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**MINNESOTA STATE ETHICAL PRACTICES BOARD**

**41 STATE OFFICE BUILDING**

**SAINT PAUL, MINNESOTA 55155**

**612-296-5148**

**ADVISORY OPINIONS**

OCTOBER 1, 1980 -- DECEMBER 31, 1981

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STATE OF MINNESOTA



DECEMBER 1981

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ABOUT ADVISORY OPINIONS

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- The Ethical Practices Board is authorized to issue advisory opinions on the requirements of the Ethics in Government Act, Minn. Stat. ch. 10A, enacted in 1974. (see *Minn. Stat. §10A.02, subd. 12*) and the Hennepin County Disclosure Law (see Laws of 1980, Chapter 362, Section 15). Individuals or associations may ask for advisory opinions about these laws to guide their own conduct.
- A request for an advisory opinion is published in the State Register before action is taken by the Board to approve an opinion. Public comment is invited. A summary of each approved advisory opinion is published in the State Register; full texts of opinions are available for public inspection in the Board office, 41 State Office Building, St. Paul, Minnesota.
- An advisory opinion lapses the day the regular legislative session adjourns in the second year following the date of the opinion (*Minn. Stat. §10A.02, subd. 12*).

ABOUT THE BOARD

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Purpose

- To maintain public confidence in the integrity of government through public disclosure and public financing of candidates through administration of the Ethics in Government Act, Minn. St. Ch. 10A.

Members

- Six member citizen body;
- Appointed by the governor; confirmed by a 3/5th vote of both houses of the legislature;
- One former legislator of each major party;
- Two individuals who have not been a public official nor a political party officer in the last three years;
- No more than three members of the same political party.

Issued to:

Approved:

Richard A. Forschler, Esq.  
Larkin, Hoffman, Daly & Lindgren, Ltd.  
Attorneys at Law  
1500 Northwestern Financial Center  
7900 Xerxes Avenue South  
Minneapolis, MN 55431

November 14, 1980

RE: Hennepin County Ballot Questions

#### ADVISORY OPINION #74

##### SUMMARY

74. A corporation may spend directly in excess of \$100.00 on a ballot question in Hennepin County, Minneapolis or Bloomington by registering a political fund with the filing office in Hennepin County. A corporation may make a contribution to a registered committee or fund organized solely to promote or defeat a ballot question without having to register its own political fund.

##### FACTS

You are an attorney representing a trade association, Minnesotans For Sensible Housing Policy. This association may in the future support or oppose a ballot measure submitted to the voters of Minneapolis. The association wishes to be in compliance with the requirements of the Hennepin County Election Law, Chapter 362 of the Laws of Minnesota 1980. You ask the Board to answer the following questions.

1. How contributions from individuals, partnerships, corporations, and trade and professional associations to political committees established for campaign work on ballot questions in the City of Minneapolis or other cities are to be dealt with for accounting and reporting purposes; and
2. Specifically, whether corporations may spend money to promote or defeat a ballot question in the City of Minneapolis or other cities either by registering their own political funds or by contributing to an already registered political committee or fund which will itemize the corporate contribution if it exceeds \$100.

##### OPINION

According to Chapter 362, Sec. 6, Subd. 1:

"REGISTRATION OF POLITICAL COMMITTEES AND POLITICAL FUNDS. Subdivision 1. FILING OFFICE; DEADLINE. Every political committee, political fund and principal campaign committee shall register with the filing officer within 14 days after the date by which the committee or fund has received contributions or made expenditures in excess of \$100."

Once a committee or fund has been established to promote or defeat a ballot

issue, it shall report and disclose contributions as outlined in Chapter 362, Sections 7 and 8.

Individuals may donate to committees or funds without having to register with the filing officer; an association which either spends in excess of \$100.00 to promote or defeat a ballot question or contributes (transfers) in excess of \$100.00 to a committee or fund which is supporting or opposing a ballot question is required to make the expenditure or contribution (transfer) from a political committee or fund. Chapter 362, Section 3 and Section 4. An association as defined in Chapter 362, Section 2, Subd. 3 includes:

"'Association' means a business, corporation, firm, partnership, committee, labor organization, club, or any other group of two or more persons, which includes more than an immediate family, acting in concert."

The 1980 legislature amended *Minn. Stat.* 210A to permit corporations which are prohibited from contributing directly or indirectly to candidates to spend directly on both local and statewide ballot questions and to contribute (transfer) money to committees and funds organized solely to promote or defeat ballot questions.

The Board found in Advisory Opinion #73 that a corporation may spend money to promote or defeat statewide ballot questions either by registering its own political fund or by contributing to an already registered political fund which will itemize that contribution if it is in excess of \$100.00. Funds accepting money from corporations may not contribute to candidates.

To be consistent the Board interprets Chapter 362 to mean that corporations spending directly to promote or defeat ballot questions in jurisdictions covered by Chapter 362 will need to adhere to the registration and reporting requirements described in the law. A corporation contributing to a registered committee or fund which is organized solely for the purpose of promoting or defeating a ballot question in a jurisdiction under Chapter 362 will not need to register a fund with the filing office in Hennepin County. The Board also extends its request for legislative clarification of *Minn. Stat.* 10A.12, Subd. 1 as it pertains to corporate expenditures on ballot questions to include Chapter 362, Section 4.

Issued to:

Mr. Arthur W. Seaberg  
313 Degree of Honor Building  
St. Paul, MN 55101

Approved:

November 14, 1980

RE: Non-campaign Disbursement, Recounts

### ADVISORY OPINION #75

#### SUMMARY

75. When a principal campaign committee pays for a recount, it is to be reported as a non-campaign disbursement.

#### FACTS

You are an unsuccessful candidate for the State Legislature. You want to know:

1. Whether your principal campaign committee may pay for a recount.
2. If it can, how should this expenditure be reported?

#### OPINION

There is nothing in *Minn. Stat.* Chapter 10A to prohibit a candidate's principal campaign committee from paying for a recount.

According to Rule 9MCAR 1.0030:

"Noncampaign disbursements-miscellaneous. Other expenses which are to be reported as miscellaneous noncampaign disbursements if paid for by the principal campaign committee of the candidate include; but are not limited to: costs for child care for the candidate's children when campaigning, fees paid to attend a campaign school, costs of a post election party during the election year when a candidate's name will no longer appear on a ballot or the general election is concluded, whichever occurs first, interest on loans paid by a principal campaign committee on outstanding loans, and filing fees, if permitted by other Minnesota law, post general election thank you notes or advertisements in the news media." (Emphasis added)

The Board concludes that the payment for a recount is a noncampaign disbursement as defined by Chapter 10A.01, Subd. 10c. and should be reported as a miscellaneous noncampaign disbursement.

Issued to:

Representative Glen H. Anderson  
291 State Office Building  
St. Paul, MN 55155

Approved:

December 18, 1980

RE: Noncampaign Disbursement

### ADVISORY OPINION #76

#### SUMMARY

76. The purchase of flags for schools by a candidate's principal campaign committee should be reported as a miscellaneous noncampaign disbursement.

#### FACTS

You have requested an advisory opinion from the Board in response to the following:

You are a State Representative who ran successfully for re-election in November 1980. You have funds remaining in your account that you wish to use to purchase U. S. flags for public schools. You wish to know whether you can make this expenditure from the account of your campaign committee and how it is to be reported on the Report of Receipts and Expenditures.

#### OPINION

According to 9MCAR §1.0030:

"Noncampaign disbursements-miscellaneous. Other expenses which are to be reported as miscellaneous noncampaign disbursements if paid for by the principal campaign committee of the candidate include; but are not limited to: costs for child care for the candidate's children when campaigning, fees paid to attend a campaign school, costs of a post election party during the election year when a candidate's name will no longer appear on a ballot or the general election is concluded, whichever occurs first, interest on loans paid by a principal campaign committee on outstanding loans, and filing fees, if permitted by other Minnesota law, post general election thank you notes or advertisements in the news media."  
(Emphasis added)

The Board finds that there is nothing in *Minn. Stat.* Chapter 10A, the Ethics In Government Act, which prohibits a candidate's principal campaign committee from purchasing flags for public schools. The purchase of such flags should be reported as a miscellaneous noncampaign disbursement.

Issued to:

Commissioner Randy Johnson  
Board of Hennepin County Commissioners  
2400 Government Center  
Minneapolis, MN 55487

Approved:

March 27, 1981

RE: Campaign Finance Disclosure

## ADVISORY OPINION #77

### SUMMARY

77. Under Minn. Laws of 1980, Chapter 362, applicable to certain elected officials in Hennepin County, the costs of publishing and distributing an officeholder's newsletter shall be reported as campaign expenditures commencing after the officeholder files for re-election.

### FACTS

You are an elected official of Hennepin County who distributes a periodic newsletter to interested constituents. Costs of these newsletters have been paid by you personally or from excess funds contributed to your 1978 county commissioner campaign. Pursuant to Chapter 362 of the Laws of Minnesota 1980, you ask the Board to answer the following questions:

1. If in the future remaining excess 1978 campaign funds are used to print and distribute similar newsletters, what are your reporting obligations; and
2. Can a fund to pay for similar newsletters be established separate from your principal campaign committee, and if so, what are the reporting obligations; and
3. If Hennepin County funds authorized for a newsletter are expended, what are your reporting obligations; and
4. When are you required to register a re-election committee?

### OPINION

Laws 1980, Ch. 362, section 2, subd. 10 defines "expenditure:

Subd. 10. "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the outcome of any election. "Expenditure" does not include services provided without compensation by an individual volunteering his time on behalf of a candidate, political committee or political fund, or the publishing or broadcasting of news items or editorial comments by the news media. (emphasis added)

The Board is of the opinion that during the period before an officeholder files as a candidate for re-election, newsletters do not involve an "expenditure" made "for the purpose of influencing the outcome of any election", within the meaning of Section 2, subd. 10, and therefore they are not subject to any

provisions of Chapter 362. Unlike state legislators (whose expenditures for constituent services such as newsletters are considered noncampaign expenses until the sixtieth day after adjournment sine die of the legislature, *Minn. Stat.* §10A.02, subd. 10c(f)) Hennepin County Commissioners and a number of other officials subject to Chapter 362 sit in continuous session. Arguably, therefore, there is a legitimate constituent service purpose in distributing newsletters even during the election season. Nevertheless, the Board believes that after the officeholder files for re-election, the purpose of promoting his or her re-election becomes dominant. Moreover, the officeholder's opponents would be required to report as campaign expenses the costs of any newsletters which they might distribute. In the interest of fairness and evenhandedness, therefore, the Board believes the incumbent's newsletters must receive the same treatment. Any other approach would afford the incumbent an undue advantage, by omitting from reporting requirements expenses which may do much to further the incumbent's candidacy.

With this reasoning in mind, we offer the following opinions on your specific questions:

1. If newsletter expenditures are made from a committee which is required to be registered as a principal campaign committee, then:

- (a) prior to the time the officeholder files for re-election, the newsletter expenditures are included in the sum of noncampaign disbursements reported pursuant to Sec. 8, subd. 2 (k); and

- (b) after the officeholder files for re-election, the newsletter expenditures are reported as "expenditures" made to influence the outcome of the election. All moneys received or expended for this purpose, including the incumbent's own money, must be channeled through the officeholder's principal campaign committee, with contributions and expenditures properly disclosed.

If newsletter expenditures are made from a source other than a committee which is required to be registered as a principal campaign committee, then:

- (a) prior to the time the officeholder files for re-election, there is no obligation to report newsletter costs or the source of the funds used for these costs; and

- (b) after the officeholder files for re-election, all newsletter spending, including spending from 1978 campaign funds or from the candidate's own money, must be reported as contributions to the candidate's principal campaign committee, which will then report the expenditures as required by Ch. 362, Sec. 8.

2. There is no provision in Ch. 362 to prohibit establishment of a separate newsletter fund for newsletters printed and distributed prior to the date an incumbent files for re-election; such a fund would have no reporting obligations under Ch. 362. After that date, however, in order to continue newsletters on behalf



of an incumbent, a newsletter fund must register as a political committee as required by Sec. 6 within 14 days after it receives contributions or makes expenditures in excess of \$100.

Expenditures of the newsletter fund made with the officeholder's knowledge or cooperation after the date he or she files for re-election must be reported as contributions to the officeholder's principal campaign committee. Reporting obligations are those defined in Sec. 8.

3. The Board is not authorized to regulate the use of county funds allocated by Hennepin County for the office expenses of County Commissioners. Because such funds are appropriated for official business purposes and not for influencing the nomination or election of a candidate, the use of these funds is not ordinarily reportable under Chapter 362. However, any funds, whether public or private, which are used to influence the outcome of an election, are subject to the reporting requirements. Thus, while the Board questions whether county funds may properly be used to promote the re-election campaign of an officeholder by financing his or her newsletter after the officeholder files for re-election, any use of county funds for this purpose, or for any other expenditure designed to influence the outcome of the election, must be reported as prescribed in Section 8.
4. A candidate's principal campaign committee must register within 14 days after funds are received, or expenditures are made, in excess of \$100 to influence the outcome of the election for the office sought. In addition, the Board has concluded that, in any case, an officeholder who has an existing campaign committee with funds of more than \$100 must register the committee not later than July 1, 1981.

Issued to:

Representative Douglas W. Carlson  
372 State Office Building  
St. Paul, MN 55155

Approved:

April 10, 1981

RE: Potential Conflict of Interest - State Legislator

### ADVISORY OPINION #78

#### SUMMARY

78. When a legislator's official duties require action which would substantially affect his financial interests, he must disclose both the matter requiring action and the nature of his potential conflict of interest.

#### TEXT

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

#### FACTS

You are a state representative. You own a commercial building which you lease to Independent School District #576, with permission to the school district to assign all or any portion of the lease to the Minnesota Department of Corrections and to other school districts nearby. On April 26, 1979, you filed with the Board a notice of potential conflict of interest in accordance with *Minn. Stat. §10A.07*, concerning this property. The current lease (September 26, 1979 through June 30, 1981) provides for a rental payment to you by the school district and requires you, in turn, to maintain the property. You now ask the following question:

Are you required to file a notice of potential conflict of interest for the 1981-82 Legislative Session relative to this building which you own and lease to Independent School District #576?

#### OPINION

After reviewing section 10A.07, Subd. 1 (1980), your current lease agreement, and your 1979 potential conflict of interest notice, the Board concludes that as a member of the Legislature you will be required to take an action or make a decision which could substantially affect your financial interests. Thus, you must file the notice in accordance with *Minn. Stat. §10A.07*.

Issued to:

Bruce Beattie, Finance Director  
Minnesota Democratic-Farmer-Labor Party  
730 East 38th Street  
Minneapolis, MN 55407

Approved:

July 17, 1981

RE: Campaign Finance: Contributions

### ADVISORY OPINION #79

#### SUMMARY

79. A political committee may accept contributions in the form of stock for which the market value can be determined readily; the amount of contribution reported is equal to the market value on the date received; stock shall be converted into cash within 30 days after receipt.

#### FACTS

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

You are the finance director of a major political party as defined in *Minn. Stat.* §§10A.01, Subd. 12, and 200.02, Subd. 7, which has registered a political committee as required by *Minn. Stat.* §10A.14. Several potential contributors have informed your party that they would prefer to make their contributions in the form of stock versus cash. Accordingly, you are investigating the possibility of establishing an account with a local brokerage in the name of your party. Prior to initiating such an account, you seek the Board's advice on the establishment and reporting of such contributions and you ask the following questions:

1. If such an account were established, should the Minnesota Democratic-Farmer-labor Party political committee's Statement of Organization be amended to specify the location of such an account; and
2. Would such contributions be reported as in-kind contributions with a value of the stock on the specific date of transfer; may donations of both certificated securities and noncertificated securities be received by a political party as eligible contributions; if so, what are the reporting requirements for each; and
3. What information is the Board able to provide regarding transfers of shares of common stock, municipal bonds, or other non-cash assets which might be offered as contributions to a political party?

#### OPINION

A political committee may accept contributions in the form of stock if the market value of the stock can be determined readily, for example, if it is regularly traded on a national securities exchange. The committee must record

the contribution at the market value of the stock on the date of receipt. If that value is greater than \$50, the Report of Receipts and Expenditures for the reporting period in which the stock is received must also disclose the name of the stock, the number of shares, the market value on the date of receipt, and the name, address, and employer of the contributor.

Because all transfers must be deposited promptly upon receipt in a designated depository, see *Minn. Stat.* §§10A.01, subd. 7; 10A.15, subd. 3; 9MCAR §1.0031, subd. D., and because a brokerage house is not within the definition of depository, *Minn. Stat.* §10A.01, subd. 8, the Board concludes that a committee must convert the stock into cash within thirty days after receipt and deposit the cash in a depository identified on the committee's registration. If the stock is sold for a greater amount than its value when received, then the additional amount realized on the sale must be reported as "miscellaneous income"; if the stock is sold for an amount less than its value at the time of receipt, the loss must be reported as a "miscellaneous disbursement".

With respect to your questions concerning contributions to a political committee in the form of municipal bonds and other noncash assets, the Board believes that if the market value of these assets can be determined readily, the committee may accept such contributions, but that the assets must be converted into cash within thirty days of receipt and that the transactions must be reported in the manner described above for transactions involving stocks.

Issued to:

Vernon T. Hoppe  
Director of Property Taxation  
Hennepin County  
Department of Property Taxation  
A606 Government Center  
Minneapolis, MN 55487

Approved:

June 26, 1981

RE: Hennepin County Disclosure Law - Administration

## ADVISORY OPINION #80

### SUMMARY

80. An individual appointed to fill a vacancy in an elected office in Hennepin County is required to file a statement of economic interest. The Hennepin County Auditor shall require the proper filing of required statements and reports, examine statements and reports which are filed, notify individuals about changes or corrections in filed reports, and secure the proper amendments.

### FACTS

As the official responsible for administration of the election laws for Hennepin County, you are the filing officer, pursuant to Chapter 362. You ask the following questions about your duties:

1. a) Are the appointed members of the Hennepin County Park Reserve Board ("park board") required to file statements of economic interest pursuant to section 13; and
- b) Is an elected member of the park board an "elected official of Hennepin County" for purposes of section 13; and
- c) Is a member appointed to fill a vacancy in an elective office of the park board required to file an economic interest statement pursuant to section 13; if answer is in the affirmative, what is the due date for filing the statement; and
2. What is the responsibility of the filing officer in regard to registration of and reporting by principal campaign committees for city council members in Bloomington and Minneapolis prior to the first election for those offices since enactment of Chapter 362; and
3. Regarding the filing officer's duties in enforcement procedures:
  - a) Is section 14, subd. 8, applicable to violations for failure to file the statements or reports required in Chapter 362;
  - b) If answer is in the affirmative, at what point does the failure to file a required statement or report constitute a "violation" for the purpose of reporting pursuant to section 14, subd. 8; and
  - c) If a political fund reports a contribution to a candidate, does section 14, subdivision 8 or any other section of

Chapter 362 require the filing office to audit, review and monitor the political funds reports and the candidate's principal campaign committee reports to assure that the contributions have been properly reported as income? Must the candidate's reports be monitored to assure that political funds register and file appropriate reports? In other words, does section 14, subdivision 8 charge the filing officer with the constructive knowledge of information contained in reports or statements filed?

#### OPINION

Since candidates for four positions on the Hennepin County Park Board appear on the ballot in Hennepin County and are elected by voters of that county, these four members are elected officials of Hennepin County and within the scope of section 13.

The elected members of the park board are required to disclose their economic interests. When an individual is appointed to fill a vacancy in one of the elected positions on the park board, that individual shall file a statement of economic interest within 60 days after undertaking the duties of the office. Section 13 does not speak about individuals appointed to positions such as the Hennepin County Park Reserve Board. The Board notes that both elected and appointed park board members participate together in decision making. Appointed members of the park board should be encouraged to voluntarily disclose their economic interests. The Board asks the legislature to clarify Chapter 362 to require disclosure of the economic interests of public officials serving on the same board whether they be elected or appointed to the position.

Section 14, subd. 8, is not applicable to violations for failure to file the statements or reports required by Chapter 362. With respect to your questions concerning the enforcement provisions of Chapter 362, the Board believes that the auditor's responsibilities extend beyond accepting filings of reports and statements required by law. The auditor has the obligation to review the filed forms to determine whether statements and reports are in compliance with the law and to secure such compliance. The reporting of violations should be made in accordance with statutory requirements.

Issued to:

Mr. Tim Groshens, Administrator  
Lawyers Public Affairs Commission  
110 Minnesota Federal Building  
Minneapolis, MN 55402

Approved:

December 2, 1981

RE: Voluntary Contribution Plans

## ADVISORY OPINION #81

### SUMMARY

81. Voluntary checkoff plans conducted by a membership association may be used by political committees or political funds to raise money if:

1. The political committee or fund reimburses the association for all costs in soliciting, collecting and recording amounts allocated to the political committee or fund and receives only legal contributions.
2. A single payment covering both dues and political contribution is put into a separate trust bank account with the political contribution transferred promptly to the political committee or fund. The trust bank account is subject to audit under Minn. Stat. §10A.

### FACTS

You are the administrator of Lawyers Public Affairs Commission (LAWPAC), a voluntary, nonprofit, unincorporated, nonpartisan committee which receives contributions from individual members of the legal profession, partnerships, and law firm political funds. LAWPAC seeks to expand its base of support and increase available funds in the following manner:

1. LAWPAC would arrange for a section on the dues statement of the Minnesota State Bar Association (MSBA) to allow members to make a voluntary contribution to LAWPAC with notice that all solicitation and administrative costs and expenses of the contribution are paid by LAWPAC.
2. Instructions about the plan would include references to Minnesota Statutes, which prohibit corporate contributions and require partnerships contributing over \$100 to register with the Ethical Practices Board, and to the Code of Judicial Conduct which prohibits judges from contributing to LAWPAC;
3. LAWPAC would reimburse MSBA for all services rendered and costs incurred for soliciting, collecting and recording amounts received as contributions to LAWPAC;
4. A separate trust bank account would be established to handle any check which contained both MSBA dues and a LAWPAC contribution to ensure that LAWPAC would not receive any

corporate contributions.

You ask the Board to answer the following question:

Would use of this voluntary checkoff by LAW PAC in seeking contributions from members of MSBA be in compliance with Minnesota Law?

#### OPINION

Since Minn. Stat. §10A does not preclude the use of a voluntary checkoff system to raise funds for political purposes, LAW PAC may utilize this procedure.

You indicate that the LAW PAC checkoff system will require a participant to take voluntary, affirmative action to contribute to the committee. This procedure is preferable to a reverse checkoff system which requires action by the member to prevent the contribution. The checkoff system should be voluntary and add-on.

Since LAW PAC is a political committee, the fundraising plan must fully comply with the disclosure deposit reporting and administrative procedures and requirements of Minn. Stat. §10A. Additionally, it is important to include in the requests for contributions to LAW PAC notice that the LAW PAC space on the dues statement is paid for by LAW PAC; that partnerships contributing more than \$100 are required to register with the Ethical Practices Board; and that contributions from corporations and judges are prohibited since these notices clarify the parameters of the plan.

The law prohibits the commingling of political and nonpolitical funds. (Minn. Stat. §10A.11, subd. 5; Rule 9MCAR81.0031) Contributors should be encouraged to make a separate payment to the political fund. However, if one payment containing both dues and contributions is received, it must be processed through a trust bank account especially created for that purpose. The proceeds of such a check must immediately be allocated and disbursed to either MSBA or LAW PAC as the payor has directed. The check may also be returned intact. LAW PAC may not allow contributions to accumulate in the trust account; otherwise the account itself could be considered to be a political fund requiring separate registration. The trust account as well as the political committee account would be subject to Board audit procedures.

While the Board does not administer the provisions of Minn. Stat. §210A, the potential applicability of Minn. Stat. §210A.34 requires comment. The Board recommends that since MSBA is incorporated, LAW PAC fully reimburse MSBA for all solicitation and administrative costs and expenses incurred by MSBA relative to the checkoff system. Contributions in the form of checks from professional corporations must be handled in a manner consistent with Minn. Stat. §210A.34.