

MINNESOTA STATE ETHICAL PRACTICES BOARD
410 STATE OFFICE BUILDING
SAINT PAUL, MINNESOTA 55155
612-296-5148

ADVISORY OPINIONS

APRIL 29, 1974 — SEPTEMBER 7, 1976

NUMBERS 1-30

SEPTEMBER 1976

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MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINIONS NO. 1 AND NO. 2

May 31, 1974

Issued to:

Mr. James G. Miles
Deephaven, Minnesota

Syllabus

1. **Reporting Methods.**

The Commission is obligated by law to make the reports filed with it available for public inspection and copying by the end of the second day following receipt. The Commission cannot perform its duty to inspect and make available the required information if the information is furnished on computer intelligible magnetic tape. The Commission will accept the information on computer printouts provided it is limited to the information required and is furnished in the same format as provided by Commission reporting forms.

2. **Direct Expenditures by Candidate.**

A candidate for governor who makes direct expenditures in excess of $100 on behalf of his candidacy, and not by contribution to his principal campaign committee, must file with the Commission all the statements required of a political committee or fund. A candidate may not expend on his own behalf more than 10 percent of his total statutory expenditure limit. The Act requires that every candidate designate a single principal campaign committee. The treasurer of that committee must authorize all expenditures made with the consent, or under the control, of the candidate. All such expenditures are counted against the candidate's total expenditure limit.

Approved by Minnesota State Ethics Commission on May 31, 1974.

(Text of Opinions 1 and 2 omitted.)

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 3

July 2, 1974

Issued to:

Ms. Sharon L. Wemlinger
Al Loehr for Secretary of State
Volunteer Committee
St. Cloud, Minnesota

Syllabus

3. **Spending Limits.**

When a candidate unsuccessfully seeks endorsement for one office and subsequently receives endorsement for another office, campaign funds expended unsuccessfully seeking endorsement for the first office will be included within the authorized spending limit for the second if both offices were sought within the same election period, unless it can be demonstrated that the initial expenses provided no benefit to the candidacy for which endorsement ultimately was received.

TEXT

You have requested an advisory opinion from the Commission based upon the following:

FACTS

Al Loehr sought DFL endorsement for the office of secretary of state. In seeking that endorsement, certain expenditures were made in support of his candidacy. Mr. Loehr did not receive endorsement for the office of secretary of state but subsequently was endorsed by the same party at the same convention as the DFL candidate for the office of state auditor. He accepted that endorsement. You then asked the following:

QUESTION

Should the expenditures of the Loehr Volunteer Committee in Mr. Loehr's effort to obtain the DFL endorsement for the office of secretary of state be included within the spending limits established by law for the office of state auditor?

OPINION

Under Minn. Stat. 10A.25 (1974), there are aggregate expenditure limitations on behalf of each of the candidates listed in the statute. The limitation for both secretary of state and state auditor is 1-1/4 cents per capita or $50,000, whichever is greater. The statute does not expressly deal with allocation of expenditure limitations when a candidate seeks two different offices in the same year.

Only expenditures occurring on or after April 13, 1974 are chargeable against the spending limits for 1974. Since in this case the office of secretary of state has the same spending limits as the office of state auditor; and since Mr. Loehr's endorsement for auditor occurred at the same convention and by the same delegates as the endorsement for secretary of state, it is therefore the opinion of the Commission that expenditures by the Loehr Volunteer Committee for endorsement for the office of the secretary of state will be counted against the limit applicable to the office of state auditor except to the extent that the candidate demonstrates to the Commission that any such expenditures provided no benefit to Mr. Loehr's candidacy for auditor.

The Volunteers for Al Loehr for secretary of state should file with the Commission a Registration and Statement of Organization (EC Form 1) and a Report of Receipts and Expenditures (EC Form 2) on July 7, 1974, which meet the requirements of Minnesota Statutes Chapter 10A.

The Volunteers for Al Loehr for State Auditor should file with the Commission a Registration and Statement of Organization (EC Form 1), and a Report of Receipt and Expenditures (EC Form 2) on July 7, 1974, listing on Schedule J all expenditures by the Volunteers for Al Loehr for Secretary of State except those which provided no benefit to Mr. Loehr's candidacy for auditor. These expenditures listed on Schedule J will be counted against Mr. Loehr's limit for seeking the office of state auditor.

Approved by the Minnesota State Ethics Commission on July 2, 1974.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 4

July 17, 1974

Issued to:

Mr. Henry F. Fischer, Chairman
Minnesota Democratic Farmer Labor
State Central Committee
Minneapolis, Minnesota

Syllabus

4. **Endorsement of Candidates.**

If political literature distributed by a candidate contains incidental references to other candidates seeking election, the expenditure is not considered to be made on behalf of the other candidates. A prominent statement such as one urging the election of other candidates, however, is an expenditure made on behalf of the other candidates and needs to be reported as an expenditure by the candidates whose election is urged in the literature if authorized either directly or indirectly by them.

TEXT

You have requested an advisory opinion on the matter set forth below.

FACTS

A candidate for public office determines that it is in the best interest of his campaign to print campaign literature containing the names of one or more of the endorsed candidates of the same party. The full expense of publication and distribution is borne by the principal political committee supporting the candidate. The consent of the other candidate or candidates whose names are included on the literature has not been solicited.

Minn. Laws 1974, Ch. 470, Section 17, subd. 2 requires that if any person makes an expenditure on behalf of a candidate with such candidate's "authorization or consent, express or implied . . . or under (the candidate's) control, direct or indirect," such person must first obtain authorization from the candidate's campaign committee treasurer and the amount will be counted for expenditure limit purposes.

Ch. 470, Section 17, subd. 5 provides that if an expenditure is made on behalf of a candidate, a disclaimer of such candidate's participation is required if not authorized by such candidate.

You ask essentially the following:

QUESTIONS

1. Is the expenditure made "on behalf of" the other candidate or candidates as that term is used in Minn. Laws 1974, Section 17, subd. 2 and subd. 5?

2. If the expenditure is deemed to be "on behalf of" such other candidate or candidates, is it made with their "authorization or consent, express or implied . . . or under (their) control, direct or indirect," as specified in Section 17, subd. 2, or is it made without such authorization or consent and therefore subject to disclaimer under subd. 5?

OPINION

Since there is no specific expenditure cited in the opinion request, this opinion is necessarily designed to set forth general guidelines to be applied on a case-by-case basis.

First.

The first determination which must be made in each case is whether the expenditure is made "on behalf of" any of the other candidates since both statutory provisions of Section 17 contain this requirement. The term "on behalf of" means "in the interest of; as the representative of; for the benefit of." *Webster's Third New International Dictionary* at 198 (1964). This determination is a factual one. Generally, an incidental reference in the campaign literature to other candidates, or a picture with a political leader, will not be deemed to be an expenditure on behalf of the other candidate or candidates. A prominent statement, however, such as a reference advocating the election of the other candidate or candidates, will be deemed to be an expenditure in the interest of, as a representative of, or for the benefit of those candidates, and therefore on their behalf.

An expenditure could also be "on behalf of" another candidate or candidates, and require apportionment, in the case of publication and distribution of literature such as sample ballots naming a number of candidates. Apportionment could likewise be required where an expenditure is by a political fund or committee that supported a number of candidates.

Second.

Since neither subd. 2 nor 5 of Section 17 is applicable to another candidate or candidates if the expenditure is not made "on behalf of" such other candidate or candidates, it is necessary to determine whether the expenditure is with the authorization or consent of the other candidate or candidates. Assuming that an expenditure is made "on behalf of" the other candidate or candidates, the facts above negate any express authorization or express consent. Implied authorization or consent does not arise merely from the fact that all candidates involved belong to the same party, but determining whether there has been implied authorization or consent is a factual question. A significant factor in this determination is the degree of knowledge of and acquiesence to the publication on the part of the other candidate or candidates. Likewise, under the facts above, the expenditure is "under the control, direct or indirect" of the other named candidates; the lack of direct control is apparent, and there are no facts suggesting indirect control.

If it is determined that there has been an expenditure on behalf of another candidate or candidates, but neither the element of authorization nor the element of control is present, the disclaimer provision of subd. 5 is applicable.

Approved by the Minnesota State Ethics Commission on July 12, 1974.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 5

August 29, 1974

Issued to:

John D. Levine, Esq.
Minneapolis, Minnesota

Syllabus

5. **Committees for Judicial Candidates.**

A principal campaign committee established under Chapter 10A is not automatically deemed to be a personal campaign committee under Chapter 211, and the expenditure limitations of Chapter 211 do not necessarily apply to a candidate for judge of district court.

TEXT

As coordinator for the re-election campaign of Hennepin County District Judge David Leslie, you have requested an advisory opinion of the State Ethics Commission based upon the following:

FACTS

Several judges who are candidates for re-election in 1974, including Judge Leslie, have established or intend to establish their respective principal campaign committees as required pursuant to Minn. Stat. 10A.19 (1974), which requires that every candidate shall designate and cause to be formed a principal campaign committee. Under Chapter 10A there are no limitations on the amounts which can be raised or spent on behalf of candidates for judge of district court or supreme court.

Under previously existing law, Minn. Stat. 211.17 (1973), any candidate (including candidates for judicial office) may select a single personal campaign committee. Before any disbursement is made by such committee, the candidate shall file a written statement of appointment of such personal campaign committee. Under Minn. Stat. 211.06 (1973) an expenditure limitation is imposed upon any candidate, or his personal campaign committee, in the sum not exceeding one-third of the salary for the office in the year that the election is held. Traditionally this limitation has been bypassed through the establishment of volunteer committees which are not considered personal campaign committees and therefore not governed by limitations in amount of expenditure.

You then ask the following:

QUESTION

Is the establishment of a principal campaign committee under Chapter 10A equivalent to establishment of a personal campaign committee under Chapter 211 so as to subject a candidate for judge of district court to the expenditure limitations imposed upon personal campaign committees?

OPINION

It is the opinion of the Commission that a principal campaign committee under Chapter 10A is not automatically to be deemed a personal campaign committee under Chapter 211, and the expenditure limitations of Chapter 211 do not therefore necessarily apply to a candidate for judge of district court.

Under 10A.25 (1974) the Legislature imposed limits on campaign expenditures for certain candidates. However, the Legislature chose not to impose any limitations upon expenditures for campaigns for judicial office. The principal purpose of requiring candidates to designate principal campaign committees under Chapter 10A was obviously to make it possible both to monitor campaign contributions and expenditures and to determine that designated limits were not exceeded. These purposes are not applicable to judges insofar as expenditure limitations are concerned.

Likewise, under Chapter 211 the Legislature clearly envisioned that the expenditure limitations imposed thereunder were to apply only to the candidate, and his appointed personal campaign committee, but not necessarily to all expenditures made on the candidate's behalf by volunteer committees.

Since the Legislature has imposed no limitations on expenditures by a principal campaign committee of a candidate for judicial office under Chapter 10A, and since the Legislature likewise has not imposed any limitation upon the amount which can be spent by a volunteer committee under Chapter 211, it would be anamalous and contrary to legislative intent to read the language of the two sections together to produce a result intended by neither section. The similarity in wording between the sections is merely coincidental.

Moreover, simply because a volunteer committee is designated as a principal campaign committee under Chapter 10A, that designation does not necessarily cause that committee to be a personal campaign committee under Chapter 211 as a matter of law. The selection of a principal campaign committee under Chapter 10A is mandatory. The selection of a personal campaign committee under Chapter 211 is optional, and the candidate must specifically appoint such committee as a "personal campaign committee."

Therefore, if a candidate for judge of district court or justice of supreme court designates a volunteer committee as a principal campaign committee under Chapter 10A, and declares that such committee is not deemed a personal campaign committee under Chapter 211, then there are not applicable expenditure limitations imposed upon such principal campaign committee.

Approved by the Minnesota State Ethics Commission on August 29, 1974.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 6

September 9, 1974

Issued to:

Mr. Lloyd L. Brandt
Vice President
First Bank System
Minneapolis, Minnesota

Syllabus

6. **Corporate Plans.**

A corporation doing business in Minnesota may establish a nonpartisan or conduit plan to solicit and collect voluntary contributions from employees in order to facilitate the employee's ability to make political contributions, if the individual employee making the contribution retains sole control over the disposition of his accumulated funds. Under these circumstances the corporation is not required to register and report as a political committee of fund. Minnesota law does not permit, however, the nonconduit or partisan plan where the individual employee does not control the final disposition of his accumulated funds.

TEXT

You have requested an advisory opinion from the Commission based upon essentially the following:

FACTS

First Bank System has established for its employees a political contribution program called the First Bank System Minnesota Good Government Program. First Bank System informs its employees that this Program is available to them, and encourages employees to contribute through the Program on a voluntary basis to candidates for Federal, State and local offices as a means of participating in the political process. First Bank System furnishes forms on which the individual employees may indicate the amount of their contributions. The contributing employee may designate a particular candidate or party as a recipient of the contribution (conduit or nonpartisan plan). In that case, the Treasurer of the Program follows the instructions of the employee, and the name and address of the employee contributor is supplied to the candidate or political party receiving the contribution. If the employee makes no designation of a particular candidate or party to receive the contribution, then the corporation's committee charged with operating the program selects the candidates or parties which will receive the undesignated funds and decides the amounts to be allocated to each candidate or party (nonconduit or partisan plan).

Employees are given the option of having money withheld from their paychecks for the Program. First Bank System officers and employees provide the services necessary to operate the Program as part of their regular duties, and First Bank System bears all administrative and other costs of the Program.

Before taking steps to distribute funds under the Program to Minnesota statewide or legislative candidates, you ask the Commission the following:

QUESTIONS

1. Under Minnesota law, can a corporation doing business in Minnesota establish and administer either a nonpartisan (conduit) plan, or a partisan (nonconduit) plan, to solicit and collect voluntary contributions from its employees whereby distributions are made to statewide or legislative candidates for offices in Minnesota?

2. To the extent that the answer to the first question is in the affirmative, what are the registration and reporting requirements for such a plan under Minnesota law?

OPINION

It is the opinion of the Commission that under Minnesota law the corporation may receive and distribute contributions from employees to state parties or candidates for state or local offices in Minnesota where the designation is made by the employee (nonpartisan plan), but that the corporation may not collect undesignated employee contributions and distribute them to such parties or candidates at the discretion of the corporation (partisan plan). If a corporation elects to use the nonpartisan plan, it need not register and report as a political fund under Minnesota law.

By way of background, the First Bank System Program resembles the plans established in Minnesota by a number of corporations under Federal law. Some of these plans, such as that of the First Bank System, are operated through a Committee registered under Federal law, so as to permit the corporation itself to allocate undesignated employee contributions to parties or candidates chosen by the corporation (nonconduit), as well as to distribute designated contributions (conduit). Other such plans do not involve the establishment of a Committee under Federal law, but merely involve a purely conduit system under which individual accounts are established in which employee contributions are accumulated for subsequent distribution by the corporation to candidates solely as directed by the employee.

Under Minnesota law, corporations are prohibited from making political campaign contributions:

> 211.27 CORPORATIONS NOT TO CONTRIBUTE TO POLITICAL CAMPAIGN. Subd. 1. No corporation doing business in this state shall pay or contribute, or offer, consent, or agree to pay or contribute, directly or indirectly, any money, property, free service of its officers or employees or thing of value to any political party, organization, committee, or individual for any political purpose whatsoever, or to promote or defeat the candidacy of any person for nomination, election, or appointment to any political office. If any corporation shall be convicted of violating any of the provisions of this chapter, it shall be subject to a penalty in the amount not exceeding $10,000 to be collected as other claims or demands for money are collected; and, if a domestic corporation, in addition to that penalty, it may be dissolved; and, if a foreign or non-resident corporation, in addition to that penalty, its right to do business in this state may be declared forfeited. (Emphasis supplied.)

A "political purpose" is defined under Minn. Stat. 211.01, subd. 2, as follows:

> Subd. 2. Any act shall be deemed to have been for "political purposes" when the act is of a nature, is done with the intent, or is done in such a way, as to influence or tend to influence, directly or indirectly, voting at any primary or election or on account of any person having voted, or refrained from voting, or being about to vote or refrain from voting at any election or primary.

This definition appears applicable to elections not involving candidates, since Minn. Stat. 211.27 contains a separate additional clause prohibiting contributions " . . . to promote or defeat the candidacy of any person." The existence of this latter clause indicates that is is the pertinent clause to the present situation.

Likewise, under Minn. Stat. 10A.01, subd. 7, "contribution" is defined as follows:

> Subd. 7. "Contribution" means:
>
> (a) A gift, subscription, loan, advance, the providing of supplies, materials or equipment, or deposit of money or anything else of value made to influence the nomination for election or election of a candidate to office;
>
> (b) A transfer of funds between political committees or political funds; or
>
> (c) The payment of compensation for the personal services of another person which are rendered to a candidate, political committee or political fund to influence the nomination for election or election of a candidate to office by any person other than that candidate, political committee or political fund.

> "Contribution" does not include services provided without compensation by individuals volunteering their time on behalf of a candidate, political committee or political fund, or coverage by news media, but only while acting in the ordinary course of business of publishing or broadcasting news items, editorials or other comments. (Emphasis supplied.)

The question under the statutes in the case of each plan is whether the expenditure of the corporation's resources is made in such a way as to promote any candidacy contrary to Minn. Stat. 211.27, or to influence the election of any candidate under Minn. Stat. 10A.01, subd. 7. *Webster's Seventh New Collegiate Dictionary* defines the verb "promote" as meaning:

> "2a: to contribute to the growth or prosperity of: FURTHER . . . "

Likewise, the verb "influence" is defined as meaning:

> "1: to affect or alter by indirect or intangible means: SWAY 2: to have an effect on the condition or development of MODIFY"

In applying the language of the statutes, there is clearly a difference between the nature of the corporate activity engaged in under the conduit (nonpartisan) plan, as opposed to the nonconduit (partisan) plan.

Conduit Plan

Under the conduit or nonpartisan plan, the employee alone makes the selection of each candidate or party which will receive his contribution. In this case, the corporation is expending its resources solely as an aid to the employee; and any benefit to any candidate or party receiving the contribution is merely coincidental with the employee's selection. The corporation's activity is purely neutral in character, and is intended purely to encourage political contributions by employees in general. It is only the employee's decision, and the employee's contribution, which operates to promote or influence the outcome of any particular election. In our opinion, therefore, it follows that the operation of the nonpartisan or conduit plan is not prohibited under the Minnesota law. The corporation is not expending its resources to "promote" or "influence" the election of any candidate as those terms are used in the statutes. This result is consistent with the clear intent of the statute to prohibit corporate influence directed to the benefit of a particular candidate. See LaBelle v. Hennepin County Bar Association, 206 Minn. 290, 288 N.W. 788 (1939).

Nonconduit Plan

By contrast, the operation of the nonconduit or partisan plan represents a corporate expenditure for services and other costs clearly intended to promote or influence the election of certain specific candidates for election. Under the nonconduit plan the corporation, through the appointed committee, is definitely exerting its influence by deciding to direct accumulated employee contributions in such manner as the corporation deems most beneficial to its interests. This is clearly proscribed by the express language of the above statutes.

Likewise, under the nonconduit plan, the corporation would be required to establish a registered political fund in order to accumulate the employee contributions:

> 10A.01, subd. 16. "Political fund" means any accumulation of dues or voluntary donations by an association other than a political committee, which accumulation is collected or expended for the purpose of influencing the nomination for election or election of a candidate. (Emphasis supplied.)

Since under Minn. Stat. 10A.01 "contribution" includes providing anything of value to influence an election, or transfer of funds from a political fund or payment of personal services rendered to a political fund to influence any election, the corporation under the nonconduit plan would be making a contribution under each of these defined criteria, contrary to Minn. Stat. 211.27.

Federal Law

The foregoing conclusions are supported by reference to the comparable Federal law on the subject.

Under 18 U.S.C. 610, it is illegal for a corporation" . . . to make a contribution or expenditure in connection with any election to any political office." However, under the 1972 amendments to Section 610, the term contribution or expenditure

was defined to exclude" . . . the establishment, administration, and solicitation of contributions to a separate, segregated fund to be activated for political purposes . . . " Thus, under Section 610 a corporation (such as First Bank System) may have a nonconduit plan, as well as a conduit plan for purposes of making distributions to candidates for Federal office.

However, under Section 611, of Title 18, corporations having Federal contracts may not" . . . directly or indirectly make . . . any contribution of money or any other thing of value, . . . to any political party, committee, or candidate for public office or to any person for any political purposes or use . . . " Under Section 611 a nonconduit plan is prohibited.[1]

The extent of the prohibition under Minnesota state law is parallel to Section 611, which prohibits nonconduit plans but permits conduit plans, rather than Section 610, which permits both. This result is confirmed by reference to Pipefitters Local Union No. 562 v. United States, 92 S.Ct. 2247 (1972). That case arose under Section 610 prior to the 1972 Federal amendments, but was decided by the Supreme Court after the enactment of the amendments. There a union nonconduit plan was upheld. However, the Court relied upon a wealth of legislative history as a basis for concluding that voluntary nonconduit contribution plans of corporations or unions did not fall within the activity prohibited by Congress. The Court further relied upon the fact that Congress enacted the 1972 amendments to Section 610 (permitting the nonconduit plan) merely to codify the pre-existing Federal law. In Minnesota, on the other hand, there is an absence of legislative history indicating any intention by the legislature to permit the nonconduit plan. Also, the Minnesota statutes themselves are more stringent than Section 610 as it existed prior to 1972, and are at least as stringent as Section 611. Thus, Minn. Stat. 211.27 prohibits any corporate contribution made directly or indirectly. Section 610 prior to 1972 contained no such language. Likewise, Section 610 prior to 1972, in contrast to the Minnesota statutes, did not expressly exclude furnishing of services of officers and employees from the area of permitted activity. Therefore, Federal law, to the extent that it permits nonconduit plans, does not provide support for the existence of such plans under the Minnesota law.

Registration as Political Fund

Since we are of the opinion that under Minnesota law, a nonpartisan (conduit) plan is permitted, but a partisan (nonconduit) plan is prohibited, the question then presented is whether a nonpartisan (conduit) plan must be registered and reported by a corporation as a political fund under Chapter 10A (1974). In our opinion, this is not required. A political fund by definition involves an accumulation of funds collected or expended for the purpose of influencing the election of a candidate. Minn. Stat. 10A.01, subd. 16. Since under the conduit plan, all contributions are designated by employees, there is no accumulation which is to be the subject of a decision by the corporation to influence any particular election. It follows that the employee is making the contribution directly to the party or to the candidate's campaign committee. It is not logical or useful to require the corporation to establish a political fund under these circumstances because it would serve no reporting or disclosure purpose, and because the plan is simply a conduit in which all contributions pass through as from the employee to the receiving campaign committee or party, and are reported as such. The fact that the contributions pass through the conduit is irrelevant, and to require the establishment of a political fund is unnecessary.

CONCLUSION

Under this opinion, First Bank System will simply have to make it clear that accumulated, undesignated funds will go only to candidates for Federal office. Contributions may go to State parties or candidates only where designated by the employee.

Although the Commission recognizes that the purpose underlying the establishment of voluntary employee contribution by corporations (both partisan and nonpartisan) may be laudable and beneficial to the health of the political process, the Minnesota Legislature for many decades has not seen fit to enact legislation which would permit a corporation to establish a partisan (nonconduit) plan. Certainly it is appropriate for the Legislature to consider this question in future sessions and also to set forth clearly all areas of permitted corporate activity.

Moreover, under Minnesota law labor unions are not proscribed from making campaign contributions, either directly or through voluntary contribution plans (including partisan plans). We believe that the resulting inequality of treatment between labor unions and corporations likewise deserves careful attention from the Legislature.

Approved by the Minnesota State Ethics Commission on September 9, 1974.

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1. See Common Cause v. TRW, Incorporated, Civ. No. 980-72 (D.D.C.) in which TRW agreed by stipluation to dissolve its nonconduit plan under Section 611; see also Congressional Record 14829 - 14840, July 27, 1973.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 7

September 16, 1974

Issued to:

Si Weisman, Esq.
Hvass, Weisman & King
Minneapolis, Minnesota

Syllabus

1. **Labor Union Fund.**

A local labor organization may designate a statewide labor organization as its political fund for the purpose of making political contributions and need not establish a separate political fund for its own use.

TEXT

On behalf of Minnesota Teamsters Joint Council No. 32, and various local units of the Joint Council, you have asked the Commission for an advisory opinion based upon the following:

FACTS

The local chapters desire to make contributions out of their union treasuries to DRIVE, which is an unincorporated association receiving funds from Teamster locals for political education and political activity (including making of campaign contributions). DRIVE is a registered political fund under Minnesota law. The contributions from the locals are in some cases designated for specific candidates for elective, and in other cases no designation is made and DRIVE decides where to place the contributions. You then ask the following:

QUESTION

Is the union local unit required by Minnesota law to establish a separate political fund?

OPINION

In our opinion, the local may transfer funds to DRIVE without establishing a separate political fund.

Minn. Stat. 10A.01 Subd. 16 (1974) defines political fund:

> Subd. 16. "Political fund" means any accumulation of dues or voluntary donations by an association other than a political committee, which accumulation is collected or expended for the purpose of influencing the nomination for election or election of a candidate.

Under Stat. 10A.12, Subd. 1:

> 10A.12 POLITICAL FUNDS. Subd. 1. No association shall make a transfer of funds to a candidate or political committee or make an expenditure which has as its purpose the influencing of the nomination for election or election or defeat of a candidate unless it is a political committee or unless the funds for the contribution or expenditure come solely from a political fund.

Under Stat. 10A.12, Subd. 5:

> Subd. 5. Notwithstanding subdivision 1, any association may, if not prohibited by law, transfer to its political fund money from that part of its treasury financed by dues or membership fees. Pursuant to section 10A.20, the source of the dues or membership fees must be disclosed if an aggregate amount in excess of $50 of any member's dues, membership fees and voluntary contributions are transferred to the political fund within one year.

Under subdivision 5 above, a union local may transfer money from its treasury to its political fund. If the local designates the statewide union political fund (in this case DRIVE) as its political fund. then the local has satisfied the requirement of the statute and need not establish a separate political fund. In that event, DRIVE as a political fund merely lists the contributing locals as supporting associations, and reports the moneys transfe-red from the local as earmarked contributions under Stat. 10A.16 (if designated for a specific candidate) or as general contributions from the locals (if not designated for a specific candidate). Disclosure of the names of individual local members is not required if the money transferred represents no more than $50 of any individual local member's dues.

The procedure set forth above is consistent with a careful reading of the entire statutory language. The local, is of course, accumulating dues or donations within the meaning of the definition of "political fund" in Stat. 10A.01. subd. 17. The local is likewise making an expenditure for the purpose of influencing an election and therefore could be said to fall within the requirement of Stat 10A.12, subd. 1, which requires establishment of a political fund in the case of such an expenditure. However, the provisions Stat. 10A.12, Subd. 5 expressly operate notwithstanding subdivison 1. Therefore. if DRIVE is designated as the local's political fund, and the transfer is made directly to DRIVE the statutory requirements have clearly been met. The local would then not have to set up its own political fund unless the local made a contribution directly to the campaign of a candidate for statewide or legislative office.

Moreover, it would be illogical and unnecessary for the union local to establish its own political fund when it has designated DRIVE as a statewide political fund, since the result would be merely double reporting of the same transactions. All of the information necessary for full disclosure will be provided in the report to be filed by DRIVE, including the total amount of dollars transferred from the local, as well as any earmarking for the campaigns of specific candidates. Likewise, in the case of any earmarked funds, the receiving candidate's campaign committee will report the receipt of funds as being earmarked contributions from the local made through DRIVE. If the local were required to set up its own political fund, exactly the same reporting results would occur at all stages and no additional information would be provided in any report made by a political fund set up by the union local. Thus, to require the local to go through the additional requirement of setting up a separate political fund would merely create an unnecessary burden and is to be avoided if the statutory scheme is to work efficiently and with a minimum of useless paperwork.

Approved by the Minnesota State Ethics Commission on September 9, 1974.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 8

September 23, 1974

Issued to:

Michael S. Berman, Esq.
Anderson-Perpich Volunteer Committee
Minneapolis, Minnesota

Syllabus

8. **Television Commercials.**

The mere participation of a candidate for one office in television commercials supporting a candidate for another office does not constitute an expenditure made on behalf of the first candidate if no direct reference or appeal for support is made in the commercial on behalf of the first candidate.

TEXT

As the campaign manager of the Anderson-Perpich Volunteer Committee, you have requested an advisory opinion of the State Ethics Commission based upon the following:

FACTS

Governor Wendell A. Anderson, a candidate for re-election in 1974, participated in a TV advertisement (scenario attached) on behalf of State Senator Tony Perpich, who is a candidate in a primary election for the U.S. House of Representatives in the 8th Congressional District of Minnesota.

The Governor's participation in this advertisement was requested by Senator Perpich.

The production and placement of this advertisement will be paid for by the Perpich committee.

Minnesota Laws 1974, ch. 470, Section 25, Subd. 1 provides that all expendutires made by or on behalf of the candidate for governor shall be considered to be expenditures and all expenditures made by or on behalf of the candidate for lieutenant governor shall be considered to be expenditures by or on behalf of the candidate for governor.

You then ask the following:

QUESTION

Inasmuch as this advertisement is for the benefit of Senator Perpich, and does not in any way refer to or encourage the election of Governor Anderson, should any part of the costs involved in producing or placing this advertisement be deemed an expenditure on behalf of Governor Anderson?

OPINION

It is the opinion of the Commission that Governor Anderson's participation in this advertisement for a candidate for congress in a primary election does not constitute grounds for an allocation of any part of the cost of production or placement of this advertisement as an expenditure on behalf of Governor Anderson.

The determination to be made is whether the expenditure is made "on behalf of" either the Governor or the Lieutenant Governor. The term "on behalf of" means "in the interest of; as the representative; for the benefit of". *Webster's Third New International Dictionary* at 198 (1964). There was no mention of name; no direct reference to the Governor or Lieutenant Governor; no appeal for support of the Governor or Lieutenant Governor or their candidacies. Therefore this advertisement is not an expenditure in the interest of, as a representative of, or for the benefit of the Governor or the Lieutenant Governor, and therefore, on behalf of either of them.

Approved by the Minnesota State Ethics Commission on September 20, 2974.

Script: Perpich for Congress Commercial

Talent: (on camera) State Senator Tony Perpich and Governor Wendell Anderson

(open on a two short)

PERPICH: I am Senator Tony Perpich.

(switch to camera 2 for MCU of Perpich only)

PERPICH: As chairman of the senate tax committee I helped close tax loopholes, worked with local officials to hold property taxes down and made Minnesota the first state in the nation to freeze property taxes for its senior citizens.

(switch to 2 shot on camera one)

ANDERSON: State Senator Tony Perpich is a courageous, dedicated and effective legislator, the kind of representative Minnesota's people need in Congress. I urge you to vote for Tony Perpich, our DFL endorsed candidate for Congress in the primary September 10th.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 9

September 30, 1974

Issued to:

Mr. Henry F. Fischer, Chairman
Minnesota Democratic Farmer Labor State
Central Committee
Minneapolis, Minnesota

Syllabus

9. **Sample Ballots.**

Since individuals whose names are contained on a sample ballot benefit from such listing, the costs of the preparation and distribution must be counted toward the appropriate campaign expense limitations. If a candidate chooses to prepare and distribute his own sample ballots, and includes names of other candidates without their authorization, the ballot must contain the proper disclaimer and the total cost will be assessed against the candidate preparing it.

TEXT

You have requested an advisory opinion based upon the following:

FACTS

As in past years it is anticipated that the DFL Party will print a number of sample ballots for distribution prior to the primary and general elections. Participation on these ballots is made available to candidates for local, federal, and legislative offices with distribution made to the individual households. The ballot asks for support for the entire ticket of the party (see attached sample), and the cost of producing the actual sample ballots is allocated on reasonable basis by the party as expenditures on behalf of the candidates whose names are included on the ballot.

Neither the DFL Party nor any of the candidates for statewide office listed on the sample ballot prescribes the manner of distribution as a prerequisite to their names being included on the sample ballot, and usually are not aware of the manner of distribution. Local, federal or legislative candidates in whose districts the ballots are distributed normally determine the method of distribution. Distribution may occur through hand delivery by volunteers, by mail, or through a combination of both methods.

Candidates whose names appear on the sample ballot have authorized the expenditure for producing the sample ballot, but the statewide candidates usually have not authorized the expenditure for distribution since traditionally that cost has been sustained by the other candidates whose names appear on the ballot. You then ask the following:

QUESTION

Are expenditures made for the distribution of sample ballot expenditure made "on behalf of" all the candidates listed on the sample ballot as that term is used in Minnesota Laws of 1974, Chapter 470, Section 17, Subd. 2 and Subd. 5?

OPINION

It is the opinion of the Commission that since the sample ballot is printed on behalf of all the candidates listed on the ballot, and further that the preparation of the sample ballot is a reportable expenditure for purposes of Laws of 1974, Chapter 470, Section 20, by all such candidates listed, therefore any distribution cost of sample ballots for those same candidates is a campaign expense on behalf of the listed individual candidates and should be counted in any applicable candidate expenditure limitation.

Minn. Laws 1974, Chapter 470, Section 17, Subd. 2, requires that any person who makes an expenditure on behalf of any candidate must first obtain authorization from the candidate's campaign committee treasurer and the amount expended will be counted for expenditure limit purposes. Each candidate whose name appears on the same ballot has made such authorization for preparation costs and thus must share equitably in any costs associated with distribution as well as preparation.

Although the principal purpose of sample ballot distribution may be to promote the candidacy of a certain candidate, the ballot will still benefit the candidacy of others and the distribution costs must be allocated on a reasonable basis amongst all the candidates so listed. If a candidate for office included under the provision of Minnesota Laws of 1974, Chapter 470, Sec. 25, Subd. 2 chooses to prepare and distribute his own sample ballot and have the total cost of preparation and distribution charged against his own expenditure limits because of lack of authorization from the other candidates, he must include the disclaimer provided for in Section 17, Subd. 5.

Approved by the Minnesota State Ethics Commission on September 24, 1974.

This is the official Democratic-Farmer-Labor sample ballot prepared for the primary election, September 10, 1974. Please notice we have provided two ballots. Divide this card on the dotted line and share it with a friend or relative. Minnesota DFL Party, 730 E. 38th St., Mpls., Henry F. Fischer, Chairman.


for Governor Anderson


for State Rep. Munger


for Congress Perpich

OFFICIAL DFL SAMPLE BALLOT

FOR REPRESENTATIVE IN CONGRESS

☒ TONY PERPICH

FOR STATE REPRESENTATIVE 7A

☒ WILLARD MUNGER

FOR GOVERNOR

☒ WENDELL R. ANDERSON

FOR LT. GOVERNOR

☒ RUDY PERPICH

FOR SECRETARY OF STATE

☒ JOAN A. GROWE

FOR STATE AUDITOR

☒ ALCUIN (AL) LOEHR

FOR STATE TREASURER

☒ JIM LORD

FOR ATTORNEY GENERAL

☒ WARREN SPANNAUS

Vote DFL September 10th


for Governor Anderson


for State Rep. Munger


for Congress Perpich

OFFICIAL DFL SAMPLE BALLOT

FOR REPRESENTATIVE IN CONGRESS

☒ TONY PERPICH

FOR STATE REPRESENTATIVE 7A

☒ WILLARD MUNGER

FOR GOVERNOR

☒ WENDELL R. ANDERSON

FOR LT. GOVERNOR

☒ RUDY PERPICH

FOR SECRETARY OF STATE

☒ JOAN A. GROWE

FOR STATE AUDITOR

☒ ALCUIN (AL) LOEHR

FOR STATE TREASURER

☒ JIM LORD

FOR ATTORNEY GENERAL

☒ WARREN SPANNAUS

Vote DFL September 10th

This is the official Democratic-Farmer-Labor sample ballot prepared for the primary election, September 10, 1974. Please notice we have provided two ballots. Divide this card on the dotted line and share it with a friend or relative. Minnesota DFL Party, 730 E. 38th St., Mpls., Henry F. Fischer, Chairman.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 10

November 1, 1974

Issued to:

Mr. Neil C. Sherburne
Secretary-Treasurer
Minnesota AFL-CIO
175 Aurora Avenue
St. Paul, Minnesota

Syllabus

10. Letters From Associations to Members.

The cost of preparing and distributing letters from an association to its members urging the election of specific candidates represents an expenditure made on behalf of the candidates named and therefore must be allocated on a pro-rata basis among all individuals named in such letters.

TEXT

By letter dated October 21, 1974, you have asked the Commission for an Advisory Opinion based upon the following:

FACTS

The Minnesota AFL-CIO has prepared and distributed a letter to each of its members. The letter was sent on or about October 15, 1974. An example of the letter is set forth in attached Exhibit "A". Exhibit "A" urged the members to vote for the named Labor-supported candidates for statewide and legislative office in the general election. The letter also cited certain legislation enacted by the 1973-1974 Minnesota Legislature as evidence of grounds for support of the named candidates. Prior to mailing of the letter, you obtained informal advice from the Commission indicating that the costs involved in the mailing did not constitute contributions or expenditures. The matter has now been raised anew. You ask essentially the following:

QUESTION

Do the costs of preparation and distribution of these letters to Minnesota ALF-CIO members constitute contributions and expenditures subject to reporting and other requirements of Minnesota law?

OPINION

Is it the opinion of the Commission that these costs do constitute contributions and expenditures which are subject to reporting and other statutory requirements.

Minn. Stat. § 10A.01, subd. 7 (1974) defines contribution as follows:

> Subd. 7. "Contribution" means:
>
> (a) A gift, subscription, loan, advance, the providing of supplies, materials or equipment, or deposit of money or anything else of value made to influence the nomination for election or election of a candidate to office;

(b) A transfer of funds between political committees or political funds; or

(c) The payment of compensation for the personal services of another person which are rendered to a candidate, political committee or political fund to influence the nomination for election or election of a candidate to office by any person other than that candidate, political committee or political fund.

"Contribution" does not include services provided without compensation by individuals volunteering their time on behalf of a candidate, political committee or political fund, or coverage by news media, but only while acting in the ordinary course of business or publishing or broadcasting news item, editorials or other comments.

Likewise, Minn. Stat. § 10A.01, subd. 10 (1974) defines expenditure as follows:

Subd. 10. "Expenditure" means:

(a) A purchase, payment, distribution, loan, advance, deposit of gift of money or anything of value, made for the purpose of influencing the nomination for election or election of any candidate to office; or

(b) A transfer of funds between political committees or political funds.

"Expenditure" does not include: (a) Services provided without compensation by individuals volunteering their time on behalf of a candidate, political committee, or political fund; or (b) expenses incurred by a member of the legislative or a person holding constitutional office in the executive branch, in performing services for constituents. The commission shall have the power to determine whether the expense was incurred primarily for the purpose of providing a constituent service or is an expenditure within the meaning of this subdivision.

These definitions are extremely broad in their inclusiveness. Under careful reading of these definitions, the costs of preparing and mailing the letters clearly come within the inclusive provisions of the statute, and do not fall under the exclusive provisions. The Legislature can have intended no other result than to require that anything of value furnished to influence the nomination or election of a candidate is subject to reporting requirements. The costs involved here are functionally no different from the costs of any written material supporting a candidate.

It is important to note that Minnesota law, unlike Federal law, does not prohibit contributions or expenditures by unions on behalf of candidates in any form, including contributions or expenditures made in the form of communications to its members or to the public. In this regard, there is no criminal penalty under Minnesota law attached to the making of a contribution or expenditure of the kind involved here. We are not, therefore, faced with a situation in which there is any need to interpret the statute in such a way as to avoid any question of unconstitutionality, as the courts have been inclined to do in cases of criminal prosecution under the Federal law.[1]

The only requirements involved here are those relating to reporting of amounts, and those relating to limitations on total amounts which can be received by a candidate or expended by a single person or organization on behalf of a candidate.

If the expenditures involved here were regarded as totally outside of the reporting and limitation provisions could easily be circumvented by the substantial expenditure of funds by organizations in communicating to their membership or to others, for the purposes of advocating the election of certain candidates. Clearly the Legislature did not contemplate such a result, as is evidenced by the requirement of a single principal campaign committee for each candidate, with accountability through that committee for monitoring the amounts expended on behalf of the candidacy involved. See Minn. Stat. § 10A.19 and 10A.17 (1974).

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1. See, e.g., United States v. C.I.O., 335 U.S. 106 (1947); but see United States v. Auto Workers, 352 U.S. 567 (1957). In 1972, Congress amended the definition of "contribution or expenditure" to exclude" . . . communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject." 18 U.S.C. § 610.

In this regard, Minn. Stat. § 10A.17, subd. 2 (1974) provides as follows:

> Subd. 2. No person or persons acting in concert other than the candidate and the treasurer of the candidate's principal campaign committee may make expenditures of more than $20 with the authorization or consent, express or implied, of a candidate or his agent, or under the control, direct or indirect, of a candidate or his agent, or under the control, direct or indirect, of a candidate or his agent on behalf of a candidate without receiving from the treasurer of that candidate's principal campaign committee (i) prior written authorization and (ii) certification that the expenditures will not exceed the limits on expenditures as set forth in sections 10A.25 and 10A.17. All such expenditures shall be counted against the spending limitations of the candidate.

Thus, the purpose of the Minnesota statute is not to prohibit such expenditures, but merely to require that they be recorded and included in the limitation allocable to a candidate and in the limitation on the amount which can be expended by a single source on behalf of a candidate.

If the expenditures in this case are made with the authorization or consent of the respective candidates, express or implied, then these expenditures are subject to the requirement of prior written authorization and written certification that the expenditures will not exceed the statutory limits of the candidates involved. This procedure enables the amounts to be counted against the spending limitations of the respective candidates. If such written authorization and certification have not been obtained, then it is our opinion that such authorization and certification may be sought by the ALF-CIO prior to November 6, 1974, or as soon thereafter as feasible in view of the fact that the Commission previously issued oral advice contrary to this Opinion.

Written authorization and certification are not required, only in cases where an expenditure is made without authorization or consent of the candidate, express or implied. Only then is the expenditure subject to the disclaimer provisions of Minn. Stat. § 10A.17, subd. 5, and not subject to inclusion within the candidate's expenditure limitation.

For your future information, Subdivision 6 of § 10A.17 provides that any person who knowingly violates the provisions of Subdivision 2 (making expenditure without authorization and certification) or Subdivision 5 (requirement of disclaimer) is guilty of a misdemeanor.

Your attention is also directed to Minn. Stat. § 10A.27 (1974), which limits expenditures by a single organization on behalf of a candidate, or transfers to a candidate's principal committee, 10 percent of the total limitation applicable to that candidate. § 10A.28 (1974) provides for the imposition of civil penalties of four times the amount by which the 10 percent limit is exceeded.

In this case, the total costs of services and disbursements connected with the mailing of the letters constitute contributions and expenditures and are reportable as contributions to the respective candidates and as expenditures by the AFL-CIO on behalf of such candidates. The amount allocable to each candidate should be a fractional share proportionate to the total number of candidates listed in the letter.

If you have further questions, please let us know.

Approved by the Minnesota State Ethics Commission on November 1, 1974.

MINNESOTA AFL-CIO 175 AURORA AVENUE ST. PAUL, MINNESOTA 55103 • PHONE: AREA (612) 227-7647

October 15, 1974

Dear AFL-CIO Member:

The 1973-74 Minnesota Legislature was the most important in history for improvements in the working and living conditions of the people of our State.

The comprehensive Occupational Safety and Health Act, the first true Minimum Wage Law, major improvements in Unemployment and Workmen's Compensation programs, pension protection, no-fault auto insurance, probate reform, bans on use of lie detector tests and professional strikebreakers, new election laws to make registering, voting and campaign financing fairer, expansion of non-profit health maintenance organizations and a wide range of improvements in laws affecting collective bargaining in both the public and private sectors were possible only because of strong Labor turnout at the polls to elect our friends to the Legislature and a friendly Governor to sign the bills into law.

Governor Wendell Anderson has an outstanding record in support of working people and consumers. We must return the Governor and Lieutenant Governor Rudy Perpich to office, and strengthen their ability to build on this progressive record by electing the entire Labor-endorsed team of Warren Spannaus for Attorney General, Joan Growe for Secretary of State, Robert Mattson for State Auditor, James Lord for State Treasurer, James Metzen for Representative from Legislative District 52A, and Harry Sieben, Jr. for Representative from Legislative District 52B.

In order to elect our friends to office, union families and friends must go to the polls and VOTE on General Election Day, NOVEMBER 5th!

Sincerely and fraternally

MINNESOTA AFL-CIO

David K. Koe, President Neil C. Sherburne, Secretary-Treasurer

Leonard O. LaShomb, Executive Vice President

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 11

November 13, 1974

Issued to:

Michael S. Berman, Esq.
Anderson-Perpich Volunteer Committee
Minneapolis, Minnesota

Syllabus

11. **Media Advertising.**

If a candidate for one office participates in media advertisements on behalf of candidates for other offices and the costs of preparing the advertisements are borne by the other candidates then no expenditures need be allocated to the first candidate as long as the candidacy of the first candidate is not mentioned and no appeal for support is made on his behalf.

TEXT

As campaign manager of the Bruce Nelsen Volunteer Committee you have requested an advisory opinion of the Minnesota State Ethics Commission based upon the following:

FACTS

Governor Wendell R. Anderson, a candidate for re-election in 1974, who was endorsed and supported by the DFL Party, was asked to participate in television and radio advertisements on behalf of other candidates for statewide office as well as some candidates for the Minnesota Legislature.

The Governor's participation in these advertisements was requested by other respective candidates. The cost of production and air time for these advertisements was paid for entirely by the candidates requesting the Governor's participation, and was in no part paid for by the Anderson-Perpich Volunteer Committee. The advertisements were aired during the interval between the primary and general elections. The scenario and scripts were prepared by the candidates requesting the Governor's participation.

In general, the content of each television advertisement included visual presentations of both the Governor and the other candidate, and the Governor advocated election of the other candidate. In the radio advertisements the Governor was identified as Governor and advocated election of the other candidate. No mention of the Governor's candidacy was made in any of the advertisements, and no encouragement of the Governor's re-election was included. You then ask the following:

QUESTION

Inasmuch as the advertisement was intended solely for the benefit of the other respective candidates involved in the advertisement, and since Governor Anderson's re-election was not encouraged, is any part of the costs involved in producing or placing the advertisements deemed an expenditure "on behalf of" Governor Anderson as provided under Minn. Stat. 10A.17 and 10A.25 (1974)?

OPINION

It is the opinion of the Commission that none of the costs of the advertisements is allocable to Governor Anderson's campaign expenditure limitation, and that all of the costs are allocable to the other respective candidates.

The determination to be made is whether the expenditures are made in part "on behalf of" the Governor's candidacy, so as to be in such part included within the Governor's expenditure limitation and excluded from the limitations of the other respective candidate.

Since in each case the candidate other than the Governor has expended all of the costs for the sole avowed purpose of advocating his own candidacy, and since no mention is made of the Governor as a candidate and since the Governor's candidacy is not in any way urged, it follows that any benefit to the Governor is incidental as a result of the presence of the Governor's name, voice and face (in television ads). It cannot be assumed that such presence necessarily operates to benefit the Governor's candidacy. Indeed, the mere presence of his name, voice and face would conceivably operate adversely to the Governor, or be neutral as to him, when he merely supports the election of another candidate.

Moreover, it is not feasible as a practical matter to reduce the expenditure allocable to the other candidate in such circumstances. Otherwise, for example, a situation could be presented in which a prominent political figure who is not himself a candidate appears with a candidate; yet it is not logical to conclude that the candidate's expenditure should be subject to reduction in that situation. As a matter of policy, the Commission is of the opinion that the amount allocable to the candidate whose election is urged should not be diminished by the presence of another political figure advocating on the candidate's behalf.

Finally, there is no adequate or equitable method of determining objectively the percentage of any benefit (or detriment) to the Governor in this situation. The only practical or equitable line of demarcation under the statute is at the point where the Governor's candidacy is cited or otherwise advocated, as in a joint advertisement or sample ballot expressly advocating the election of all of the candidates involved.[1]

Approved by the Minnesota State Ethics Commission on November 8, 1974.

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1. Thus, 11 Code of Federal Regulations Stat. 4.4 provides in pertinent part: " . . . An expenditure for the use of communications media is deemed to be on behalf of the candidacy of (a) Federal candidate if the use identifies the candidate, directly or by implication, and advocates or supports the nomination or election of the candidate." (Emphasis supplied.)

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 12

November 25, 1974

Issued to:

Mr. Albert Nelson, Jr.
Swanville, Minnesota

Syllabus

12. **Special Elections.**

The limitation on campaign expenditures for a given office within a calendar year applies to each specific election and is not cumulative. Therefore a candidate who stands for election in both a general and any special election which may be held in the same year for the same office may expend funds in each election up to the spending limit for that office.

TEXT

As campaign manager of the Bruce Nelsen Volunteer Committee you have requested an advisory opinion of the Minnesota State Ethics Commission based upon the following:

FACTS

Bruce Nelsen was an unsuccessful candidate in District 12A for the House of Representatives in the general election held November 5, 1974. In the course of that campaign the Bruce Nelson Volunteer Committee expended a sum of money to urge the nomination and election of Bruce Nelson. Subsequent to the general election held November 5, 1974, the incumbent (who had been reelected) died. A special election will be called to fill the vacancy in District 12A. Bruce Nelsen intends to be a candidate in the special election. You than ask the following:

QUESTION

Does the limitation governing expenditures made on behalf of a candidate in a calendar year for a particular office in Minn. Stat. 10A.25, subd. 2 (1974) apply to a candidate who stands for election for the same office in both a general and a special election?

OPINION

It is the opinion of the Commission that the limitation provided in Minn. Stat. 10A.25, subd. 2 (1974) applies to each election and is not cumulative for a candidate who stands for election in both a general and special election for the same office.

Minn. Stat. 10A.01, subd. 5 (1974) defines a candidate in pertinent part as follows:

> Subd. 5. "Candidate" means an individual who seeks nomination for election or election to any statewide office or legislative office . . . An individual shall be deemed to seek nomination for election or election if he has taken the action necessary under the law of the state of Minnesota to qualify himself for nomination for election or election to an office, has received contributions or made expenditures in excess of $100, or has given his consent, implicit or explicit, for any other person to receive contributions or make expenditures in excess of $100 with a view to bringing about his nomination for election or election to an office.

An election is defined in Minn. Stat. 10A.01, subd. 9 (1974) as follows:

> Subd. 9. "Election" means a general, special, primary or special primary election, or a convention or caucus of a political party held to nominate or endorse a candidate.

An expenditure is defined in Minn. Stat. 10A.01, subd. (10)a)(1974) as follows:

> (a) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of influencing the nomination for election or election of any candidate to office;

Since the statute contains separate definitions of "candidate", "election" and "expenditure" it follows that a candidate is any person who seeks nomination or election to an office in a particular general or special election, or a particular primary preceding a general or special election.

When a candidate runs in a general election, his candidacy ends when the election has been decided and his expenditure limitation necessarily terminates. When a special election is thereafter called, and the candidate who was defeated in the general election files anew as a candidate, a new candidacy arises and a new election occurs. Therefore, the limitation applicable to the first candidacy does not extend to expenditures incurred pursuant to a subsequent candidacy in a subsequent election. Even though expenditures during the first candidacy because of time proximity involved, the only meaningful application of the statute requires that the candidate in the special election be entitled to make expenditures in additional amount up to $7,500 in connection with that special election.

Approved by the Minnesota State Ethics Commission on November 22, 1974.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 13

January 20, 1975

Issued to:

Mr. James Faber
General Manager
Minnesota Association of Commerce and Industry
St. Paul, Minnesota

Syllabus

13. **Publication Costs.**

Publication costs must be reported as a lobbyist expense if three requirements are met. First, the publication must be prepared by or for a lobbyist's employer. Second, the publication must advocate, support or promote the special interests of the lobbyist. A mere presentation of factual material without comment does not constitute a reportable lobbyist expense. Third, the publication must be communicated directly to a public official.

TEXT

By letter dated December 18, 1974, you have requested an advisory opinion based on the following:

FACTS

The Minnesota Association of Commerce and Industry (MACI) employs a number of lobbyists who must register and report disbursements under Minn. Stat. § 10A.03 et seq. (1974) and regulations promulgated pursuant to that statute. MACI puts out a number of publications, some of which contain comment on various matters which are pending before the Legislature or administrative agencies of the State. The publications include Greater Minnesota magazine, Greater Minnesota bulletin, Environmental Affairs, Employment Relations, Occupational Safety and Washington Outlook bulletins, Informational bulletins, Facts On An Issue, Your Year of Decision, and Legislative Bulletin. Sample copies were provided to the Commission. Some of the publications advocate a position on issues; others merely report on developments concerning them. Ocassionally MACI's members are urged to contact legislators or administrative officials to express their views. A number of the publications are distributed to legislators. You then ask essentially the following:

QUESTIONS

1. Are disbursements for the preparation and distribution of any of these publications subject to reporting under Minn. Stat. § 10A.04 (1974) and Regulation EC 205A(2)?

2. If the answer to the foregoing question is in the affirmative, must the total cost of preparation and distribution be reported or only the proportionate cost of the materials which are distributed to public officials rather than MACI members or the general public?

OPINION

Inasmuch as the content of the MACI publications varies from issue to issue, it is not feasible to state categorically that a particular publication will always be subject to reporting or not. Accordingly, this Opinion will set forth guidelines to enable you to decide when the expense of a publication, or a portion thereof, will be reportable.

Regulation EC 205A(2) generally requires reporting of total disbursements by the lobbyist, or any employer or employee of the lobbyist, for lobbying purposes.

Category (a) under this Section includes " . . . disbursements for preparation and distribution of . . . communication material specifically prepared by or for a lobbyist, or any employer or employee of the lobbyist, and which advocates, promotes or supports the special interest of an individual or association, and which is used to attempt to influence the action of any public official." All three of these requirements must be met before a publication is subject to reporting as lobbying material.

1. All of the publications meet the first requirement for reporting of lobbying materials: they are prepared by or for a lobbyist's employer (MACI).

2. The second requirement for reporting is that the material must advocate, support or promote the special interests of a group. Publications which merely contain factual information (such as the bulletin on Workmen's Compensation rates), or which merely report developments about an issue without comment on the merits of that issue (such as the Legislative Bulletin) do not meet that requirement and are therefore not reportable as lobbying materials. Similarly, a publication such as FACTS ON AN ISSUE does not meet that requirement where both sides of an issue are presented fairly, and no conclusion is drawn and no action is recommended on the issue. However, if there is commentary for or against the issue, or if particular action on the issue is recommended, that portion of the publication advocates the special interest of a group.

3. The third requirement is that the publication be " . . . used to attempt to influence the action of a public official." In this regard, it must be noted that the Regulations first provide that disbursements for communication materials are reportable only if made" . . . for lobbying purposes." EC 205(A)(2). "Lobbying" means " . . . to attempt to influence legislative or administrative action by communicating with public officials." EC 201 (H). Thus, communication by transmittal of the material to a public official is essential before the material is subject to reporting. Material which merely encourages others to advocate a particular result by communicating with public officials is not lobbying material unless that material is also directly transmitted to those public officials.

Moreover, " . . . attempt to influence" means " . . . any effort to persuade a public offical to support or oppose proposed legislation or to direct the outcome of an administrative action in a particular way." EC 201(C). Therefore, in order to be subject to reporting, the advocacy material must be not only communicated to public officials, but must be communicated to those particular public officials who are in a position to vote upon legislation, or to direct administrative actions or decisions on the issue which is the subject of the advocacy in the material.

If the foregoing criteria are met so as to require reporting, then the disbursements to be reported include that portion of the total cost of the publication equal to the percentage of the applicable public officials receiving the communication, as compared to the total number of persons receiving the communication; and finally disbursements which are subject to computation for reporting purposes include only the actual costs of printing, distribution and like expenses, but not the costs attributable to the research or writing of the materials. However, associated costs, such as postage, may be subject to reporting under other categories, e.g. EC 205(A)(d).

Approved by the Minnesota State Ethics Commission on January 17, 1975.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 14

February 10, 1975

Issued to:

Michael S. Berman, Esq.
Gainsley, Squier, Berman & Korsh
Attorneys at Law
Minneapolis, Minnesota

Syllabus

14. **Joint Limitations for Governor and Lt. Governor.**

The maximum limitation which applies to the governor and lieutenant governor is a joint limitation, both in campaign and non-campaign years. There is no individual limitation. Individual accounts for the governor and lieutenant governor may be established within an overall fund so long as the joint maximum limit is not exceeded and the principal campaign committee treasurer retains overall responsibility for the reports submitted to the Commission.

TEXT

You have requested an Advisory Opinion of the Commission based on the following:

FACTS

During the 1974 election year, the Governor and the Lieutenant Governor had one joint political committee, which was their designated principal campaign committee pursuant to Minn. Stat. § 10A.19, subd. 1 (1974). During that election year, expenditures made on behalf of the Governor and Lieutenant Governor, running jointly, were limited to a maximum $600,000.00 as provided under Minn. Stat. § 10A.25, subd. 2 (1974). For the year 1975, expenditures on behalf of the Governor and the Lieutenant Governor are subject to the Provisions of Minn. Stat. § 10A.25, subd. 6 (1974), which provides that in a year in which a candidate does not stand for re-election, expenditures are limited to 20 percent of the amount permitted in an election year.

You then ask the following:

QUESTIONS

1. Under Minn. Stat. § 10A.25, subd. 6, is it correct that during a non-election year the Governor and Lieutenant Governor are jointly limited to spending or to have spent in their behalf, the sum of 20 percent of the maximum for an election year, or $120,000.00?

2. If the answer to Question 1 is in the affirmative, is there any individual limitation upon the amount that either the Governor or the Lieutenant Governor may spend, or have spent on his behalf, within the joint limitation?

3. During non-election years, may the Governor and Lieutenant Governor make expenditures, or have expenditures made, from two separate campaign committees filing separate reports?

4. If the answer to Question 3 is in the negative, may the Governor and Lieutenant Governor have two separate bank accounts with joint reporting of receipts and expenditures?

OPINION

1. The answer to Question 1 is yes. Minn. Stat. § 10A.25, subd. 1 (1974) provides that for the purpose of § 10A.11 – 10A.34 the candidates for governor and lieutenant governor running together shall be deemed to be a single candidate and all expenditures made by or on behalf of either one shall be considered expenditures by or on behalf of the candidate for governor. From the foregoing, it follows that the expenditure limitations set forth in Minn. Stat. § 10A.25, subd. 6 (1974) (i.e., 20 percent of $600,000.00 or $120,000.00) applies jointly to the Governor and Lieutenant Governor in non-election years.

2. There is no individual limitation on the amount that either the Governor or the Lieutenant Governor may spend, or have spent in his behalf, within the joint $120,000.00 limitation for each non-election year.

3. In non-election years, the Governor and Lietuenant Governor are entitled to make expenditures, or to have expenditures made, from two separate committees filing separate reports. Minn. Stat. § 10A.19 merely provides that the candidate (which in this case includes both the Governor and Lieutenant Governor) must designate a single principal campaign committee. However, there is no limitation on the number of other political committees which may be formed. Thus, the Governor may have one committee (e.g., the principal campaign committee) on one bank account, and the Lieutenant Governor may have a separate political committee with another bank account. Each committee must then file a separate report subject to the combined joint expenditure limitation of $120,000.00 for both committees.

In addition, Minn. Stat. § 10A.17, subd. 2, provides that no person other than the candidate or the treasurer of the principal campaign committee, may make expenditures of more than $20.00 on behalf of a candidate without receiving from the treasurer prior written authorization and certification that the expenditures will not exceed the expenditure limit. In order to assure compliance with this requirement, the treasurer of the principal campaign committee may authorize another campaign committee set up during a non-election year on behalf of the Governor or Lieutenant Governor to spend a designated amount of money and certify that the expenditures so made will not exceed the expenditure limit of $120,000.00

4. Since Question 3 is answered in the affirmative, it is not necessary to answer Question 4. However, the Governor and Lieutenant Governor may, if they prefer, establish two separate accounts under one committee, with joint reporting. This procedure would be no different in effect than having two committees, and may be more convenient.

Approved by the Minnesota State Ethics Commission on February 7, 1975.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 15

April 3, 1975

Issued to:

R. Walter Bachman, Jr., Esq.
Broeker, Bachman and Zerby
Minneapolis, Minnesota

Syllabus

15. **Rate-setting.**

If an individual communicates with public officials regarding any type of rate-setting determination made by a state agency, that individual must register and report as a lobbyist. If communication occurs with state employees not defined as public officials, the lobbyist provisions do not apply unless the person making the communication requests that its substance be reported to a public official. Communication with a public official in the course of contested case or appeal procedure does not constitute lobbying.

TEXT

As attorney for a number of nursing home facilities, you have requested an opinion based on the following:

FACTS

The Minnesota medical assistance program requires the Department of Public Welfare to reimburse nursing home facilities, among others, for care which they have provided to individuals qualifying for medical assistance. To facilitate this process, the Department has established procedures for setting the rate which a nursing home may charge medical assistance recipients. Every fiscal year each nursing home which provides care for recipients is required to submit to the Department a comprehensive report containing information on its costs, earnings and other financial data. The Department staff analyzes this data, and the Commissioner determines the maximum rate which may be charged to recipients. If the provider and the Department disagree about what the rate should be on the basis of the reported data, there is a procedure under department regulations for informal resolution. If disputes cannot be resolved informally, the Commissioner may appoint a seven member appeal committee to hear disputes and to recommend resolution. He must then make a final decision on the appeal. While the appeal is being considered, the rate which the Commissioner has determined remains in effect.

As attorney for a number of nursing homes whose rates for medical assistance recipients are set by the Department, you may have occasion to contact department employees, including the Commissioner, Deputy Commissioner and Deputy and Assistant Attorneys General for Welfare, in connection with the rates to be set for those facilities. Such contact may take place both before and after the Commissioner makes his initial rate determination.

You then ask the following:

QUESTIONS

1. Must you register and report as a lobbyist because of any communications with Department employees which occur before the Commissioner makes his initial rate determination?

2. Must you register and report as a lobbyist because of any communications with Department employees in connection with informal resolution of a rate dispute or formal appeal of a rate determination?

OPINION

1. Minn. Stat. § 10A.01, subd. 11 (1974) includes in the definition of lobbyist "any person who is engaged for pay . . . for the purpose of attempting to influence legislative or administrative action by communicating with public officials . . ." Administrative action is defined as action of a nonministerial nature, which includes "making rules, regulations or other general policy and does not include the application or administration of those rules, regulations or policies in specific instances, except in cases of rate-setting, power plant siting, and others which the commission may specify," Minn. Stat. § 10A.01, subd. 14 (1974). While application of rules and regulations in specific instances is not within the general definition of administrative action, cases of rate-setting is not defined in the statute, nursing home rate-setting proceedings fall within the literal language of the statute. Therefore, communication with public officials in an attempt to influence their decisions in such cases constitutes lobbying.

The Commissioner, Deputy Commissioner and Deputy and Assistant Attorneys General are all public officials. Most other Department staff members are not public officials, and communication with them is not lobbying unless the person making the communication requests that the substance of the communication be transmitted to the public official for the purpose of influencing his decision. However, the filing of the financial report required by Department regulations, or the furnishings of a response to any additional requests for information, are not attempts to influence the Department's decision and therefore are not lobbying activities. Subject to the above qualifications, we answer your first question in the affirmative.

2. We answer your second question in the negative. Once the Commissioner has issued his rate determination, the rate-setting proceeding has ended. The Commissioner's decision has already been made and continues in effect. There is a formal appeals procedure analogous to contested case procedures in other state agencies. Since the similar procedures of other agencies are not included in the definition of administrative action, it is consistent to exclude nursing home rate appeal proceedings. Informal attempts to resolve disputes made in connection with those formal proceedings would therefore also be excluded.

Approved by the Minnesota State Ethics Commission on April 2, 1975.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 16

March 10, 1975

Issued to:

Mr. Louis Plutzer
Deputy Commissioner of Revenue (Acting)
State of Minnesota Department of Revenue
St. Paul, Minnesota

Syllabus

16. **Advisory Boards.**

Individuals serving on an advisory board appointed by a public official to provide advice to the official need not register and report as lobbyists in connection with communications to that public official on the subject matter which the board was appointed to consider.

TEXT

You have requested an advisory opinion of the Commission based on the following:

FACTS

The Commissioner of Revenue often requests certain attorneys, accountants, bankers and businessmen to form committees for the purpose of discussing with him proposed tax legislation or proposed rules and regulations. The Commissioner solicits the views of these committee members for his benefit. At times these committees may meet with deputy commissioners or other Department of Revenue employees as well as the Commissioner.

You then ask the following:

QUESTIONS

1. Are the members of committees (formed at the request of the Commissioner) lobbyists and therefore subject to the registration and reporting requirements of Minn. Stat. § 10A.03 and 10A.04 (1974)?

2. If such a committee were to meet with a Deputy Commissioner, would the committee members then be engaged in lobbying?

OPINION

1. A lobbyist is defined by Minn. Stat. § 10A.01, subd. 11 (1974) to include any of the following persons:

   (a) Individual who is engaged for pay or other consideration or is authorized by another person to spend money for the purpose of attempting to influence legislative or administrative action by communicating with public officials;

   (b) Officially designated representatives of any person or association which has as a major purpose the influencing of legislative or administrative action who attempt to influence the action by communicating with public officials; or

(c) Individual who spends more than $250, not including traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating with public officials.

In order to fall within the definition of a lobbyist, an individual must attempt to influence legislative or administrative action by communicating with public officials. An administrative action is defined as an action of a non-ministerial nature, which includes " . . . making rules, regulations or general policy . . . " Minn. Stat. § 10A.01, subd. 2 and subd. 14 (1974). Therefore, proposal of legislation (general policy) and promulgation of rules and regulations are administrative actions within the statute. Since the Commissioner of Revenue is a public official, as defined in Minn. Stat. § 10A.01 subd. 18 (1974), any attempt to influence him regarding legislation or rules and regulations by a lobbyist would constitute lobbying.

However, under the circumstances presented by this case, it is the opinion of the Commission that an individual who serves on a committee at the request of the Commissioner to discuss proposed legislation or rules and regulations is not a lobbyist within the intent of the statute. Such an individual is merely responding to a request of the Commissioner for advice for the Commissioner's benefit, and is not acting at the instance or request of any organization or individual, including himself. It is not within any perceived statutory purpose to require such person to register and report as a lobbyist. We therefore answer Question No. 1 in the negative. (However, if any committee member were to meet with the Commissioner at the member's request, on behalf of himself or another organization or person, for the purpose of influencing the Commissioner's decision, then such member would be a lobbyist.)

2. Since Question No. 1 is answered in the negative, it is not necessary to answer Question No. 2. However, neither the deputy commissioners nor other department employees are public officials. Minn. Stat. § 10A.02, subd. 18 (1974); Minn. Stat. § 15A.081 (1974). Therefore, communication with them by a lobbyist would constitute lobbying only if the communication through the officials were intended to influence an ultimate decision by the Commissioner.

Approved by the Minnesota State Ethics Commission on March 7, 1975.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 17

March 10, 1975

Issued to:

Stephen J. Beatty, Esq.
Moore, Costello and Hart
St. Paul, Minnesota

Syllabus

17. **Media Advertising.**

Individuals affiliated with an association which disseminates informational material which is not communicated directly to public officials are not required to register or report as lobbyists, unless media advertising is used to advocate a specific legislative or administrative action, and therefore, might influence public officials. If media advertisements having such character are used, disbursements for that purpose must be reported as lobbyist expense by an official or employee of the association.

TEXT

You have requested an advisory opinion of the Commission based upon the following:

FACTS

A number of individuals and businesses involved in the highway construction field propose to form a corporation for the purpose of promoting public awareness of the importance of good highway transportation. The corporation will engage in research on highway safety and economics and disseminate information on highways to the public. As part of this program the corporation will engage in media advertising concerning legislation in this area and will urge individuals to contact their legislators on highway-related issues. However, neither the corporation nor its employees or agents will directly contact any public officials, either orally or in writing.

You then ask the following:

QUESTION

Will any of the officers or employees of the corporation be required to register and report as lobbyists under Minn. Stat. § 10A.04 (1974)?

OPINION

It is our opinion that the activities of the proposed corporation, generally stated, will not constitute lobbying within the meaning of Minn. Stat. Chapter 10A.

In order to become a lobbyist, and therefore subject to the registration and reporting requirements of Minn. Stat. § 10A.04 (1974), an individual must " . . . attempt to influence legislative or administrative action by communicating with public officials." Minn. Stat. § 10A.01, subd. 11 (1974).

The Commission has previously advised that issuance of publications urging others to communicate with public officials is not an attempt to influence action by communicating with public officials. (Advisory Opinion No. 13, January 20, 1975.)

Therefore, unless the corporation sends its publications directly to public officials in a position to take action on highway-related issues, there are no registration and reporting requirements applicable to that activity.

With respect to media advertising, however, Minn. Stat. § 10A.04, subd. 4(a) (1974) expressly includes disbursements for media within the category of lobbying disbursements. Since media advertising by its very nature is aimed at the general public or a segment of the public, certain media advertising may, therefore, be subject to reporting depending upon the nature of the advertisement. Since that is a fact question, it is not possible to state categorically whether the advertisements of the corporation will or will not be subject to reporting. However, as a general guideline, it is an opinion of the Commission that advertising which is purely informational in nature will not be subject to reporting. Therefore, if the advertisement urges members of the public to contact legislators or other public officials, it will not be subject to reporting if it does not urge the public to advocate a specific position on legislation or the decision of a public official. On the other hand, if the advertisement specifically advocates adoption or defeat of a bill before the Legislature, or advocates a specific decision to be made by a public official, such advertisement will generally be subject to reporting as a lobbying activity. Likewise, if the advertisement urges persons to advocate a specific result, then the costs of the advertisement will generally be reportable.

If any media advertising is subject to reporting in accordance with this opinion, then the media expense may be reported by any person registered as a lobbyist for the corporation. If there is no person already registered as a lobbyist, then the chief executive officer or employee of the corporation shall be designated by the corporation as its lobbyist and that person must register and report the media expense.

Subject to the foregoing conditions, we answer your question in the negative.

Approved by the Minnesota State Ethics Commission on March 7, 1975.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 18

April 3, 1975

Issued to:

Senator David Schaaf, Treasurer
Growe Volunteer Committee
St. Paul, Minnesota

Syllabus

18. **Expenditures to Repay Debts from Previous Years.**

If expenditures are incurred in one calendar year in order to raise money to repay obligations incurred by a political committee in a preceding year, the expenditures shall be counted toward the spending limit in the year in which the goods and services were used or consumed.

TEXT

You have requested an advisory opinion of the Commission based on the following:

FACTS

The Growe Volunteer Committee acquired a campaign debt of $24,000 in 1974. The committee plans to raise money in 1975 to repay this debt and will incur some expenses in doing so.

You then ask the following:

QUESTION

Are expenses incurred in 1975 to raise money which will be used to repay a 1974 campaign debt chargeable against the 1974 spending limit?

OPINION

No. Minn. Stat. 10A.25, subd. 2 (1974), sets limits on campaign expenditures for legislative and statewide candidates, as follows:

> In a year in which a candidate stands for election no expenditures shall be made and no obligations to make expenditures shall be incurred by a candidate . . . which results in the aggregate expenditure on behalf of the candidate of an amount in excess of the following amounts . . . (Emphasis added.)

From this language it is clear that the $24,000 debt of the Growe Volunteer Committee must be counted toward the 1974 campaign spending limit.

However, money spent in 1975 to raise funds to repay that debt are not chargeable to the 1974 spending limit. Minn. Stat. 10A.25, subd. 6 (1974) provides:

> In a year in which a candidate does not stand for election, no expenditures shall be incurred by a candidate . . . which shall result in the aggregate expenditure on behalf of the candidate in that year of an amount in excess of 20 percent of the amount of the aggregate expenditure permitted [in a campaign year]. Expenditures permitted by this subdivision shall be in addition to expenditures permitted [in a campaign year].

Subdivision 2 clearly contemplates that a candidate may have campaign related expenses both in years prior and subsequent to the election. Some of the most common expenditures in years immediately following a campaign are those made in attempting to raise money to repay campaign debts.

Further, subdivision 9 of Section 25 states: "An expenditure is made in the year in which the goods and services for which it was made are used or consumed." If the Growe Volunteer Committee spends money in 1975 to hold a fund-raising dinner or otherwise to raise money in any way, the goods and services purchased by the expenditure will be used in 1975, not 1974. Therefore, such expenditure is made in 1975 and must be counted against the 1975 campaign spending limits. We therefore answer your question in the negative.

Approved by the Minnesota State Ethics Commission on April 2, 1975.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 19

April 18, 1975

Issued to:

Senator Winston Borden
208 State Capitol
St. Paul, Minnesota

Senator Mel Hansen
126 State Office Building
St. Paul, Minnesota

Syllabus

19. **Constituent Service.**

Expenses incurred by a legislator in the course of providing constituent services during a legislative session, or immediately prior to the commencement of a legislative session, need not be reported as campaign expenses. Expenses incurred after a legislative session may, in some circumstances, be reportable as campaign expenditures if paid for by the principal campaign committee.

TEXT

Each of you have requested an opinion from the Minnesota Ethics Commission on constituent services. Because of the facts you have presented were similar, we answer your requests in one opinion which outlines those "constituent services" which are reportable under the reporting provisions of Minn. Stat. 10A.01, et seq. You requested opinions based on the following:

FACTS

Situation No. 1: During the legislative session,[1] a member of the Senate holds a number of "Legislative Hearings" in his district at which the Senator discusses with his constituents issues which are before the Legislature during that session. Such meetings are announced by press releases and notices to township, municipal and county officials.

Situation No. 2: During the legislative session, a member of the Senate is the speaker at meetings of various organizations in his District. He is invited by these organizations to speak about issues before the Legislature and travels back to his district several times a month during the legislative session to do so.

Situation No. 3: During the legislative session a member of the Senate sends a "Legislative Questionnaire" to constituents in his District asking their opinions on proposed legislation. He also distributes a questionnaire on a specific bill before the Legislature to various individuals and organizations who would be affected by the bill. The later questionnaire is distributed by volunteers.

Situation No. 4: During the legislative session a member of the Senate sends a report to his constituents on various matters pending before the Legislature.

You then ask the following:

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1. For purposes of this opinion "legislative session" means the period from January through May of each year while the Legislature is meeting at the Capitol.

QUESTION

Are expenditures associated with any of the above activities reportable as campaign expenditures?

OPINION

No. Minn. Stat. 10A.01, subd. 10 (1974) defines expenditure as follows:

"Expenditure" means:

(a) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of influencing the nomination for election or election of any candidate to office; . . .

"Expenditure" does not include: . . . expenses incurred by a member of the legislature or a person holding constitutional office in the executive branch, in performing services for constituents. The commission shall have the power to determine whether the expense was incurred primarily for the purpose of providing a constituent service or is an expenditure within the meaning of this subdivision.

It is the opinion of the Commission that expenses incurred in activities such as those described above are not reportable as campaign expenditures if the activities take place immediately prior to or during the legislative session. In our opinion, these activities can reasonably be said to occur immediately prior to the session if they occur after the November election in which the official stood for election. One of the functions of a legislator is to report to his constituents on possible legislative action and to obtain their opinions on matters which come before the Legislature so that he may represent them during the session. Any activities designed to enable him to fulfill that function are legitimate constituent services, even though they may have an incidental effect on the legislator's chances for re-election. Even though a Senator or Representative need not underwrite these activities from his campaign funds, there is no reason why he cannot do so if he wishes. He or the political committee making the expenditure should then report the expenditures as non-campaign expenses.

However, expenses related to any activity such as those referred to above occurring after the legislative session may be reportable as expenses of a candidate under either Minn. Stat. § 10A.25, Subd. 2 (in an election year), or subd. 6 (in a non-election year).

Subject to the above qualifications, we answer your question in the negative.

Approved by the Minnesota State Ethics Commission on April 2, 1975.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 20

May 13, 1975

Issued to:

Mr. Ralph T. Keyes
Executive Director
The Association of Minnesota Counties
St. Paul, Minnesota

Syllabus

20. **Local Government Associations.**

An employee of an association of local governments or officials has an obligation to register and report as a lobbyist if that employee engages in lobbying activity on behalf of such an association.

TEXT

You have requested an advisory opinion from the Commission based upon the following:

FACTS

The Association of Minnesota Counties is an organization formed to represent the interests of Minnesota counties and county officials. It is funded by contributions from member counties. As full-time executive director of the Association, one of your major activities is to represent the interests of counties before the Legislature and state agencies. You then ask the following:

QUESTION

As executive director of the Association, must you register and report as a lobbyist under Minn. Stat. § 10A.03 and 10A.04 (1974)?

OPINION

It is the opinion of the Commission that you must register and report as a lobbyist under Minn. Stat. §§10A.03 and 10A.04 (1974).

Minn. Stat. § 10A.01, subd. 11 (1974) defines lobbyist as:

> Any:
>
> (b) officially designated representatives of any person or association which has as a major purpose the influencing of legislative or administrative action who attempt to influence an action by communicating with public officials; . . .

One of the major purposes of the Association of Minnesota Counties is the influencing of legislative or administrative action. Therefore, when you appear before a legislative committee or a state agency to present the Association's position on proposed legislation or administrative action, you are attempting to influence legislative or administrative action by communicating with public officials. Since you appear before these bodies at the request of the board of directors of the Association, you are an officially designated representative of the Association.

Subdivision 11 excludes from the definition of lobbyist "[a] public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity . . . " Minn. Stat. § 10A.01, subd. 11 (1974). Since county officials are employees of political subdivisions, they are not lobbyists under the statute if they appear before the legislature or a state agency in their capacities as county officials. However, the Legislature did not state its intent to extend the exception to paid employees of associations of political subdivisions of the state. Likewise, there is nothing in the statute to suggest that such an association is a "public body" within the language of the statutory exception. If the Legislature had chosen to exempt employees of an association of political subdivisions, it could have easily done so by express language.

Our purpose of requiring lobbyist to register and report their expenditures is to make information about the use of money in the political process available to the public. Since the salaries and expenditures of county and other officials are public record, it would not necessarily advance the purpose of the law to require those public officials to report. However, associations of political subdivisions, although initially funded from public money, are not required by any other law to report their lobbying expenditures. Therefore, unless representatives of these associations are required to report under Minn. Stat. §§ 10A.03 and 10A.04 (1974), the public will not be afforded the opportunity to obtain information about lobbying expenditures by associations of such political subdivisions.

We are aware that a Federal District Court has recently held that full-time representatives of associations of governmental subdivisions are not required to register under the Federal law governing lobbyist registration. Bradley v. Saxbe, 388 F. Supp. 53 (D.C. D.C., 1974). The statute in question there, 2 U.S.C. § et seq., was more comprehensive in its scope of regulated activity and reporting than the Minnesota statute. Also, the penalties for violation of the Federal statute were more severe than those provided under the Minnesota statute (e.g. the Federal statute prohibits lobbying for three years in case of a violation). In holding that representatives of governmental subdivisions were exempt from the requirements of registration under the Federal Act, the Federal Court in Bradley was influenced by the fact that (1) Congress appeared to have impliedly acquiesced in the interpretation urged by plaintiffs; (2) a divided Supreme Court had upheld the constitutionality of the Act by strict interpretation on narrow grounds, United States v. Harriss, 347 U.S. 612 (1954); and (3) the Supreme Court had found the underlying purpose of the Federal statute to be to force disclosure by" . . . 'private special interest groups seeking favored treatment while masquerading as proponents of the public weal'." Also, the Federal Court found that the legislative history revealed that the definition of "organization" was intended to apply to "business, professional and philanthropic organizations," not to organizations of public officials and their agents. None of these above-recited circumstances exists here. Therefore, we do not regard the Federal Court decision interpreting the Federal statute in Bradley as controlling for purposes of this opinion.

By reason of the foregoing, it is our opinion that the exemption for public officials and employees of political subdivisions and public bodies does not apply to employees of associations of political subdivisions.

We answer your question in the affirmative.

Approved by the Minnesota State Ethics Commission on May 9, 1975.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 21

May 13, 1975

Issued to:

Honorable Winston Borden
208 State Capitol
St. Paul, Minnesota

Syllabus

21. **Registration Requirement.**

Any political committee which receives or spends in excess of $100 after the effective date of the Act must register and report as a political committee within 14 days after receiving or spending the funds.

TEXT

You have asked the Commission for an advisory opinion based upon the following:

FACTS

The Borden Voluntary Campaign Committee was established prior to your election to the State Sentate in 1972. The Committee has had $131.98 in its treasury since the 1972 Senate election. Recently the Committee sent a check in the amount of $131.98 to the United States Postal Service and received postage stamps in that amount. The stamps will be used for answering constituent mail. You then ask the following:

QUESTION

Is the Borden Voluntary Campaign Committee required to register and report the amount of $131.98 as an expenditure pursuant to Chapter 10A of the Minnesota Statutes?

OPINION

It is our opinion that the Committee must register with the Commission and report the amount of $131.98 as a non-campaign expenditure for constituent services.

Although the $131.98 was both contributed and deposited in the account of the Committee prior to the effective date of Minnesota Statutes, Chapter 10A (i.e. April 13, 1974), the statute nevertheless requires registration and reporting if an amount in excess of $100 is either contributed or expended by a political committee after the effective date of the Act. Minn. Stat. 10A.14, subd. 1 (1974) provides in pertinent part as follows:

> "The treasurer of a political committee . . . shall register with the Commission by filing a statement of organization no later than 14 days after the date upon which the Committee . . . has received contributions or made expenditures in excess of $100."

See also Regulation EC 3(a). Because of the constituent nature of the expenditure here, it should be reported as a non-campaign expenditure pursuant to Regulation EC 32.

You have also indicated that the Committee will not be used again and therefore should be terminated. Pursuant to Regulation EC 38, a committee which determines not to receive further contributions or make further expenditures shall notify the Commission by filing a Termination Report covering the last reporting period, together with a statement as to the disposition of residual funds.

By reason of the foregoing, your question is answered in the affirmative.

Approved by the Minnesota State Ethics Commission on May 9, 1975.

MINNESOTA STATE ETHICS COMMISSON

ADVISORY OPINION NO. 22

June 27, 1975

Issued to:

Thomas P. Brennan
Vice-President and General Counsel
International Multifoods
Minneapolis, Minnesota

Syllabus

22. **Employees of Corporations.**

Whenever, as a part of his duties for the corporation for which he is compensated, an employee communicates with public officials on behalf of the corporation, the individual is required to register and report as a lobbyist.

TEXT

You have asked the Commission for an advisory opinion based upon the following:

FACTS

William Phillips is Chairman of the Board and Chief Executive Officer of International Multifoods Corporation. The job description for his position does not list lobbying as one of his duties. Nonetheless, in his capacity as Chairman of the Board and Chief Executive Officer, Mr. Phillips wrote a letter to State Senator C.R. Hansen during the recent legislative session in which he expressed the position of International Multifoods on a bill pending before the Senate. Mr. Phillips anticipates that in the future he may have occasion to communicate on behalf of Multifoods with various public officials both in the legislative branch and in administrative agencies on policy matters in which Multifoods is interested.

You then ask the following:

QUESTION

Is Mr. Phillips required to register and report as a lobbyist under Minn. Stat. §§10A.03 and 10A.04 (1974) because of his past and proposed communications with public officials?[1]

OPINION

It is the opinion of the Commission that, under the facts described above, Mr. Phillips must register and report as a lobbyist. Minn. Stat. § 10A.01, subd. 11 (1974) defines a lobbyist, inter alia, as:

> [Any individual who is engaged for pay or other consideration . . . for the purpose of attempting to influence legislative or administrative action by communicating with public officials;

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1. Mr. Phillips has timely filed EC Form 4 in the event it is decided he must register.

Since Mr. Phillips has communicated with a public official in an attempt to influence legislative action, and since the communication was made in his capacity as Chairman of the Board and Chief Executive Officer of International Multifoods, a capacity for which he is paid, he is regarded as a lobbyist under Minn. Stat. §§ 10A.03 and 10A.04 (1974). Likewise, he will be regarded as a lobbyist in connection with similar activities in the future.

In our opinion, whenever an individual communicates with public officials on behalf of an association from which the individual receives compensation as an employee, the individual is required to register and report as a lobbyist. Thus, a paid employee of a corporation or other association who communicates with public officials on behalf of the association, for the purpose of influencing actions of the public officials, is considered as acting pursuant to his duties as a paid employee for purposes of the statute. This result is consistent with the express language of Minn. Stat. § 10A.01, subd. 11 (1974) and with the intent of the statute as a whole.

You have expressed the opinion that an individual who communicates with public officials on behalf of an association from which he receives pay or other consideration should not be considered as a lobbyist unless the individual either is primarily employed as a lobbyist or has lobbying as a specifically described duty of employment.

However, in our opinion your suggested reading of the statute is both strained and unworkable. Any distinction based upon the duties set forth in a written job description is necessarily artificial and does not reflect whether an individual has in fact engaged in lobbying. Indeed, many corporate officers and other employees are likely to engage in extensive lobbying without having a job description which recites lobbying as an enumerated duty. Moreover, your suggested reading of the statute would require the Commission to make a case-by-case determination in every instance in which an employee has lobbied on behalf of his employer in order to determine whether such activity is somehow part of the employee's assigned responsibility. Such a procedure is unduly burdensome and could easily produce inconsistent or arbitrary determinations. Therefore, we adopt the rule requiring registration by all paid employees who communicate with public officials. This rule will provide clarity and consistency in guiding the conduct of such employees.

Based upon the foregoing, we answer your question in the affirmative.

Approved by the Minnesota State Ethics Commission on June 27, 1975.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 23

August 5, 1975

Issued to:

Mr. David Durenberger
H.B. Fuller Company
St. Paul, Minnesota

Syllabus

23. **Lobbying before Metropolitan Council.**

The lobbyist registration and reporting requirements of Minnesota statutes do not extend to lobbying before the Metropolitan Council.

TEXT

As a member of the Ethics Commission who has also been involved in matters before the Metropolitan Council, as a public official and as a member of a committee or commission of the Council, you have asked the Ethics Commission for an advisory opinion based upon the following:

FACTS

The Metropolitan Council establishes general policies in certain areas as part of its regular activities. In connection with the formulation of such general policies, persons may appear before the Council or otherwise communicate with its members in an attempt to influence Council action. You then ask the following:

QUESTION

Are persons who communicate with members of the Metropolitan Council on matters of general policy in an attempt to influence Council action required to register and report as lobbyists under Minnesota Statutes, Chapter 10A (1974)?

OPINION

In the opinion of the Commission, the lobbyist registation and reporting requirements of Minn. Stat. §§ 10A.03 and 10A.04 (1974) do not apply to persons appearing before the Metropolitan Council.

A lobbyist is defined by the statute as any individual who engages in certain activity " . . . for the purpose of attempting to influence legislative or administrative action by communicating with public officials." Minn. Stat. § 10A.01, subd. 11 (1974). Thus, lobbying occurs when a person who falls under the other criteria of subdivision 11 communicates with public officials in order to attempt to influence legislative or administrative action.

Members of the Metropolitan Council are specifically included within the definition of "public official" found in Minn. Stat. § 10A.01, subd. 18 (1974). However, the actions of the Metropolitan Council are not declared to tbe "legislative" or "administrative" actions under the statute. Clearly, the word "legislative" applies only to the State Legislature. Minn. Stat. § 10A.01, subd. 2 (1974) defines "administrative action" as " . . . an action of a non-ministerial nature by any official, board, commission or agency of the executive branch." There is nothing to indicate that the reference to "executive branch" refers to any level of government other than the State.

An opinion of the Attorney General (Opinion No. 8, October 6, 1967) has ruled that the Metropolitan Council is not a state agency, a term which for present purposes has the same scope as "board, commission or agency of the executive branch". In that opinion the Attorney General was asked whether the Metropolitan Council was considered a state agency, as defined by Minn. Stat. § 16.011 (1974), for purposes of a statute which required state agencies to follow certain financial procedures. The statutory definition of state agency included "every . . . board, commission, . . . and other agency of the state, . . . excepting . . . all . . . political subdivisions of the state . . . " The Attorney General concluded:

> " . . . The Metropolitan Council is an unique unit of government. Although it has many of the attributes of a local government unit as detailed above, the council stands higher in the hierarchy than any other governmental unit in the seven-county area over which it has jurisdiction. And, although it has many of the attributes and powers of state agencies, the council lacks the state-wide jurisdiction which would place it at the same level in the hierarchy as a state agency, department, or commission. In summary, it is our opinion that the council is an unique governmental unit standing a step above local governmental units and a step below state agencies and that it is clothed with certain attributes and powers of each."

Op. Atty. Gen. No. 8, October 6, 1967, p. 214.

In light of the opinion of the Attorney General, it would be difficult for the Commission to accept the position that the Metropolitan Council is a board, commission or agency of the executive branch under Chapter 10A. In addition, exclusion of the Metropolitan Council and the other metropolitan agencies from the scope of the lobbyist provisions can be justified if those agencies are regarded as special local governmental agencies, since other local governmental units such as cities, counties or townships are excluded from the coverage of the statute.

Moreover, the Legislature in Minn. Stat. § 10A.02, subd. 11 (1974) excluded from the definition of lobbyist those parties and their representatives appearing before a " . . . state board, commission or agency . . ." if the action is ministerial. This reference to state boards, etc. in the exclusion suggests that the Legislature likewise intended to include as lobbyists only those persons appearing on non-ministerial matters before state agencies. If the statute were applied to require registration of persons appearing before the Metropolitan Council, it would also require reporting in connection with all matters, ministerial or non-ministerial, since the exclusion for ministerial matters applies only to state boards. There is no indication that the Legislature intended such a result.

We therefore answer your question in the negative.

Approved by the Minnesota State Ethics Commission on August 4, 1975.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 24

August 5, 1975

Issued to:

Representative Mary Forsythe
377 State Office Building
St. Paul, Minnesota

Syllabus

24. **Expenses for Legislative Questionnaire in Non-Election Year.**

Expenses incurred by a legislator for a questionnaire and legislative report distributed to constituents in a non-election year need not be reported as campaign expenditures. Such expenses incurred in an election year after the legislative session but before the election are campaign expenditures.

TEXT

You have requested an advisory opinion from the Commission based on the following:

FACTS

As a member of the Minnesota House of Representatives, you have in the past mailed to your constituents a report on legislative activity and a questionnaire on legislative issues, which may be filled out and returned by the recipient. The report and questionnaire were sent between sessions of the Legislature in the fall of a non-election year. You are considering the possibility of sending such a report and questionnaire to your constituents again this year. You then ask the following:

QUESTION

Must expenditures incurred by a legislator in producing and distributing a questionnaire and legislative report in a non-election year be reported as campaign expenditures under Minn. Stat. § 10A.20 (1974)?

OPINION

It is the opinion of the Commission that expenses incurred in the production and distribution of a questionnaire and legislative report when distributed to constituents between legislative sessions in a non-election year, are not campaign expenditures under Minn. Stat. § 10A.01, subd. 10 (1974). Such expenses are therefore reportable under Minn. Stat. § 10A.20 (1974) only as non-campaign expenses, which are not counted toward the campaign spending limit.

Minn. Stat. § 10A.01, subd. 10 (1974) defines "expenditure" as "a purchase, payment . . . made for the purpose of influencing the nomination for election or election of any candidate to office". However, subdivision 10 excludes from the above definition "expenses incurred by a member of the legislature . . . in performing services for constituents."

In a previous advisory opinion (No. 19), the Commission ruled that a legislative report and a questionnaire sent by a state senator to his constituents during the legislative session were constituent services. The Commission stated in that opinion:

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

Advisory Opinion No. 19, issued to Senators Winston Borden and Mel Hansen, April 18, 1975.

It is the opinion of the Commission that legislative reports and questionnaires designed solely to inform constituents on issues, or to obtain the viewpoints of constituents, are constituent services. Therefore expenses for such items are reportable only as non-campaign expenses, provided the items are distributed to constituents between legislative sessions in non-election years, when the legislator has not yet become a candidate for re-election. At that time, the effect of such communications on a future election will be incidental and speculative.

However, in an election year reports or questionnaires may have a significant impact on voters if sent out after the legislative session, and before the November election, by a legislator who is a candidate for nomination or election. It would be unfair to allow incumbents to report expenses of such communications as non-campaign expenses, and to compel non-incumbent opponents to report all communication expenses as campaign expenditures. Therefore, expenses for production and distribution of legislative reports and questionnaires during an election year after the legislative session but before the November election, by a legislator seeking nomination or election, must be considered campaign expenditures.

Since you have stated that you intend to distribute your report and questionnaire in a non-election year, you need not report expenses associated with the production and distribution as campaign expenditures, but may instead report them as non-campaign expenses.

We therefore answer your question in the negative.

Approved by the Minnesota State Ethics Commission on August 4, 1975.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 25

September 29, 1975

Issued to:

Honorable Henry J. Savelkoul
Minnesota House of Representatives
St. Paul, Minnesota

Syllabus

25. **Conflicts of Interest.**

A legislator should be reluctant to accept employment by a client for a fee in a matter which is likely to present a conflict of interest between his obligation to his client and his obligation as a legislator. In the case in which a legislator does accept a fee from a client, determination of existence of a conflict of interest requiring disclosure depends upon a number of factors, including (1) size of the fee; (2) relationship with the client; (3) duration of the relationship; (4) the degree of impact of the legislation upon the client; and (5) the nature of the services rendered to the client.

TEXT

You have requested an advisory opinion from the Commission based upon the following hypothetical:

FACTS

A Minnesota legislator serves on a committee which acts on matters relating to the State's regulation of a service industry. The industry relies heavily upon federal and state funds. Contemporaneously with his committee assignment, the legislator receives remuneration as a paid consultant to one of the industry's largest firms in the State. As part of his services for the fee the legislator also meets with representatives of the State agency which regulates the industry in an attempt to persuade the agency to provide certain benefits to his client. You then ask the following:

QUESTIONS

1. May the legislator act on bills before the committee relating to the industry without filing a conflict of interest notice under Minn. Stat. § 10A.07 (1974)?

2. May the legislator meet with officials of the State agency which regulates the industry in an attempt to persuade the agency to provide benefits to the firm which paid his fee, without filing a representation notice pursuant to Minn. Stat. § 10A.08 (1974)?

OPINION

1. Chapter 10A of Minnesota Statutes is fundamentally designed to provide public disclosure of significant economic influences and relationships relating to candidates and public officials who are subject to potential conflicts of interest. The disclosures required include campaign contributions and expenditures; lobbyist expenditures and gifts to public officials; statements of financial interests; and disclosure of conflicts of interest in specific cases. These disclosures serve a number of important purposes (1) to prevent or minimize actual or potential conflicts of interest; (2) to assure that there is no undue influence upon public officials; (3) to inform the public concerning the nature and extent of financial interests and conflicts; and (4) to foster confidence in decision-making by public officials. In sum, the sunlight of disclosure is deemed the best disinfectant.

Under Minn. Stat. § 10A.09 (1974) candidates and public officials are required to file periodic Statements of Economic Interest identifying significant sources of income, and significant holdings of stock and real estate. Such disclosures, however, do not deal with the implications of fees for services, or disclosure of conflicts in the case of specific actions or decisions by a public official. These matters come within the requirements of Minn. Stat. § 10A.07 (1974).

Minn. Stat. § 10A.07 (1974) requires a conflict of interest notice to be filed by any public official, including a legislator,

> " . . . who in the discharge of his official duties would be required to take action or make a decision which would substantially affect his financial interests or those of a business with which he is associated, unless the effect on him is no greater than on other members of his business classification, profession or occupation . . . "

When the person required to file a statement is a legislator, he must deliver a copy of a written statement, describing the matter to be decided and the nature of his potential conflict of interest, to the presiding officer of the House in which he serves, and must file the notice with the Ethics Commission. The legislator may, at his request, be excused from taking part in the action or decision in question.

The requirement of § 10A.07, unlike the other disclosure sections of the statute presents the task of balancing the need for disclosure of conflicts of interest against the difficulty of requiring disclosure for every business relationship of a legislator. Virtually every legislator has a profession, business or occupation which provides a source of income outside his salary as a legislator. It must therefore be recognized that each legislator brings an employment background to bear upon his task as a legislator. The legislator wo is a farmer, teacher or police officer is bound to have certain views oriented to the concerns of his occupation. He may have campaigned and been elected upon those views. This has been regarded historically as one of the strengths of the Legislature; namely, the citizen legislator who lives and works in the community he represents. Accordingly, the interests of a legislator involve a spectrum of interests and concerns. The question becomes a matter of carefully discerning those conflicting interests which are of such nature and extent as to require disclosure. To a certain extent the test for conflict of interest disclosure is a subjective one, and cases must be examined on an individual basis under particular facts.

In our opinion a legislator is not required to file a conflict of interest notice in a case involving legislation of general application to his business or profession simply because he is employed in that business or profession. For example, a lawyer should ordinarily not be required to file a conflict of interest notice in the case of a probate reform law where other lawyers would be affected in essentially the same manner as the legislator. The same is true of a teacher in relation to legislation affecting teachers' bargaining rights. In such a case, the profession or occupation of the legislator is generally well known and presumably has been disclosed in the required Statement of Economic Interest filed by the legislator under § 10A.09. Therefore, there is no need for additional disclosure, absent unusual circumstances.

On the other hand, if a legislator has a financial interest which would be directly and uniquely affected by certain legislation, he must file a conflict of interest notice. For example, if a legislator owns land which would become subject to condemnation or acquisition as a result of legislation, he would then have a conflict of interest requiring disclosure.

Your hypothetical facts raise another category of problem; namely, the case of a business or professional person in the Legislature who has been retained for a fee to represent a client who may be affected by legislation. In such a case, the legislation in question may affect the industry generally and may not affect the legislator's client any more or less than other firms in the industry. However, the effect of payment of a fee to a legislator for services, and the prospect of future fees, necessarily places the legislator in a position of potential conflict under the statute. By reason of his public office, the legislator is in a position to act beneficially toward his client, and therefore toward himself, in a way not open to others in the same business or profession who are not legislators.

In our opinion a legislator should at the outset be reluctant to accept employment by a client for a fee in a matter which is likely to present a conflict of interest between his obligation to his client and his obligation as a legislator. This is particularly important if there is any possibility that the legislator is being retained because of his position as a legislator in the expectation that the client may receive favorable treatment in the Legislature by reason of the legislator-client relationship. It would be absolutely improper for a legislator to represent a client with any thought that the legislator may then lobby for or otherwise represent the client on legislation. Such a situation must be scrupulously avoided.

In the case in which a legislator does accept a fee from a client for services, the question then becomes one of determining the point at which there is a conflict of interest requiring disclosure. In our opinion, there are a number of factors to be considered, including:

1. The size of the fee – whether it is nominal or substantial.

2. The relationship with the client – whether the client's business constitutes a significant part of the legislator's business.

3. The duration of the relationship – whether the relationship is recent or a long-standing one predating the election of the legislator.

4. The degree of impact of the legislation upon the client – whether the impact is marginal or significant.

5. Nature of the services rendered to the client.

In our opinion these factors must be weighed in each case, initially by the legislator himself, in making the necessary judgment on disclosure.

Stated generally, when the particular obligation of the legislator to his client is a nature and extent that it may actually impinge upon or influence the obligation of the legislator to perform his tasks as a legislator free and independent of any outside influence, that is the point where a conflict is reached and disclosure is required. In such a case, the conflict becomes clear and direct. The legislator cannot properly maintain two loyalties in conflict. He cannot represent his constituents as a legislator and at the same time represent conflicting interests of a client, without full public disclosure.

When a legislator does undertake to represent a client, he should exercise care to disclose any conflict of interest if there is the slightest question about the matter, not only to avoid any impropriety but also the appearance of impropriety.

2. In respect to Question 2, Minn. Stat. § 10A.08 (1974) requires that a public official who represents clients for a fee before a board or commission which has rule-making authority in a hearing shall disclose his participation to the Ethics Commission within 14 days after his appearance. Under the language of this section, disclosure is required in such circumstances when there is an appearance by a public official at a public hearing or in connection with a public hearing, in behalf of a client for a fee. Although the statute merely contemplates disclosure of the representation in such a case, we emphasize that the legislator should be careful to avoid using his official position in any way to receive advantage for his client from a State agency.

On the basis of the hypothetical facts presented it is not possible to give a categorical answer to the questions asked in your request. In particular cases of doubt in the future, we encourage legislators and other officials to request an advisory opinion from the Ethics Commission.

Approved by the Minnesota State Ethics Commission on September 29, 1975.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 26

November 6, 1975

Issued to:

Honorable John R. Arlandson
Minnesota House of Representatives
St. Paul, Minnesota

Syllabus

26 and 26A. **Expenditures for Campaign Materials.**

In general, expenditures for campaign materials are reported as expenditures in the year of purchase, but are counted toward campaign expenditure limitations in the year in which the materials are used or consumed. If materials are purchased and first used or consumed substantially in an election year, the entire purchase price will generally be counted toward the expenditure limit for that election year. The total purchase price of materials is counted toward expenditure limitations only once even if spread over more than one year. Items initially reported as consumed in one year, but salvaged and used in a subsequent year, are counted toward the limit only if the first year used.

TEXT

You have requested an advisory opinion from the Commission based upon the following:

FACTS

You contemplate the purchase of campaign materials in 1975 for use during the election campaign in the year 1976. You then ask the following:

QUESTION

Does the purchase of election campaign materials constitute a campaign expenditure in the year of purchase and payment, or the year in which the materials are used or consumed?

OPINION

Under the facts you have presented, it is our opinion that the expenditure is subject to reporting as an expenditure made in 1975, but is applied toward the campaign expenditure limits applicable in 1976.

We thank you for your interest in proper reporting of your expenditures.

Approved by the Minnesota State Ethics Commission on November 5, 1975.

(See Advisory Opinion No. 26A.)

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 26A

December 4, 1975

Issued to:

Mr. David L. Norrgard
Executive Director
Minnesota State Ethics Commission
410 State Office Building
St. Paul, Minnesota

(See Syllabus on No. 26)

TEXT

As Executive Director of the Minnesota State Ethics Commission, you have requested an advisory opinion from the Commission to supplement Advisory Opinion No. 26, based upon the following:

HYPOTHETICAL SITUATIONS

1. **Purchase of Campaign Literature.**

A campaign committee pays for or incurs an obligation to pay for campaign literature in a year prior to an election year. However, only 25 percent of the material is distributed in the non-election year, and the remaining 75 percent of the material is not distributed until the subsequent election year.

2. **Purchase of Typewriter for Campaign Purposes.**

A campaign committee pays, or incurs an obligation to pay, for a typewriter in a year prior to an election year. The typewriter is used in the year of purchase and in the election year, and will be used again in subsequent years when the candidate seeks re-election.

3. **Purchase of Lawn Signs.**

A campaign committee pays, or incurs in obligation to pay, for 50 lawn signs in an election year. Only 40 signs are used in that year, of which 25 (together with the 10 unused signs) are salvaged for use in a later year when the candidate seeks re-election.

As to each of the above-described situations, you ask the following:

QUESTIONS

1. In which year or years should the items be reported as campaign expenditures?
2. In which year or years are the expenditures counted towards the statutory campaign expenditure limitation?

OPINION

The pertinent sections of the Minnesota Statutes are as follows:

1. Minn. Stat. § 10A.01, subd. 10 (1974), defines an expenditure to include, among other things:

> " . . . [a] purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of influencing the nomination for election or election of any candidate to office; . . . " (Emphasis supplied.)

2. Minn. Stat. § 10A.20 (1974) provides for the filing of periodic reports by political committees and political funds. Under subdivision 3, each report must disclose certain information about assets, contributions, loans, expenditures and obligations. Subdivision 3(h) through 3(n) requires reporting as follows:

> "(h) The name, address, occupation and the principal place of business, if any, of each person to whom expenditures have been made by the political committee or political fund or on its behalf within the year in an aggregate amount in excess of $100, the amount, date and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made;
>
> (i) The sum of individual expenditures which is not otherwise reported under clause (h);
>
> (j) The name, address, occupation and the principal place of business, if any, of each person to whom an expenditure for personal services, salaries, and reimbursable expenses in excess of $100 has been made, and which is not otherwise reported, including the amount, date and purpose of the expenditure;
>
> (k) The sum of individual expenditures for personal services, salaries and reimbursable expense which is not otherwise reported under (j);
>
> (l) The total expenditures made by the political committee or political fund during the reporting period;
>
> (m) The amount and nature of debts and obligations owed by or to the political committee or political fund, and a continuous reporting of their debts and obligations after the election until the debts and obligations are extinguished;
>
> (n) The amount and nature of any contract, promise or agreement, in writing, whether or not legally enforceable, to make a contribution or expenditure; . . . "

3. Finally, Minn. Stat. § 10A.25 (1974), which governs limits on campaign expenditures, provides in subdivision 9:

> "An expenditure is made in the year in which the goods or services for which it was made are used or consumed."

First. From the statutory provisions cited above, it is apparent that the initial reporting of any campaign expenditure under § 10A.20, subd. 3 occurs to the full extent of the purchase price in the year in which payment is made or an obligation to make payment is incurred, regardless of when the item is first used or consumed. **Second.** On the other hand, the Legislature confined the time of the "expenditure" to the year in which the goods or services are used or consumed for purposes of measuring the total amount of permissible expenditures under the statutory maximum limitation for candidates.

Therefore, the statutory definitions of "expenditure" for reporting and limitation relate to different time frames respectively. In each of your hypothetical situations the items are expenditures for purposes of reporting and expenditure limitations, as follows:

1. **Campaign Literature.**

The campaign literature was paid for, or an obligation incurred, in the year prior to the election year. Therefore, the expenditure must be initially reported as an expenditure in the full amount in the first year.

If, however, 75 percent of the material is not to be distributed in the year of purchase prior to an election year, a notation should be made on the report indicating that only 25 percent of the materials is used or consumed in that first year. Only that 25 percent of the material reported as used or consumed in the year prior to an election year will therefore count towards the expenditure limitation for that first year.

The remaining 75 percent of the material which is distributed in the election year will be counted towards the expenditure limitation for that election year. The 75 percent of the material should be reported as an expenditure used or consumed in the election year, with a notation on the report indicating that the goods were reported in a prior year as purchased but not used to the extent of 75 percent.

2. **Typewriter.**

Since the typewriter was paid for, or the obligation incurred, in a year prior to an election year, it is initially reported as an expenditure in that first year. The cost of the typewriter is counted completely towards the expenditure limitation only in the year in which it is first used. When the typewriter is reused in a subsequent year, it need not be reported for any purpose.

3. **Lawn Signs.**

Since the lawn signs were paid for, or the obligation incurred, in an election year, they must be reported initially as an expenditure in that year. If the lawn signs are used in the same year in which they are initially reported as an expenditure, no notation is to be made on the report. However, in your hypothetical facts you state that only forty signs are used. For purposes of determining the expenditure limitation, however, campaign materials substantially used first in an election year shall be considered entirely used or consumed by the end of the election year, absent a compelling justification to the contrary. Therefore, the cost of all 50 lawn signs ordinarily will count towards the expenditure limit for that election year. If any of the 50 signs are saved or salvaged and used in a subsequent year, they need not be reported as used or consumed in that subsequent year.

In general:

A. If goods are entirely used or consumed in the year of purchase, and solely in that year, then the expenditure will be reported only once.

B. If the goods are purchased in a non-election year, but some of the goods are not first used or consumed in that year, then those remaining portions first used or consumed in a subsequent year will be reported as used or consumed in that subsequent year for purposes of expenditure limitations.

C. If the goods are purchased and first used or consumed substantially in an election year, the entire purchase price will generally be counted toward the expenditure limit for that election year.

D. The total purchase price of an item or items is counted towards expenditure limitations only once even if spread over more than one year to reflect use or consumption in more than one year.

E. Finally, items initially reported as used or consumed in one year, but saved or salvaged and used in a subsequent year, are counted towards the expenditure limitation only in the year first used.

We hope the foregoing is helpful in answering questions which you have received concerning the procedures to be followed in reporting campaign expenditures.[1]

Approved by the Minnesota State Ethics Commission on December 3, 1975.

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1. The conclusions in this Advisory Opinion are consistent with the Hypothetical Questions and Answers set forth on page 21 of the Manual issued by the Commission in June, 1974.

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 27

November 6, 1975

Issued to:

Mr. David L. Norrgard
Executive Director
Minnesota State Ethics Commission
410 State Office Building
St. Paul, Minnesota

Syllabus

27. **Bank Loans.**

A loan from a national or state banking institution made in the ordinary course of business to a campaign committee is not a contribution or expenditure subject to the limitations provided by Minnesota law. Such a loan must, however, be reported. Any repayment of such a loan by an endorser constitutes a transfer of funds or expenditure subject to statutory limitations, including the limitation on such an expenditure to 10 percent of the candidate's total expenditure limitations.

TEXT

You have requested an advisory opinion from the Commission based upon the following:

FACTS

As Executive Director of the Minnesota State Ethics Commission you have received inquiries concerning whether a loan from a national or state banking insitution to a political committee constitutes a contribution or expenditure within the meaning of Minn. Stat. § 10A.01 (1974) and, therefore, whether such a loan is subject to the requirements applicable to contributions and expenditures in other sections of Chapter 10A. In order that you might provide advice to interested individuals and carry out your own duties, you as the following:

QUESTION

Is a loan from a national or state banking institution made in the ordinary course of business to a campaign committee a contribution or expenditure within the meaning of Minn. Stat. § 10A.01 (1974) and therefore subject to the mandates of Minn. Stat. § 10A.11, subd. 6; 10A.27, subd. 1; and 211.27 (1974), and Regulation EC 31?

OPINION

The relevant statutory provisions are as follows:

1. Minn. Stat. § 10A.01 (1974) defines both "contribution" and "expenditure" to include, among other things, a loan when made for the purpose of influencing the nomination or election of any candidate to office.

2. Minn. Stat. § 10A.11, subd. 6 (1974) requires that political committees be financed solely through voluntary donations by natural persons or political funds.

3. Minn. Stat. § 211.27 (1974) specifically prohibits contributions from corporations.

4. Minn. Stat. § 10A.27, subd. 1 (1974) limits transfers of funds by a political committee, political fund, or individual to the principal campaign committee of a candidate to no more than 10 percent of the limit for the office sought.

5. Regulation EC 31 requires that any loan not repaid by December 31 shall be deemed a contribution for the reporting period ending December 31.

It is the opinion of the Commission that the statutes do not contemplate the inclusion of a loan from a national or state banking institution within the definition of "contribution" or "expenditure" under Minn. Stat. § 10A.01 (1974), when the loan is made in the ordinary course of business to a political committee or fund. Such a transaction is, therefore, not subject to either the mandates of Minn. Stat. § 10A.11, subd. 6; 10A.27, subd. 1; and 211.27 (1974), or Regulation EC 31.

Since an ordinary loan from a national or state banking institution is merely the provision of services to a candidate under the same general conditions as those services are provided to others it is not made for the purpose of influencing the nomination for election or election of a candidate. The bank is compensated for its services by the interest on a loan. Since other businesses which are compensated for providing their services to candidates are not considered to have made a contribution to the campaign committee, banks should be treated in the same manner provided that the terms of the transaction are not more favorable than they would otherwise be if a candidate for election was not benefiting by the loan.

This interpretation of the Minnesota law is consistent with a recent Federal District Court ruling on the federal campaign financing statute, 18 U.S.C.A. § 610 (1964). The federal statute originally defined "contribution" in the same language used in the Minnesota law, and prohibited contributions by corporations and other institutions, thus making it illegal for banks to loan money to candidate's campaign organizations. The court held that part of the statute unconstitutional. United States v. First National Bank of Cincinnati, 329 F. Supp. 1251 (S.D. Ohio, 1971). As a result of that decision, the definition of "contribution" in the federal act was amended to expressly exclude "Loan[s] of money by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business . . ." 18 U.S.C.A. § 591 (1964 Supp.)

This type of loan from a national or state banking institution, if over $100, would still be subject to the reporting provision of Minn. Stat. § 10A.20, subd. 3(e) (1974), which requires reporting of every " . . . loan . . . in excess of $100 together with the full names and mailing addresses, occupations, and the principal places of business, if any, of the lender or endorsers, if any, and the date and amount of the loans." Such a loan would also be subject to Regulation EC 11 which requires that "an agreement to make a loan to committee or fund shall be in writing, signed by the lender (and endorsers, if any) and the recipient and reported on the appropriate schedule."

If any endorser repays a loan made to a principal campaign committee from a national or state banking institution, then the loan shall be considered a transfer of funds by the endorser and subject to the 10 percent limitation imposed by Minn. Stat. § 10A.27, subd. 1 (1974). However, Regulation EC 31 (i.e. the December 31 deadline) does not apply to such a loan from a national or state banking institution and the transfer of funds or expenditures by the endorser shall be considered to be made at the time the loan is repaid.[1]

Approved by the Minnesota State Ethics Commission on November 5, 1975.

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1. However, for purposes of determining compliance with the 105 percent limitation on campaign contributions under § 10A.32, subd. 3 (1974) the amount of any loan (although not legally defined as a contribution) shall be included in the 105 percent limitation on December 31 of the election year in which the loan is made if the loan is outstanding. (§ 10A.32 governs the amount a candidate may accept above the amount received from the state elections campaign fund.)

MINNESOTA ETHICAL PRACTICES BOARD

ADVISORY OPINION NO. 28

March 15, 1976

Issued to:

Mr. Peter Vanderpoel
Chairman, Environmental Quality Council
St. Paul, Minnesota

Syllabus

28. **Public Hearings on Transmission Lines.**

Persons who appear before the Minnesota Environmental Quality Council at hearings on routes for high voltage transmission lines need not register or report as lobbyists under Minnesota law.

TEXT

You have requested an advisory opinion from the Board based upon the following:

FACTS

The Minnesota Power Plant Siting Act requires that the Minnesota Environmental Quality Council " . . . hold at least one public hearing in each county where a site or route is being considered for designation pursuant to section 116C.57 as suitable for construction of a large electric power generating plant ("LEPGP") or a high voltage transmission line ("HVTL"). Minn. Stat. § 116C.58 (1974). In addition, the Council is required by its regulations to hold similar hearings prior to its designation of a corridor for a high voltage transmission line. Minn. Reg. MEQC 73(b)(2)(cc). During the course of these transmission line hearings, the Council has been asked whether representatives or employees of the applicant-utilities who appear at such hearings on behalf of the utility are required to register with the Board as lobbyists. For this reason you ask the following:

QUESTION

Are representatives and employees of the applicant-utilities who appear at hearings held for designating transmission lines for LEPGP's or HVTL's required to register with the Board as lobbyists?

OPINION

It is the opinion of the Board that lobbyist registration is not required for appearances at transmission line hearings.

The relevant statutory provisions (Minn. Stat. § 10A.01) as implemented by Board rules on lobbyist registration and reporting are as follows:

a. EC 200(h) defines "lobbying" as, among other things, attempting to influence cases of "power plant siting" by any written or oral contact with a public official.

b. EC 200(i), subdivision 1, 2 and 3 sets forth the general definition of lobbyist.

c. EC 200(i), subdivisions 4 through 8 sets forth exemptions to the definition of lobbyist. Subdivision 5 of the regulation reads as follows:

> Parties and their representatives appearing in any proceeding before a state board, commission or agency of the executive branch other than rule making proceeding or cases of rate setting or power plant siting. (Emphasis added.)

d. EC 202 and 204 require lobbyists to register with the Commission within five days after commencing lobbying and thereafter file periodic lobbyist reports.

From the foregoing, there is no question that individuals who appear at power plant siting proceedings fit the definition of lobbyist and are not exempted from registration and reporting requirements, assuming that they otherwise fit the definition of lobbyist. Therefore, the only issue here is whether transmission line proceedings fall within the statutory definition of power plant siting proceedings.

It is the opinion of the Board that the Legislature intended power plant siting proceedings to mean only proceedings held by the Environmental Quality Council relating to the actual siting of Large Electric Power Generating Plants. A hearing to determine the site of a power plant is separate and distinct from a hearing to designate a transmission line, and therefore persons who appear at transmission proceedings are not required to register and report as lobbyists.

The Ethical Practices Board does have the power to "specify" that individuals who appear at administrative proceedings, other than rate setting and power plant siting proceedings, are lobbyists if they otherwise fit the definition of lobbyist. Minn. Stat. § 10A.01, subd. 14 (1974). There may be good policy reasons for including individuals who appear at transmission line corridor and routing proceedings relating to HVTL's within the definition of lobbyist. However, it is the policy of the Board that individuals who appear at administrative proceedings other than rate setting or power plant siting proceedings (such as transmission line proceedings) will not be included in the definition of lobbyist without a hearing at which all interested parties will be afforded an opportunity to address the Board on the subject.

Based upon the foregoing, it is the opinion of the Board that at the present time any individual who represents a party before the Environmental Quality Council at proceedings for transmission line corridors are not lobbyists.

Approved by the Ethical Practices Board on March 12, 1976.

MINNESOTA ETHICAL PRACTICES BOARD

ADVISORY OPINION NO. 29

March 15, 1976

Issued to:

Mr. John P. Millhone
Director, Minnesota Energy Agency
St. Paul, Minnesota

Syllabus

29. **Public Hearings on Certificates of Need.**

Persons who appear before the Minnesota Energy Agency at certificates of need proceedings for electric power generating plants or high voltage transmission lines need not register or report as lobbyists under Minnesota Law.

TEXT

You have requested an advisory opinion from the Board based upon the following:

FACTS

Before any large electric power generating plant ("LEPGP") or high voltage transmission line ("HVTL") can be sited in Minnesota, a certificate of need must be issued by the Minnesota Energy Agency. That agency has promulgated assessment of need criteria in the form of rules and regulations. In addition to the criteria for assessing need, the Agency has adopted rules of procedure for issuance of certificates of need. A certificate of need is issued if the need for the energy facility is justified in accordance with these rules and regulations. The Energy Agency conducts certificate of need proceedings by public hearing pursuant to Chapter 15. As Executive Director of the Minnesota Energy Agency you receive inquiries whether individuals who appear at certificate of need proceedings held for purposes of determining the need for LEPGP'S or HVTL's must register with the Ethical Practices Board as lobbyists. In order to be of assistance to both these individuals and the Ethical Practices Board you ask the following:

QUESTION

Are individuals who represent any party before the Minnesota Energy Agency at certificate of need proceedings held for determining the need for LEPGP's or HVTL's required to register with the Ethical Practices Board as lobbyists?

OPINION

It is the opinion of the Ethical Practices Board that lobbyist registration is not required.

The relevant statutory provisions (Minn. Stat. § 10A.01), as implemented by the Ethical Practices Board rules on lobbyist registration and reporting, are as follows:

a. EC200(h) defines "lobbying" as, among other things, attempting to influence cases of "power plant siting" by any written or oral contact with a public official.

b. EC 200(i), subdivisions 1, 2 and 3 set forth the general definition of lobbyist.

c. EC 200(i), subdivisions 4 through 8 set forth exemptions to the definition of lobbyist. Subdivision 5 of the regulation reads as follows:

> Parties and their representatives appearing in any proceeding before a state board, commission or agency on the executive branch other than rule making proceedings or cases of rate setting or power plant siting. (Emphasis added.)

d. EC 202 and 204 require lobbyists to register with the Commission within five days after commencing lobbying and thereafter file periodic lobbyist reports.

From the foregoing, there is no question that individuals who appear at actual power plant siting proceedings fit the definition of lobbyist and are not exempted, assuming that they otherwise qualify as lobbyists. Therefore, the only issue here is whether certificate of need proceedings fall within the statutory definition of power plant siting proceedings.

In a previous opinion (Advisory Opinion 28), the Board ruled that from the language of the statute, it is clear that the Legislature intended power plant siting proceedings only to include proceedings held by the Environmental Quality Council in order to determine the actual sites of Large Energy Power Generating Plants. On the basis of that Opinion, it follows that persons who appear at certificate of need hearings are not presently required to register and report as lobbyists.

Approved by the Minnesota State Ethical Practices Board on March 12, 1976.

MINNESOTA ETHICAL PRACTICES BOARD

ADVISORY OPINION NO. 30

September 8, 1976

Issued to:

Mr. B. Allen Clutter,
Executive Director,
Minnesota State Ethical Practices Board
St. Paul, Minnesota

Syllabus

30. **Debts**

Contributions made in 1975 by an individual[1] to the Principal campaign committee of a candidate in the 1974 election for the purpose of repaying a debt reported outstanding on the Report of Receipts and Expenditures on December 31, 1974, are subject to a limit of 10% of the combined expenditure limits of both 1974 and 1975.

TEXT

You have requested an advisory opinion from the Ethical Practices Board based upon the following:

FACTS

As Executive Director of the Minnesota State Ethical Practices Board, you have received inquiries concerning what limits apply to contributions received by 1974 candidates in 1975 for the purpose of retiring debts incurred in 1974. In order that you might provide advice to interested persons, you ask the following:

QUESTION

Are contributions made in 1975 by an individual to the principal campaign committee of a candidate in the 1974 election for the purpose of paying a debt incurred in election year 1974 subject to election year or non-election year limit?

OPINION

Contributions made in 1975 by an individual[1] to the principal campaign committee of a candidate in the 1974 election for the purpose of repaying a debt reported outstanding on the Report of Receipts and Expenditures on December 31, 1974, are subject to a limit of 10% of the combined expenditure limits of both 1974 and 1975.

Minn. Statute (1974) 10A.27, subd. 1 sets different limits on the amount an individual might transfer (contribute) to the campaign committee of a candidate or might expend on behalf of a candidate in election and non-election years. In an election year an individual may not transfer funds nor make expenditures on behalf of the nomination or election of a candidate in excess of 10% of a candidate's election year expenditure limit as set forth in Minn. Statute 10A.25, subd. 2. In a non-election year an individual may not transfer (contribute) or make expenditures on behalf of the nomination or election of a candidate in excess of 10% of the non-election year limit which is 20%[2] of the election year figure as set forth in Minn. Statute 10A.25, subd. 2.

In the opinion of the Board, the legislature did not intend to discourage the repayment of campaign debts from an election year. An individual who contributed 10% of the 1974 expenditure limit could not again give 10% of the 1974 election year expenditure limit in 1975, but he could not be prohibited from giving 10% of the non-election year limit in 1975. Therefore, it is the opinion of the Board that up to 10% of the combined expenditure limits for 1974 and 1975 could have been contributed in 1975 to repay a debt previously reported as outstanding on December 31, 1974, on the Report of Receipts and Expenditures of a 1974 candidate.

Approved by the Minnesota State Ethical Practices Board on September 7, 1976.

1/ Minn. Statute 10A.27, subd. 1 (1974) sets the same limits upon political funds and committees other than a political party or a candidate's principal campaign committee as it does an individual. However, "individual" will be used throughout this opinion to conform to the hypothetical.

2/ Minn. Statute 10A.25, subd. 6