying**

**ADVISORY OPINION 332**

**SUMMARY**

Fees paid to a public relations firm for work that supports a lobbying effort must be reported to the Board.

**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 a lobbyist registered with the Board.
2. In the past you have contracted with a public relations firm to assist you in your lobbying effort that attempted to influence legislative action.
3. You have included fees paid to the public relations firm in the Lobbyist Disbursement Reports you have filed with the Board.
4. You believe that other lobbyist are failing to report fees paid to public relations firms for services related to lobbying.
5. You ask if a lobbyist is required to disclose fees paid to a public relations firm for activities related to lobbying on the Lobbyist Disbursement Report.

**ISSUE ONE**

Are fees paid to a public relations firm to assist in a lobbying effort reported to the Board?

**OPINION**

Yes. A lobbyist must report all disbursements related to lobbying (with the exception of wages paid to the lobbyist) to the Board. Lobbying is defined in Minnesota Statutes 10A.01, subd. 21, to include either direct communication with a public or local official or communicating or urging others to communicate with public or local officials. The report must include disbursements related to lobbying made directly by the lobbyist, and those made by the lobbyist's employer or an

association represented by a lobbyist. As provided in Minnesota Rules 4511.0600, subp. 5, lobbying disbursements are reported in one of nine categories. The categorization of fees paid to a public relations firm would depend on the nature of the services provided by the firm. For example, if the public relations firm was paid to design, produce, or distribute lobbying materials the fees paid to the firm would be reported in the "Lobbying Materials" category. If the public relations firm were paid for consulting services related to lobbying, the amount would be reported under the "Fees and Allowances" category.

Minnesota Statutes 10A.04, subd. 3, provides that a lobbyist's employer or association represented by the lobbyist, forward information on their lobbying expenses to the lobbyist for disclosure to the Board. The information must be provided to the lobbyist no later than five days prior to the filing date of a Lobbyist Disbursement Report.

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: October 24, 2001

RE: **Definition of first time candidate.**

**ADVISORY OPINION 333**

**SUMMARY**

Regardless of whether a candidate received the party endorsement or filed an affidavit of candidacy for a given office, a candidate who raises or spends more than \$100 in a year for a given office cannot qualify for first-time candidate status for that same office in subsequent election cycles.

**FACTS**

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

1. You have registered a principal campaign committee with the Board. The Public Subsidy Agreement you have filed does not identify you as a first-time candidate. However, you reserve the right to amend that agreement pending the Board response to this advisory opinion request.
2. In 1997 you registered a principal campaign committee for the same office you to which you currently aspire (referred to herein as the "1997 Committee"). The Public Subsidy Agreement you filed in 1997 identifies you as a first-time candidate.
3. During calendar year 1997, the 1997 Committee raised over \$100 in contributions and spent over \$100 on campaign expenditures. During calendar year 1998, the 1997 Committee again raised over \$100 in contributions and spent over \$100 on campaign expenditures.
4. The 1997 Committee terminated its registration with the Board in 1998.
5. You did not receive your party endorsement for the office you sought in 1998. You did not file an affidavit of candidacy for that office, therefore your name did not appear on either the primary or general election ballot.

**ISSUE ONE**

Does a candidate who registered a campaign committee for a given office that raised more than \$100 in contributions and made more than \$100 in expenditures in a previous election cycle but did not receive party endorsement, file an affidavit for office nor appear on a primary or general

election ballot still remain eligible in a subsequent election for the 10% increase in expenditure limits accorded first-time candidates?

### OPINION

No, although party endorsement and placement on the primary or general election ballot are considerations in determining first-time candidacy, additional factors may disqualify an individual from qualifying as a first-time candidate for a given public office for purposes of the expenditure limits established by Minn. Stat. § 10A.25, subd. 2(d).

A "candidate" for purposes of Minnesota Statutes Chapter 10A includes anyone who seeks nomination or election as a constitutional officer, legislator, or judge. See Minn. Stat. §10A.01, subd. 10. An individual is deemed to have sought nomination or election to an office if they, or someone acting on their behalf, received contributions or made expenditures in excess of \$100. In 1997 and again in 1998, your committee exceeded the \$100 limit for both contributions and expenditures for the same office for which you are currently a candidate. Accordingly, you are not a first-time candidate for that office, and are therefore ineligible to receive a 10% increase in your expenditure limit under Minn. Stat. § 10A.25, subd. 2(d).

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 11, 2001

**RE: Definition of political committees and funds, reporting requirements of lobbyists.**

**ADVISORY OPINION 334**

**SUMMARY**

The purpose of a communication determines if the communication is a campaign expenditure, a lobbying disbursement, or a communication outside of the application of Minnesota Statutes Chapter 10A.

**FACTS**

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

1. The association is a nonprofit corporation registered in Minnesota.
2. The association proposes to create voter guides and scorecards to inform the electorate of candidates' positions on particular topics. The cost of the materials would be paid for directly by the association.
3. The association proposes to make communications that will mention specific legislation, administrative action, or official action of a metropolitan governmental unit. The communication may or may not advocate the defeat or adoption of the legislation or action.
4. The association may spend more than \$500 to compensate lobbyist(s) for "issue advocacy" communications, and may spend more than \$50,000 in a calendar year on "issue advocacy" communications.

**ISSUE ONE**

Would the association's expenditures on "issue advocacy" be considered communications that influence the nomination or election of a candidate or promote or defeat a ballot question?

**OPINION**

Minnesota Statutes do not define "issue advocacy", therefore the Board cannot offer guidance as to what communications may be categorized as issue advocacy. Further the Board cannot give an opinion relying on definitions of the term "issue advocacy" provided at other times, in other jurisdictions, and in reference to laws outside of Minnesota Statutes 10A. Undoubtedly there are many forms of communication (commercial, educational, etc.) that are not regulated

by Minnesota Statutes Chapter 10A. However, if the **purpose** of the communication is to influence the nomination or election of a candidate for judge, the state legislature, a constitutional office, or effect a statewide ballot question, then the communication falls within the jurisdiction of Minnesota Statutes Chapter 10A. Such communications must be reported to the Board as campaign expenditures.

## ISSUE TWO

If an organization produces and distributes communications that have the purpose of influencing the nomination or election of a candidate or to promote or defeat a ballot question, is the organization a campaign committee if the organization has as its major purpose tasks other than to produce said communications?

## OPINION

Minn. Stat. §10A.01, subd. 27, provides that an association whose "major purpose" is to influence the nomination or election of a candidate or to promote or defeat a ballot question is a political committee. An association (other than a political party unit or principal campaign committee) that does not meet this definition, but that makes aggregate contributions in excess of \$100, or that makes approved or independent expenditures to influence the nomination or election of a candidate or to promote or defeat a ballot question, must make the contributions or expenditures through the use of a political fund. A "political fund" is defined and regulated in Minn. Stat. §10A.01, subd. 28, and Minn. Stat §10A.12.

## ISSUE THREE

Do "issue advocacy" communications on legislation, administrative action, or the official action of a metropolitan governmental unit constitute lobbying as defined in Minnesota Statutes Chapter 10A?

## OPINION

As stated in response to Issue 1, Minnesota Statutes do not define or rely on the term "issue advocacy". Therefore, the Board cannot provide advice to an organization as to what communications fall into the category of issue advocacy. Minn. Stat. §10A.01, subd. 21, provides that activities "for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials" constitute lobbying if they occur above specified thresholds of time or value. It is the responsibility of the lobbyist principal to determine the purpose of its expenditures, and report only those expenditures related to lobbying to the Board through the lobbying disbursement reports of the designated lobbyist, and the yearly lobbying disbursement report of the lobbyist principal.

## ISSUE FOUR

Will expenditures on "issue advocacy" communications related to legislation or administrative action, or the official action of a metropolitan governmental unit, make the association a lobbyist principal?

## OPINION

Any communication made by an association with the purpose of influencing legislation or administrative action, or the official action of a metropolitan governmental unit, or which urges others to communicate with public officials on the legislation or actions, must be reported to the Board as a lobbying expenditure. If the cost of lobbying communications is greater than \$50,000 in any calendar year the association responsible for the communications must report to the Board as a lobbyist principal. An association is also classified as a lobbyist principal if it spends more than \$500 in aggregate in a calendar year to compensate a lobbyist(s).



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

**Issued to:** Daron Van Helden  
Public Affairs Representative  
AAA Minnesota/Iowa  
600 West Travelers Trail  
Burnsville, MN 55337-2594

**Issued:** December 11, 2001

**RE: Gifts to groups that may contain public officials.**

**ADVISORY OPINION 335**

**SUMMARY**

A lobbyist principal may provide gifts to officials if the officials are members of a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group.

**FACTS**

As the lobbyist for AAA Minnesota/Iowa (the AAA), you ask the Campaign Finance and Public Disclosure Board (the Board) for an advisory opinion based on the following facts:

1. The AAA is a lobbyist principal, as defined in Minn. Stat. §10A.01, subd. 33.
2. The AAA wishes to provide a gift (a year membership in the organization) with a value of \$55.00 to every member of five Minnesota based associations.
3. The membership of the associations almost certainly includes public and local officials.

**ISSUE ONE**

May the AAA provide a gift of more than insignificant value to members of an association if the membership includes individuals who are public officials?

**OPINION**

Minn. Stat. §10A.071, subd. 3, provides limited exceptions to the general prohibition of gifts from lobbyists or lobbyist principals to public officials, employees of the legislature, and local officials of a metropolitan governmental unit (officials). In particular the statute provides that a lobbyist principal may provide a gift to officials if the gift is because of the official's membership in a group, the majority of the members of the group are not officials, and if every member in the group is given a gift of equivalent value.

As provided in the facts of the request, the intended gifts are of equivalent value, and are being provided because of membership in a group. What the Board cannot ascertain from the facts provided is the membership composition of each association. The Board suggests that the AAA

contact each association for a list of members that are officials. The Board maintains a list of positions that have been designated as "local officials" by metropolitan governmental units. This list is available to the public, and may be of use in determining the makeup of the associations.

If you determine that the majority of the association(s) membership are not officials as defined in Minn. Stat. §10A.071, subd. 1, (c), and the gifts are provided, the AAA must disclose information about the gifts to the Board. The designated lobbyist for the AAA is required to report the name and office of each official who received the gift, as well as a description of the gift and its monetary value. This disclosure is provided in the Lobbyist Disbursement Report for the reporting period in which the gift is made (Minn. Stat. §10A.04, subd. 4, (c)).

The Board also notes that this advisory opinion is based solely on the provisions of Minnesota Statutes Chapter 10A. The AAA may wish to confer with legal counsel about the existence of other laws that may apply to the proposed gift including, but not limited to, Minn. Stat. § 471.895, which is reprinted below.

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: January 25, 2002

**RE: Use of specific words or phrases in campaign expenditures, independent expenditures, or lobbying communications and disclosure of funds used for lobbying purposes.**

**ADVISORY OPINION 336**

**SUMMARY**

Campaign expenditures, independent expenditures, and lobbying communications are defined by their purpose, and do not require the presence of specific words or phrases in order to come under the provisions of Minnesota Statutes Chapter 10A. A lobbyist principal must disclose to the Board the name of an individual or entity who provides, either directly or as a percentage of their total dues or contributions, over \$500 for lobbying efforts.

**FACTS**

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

1. The association you represent is a nonprofit corporation registered in Minnesota.
2. The association proposes to create voter guides and scorecards to inform the public of "candidates' qualifications for office, records and positions. The association also proposes to produce "communications to the public urging the general public to contact legislators to influence legislation".
3. For the purposes of this advisory opinion the association defines words of "express advocacy" as: "vote for", "elect", "support", "cast your ballot for", "Smith for Congress", "defeat", and "reject".
4. The association may spend more than \$500 to compensate a lobbyist, and may spend more than \$50,000 in a calendar year on communications that influence legislative or administrative action, or the official action of a metropolitan governmental unit.

**ISSUE ONE**

Are organizations whose major purpose is to engage in communications to "influence the nomination or election of a candidate or to promote or defeat a ballot question", but whose communications do not include express words of advocacy (as provided in fact #3 of this opinion) subject to regulation as a political committee?

## OPINION

Yes. If an organization's major purpose is to produce communications to influence the nomination or election of a candidate for judicial office, the state legislature, a constitutional office, or to promote or defeat a statewide ballot question, the organization is a political committee as provided in Minn. Stat. §10A.01, subd. 27. Depending on the presence of coordination with a candidate or the candidate's committee the communication as described would be either an approved campaign expenditure or an independent expenditure as defined in Minn. Stat. §10A.01, subd. 9 and 18. Neither definition requires the presence of specific words or any other condition beyond the "purpose" of the expenditure.

## ISSUE TWO

Would communications by the association which do not contain express words of advocacy but which are designed to "influence the nomination or election of a candidate or to promote or defeat a ballot question" be subject to regulation under the political fund requirements?

## OPINION

Yes. A "political fund" is defined and regulated in Minn. Stat. §10A.01, subd. 28, and Minn. Stat. §10A.12. Political funds have different priorities and are organizationally different than political committees, however, the test to determine if a communication is a reportable campaign expenditure or independent expenditure is the same. If the communications are designed to influence the nomination or election of a candidate for judicial office, the state legislature, a constitutional office, or to promote or defeat a statewide ballot question, the provisions of Chapter 10A apply to the communication and the political fund that produces the communication.

## ISSUE THREE

Is an individual a lobbyist under Minnesota Statutes if the individual is paid and spends more than \$250 or more than five hours in a month "for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials" if the communications lacked express words of advocacy?

## OPINION

Yes. The activities that define a lobbyist are those provided in Minn. Stat. §10A.01, subd. 21. This statute does not require or prevent a lobbyist from including specific words or phrases in communications that have the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit.

## ISSUE FOUR

Will the association be a lobbyist principal if it either spends more than \$500 in a calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist, or if it spends more than \$50,000 to influence legislative or administrative action, or the official action of a metropolitan governmental unit, even though such communications would lack express words of advocacy?

## OPINION

Yes. Any communication made by an association for the purpose of influencing legislation or administrative action, or the official action of a metropolitan governmental unit, or which urges others to communicate with public and local officials, must be reported to the Board as a lobbying disbursement. If the cost of lobbying expenditures is greater than \$50,000 in any calendar year, the association responsible for the communications must report to the Board as a lobbyist principal. An association is also classified as a lobbyist principal if it spends more than \$500 in aggregate in a calendar year to compensate a lobbyist. As stated in the response to issue 3, lobbying communications are defined by their purpose, not by the presence or lack of any specific word or phrase.

## ISSUE FIVE

A lobbyist is required by Minn. Stat. 10A.04, subd. 4(d), to report "each original source of money in excess of \$500 in any year used for the purpose of lobbying to influence legislative action, administrative action, or the official action of a metropolitan unit". Does this provision require a lobbyist principal to supply the lobbyist with a list of those individuals and associations who contributed more than \$500 specifically for lobbying? Or should the lobbyist principal provide a list of all contributors over \$500?

## OPINION

The lobbyist principal must provide the lobbyist with a list of all individuals and associations who earmark their aggregate contribution of over \$500 for lobbying purposes, and those individuals whose aggregate contributions multiplied by the percentage of the budget of the lobbyist principal used for lobbying is greater than \$500. For example, a lobbyist principal uses 50% of its total budget for lobbying in Minnesota. If an individual or association contributed over \$1,000 to the lobbyist principal, the individual's name, address, employer, or if self-employed, the occupation and place of business, must be disclosed to the Board.



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: January 25, 2002

RE: Gift of coffee mug to officials.

**ADVISORY OPINION 337**

**SUMMARY**

The gift of a coffee mug to members of the legislature and legislative staff meets the exemption in Minn. Stat. §10A.071, subd. 3 (a)(5), because it is an item of insignificant value.

**FACTS**

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

1. You represent a lobbyist principal, as defined in Minn. Stat. §10A.01, subd. 33.
2. The lobbyist principal wishes to give legislators and legislative staff a coffee mug inscribed with the principal's logo and website address.
3. The cost to the lobbyist principal to produce the coffee mug is approximately \$4.75. The estimated retail value of the mug is \$4.00 to \$6.00.

**ISSUE ONE**

May a lobbyist principal provide a legislator or legislative staff with a coffee mug that has a retail value of approximately \$4 to \$6?

**OPINION**

Minn. Stat. §10A.071, subd. 3, provides limited exceptions to the general prohibition of gifts from lobbyists or lobbyist principals to public officials, employees of the legislature, and local officials of a metropolitan governmental unit (officials). In particular the statute provides that a lobbyist principal may provide a gift to officials if the gift is "a trinket or memento of insignificant value".

The statute does not provide a set monetary value for determining if an item is "of insignificant value". The value placed on the gift may vary significantly among recipients. The Board considers the cost of the gift to the giver, and its approximate retail value as relevant facts; but focuses on the likely value of the gift to the recipient. Based on the facts as provided in this request, the Board believes that the gift, a coffee mug, is not of "significant" value to the recipient. Therefore the Board finds that the coffee mug is a trinket of insignificant value and falls within the exception provided in Minn. Stat. §10A.071, subd. 3(a)(5).



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

**Issued to:** Alan W. Weinblatt  
Weinblatt & Gaylord, PLC  
1616 Pioneer Building  
336 N. Robert Street  
St. Paul, MN 55101

**Issued:** April 23, 2002

**RE:** Definition of the term agent in relation to independent expenditures.

**ADVISORY OPINION 338**

**SUMMARY**

A consultant who provides services to a principal campaign committee is an agent of that committee. An expenditure is not independent if an agent of a principal campaign committee directly or indirectly influences the political party unit, political committee, or political fund to make the expenditure.

**FACTS**

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

1. The campaign consultants provide their services to political committees and funds (political committees), principal campaign committees, and party units as defined in Minnesota Statutes Chapter 10A. At any given time a consultant may be simultaneously employed by multiple political committees, principal campaign committees, and party units.
2. The political committees and party units employ the services of the consultants that may want to make independent expenditures, as defined in Minn. Stat §10A.01, subd. 18, on behalf of candidates.
3. For the purpose of this advisory opinion the term "candidate" means a candidate covered by the provisions of Chapter 10A.

**ISSUE ONE**

May a political committee make an independent expenditure in support of a candidate for an office covered by Chapter 10A even though one of its consultants is also a fee for service paid consultant to the candidate who benefits from the independent expenditure?

## OPINION

Minnesota Statutes §10A.01, subdivision 18, provides in part: " 'Independent expenditure' means an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent."

In the Board's view the statute requires a high wall of separation between the entity making an independent expenditure, and the candidate who benefits from that expenditure. A breach of that wall would occur if an "agent" of the principal campaign committee initiates, requests, suggests or influences an expenditure by a political committee or party unit that benefits the agent's candidate.

A consultant to a principal campaign committee is an agent of that committee because the consultant is engaged to perform duties that benefit the principal campaign committee. The consultant's status as an agent of the principal campaign committee provides an avenue for coordination, cooperation, and at least implied consent between the principal campaign committee and any entity making a political expenditure that benefits the principal campaign committee. If a consultant is simultaneously providing services to a principal campaign committee and a political committee or political party unit, the wall of separation needed to make a campaign expenditure independent may be compromised.

Under certain circumstances, a consultant simultaneously employed by a principal campaign committee and an entity making independent expenditures may provide their services in an environment totally isolated from the independent expenditures. Such an environment would require strict adherence to internal procedures and controls establishing and maintaining separation between the consultant and the individuals and procedures used to make the independent expenditure, and prohibiting any contact or communications between them regarding such expenditures.

## ISSUE TWO

Using the scenario provided in Issue One, is the expenditure independent if the political committee does not compensate the consultant for their services?

## OPINION

The consultant's relationship to the principal campaign committee makes them an agent of the principal campaign committee regardless of any compensation they may receive for services provided to the political committee or party unit. An expenditure is not independent if an agent of the principal campaign committee that benefits from the expenditure directly or indirectly influences the political committee or party unit making the expenditure.

## ISSUE THREE

Using the scenario provided in Issue One, is the expenditure independent if the candidate or the candidates principal campaign committee does not compensate the consultant for their services?

## OPINION

The consultant provides services that have the goal of assisting the candidate and the principal campaign committee. This makes the consultant an agent of the committee regardless of any compensation received. As stated above, an agent of a principal campaign committee must be isolated from the processes and individuals used to make independent expenditures.

## ISSUE FOUR

Using the scenario provided in Issue One, is the expenditure independent if the consultant does or does not receive a fee from both the political fund and one or more candidates or principal campaign committees, which may be the beneficiaries of a political committees independent expenditures?

## OPINION

As with Issues One, Two, and, Three it is the purpose and nature of the relationship between the consultant and the principal campaign committee that makes the consultant an agent of the principal campaign committee. The presence or lack of compensation does not change the Board's view that a consultant is an "agent" for the purposes of Min. Stat. §10A.01, subd. 18. As with the previous issues in this opinion, the Board's position is that an agent of a principal campaign committee cannot simultaneously provide services to a political committee or party unit that wishes to make an independent expenditure for the benefit of the agent's candidate unless the agent is thoroughly isolated from the procedures and individuals making the independent expenditure.

## ISSUE FIVE

Can a political party unit make independent expenditures that benefit one or more candidates if the party unit receives services from a consultant that also provides services to at least one of the candidates that would benefit from the independent expenditure?

## OPINION

A political party unit is treated in the same manner as a political committee under the provisions of Minn. Stat. §10A.01, subd. 18. Therefore the opinion expressed in Issue Four applies here as well.

However, Minn. Stat. §10A.275 provides for specific types of multicandidate political party expenditures that are not subject to the same standards of separation required of independent expenditures. A multicandidate expenditure as defined in this statute may occur even if the party unit and one or more candidates who benefit from the expenditure are employing the same consultant. A multicandidate expenditure does not count against any candidates spending limit, and does not need prior approval from the principal campaign committees that benefit from the expenditure.

## ISSUE SIX

If a consultant or a member of the principal campaign committee does not have actual oral or written authority to make or authorize the making of expenditures on behalf of the candidate or the candidate's principal campaign committee, may they participate with a political committee or

party unit in making an independent expenditure that benefits the principal campaign committee?

**OPINION**

No. As provided by Minn. Stat. §10A.17, subd. 1, only the treasurer or deputy treasurer of a principal campaign committee may authorize expenditures for the committee. The separation required for an independent expenditure by Minn. Stat. §10A.01, subd. 18, extends beyond the treasurer and deputy treasurer to the candidate, all members of the principal campaign committee, and agents of that committee.

**ISSUE SEVEN**

If a consultant or a member of the principal campaign committee is not placed in a position in which they may authorize expenditures on behalf of the candidate or the principal campaign committee, may they participate with a political committee or party unit in making an independent expenditure that benefits the principal campaign committee?

**OPINION**

No. The authority to make or authorize expenditures is not the only way a person may be an agent of a candidate or committee, and is not needed to conduct the types of communication prohibited between principal campaign committees or their agents and an entity making an independent expenditure.

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

**Issued to:** Phil Madsen, Treasurer  
Jesse Ventura Volunteer Committee  
PO Box 397  
Circle Pines, MN 55014

**Issued:** June 6, 2002

**RE: Use of E-Mail and Websites in Political Campaigns.**

**ADVISORY OPINION 339**

**SUMMARY**

Contribution limits and reporting requirements required by Minnesota Statutes Chapter 10A apply to Internet based campaign materials.

**FACTS**

As the treasurer of the Jesse Ventura Volunteer Committee, you ask the Campaign Finance and Public Disclosure Board (the Board) for an advisory opinion based on the following facts:

1. The Jesse Ventura Volunteer Committee (JVVC) a principal campaign committee registered with the Board and therefore is covered by the provisions of Minnesota Statutes Chapter 10A.
2. The JVVC maintains a website, and an extensive list of e-mail addresses of supporters of the JVVC.
3. The cost to the JVVC for the website and use of e-mail communications includes the cost of an Internet service provider (ISP), computer software, and occasional use of technical consultants.
4. Much of the JVVC Webs site and e-mail list is developed and maintained by volunteers of the JVVC, using their own computers, ISP connection, software, and technical knowledge.
5. The cost of sending e-mail is static after the monthly ISP charge is paid. Therefore, sending an e-mail to 10,000 individuals is no more or less expensive than sending an e-mail to one individual. If the work is done by volunteers the cost of adding a page or a hyperlink to the JVVC website is zero.
6. In the future, the JVVC may wish to post web pages or add hyperlinks that promote other candidates or organizations, and/or advocate candidates or issues in e-mails sent to individuals on the JVVC e-mail list.
7. For the purposes of this advisory opinion the word "entity" is defined as a principal campaign committee other than the JVVC, a political party unit, or political committees

and funds (political committees), all of which are under the provisions of Minnesota Statutes Chapter 10A.

8. For the purposes of this advisory opinion, the requestor asks that "entity" also include non-profit charitable corporations that are prohibited from political activity of any kind by tax law and or charter. The Board is limited to providing opinions to individuals or organizations that are defined and regulated by Minnesota Statutes Chapter 10A. As non-profit charitable corporations are outside of that scope, the opinions contained in this document do not apply to such organizations.

## **FOREWORD**

Before addressing the specific questions of this advisory opinion request it is appropriate to note the growing use of the Internet for campaign related purposes. As a relatively new factor in the political arena, the Internet is sometimes viewed as a "place" outside of laws used to regulate more traditional campaign activities. In the Board's view the Internet, despite all of the attention and comment it receives, is in the end nothing more than a medium for communication. If the Board were to exclude websites, hyperlinks, and e-mails from the requirements of Chapter 10A it would in effect be deciding that the medium, not the message, determines whether a given communication is campaign material. There is nothing in Chapter 10A to suggest that the legislature views the Internet as a forum for campaigning without regulation or reporting requirements. Indeed, as the number of candidates who establish campaign websites and who use e-mail to distribute campaign related messages grows with each election, the interest from the public for disclosure on Internet based campaign expenditures will similarly grow.

## **ISSUE ONE**

If the JVVC is requested to use its e-mail list to send a message encouraging recipients to contribute funds, join, or in some other manner support an entity, and the JVVC sends the requested message, is the message reported to the Board as an in kind donation? If so how is the value of the donation determined?

## **OPINION**

Contributions of anything of value other than money are considered a "donation in-kind", as provided in Minnesota Statutes §10A.01, subd. 13. The use of an e-mail list to gather donations or other support for an entity clearly has value to the entity that requested the e-mail.

The value of the donation in-kind is determined by the fair market value that would be paid by the recipient to purchase the same item or service on the open market. The value of an item does not necessarily equate to the cost of providing the item or service. In many cases the cost to the contributor of providing an in-kind donation is zero. The contributor has already paid for the item being donated; the contributor does not need to pay for the item again in order to provide it as an in-kind donation. The fact that sending an e-mail is a donation without cost to the contributor does not differentiate it from most other in-kind donations. Factors that appear reasonable to include when calculating the fair market value of sending the e-mail are the cost of acquiring ISP service, and the cost of either buying a single use of the JVVC's mailing list, or another commercial e-mail list of similar size. If the fair market value of sending the e-mail is greater than \$20 the JVVC must record the donation, and report it to the Board, (Minn. Stat. §10A.13, subd. 1). Additionally, if the e-mail is valued at over \$20 and is donated to a principal

campaign committee, the JVVC must obtain written permission from the treasurer of the principal campaign committee authorizing the purpose and the amount that may be spent on the expenditure (Minn. Stat. §10A.17, subd. 2). Written authorization is not required before making an approved expenditure for a political committee or party unit.

If the fair market value of the e-mail is over \$100 the contribution is itemized and reported to the Board. Itemization of an in-kind donation includes the date on which the donation was made, a description of the item donated, and its fair market value. If the value of the e-mail is over \$20 but no more than \$100, the expenditure is reported to the Board as a non-itemized expenditure. Non-itemized expenditures are reported in aggregate total. If the value of the in-kind donation is \$20 or less the JVVC is not required to record or report the donation to the Board.

Because the JVVC is a registered principal campaign committee it is important to note that the JVVC may make a donation to another state level candidate only if the JVVC terminates during the reporting period in which the donation is made (Minn. Rules 4503.0300, Subp. 2). Additionally the JVVC is prohibited, even if it intends to terminate, from making donations to local or federal level candidates (Minn. Stat. §10A.27, subd. 9). There is no restriction on the JVVC making a donation to a political party unit or a political committee.

## **ISSUE TWO**

Using the scenario provided in Issue One, what reporting requirements occur if the entity did not request or authorize the e-mail?

## **OPINION**

If the e-mail is sent to benefit another candidate, without any request, cooperation, coordination, or consent of the candidate, the candidate's committee, or an agent of the candidate, it would be an "independent expenditure", as defined in Minn. Stat. §10A.01, subd. 18. Independent expenditures, regardless of value, must be reported to the Board. In addition, an e-mail sent as a independent expenditure would need to contain a statement in conspicuous type that the message is an independent expenditure, and is not approved by the candidate who benefits from it, nor is that candidate responsible for the content of the e-mail (Minn. Stat. §10A.17, subd. 4). The JVVC would also need to file an Affidavit of Independent Expenditures when reporting the cost of the independent expenditure to the Board (Minn. Stat. 10A.20, subd. 6a).

Independent expenditures are by definition disbursements to promote or defeat a specific candidate. A donation in-kind to a political party unit or political committee must be accepted by the entity receiving the item in order for the donation to occur. E-mail sent without the prior knowledge or cooperation of a party unit or political committee does not fall under either category, and does not need to be reported to the Board.

## **ISSUE THREE**

If the JVVC is requested by an entity to publish a page on its website that encourages support of the entity, and the JVVC publishes the requested page, is the page an in-kind contribution to the entity that is reported to the Board? If so how is the value of the contribution determined?

## OPINION

Providing one or more pages on a website at the request of an entity for use in creating support for that entity meets the definition of a donation in-kind, as discussed in Issue One. The donation must be reported to the Board if the fair market value of the item, in this case a web page, is over \$20. The same concerns outlined in Issue One relating to donations to state, federal, and local candidates apply to this issue as well.

In determining the fair market value of donating space on the JVVC website, the nature of the donation and the costs saved by the entity when the JVVC distributes their material on the Internet must be considered. If the JVVC becomes the de facto ISP for another entity by providing numerous website pages and or e-mail broadcasts, then the other entity has saved a considerable amount of cost, which should be reflected in the valuation of the donation. Conversely, hosting a web page for only a few days may very well result in a donation that has a fair market value of less than \$20, which does not need to be recorded or reported to the Board.

## ISSUE FOUR

Using the scenario provided in Issue Three, what reporting requirements occur if the entity did not request or authorize the Web page?

## OPINION

Issue Four varies from Issue Two only in the specific of the item being provided by the JVVC. Therefore, the opinion provided for Issue Two applies to Issue Four.

## ISSUE FIVE

If the JVVC is requested by an entity to create a hyperlink from the JVVC website to the entity's website, and the JVVC creates the requested hyperlink, is the hyperlink an in-kind contribution to the entity that is reported to the Board? If so how is the value of the contribution determined?

## OPINION

As with the e-mail and web pages the hyperlink provides an item of value to the entity it benefits. That the hyperlink has value is confirmed by the fact that an entity is requesting its creation. The hyperlink raises the same issues of fair market value, twenty dollar reporting threshold, and donations to state, federal, and local candidates discussed in the opinion for Issue One.

## ISSUE SIX

Using the scenario provided in Issue Five, what reporting requirements occur if the entity did not request or authorize the hyperlink?

## OPINION

Issue Six varies from Issue Two only in the specific of the item being provided by the JVVC. Therefore the opinion provided for Issue Two applies to Issue Six.

## ISSUE SEVEN

If an entity cooperates with the JVVC to use e-mails, web pages, or hyperlinks, to promote the candidates of the JVVC, is this a contribution to the JVVC? If so, how should the value of the contribution be determined?

### OPINION

By cooperating with an entity to use the resources of the Internet to campaign for its candidates, the JVVC is authorizing an "approved expenditure" as defined in Min. Stat. §10A.01, subd. 4. The JVVC must provide written authorization to the entity stating the amount that may be spent and the purpose of the expenditure (Minn. Stat. §10A.17, subd. 2). The written authorization provides a safeguard so that the JVVC maintains control over the approved expenditure being made on behalf of the committee.

An approved expenditure is always a donation in-kind (Min. Stat. §10A.01, subd. 13). As with all donations in-kind the item is reported to the Board if the value exceeds \$20. A donation in-kind is both a donation to the JVVC, and a campaign expenditure by the JVVC. Therefore the donation counts against the aggregate contribution limit of the entity that provided the donation, and to the campaign spending limit of the JVVC. A donation in-kind, if over \$20 in value, is reported as a contribution and as an expenditure in the reporting period in which it is received (Minn. Stat. §10A.20, subd. 3).

The Board recognizes that determining fair market value for Internet based items may be more difficult than determining the fair market value of a more traditional donation in-kind. The nature of the Internet is that its most important component is intellectual, not material, in nature. Intellectual capital is often more difficult to assign value to than, for example, tangible items such as used office furniture. Nonetheless, the content and services of the Internet have value. In some cases the value of the Internet based donation in-kind will be so minimal as to fall outside the reporting requirements of Chapter 10A. However, a principal campaign committee should not provide written authorization for any approved expenditure without calculating the value of the donation and the effect it will have on the contribution, expenditure, and special source limits of the committee.

## ISSUE EIGHT

If an entity uses e-mail, web pages, or hyperlinks to promote the candidates of the JVVC without the knowledge or authorization of the JVVC, what obligation does the JVVC have in discovering the Internet activity and how is the value determined and reported to the Board?

### OPINION

An entity making a campaign expenditure that benefits the candidates of the JVVC without the knowledge or authorization of the JVVC is making an independent expenditure. The nature of independent expenditures is that the JVVC will either find out about the expenditure after it occurs, or will perhaps never learn of the expenditure. In either case the JVVC is not required to search the Internet for independent expenditures or make any reference to them when reporting to the Board.

## **ISSUE NINE**

If the JVVC makes available on its website a multi-page campaign brochure that can be downloaded and printed by anyone who accesses the website, and if one or more individuals download, print, and distribute multiple copies of the brochure, is this a contribution to the JVVC, and if so how is it reported to the Board?

### **OPINION**

As long as the decision to distribute multiple copies of the brochure is made by the individual, and not at the request or suggestion of the JVVC, the distributed brochures become an independent expenditure made on behalf of JVVC candidates. The JVVC is not required to report independent expenditures made on its behalf.

## **ISSUE TEN**

If the JVVC develops a computer game that uses interactive simulations, graphics, and multimedia elements to convey the JVVC campaign message, may the JVVC provide the game as a free download on the JVVC website, or provide the game on a CD or DVD? May the computer game be provided if the JVVC charged a fee for the game? If the JVVC publishes campaign material on a CD or DVD (non-interactive, non-game) is the CD or DVD an item of value that cannot be offered for free to a voter?

### **OPINION**

The Board is authorized to provide advisory opinions on the requirements of Chapter 10A. The distribution of items of value during a campaign is regulated by Minn. Stat. 211B.13. Therefore, this issue is outside of the realm of campaign finance law on which the Board can provide an opinion.

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

**Issued to:** Steve Keillor  
Keillor for State Senate Committee  
PO Box 23  
Askov, MN 55704

**Issued:** June 6, 2002

**RE: Public Subsidy Payments Potentially Available to Minor Party or Independent Candidates**

**ADVISORY OPINION 340**

**SUMMARY**

Minor party and independent candidates who sign a public subsidy agreement with the State of Minnesota prior to August 1, 2002 may qualify to receive a general account public subsidy payment after the 2002 state general election.

**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, have registered a principal campaign committee, and have signed a public subsidy agreement with the Board for that office.
2. You are running for office without party affiliation as an "independent". As an independent, your name will not appear on the state primary ballot but will be on the state general election ballot.
3. The Laws of 2001, 1<sup>st</sup> Special Session, Chapter 10, article 18, section 2, provides that public subsidy payments are made only to the winners of primary elections. This provision would prevent an independent candidate from receiving a public subsidy payment.
4. The Laws of 2002, Chapter 363, section 42, provides that candidates who sign a public subsidy agreement prior to August 1, 2002 will be eligible for public subsidy payments as provided in statute prior to the enactment of Laws of 2001, 1<sup>st</sup> Special Session, Chapter 10, article 18, section 2.

**ISSUE ONE**

Are minor party and independent candidates able to qualify for a public subsidy payment in 2002?

## OPINION

Yes. The provisions of Minn. Stat §10A.31, subd. 7, prior to the enactment of Laws of 2001, 1<sup>st</sup> Special Session, Chapter 10, article 18, section 2 set requirements for the distribution of the general account public subsidy payments. The statute distributes the general account payment according to a allocation method that provides a equal payment to candidates for the same office regardless of district or party affiliation. To receive a general account payment the candidate must: 1) have signed a valid public subsidy agreement. 2) have filed the affidavit of contributions required by Minn. Stat. §10A.323. 3) have an opponent at either the primary or general election. 4) receive at least 5% of the votes cast at the general election for that office if running for a state wide office, or at least 10% of the votes cast at the general election for that office if running for a legislative seat.

The requirements provided above will be used to determine if minor and independent party candidates who sign a public subsidy agreement prior to August 1, 2002 are eligible for a general account public subsidy payment. Minor party and independent candidates who sign a public subsidy agreement on or after August 1, 2002 are not eligible to receive a public subsidy payment.

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: June 6, 2002.

**RE: Providing the Services of An Employee to a Candidate is an In-Kind Donation  
From the Employer.**

**ADVISORY OPINION 341**

**SUMMARY**

Providing a paid sabbatical leave to an employee so that the employee may work in the campaign of a state candidate is an in-kind donation from the employer to the candidate.

**FACTS**

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

1. The organization you represent is the sponsoring organization for a political fund registered with the Board.
2. The organization has a collective bargaining agreement with many of its employees. One provision of the collective bargaining agreement provides that an employee may request sabbatical leave. If the sabbatical is granted the employee receives three-fourths of their full salary, plus full health and retirement benefits, for the duration of the leave.
3. The organization has received a sabbatical request from an employee who wishes to work for the principal campaign committee of a candidate for governor.
4. If the sabbatical is granted, the organization you represent will not communicate with the employee about election plans or activities of the candidate for governor.

**ISSUE ONE**

If the sabbatical leave is granted, will the organization have made a contribution to the candidates campaign?

**OPINION**

Yes. A campaign gains the services of an individual through one of three means; the individual is paid for their services, the individual is a volunteer, or the individual's services are an in-kind donation to the campaign. From the facts provided it is clear that neither the individual, nor the organization asking for this opinion, has a vendor/buyer relationship with the candidate.

In order for the employee to be a volunteer for the candidate he or she would need to meet the qualification stated in Minnesota Statutes §10A.01, subd. 11 (c), which provides in part that a contribution "...does not include services provided without compensation by an individual volunteering personal time on behalf of a candidate". To qualify as "personal time" the volunteer must be free to provide their services without the permission of the employer. For example campaign work done after business hours, on the weekend, or while on vacation, is on "personal time" and is not limited by the provisions of Chapter 10A. However, sabbatical leave, as described in the facts of this request, does not qualify as personal time. In the scenario provided the organization is authorizing the employee to work on a campaign in lieu of the employee's regular duties. The employee is not free to use the time in any way he or she would like. In addition, the services would be provided with compensation because the organization is paying and providing benefits to the employee while the employee is working for the campaign.

This leaves the final category in which the employee's services are an in-kind donation to the candidate. (Minn. Stat. §10A.01, subd. 13). A donation in-kind to a candidate for governor is limited by the contribution limit set in Minn. Stat. §10A.27, subd. 1(a)(1). For an election year that limit is \$2,000. The compensation and benefits that would be provided to the employee during sabbatical leave by the organization constitute an in-kind donation to the candidate of the employee's services based on the provisions of Minnesota Rules, Part 4503.0500, subp. 4. That subpart reads as follows:

"An individual or association that pays for or provides goods or services, or makes goods or services available, with the knowledge that they will be used for the benefit of a political committee or a political fund, is the contributor of those goods and services."

If the organization grants the sabbatical leave it will be both paying for and making the services of one of its employees available knowing that those services will be used to benefit a specific candidate. Therefore, the organization would be the contributor of the donation in-kind. Because the organization requesting this opinion is not a registered political committee it would be required to provide the disclosure required in Minn. Stat. §10A.27, subd. 13, if the value of the in-kind donation exceeded \$100.