

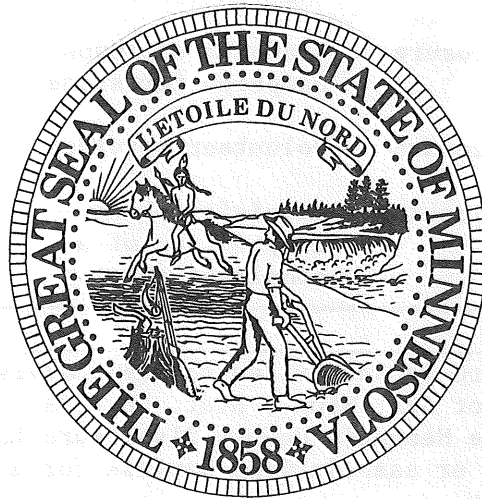
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A D V I S O R Y O P I N I O N S

(Under Minn. Stat. § 10A.02, Subd. 8)

July 13, 1987 - March 30, 1990

Numbers 96 - 104



J U N E , 1 9 9 0

MINNESOTA STATE ETHICAL PRACTICES BOARD

625 NORTH ROBERT STREET . ST. PAUL, MN 55101-2520 . (612) 296-5148

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ABOUT ADVISORY OPINIONS

- . The Ethical Practices Board is authorized to issue advisory opinions on the requirement 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, 625 North Robert St. Paul, MN.
- . 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).

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ABOUT THE BOARD

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. Stat. 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;
- . Nor more than three members of the same political party.

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An Advisory Opinion Index is available at the Board office.



STATE OF MINNESOTA
ETHICAL PRACTICES BOARD
625 NORTH ROBERT STREET, SUITE 102
ST. PAUL, MINNESOTA 55101-2520
PHONE: (612) 296-5148

Issued to:

Bruce D. Willis, Esq.
Popham, Haik, Schnobrich, Kaufman & Doty, Ltd.
3300 Piper Jaffray Tower
Minneapolis, MN 55402

Approved:

July 13, 1987

Re: Campaign Finance Disclosure

Advisory Opinion #96

SUMMARY

96. Expenditures described in Minn. Stat. §10A.275 made by a political committee cosponsored by the party organization within the House and the Senate are not allocable to any candidates.

FACTS

You represent the Independent-Republican House Caucus and the Independent-Republican Senate Caucus, which intend to establish a fund to which contributions from individuals (only) will be solicited. The caucuses propose that the funds will be used to buy advertisements to run beginning in the autumn, 1987, that refer to the Independent-Republican Party of Minnesota generally in a party-building effort. The caucuses intend also that the advertisements will develop a theme that Independent-Republican candidates in the next election be allowed to use in their campaigns, if they so choose.

You ask the Board the following questions:

1. Would expenditures made by a political fund cosponsored by the Independent-Republican House Caucus and the Independent-Republican Senate Caucus be considered expenditure by a substate unit of a state political party for the purposes of Minn. Stat. §10A.275?
2. Will all or any portion of the money expended by the proposed political fund in the development of the theme constitute a donation in kind under Minn. Stat. §10A.01, subd. 7b, to individual candidates who choose to use the theme in their own campaigns?

OPINION

For the purposes of Minn. Stat. §§10A.27 and 10A.275, political party means the aggregate of the party organization within each house of the legislature, as well as the other kinds of party organizations listed in section 10A.27, subd. 4.

Advisory Opinion #96
Page two

July 13, 1987

The expenditures of a substate unit of a state political party on behalf of candidates of that party generally without referring to any of them specifically in any advertisement published, posted, or broadcast are not considered contributions to or expenditures on behalf of any candidate for the purposes of section 10A.25 or 10A.27 and must not be allocated to any candidates. Minn. Stat. §10A.275 (a).

In the opinion of the Board, the joint activities of the party organization within each house of the legislature that meet the standards imposed by section 10A.275 may be deemed to be within the exemptions provided by section 10A.275. For that reason, the use of a theme developed through the joint activities under section 10A.275 does not constitute a donation in kind, regardless of when the theme may be used by a candidate in an election campaign.

Should the proposed fund raise or spend over \$100, the fund would be required to establish and register a political committee with the Board within fourteen days, under Minn. Stat. §10A.14.

This opinion is limited to the specific circumstances outlined in this request. The Board finds the application of section 10A.27, subd. 4, and section 10A.275 to be conflicting and ambiguous and requests that the Legislature clarify the matter in order to guide political party substate units in the future.



STATE OF MINNESOTA
ETHICAL PRACTICES BOARD
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Issued to:

Dale G. Folstad, County Auditor
Director of Property Tax and Public Records
Hennepin County
A607 Government Center
Minneapolis, MN 55487-0067

Approved:

November 5, 1987

Re: Hennepin County Disclosure Law

Advisory Opinion #97

SUMMARY

97. Contributions to and payments from a separate fund to defray cost of an elected Hennepin County official's personal expenses associated with volunteer duties on behalf of the Minneapolis Aquatennial Association are not subject to the registration and reporting requirements of Minn. Stat. §§383B.041 to 383B.056 under certain conditions.

FACTS

You are the filing officer as defined in the Hennepin County Disclosure Law, Minn. Stat. §§383B.041 to 383B.056. A Hennepin County elected official, who is subject to the reporting requirement of Minn. Stat. §§383B.041 to 383B.056 and whose term expires in 1991, will shortly assume an office with the Minneapolis Aquatennial Association (the "Association"). The position is an unpaid, voluntary service for approximately one year with the Association, which is a nonprofit community organization to promote the city of Minneapolis and constituent groups by presenting an annual parade and related community festivities.

The official is asking if he can raise funds to help defray the cost of appreciable personal expenses and costs in connection with this position, none of which can be paid by the Association.

Under Minn. Stat. §383B.055, subd. 1 (b), you ask the Board to answer this question:

Does a fund established by a Hennepin County elected official to raise funds to help defray the cost of personal expenses arising out of the official's unpaid, voluntary duties with the Minneapolis Aquatennial Association constitute a "political fund" within the meaning of Minn. Stat. §383B.042, subd. 14, so as to require the fund's registration with the Hennepin County filing officer?

November 5, 1987

OPINION

A candidate for elective county office in Hennepin County must register a principal campaign committee within fourteen days after receiving contributions of more than \$100 or making expenditures of more than \$100 to influence the candidate's election. The committee registers with and reports to the Hennepin County filing officer. Minn. Stat. §383B.046.

A political fund must be established by an association other than a political committee which accumulates dues or voluntary contributions or expends funds for the purpose of influencing the outcome of any election. The political fund registers with and reports to the Hennepin County filing officer. Minn. Stat. §§383B.042, subd. 14; 383B.044; and 383B.046.

Contributions to a fund established by an elected county official for the purpose of defraying personal expenses associated with that official's unpaid, voluntary service to the Minneapolis Aquatennial Association are not contributions subject to the registration and reporting requirements of Minn. Stat. §§383B.041 to 383B.056, provided:

1. Written or oral solicitations for the fund do not contain reference to the elected official's office, to whether the official is running for election, or to the act of voting for the official as a candidate for election; and
2. Contributions to the fund are not commingled with the funds of the elected official's principal campaign committee.

In the opinion of the Board, a fund that meets the conditions described above would not be required to register with or report to the Hennepin County filing officer. State or federal laws that may apply to reporting requirements of the fund or of the elected official regarding receipts or disbursements from the fund are not within the jurisdiction of the Board.



STATE OF MINNESOTA
ETHICAL PRACTICES BOARD
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Issued to:

James Johnson, Treasurer
John Sarna Volunteer Committee, #1-0026-0158
2943 Cleveland St., N.E.
Minneapolis, MN 55418

Approved:

January 21, 1988

Re: Hennepin County Disclosure Law

Advisory Opinion #98

SUMMARY

98. In lieu of registration with the Hennepin County filing officer under Minn. Stat. §§383B.041 to 383B.058, a committee or fund registered with the Ethical Practices Board that makes contributions of more than \$100 in a calendar year to a Hennepin County-registered committee or fund may notify the recipient committee or fund of its registration with the Board and instruct the recipient committee or fund to include the notice when the recipient committee discloses receipt of the contribution.

FACTS

You are the treasurer of a state representative's principal computing committee (the "Committee") registered with and reporting to the Board under Minn. Stat. Ch. 10A since 1974. In 1987, the Committee made contributions to another state representative and to several Minneapolis school board candidates. The Committee and each recipient were required to report the Committee contribution under appropriate disclosure laws which differ as to the registration and reporting dates prescribed by the laws.

Under Minn. Stat. §383B.055, subd. 1 (b), you ask the Board to answer this question: Is the Committee required to register with and report to the Hennepin County filing officer as an "association" by virtue of its contributions to Minneapolis school board candidates, even though the Committee will be reporting these contributions on the periodic report of receipts and expenditures required by Minn. Stat. Ch. 10A?

OPINION

An Association of two or more persons, acting in concert, includes the Committee. Minn. Stat. §383B.042, subd. 3. The Committee is registered with the Board under Minn. Stat. §§10A.01, subds. 3, 5, 15; 10A.14; and 10A.19. When the Committee seeks to influence the outcome of a Minneapolis school board election, the Committee is subject to the registration and reporting requirements imposed at Minn. Stat. §§383B.046 and 393B.048.

Advisory Opinion #98
Page two

January 21, 1988

As a principal campaign committee registered with the Board, the Committee is required to file with the Board, on or before February 1, 1988, a single report of receipts and expenditures covering calendar year 1987. This report must include all Committee transactions during 1987, including contributions to other state candidates and to candidates for Minneapolis school board. Minn. Stat. §10A.20.

Mindful of the dual registration and reporting that occurred following enactment of the Hennepin County disclosure law in 1980, the Board established a policy in 1984 and then promulgated a rule in 1986 to address this matter. Minn. Rules pt.

4500.1600, subpt. 3. This rule provides an option for an association registered with the Hennepin County filing officer under Minn. Stat. §§383B.041 to 383B.058 in lieu of establishing dual registration with the Board and with Hennepin County. The rule permits a Hennepin County-registered association making contributions of more than \$100 in a calendar year to a Board-registered committee or fund to notify the recipient committee or fund that the donating committee is registered with Hennepin County. The recipient committee or fund is required to furnish this information when reporting receipt of the contribution in its next-following periodic report to the Board.

In the opinion of the Board, a Board-registered committee or fund, contributing more than \$100 in a calendar year to a Hennepin county-registered committee or fund should be permitted to notify the recipient committee or fund that the donating committee or fund is registered with the Board, in lieu of establishing dual registration-reporting with Hennepin County filing officer, under Minn. Stat. §§383B.046 and 383B.048.

For purposes of Minn. Stat. §10A.20, subd. 3 (j), the Committee must itemize the Committee transactions to the Minneapolis school board candidates, as well as to other state representatives, to whom aggregate transfers of more than \$100 were made in 1987, when filing the Committee's annual report of receipts and expenditures for 1987, on or before February 1, 1988. Total contributions and disbursements, including those itemized on Schedule B. of the reporting form, must be reported in accordance with Minn. Stat. §10A.20.

The Board finds that the registration requirements and reporting dates of Minn. Stat. §§383B.046 and 383B.048 are conflicting with respect to committees or funds registered with and reporting to the Board under Minn. Stat. Ch. 10A and requests that the Legislature clarify the matter in order to guide associations in the future.



STATE OF MINNESOTA
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Issued to:

Bruce D. Willis, Esq.
Popham, Haik, Schnobrich & Kaufman, Ltd.
3300 Piper Jaffray Tower
Minneapolis, MN 55402

Approved:

May 21, 1988

Re: Contribution Plan

Advisory Opinion #99

SUMMARY

99. An association's plan to submit to members a proposal to transfer a portion of a dues increase to the association's political fund is not within the jurisdiction of the Ethical Practices Board. Notice of certain protection provided by the Ethics in Government act to individuals or associations because of their political activity need not be printed on solicitations for contributions to a political committee or political fund.

FACTS

You are writing on behalf of the Minnesota State Bar Association (MSBA), a nonprofit corporation, and the Lawyers Public Affairs Commission (LAWPAC), a registered political fund of the MSBA. MSBA is considering a membership dues increase of \$3.00 or some similar nominal amount in the hope that the amount realized by the dues increase will be directed to LAW PAC. MSBA would transfer to LAW PAC only the amount of the dues increase paid by individual members from individual funds. The amount of the dues increase paid by judges or paid by corporations on behalf of MSBA members would not be transferred to LAW PAC.

Prior to effecting the dues increase, MSBA proposes to include an "advisory question" in the next MSBA dues statement asking all members to express their opinions regarding the proposal as described in your letter. You cite the Board's Advisory Opinion #86, approved January 12, 1984, regarding a contribution plan proposed by the Minnesota Trial Lawyers Political Action Committee (TRIAL-PAC), that the contribution system should offer all members the opportunity to affirmatively request that no transfer of a portion of dues to TRIAL-PAC be made. Additionally Advisory Opinion #86 required that each member be provided with notice of the provisions of Minn. Stat. §10A.20, subd. 11, which provides protection against economic reprisals against any person or association because of that person's or association's political contribution or political activity.

Advisory Opinion #99
Page two

May 21, 1988

You ask the Board to advise the MSBA, first, whether Chapter 10A requires the MSBA to give each member paying dues from individual funds, and only such member, the opportunity to respond to the "advisory question" or whether MSBA can allow all of its members to respond; and, second, whether notice about the provisions of Minn. Stat. §10A.20, subd. 11, must be printed on MSBA dues statements along with the advisory question.

OPINION

The MSBA proposal to submit an "advisory question" to members does not appear to fall within the jurisdiction of the Board.

Minn. Stat. Ch. 10A imposes certain recordkeeping and disclosure requirements upon a registered political fund at Sections 10A.12, 10A.13, and 10A.20. For example, Section 10A.13, subd. 1 requires the treasurer to keep an account of the name and address of each source of a transfer made to the fund in excess of \$20. Sections 10A.12, subd. 5, and 10A.20, subd. 3(b) require disclosure of transfers from the same source within the year which in aggregate exceed \$100. Should the only transfer to LAWPAC by a member be \$20 or less, no record of the name and address of the contributor need be maintained, and the amount transferred would be included in the sum of all contributions received that must be reported on each periodic report, under Section 10A.20.

In the opinion of the Board, Chapter 10A does not require that notice of Section 10A.20, subd. 11, must be printed on each solicitation for contributions to a political committee or political fund, however desirable that may be, depending upon the circumstances of the solicitation, the individual, or the association involved.

The Board points out that the conditions outlined in Advisory Opinion #86 were determined in response to the facts specific to the advisory opinion request as submitted to the Board, under Section 10A.02, subd. 11, which provides, in part, that "...applications for an advisory opinion may be made only by an individual or association who wishes to use the opinion to guide the individual's or the association's own conduct...." (emphasis added).



STATE OF MINNESOTA
ETHICAL PRACTICES BOARD
625 NORTH ROBERT STREET, SUITE 102
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PHONE: (612) 296-5148

Issued to:

Alan W. Weinblatt, Esq.
Weinblatt and Davis
Suite 1616, Pioneer Building
336 Robert Street
St. Paul, MN 55101

Approved:

December 29, 1988

Re: Public Financing

Advisory Opinion #100

SUMMARY

100. A candidate whose campaign spending is unlimited under conditions imposed by Laws of 1988, Chapter 707, Sections 2 and 4, and who certifies that the candidate made campaign expenditures equal to the full amount of the public financing received is not required to return any portion of the money received from the State Elections Campaign Fund under the aggregate contribution limit provisions of Minn. Stat. §10A.32, subd. 3.

FACTS

You are writing on behalf of legislative candidates about the effect of Laws of 1988, Chapter 707, Section 2, on the return of public financing, under Minn. Stat. §10A.32. It is your opinion that the legislature intended to make the expenditure limits irrelevant for all purposes in those instances where both sides did not voluntarily accept them. Additionally, you submit that Minn. Stat. § 10A.32, subd. 3 (a) is subject to the changes worked by reason of Laws of 1988, Chapter 707, Sections 2 and 4, because candidates are now eligible for state subsidies even though they will in fact exceed the expenditure limits in those instances where the expenditure limits of Minn. Stat. §10A.25 have been made inapplicable by the 1988 law.

You disagree with the Board's determination at its public meeting of October 4, 1988, that for the purpose of calculating the possible need to return public financing under a 1988 Public Financing Agreement, the statutory limit of \$18,597 applies to candidates whose campaign spending is unlimited under conditions imposed by the cited 1988 law.

You ask the Board to

1. suspend operation of its determination October 4, 1988, regarding the application of Minn. Stat. §10A.32, subd. 3 to candidates receiving public financing and qualifying for exemption from expenditure limits under the cited 1988 law; and
2. reconsider its October 4, 1988, interpretation at its next public meeting, November 29, 1988.

OPINION

The voluntary Public Financing Agreement that a candidate signs includes several conditions to which the candidate agrees in order to be eligible to receive money from taxpayer checkoffs to the State Elections Campaign Fund. Minn. Stat. §10A.32.

Limitations and conditions included in the voluntary Public Financing Agreement are prescribed by law. For example, a candidate who signed a Public Financing Agreement in 1988 and received money from the State Elections Campaign fund in 1988 may be required to return some or all of the public financing received when filing the principal campaign committee's report of receipts and expenditures for the period October 25 through December 31, 1988, on or before January 31, 1989. Minn. Stat. §10A.32.

Laws of 1988, Chapter 707, Sections 2 and 4, permits the waiver of one of these conditions, the limits on campaign expenditures, provided an opponent of the candidate does not sign the Agreement, but otherwise is eligible for a public subsidy. The law provides that if one candidate accepts the spending limits and an opponent of the candidate does not, the candidate who accepted the spending limits is no longer bound by the expenditure limits and will receive public financing.

The Board finds that the new law is unclear and ambiguous in regard to the application of the aggregate contribution limit imposed by Minn. Stat. §10A.32, subd. 3, to those candidates whose campaign expenditure limit is waived under the 1988 law cited above. The Board's initial construction of the new law involved a strict interpretation of the provisions. Subsequent written and oral testimony presented to the Board about the legislative intent of the new law conflicted with the Board's initial interpretation. In examining the legislative intent pursuant to Minn. Stat. §645.16, the Board considered the object to be attained by the 1988 law. The Board agrees that the new law provides a strong incentive to abide by spending limits. Candidates may be less likely to choose to ignore the spending limit if they realize that their opponents could receive public financing and have unlimited spending.

The Board accepts the legislative intent that a candidate in the unique situation provided by Laws of 1988, Chapter 707, would not be required to return any of the public subsidy received, provided the candidate certifies to having spent the full amount of the public subsidy for campaign expenditures as required by Minn. Stat. §10A.32, subd. 2. The Board requests that the Legislature review and clarify the pertinent statutes as soon as possible to remove the possible confusion about the cited 1988 law.



STATE OF MINNESOTA
ETHICAL PRACTICES BOARD
625 NORTH ROBERT STREET, SUITE 102
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PHONE: (612) 296-5148

Issued to:

Eric Sandrock
8696 Hillside Trail
Cottage Grove, MN 55016

Approved:

July 27, 1989

Re: Legal Defense Fund

Advisory Opinion #101

SUMMARY

101. Contributions to and payments from a legal defense fund established by a candidate are not subject to the registration and reporting requirements of Minn. Stat. Ch. 10A.

FACTS

You were a candidate for the office of state representative in the 1988 election. Your registered principal campaign committee continues to file periodic reports with the Board under Minn. Stat. Ch. 10A.

You owe a personal debt for legal services incurred in the successful defense of a charge brought against you under Minn. Stat. Ch. 211B in connection with your campaign for state representative in the 1988 election. You would like to use a legal defense fund separate from your principal campaign committee to help you pay this personal obligation.

You ask the Board to answer these questions:

1. May a legal defense fund be established separately from your principal campaign committee?
2. If a legal defense fund may be established separately from your principal campaign committee, what are the reporting obligations, if any, of such a legal defense fund?

OPINION

A candidate's payments for legal services are not campaign expenditures of that candidate. Minn. Stat. §10A.02, subd. 10c (a) (1988)

Contributions to a legal defense fund established by a candidate are not contributions subject to the registration and reporting requirements of Minn. Stat. Ch. 10A.



STATE OF MINNESOTA
ETHICAL PRACTICES BOARD
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PHONE: (612) 296-5148

Issued to:

Approved

The Honorable Howard Orenstein
521 State Office Building
St. Paul, MN 55155

August 24, 1989

RE: Campaign Finance Disclosure

ADVISORY OPINION #102

SUMMARY

102. The Ethics in Government Act, Minnesota Statutes Chapter 10A, provides for disclosure of the receipt and the expenditure, disbursement or transfer of funds in campaigns for state elective office. The Act does not expressly prohibit transfer of funds among candidate committees and appears to acknowledge the transfer procedures.

FACTS

You are a legislator who as a candidate for state representative established a principal campaign committee, Howard Orenstein Volunteer Committee, under Minn. Stat. §§10A.14 and 10A.19. Additionally, you have established a political committee, Friends of Howard Orenstein, under Minn. Stat. §10A.14, for which you are the registered chair and treasurer.

An amendment to an election bill was offered on the floor of the House of Representatives on May 15, 1989, which would have prohibited candidates from having separate political committees or political funds which bear the name of the candidate or the title of an office held by the candidate. During the debate on the amendment, questions were raised about the application of certain contribution or expenditure limits to the principal campaign committee of a candidate who had two or more committees or funds, each bearing the name of the candidate or the title of an office held by the candidate, and to any other candidate to whom the first candidate made contributions from any one of or all of the multiple entities.

You ask the Board to answer these questions:

1. Can a candidate (A) for the legislature, who has signed and filed a public financing agreement, avoid campaign expenditure limits by making donations to a legislative candidate (B) from a political committee or political fund established by A rather than from A's principal campaign committee?

Advisory Opinion #102
Page two

August 24, 1989

2. If A gave a donation to B from A's political committee or political fund and the amount of that donation, when aggregated with donations from A's principal campaign committee, did not exceed the applicable election year or nonelection year contribution limit, would A be using A's political committee or political fund to exceed any contribution limits in the law?
3. Does the law make any distinction, for purposes of the propriety of donations to legislative candidates or limits on such donations, between a donation from a political committee or political fund controlled by someone who happens to be a legislator as opposed to a donation from a political committee or political fund affiliated with a special interest group such as the National Rifle Association, the Minnesota Chamber of Commerce, or any other such group?
4. If A transfers funds to B from contributions received by A's principal campaign committee, does this practice constitute a conversion to A's personal use and not a legal expenditure under Minn. Stat. Chs. 10A and 211B?

OPINION

All disbursements made by a candidate's principal campaign committee for "campaign expenditures", as defined in Minn. Stat. §10A.01, subd. 10, count toward the applicable election year or nonelection year campaign expenditure limit, provided the candidate has signed and filed a public financing agreement that has not expired, under Minn. Stat. §10A.32. Disbursements or transfers made by that candidate's principal campaign committee for purposes other than "campaign expenditures" do not count toward the expenditure limit.

When the principal campaign committee of a candidate accepts contributions from a political committee or political fund established with the name of a candidate or the office held by that candidate, the contributions are subject separately to the campaign contribution limits imposed by Minn. Stat. §10A.27. Penalties for accepting contributions from any one of these sources that exceed the applicable contribution limit are imposed against the candidate accepting the contributions, under Minn. Stat. §§10A.27, 10A.28, and 10A.34.

Contribution limits cited above apply without distinction to contributions accepted by a candidate's principal campaign committee from individuals and from associations of two or more individuals who have established and registered a political committee, political fund, a principal campaign committee, or a political party unit, regardless of the name selected by association for the committee or fund.

In the opinion of the Board, the preceding paragraphs may be construed as providing a response of "no" to each of your first three questions.

In regard to your fourth question, the Board notes that potential violations of the "personal use" provisions of Minn. Stat. Ch. 211B are not within the jurisdiction assigned to the Board by the Legislature. In regard to the Ethics in Government Act, Minn. Stat. Ch. 10A, it is the Board's opinion that the Act does not expressly prohibit the transfer of funds from a principal campaign committee to other candidate committees, and, in fact, the Act appears to acknowledge the transfer procedures. Minn. Stat. §§10A.01, subs. 7, 7a; 10A.12; 10A.15, subs. 3, 3a; and 10A.20, subd. 3 (j), (k).



STATE OF MINNESOTA
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Issued to:

Bruce D. Willis, Esq.
Popham, Haik, Schnobrich & Kaufman, Ltd.
3300 Piper Jaffray Tower
Minneapolis, MN 55402

Approved:

October 26, 1989

RE: Campaign Finance Disclosure

ADVISORY OPINION #103

SUMMARY

103. The Board is concerned that the provisions of Minn. Stat. §10A.15, subd. 3b, are overly broad, confusing, and conflict internally with other provisions of the Ethics in Government Act, Minnesota Statutes Chapter 10A. Nevertheless, until amended by the Legislature, the cited statute requires that contributions received by a candidate from individuals who participate in any way with a political committee or political fund that is organized primarily to solicit or direct the contributions of its members and to influence the nomination or election of a candidate are attributable to that committee or fund and must count toward the contribution limits of that committee or fund specified in Minn. Stat. §10A.27.

FACTS

You are an attorney representing individual, unrelated persons who propose to undertake the following: recruit approximately ten volunteers, each of whom would become a member of a different Minnesota House candidate's volunteer committee (Group A). The persons recruited would provide political advice to the respective volunteer committees and would assist in fundraising.

Your clients further propose to recruit a second group of persons interested in volunteering their time, talent, or financial resources to an appropriate House candidate or to appropriate House candidates (Group B). Each of the members of Group B would authorize your clients to forward their name to one or more members of Group A, so that they may be contacted either by members of Group A or by other representatives of the respective candidates in order to learn about the candidates' positions on issues, the progress of their campaigns, and volunteer options available in the event that they decide to support any such candidates, which obviously may include financial contributions.

Your clients also propose to host a fundraising event on behalf of one or more Minnesota House candidates.

All of the activities proposed would be completely volunteer. No paid staff of any kind would be used.

You point out that, Minn. Stat. §10A.01, subd. 3, provides: "Association" means 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" [sic], and Minn. Stat. §10A.01, subd. 15, provides that: "Political committee" means any association as defined in subdivision 3, whose major purpose is to influence the nomination or election of a candidate ..."

You further note that, Minn. Stat. §10A.15, subd. 3b, provides:

Contributions made to a candidate or principal campaign committee by individual members of a political fund or committee that are solicited by the political fund or committee must be reported as attributable to the political fund or committee and count toward the contribution limits of that fund or committee specified in section 10A.27, if the political fund or committee was organized primarily to solicit the contributions of its members and to influence the nomination or election of a candidate. The term "individual members" as used in this subdivision means a person or entity who in any manner participates in or in any manner contributes financially or otherwise to the activities of the political fund or committee.

Finally, you note that Minn. Stat. §10A.01, subd. 7, inter alia, provides: "Contribution does not include services provided without compensation by an individual volunteering personal time on behalf of a candidate"

You ask the Board to answer these questions:

1. If the course of action first described above is undertaken, have your clients created a "political committee," within the meaning of Minn. Stat. §10A.01, subd. 15?
2. If the answer to question 1 is yes:
 - (a) Who are the members of the political committee?
 - (b) Is the political committee required to register with the Ethical Practices Board, even though any financial contributions would be made directly by the giver to a candidate committee?
 - (c) Does Minn. Stat. §10A.15, subd. 3b, then limit financial contributions from all members of the two groups of volunteers to a particular House candidate to \$150 during 1989 and \$750 during 1990? That is, even though none of the volunteers would contribute financially to the activities of the political committee, have they "in any way" contributed "otherwise" to such activities by allowing their names to be forwarded to candidate committees, volunteering time on behalf of such committees, or making financial contribution to such committees, thereby becoming "individual members" of the political committee?
 - (d) Would an individual recruited by your clients to perform purely volunteer services for a House candidate's committee become an "individual member" of the political committee, pursuant to Minn. Stat. §10A.15, subd. 3b (by "in any way" contributing "otherwise" to the activities of the political committee), despite the fact that such services are excluded from the definition of "contribution" contained in Minn. Stat. §10A.01, subd. 7?
 - (e) Would it make a difference if any candidate committee requests for financial contributions from members of Group B came from committee representatives other than the members of Group A attached to such committees?

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- (f) If a member of Group A attached to a particular candidate's committee solicited contributions from person other than members of Group B, would those contributions also be subject to the same single contribution limit under Minn. Stat. §10A.15, subd. 3b, if Group A members are deemed to be members of a political committee, on the theory that such contributors are "in any way" contributing to the activities of the political committee by responding to fundraising requests?
3. If your clients arrange a fundraiser for one or more House candidates, have they thereby created a "political committee," within the meaning of Minn. Stat. §10A.01, subd. 15?
4. If the answer to question 3 is yes:
- (a) Who are the members of the political committee?
 - (b) Does the political committee have to register with the Ethical Practices Board even though contributions would be made directly to candidate committees by those in attendance?
 - (c) Do the provisions of Minn. Stat. §10A.15, subd. 3b, limit the cumulative amount that a single House candidate may receive from all of those who attend the fundraiser to \$150 during 1989 and \$750 during 1990? That is, since the fundraiser is designed to solicit contributions, does attendance at the fundraiser constitute "in any way" contributing "otherwise" to the activities of the committee, so that all of those in attendance become "individual members" and are forever thereafter subject to a single contribution limitation?
5. Would the Board's response to any of the foregoing questions be different if only one of your clients recruits volunteers or arranges a fundraiser?

OPINION

"Contribution", as defined in Minn. Stat. Ch. 10A, does not include "services provided without compensation by an individual volunteering personal time on behalf of a candidate, ... political committee or political fund" or an "independent expenditure". Minn. Stat. §10A.01, subds. 7 and 10b.

The clients on whose behalf the Board's opinion is requested constitute a third group. To avoid confusion, in this opinion the third group is referred to as "Group X". Group X is the clients who propose to recruit ten volunteers (Group A) and who further propose to recruit a second group of volunteers (Group B).

With this clarification, the Board responds to the questions posed, as follows:

1. Yes, the activities of Group X would require registration of a political committee within 14 days after X raises or spends more than \$100 in its efforts. Minn. Stat. §§10A.01, subds. 3, 15; 10A.14.
2. (a) Groups X, A, and B are members of the political committee that Group X might register. Minn. Stat. §10A.15, subd. 3b.
- (b) Yes, Group X must register a political committee if it raises or spends more than \$100 in its efforts. Minn. Stat. §§10A.14 and 10A.15, subd. 3b
- (c) Yes, the candidate must not accept total contributions from the political committee registered by Group X and from "individual members" of Group X, Group A, and Group B, together, that exceed the single \$150 nonelection year limit or the \$750 election year limit, under Sec. 10A.27, subd. 1 (e). Minn. Stat. § 10A.15, subd. 3b

(d) Yes, an individual recruited by Group X becomes an "individual member" of Group X's political committee, even though the individual performs purely volunteer services for a candidate's committee. Since the definition of "individual member" contained in Sec. 10A.15, subd. 3b, was enacted more recently than the definition of "contribution" contained in Sec. 10A.01, subd. 7, and is more specific, the more recent statute governs in the application of Sec. 10A.15, subd. 3b, to the volunteer services performed for a candidate by an individual recruited by Group X. Minn. Stat. §645.26, subd. 1.

(e) No, Group B's participation "in any way" with Group X governs in the application of Sec. 10A.15, subd. 3b, to the contributions from members of Group B received by the candidate.

(f) Yes, the fact that the contributions were solicited by Group A governs in the application of Sec. 10A.15, subd. 3b, to the contributions received by the candidate from persons other than members of Group B.

3. Yes, an association of two or more individuals, as described in this request, that arranges a fundraiser for one or more candidates, must register a political committee if the association raises or spends more than \$100 in the endeavor. However, if the association has registered a political committee as the result of other activities, then the receipts and expenditures pertaining to the fundraiser must be reported by the registered committee in accordance with Sec. 10A.20.

4. (a) The members of Group X and any individuals who "in any way" participate in the fundraiser become "members of the political committee" established by Group X, provided the committee was "organized primarily to solicit or direct the contributions of its members and to influence the nomination or election of a candidate". Minn. Stat. §10A.15, subd. 3b.

(b) Yes; please see responses to Questions #1 and #3, above.

(c) Yes, those individuals in attendance at the fundraiser held by Group X become "individual members", provided the conditions described in the response to (a), immediately above, are met. Until termination of the committee registered by Group X, under Sec. 10A.24, the provisions of Sec. 10A.15, subd. 3b, apply to contributions made by Group X and by the individual members of Group X's political committee.

5. No. In the opinion of the Board, the acts of recruiting volunteers or of arranging a fundraiser involve more than one individual, regardless of the fact that one individual may initiate the activity. When even one other, unrelated individual responds to an individual's request by serving as a volunteer on behalf of a candidate or by participating in a fundraiser, the two individuals are an "association", as defined in Sec. 10A.01, subd. 3, and subject to the registration and reporting requirements of Ch. 10A, including Secs. 10A.14; 10A.15, subd. 3b; and 10A.20.

The Board notes that if the activities described in questions No. 1 through No. 4 were "independent expenditures", within the definition at Minn. Stat. §10A.01, subd. 10B, and conducted as required by Minn. Stat. §10A.17, subd. 4, then the provisions of Sec. 10A.15, subd. 3b, would not apply. Minn. Stat. §10A.27, subd. 5.

The Board concludes that since volunteer services are excluded from the definition of "contribution" at Sec. 10A.01, subd. 7, "volunteer services" should be excluded from the definition of "individual members" for purposes of determining the application of Sec. 10A.15, subd. 3b, to contribution limits specified in Sec. 10A.27.

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The Board finds the provisions of Sec. 10A.15, subd. 3b, to be overly broad, confusing, and conflicting internally with other provisions of Chapter 10A. The Board is concerned that the opportunity for inadvertent violations of the cited section may create a chilling effect on the freedom of speech and association inherent in political campaign activities under the Ethics in Government Act. The Board strongly urges the Legislature to clarify the application of the provisions of Sec. 10A.15, subd. 3b, in order to guide the conduct of individuals and associations in the 1990 election.



STATE OF MINNESOTA
ETHICAL PRACTICES BOARD
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Issued to:

The Honorable Joe Bertram, Sr.
State Senator
323 State Capitol
St. Paul, MN 55155

Approved:

March 30, 1990

RE: Acquisition and Disposition of Committee Asset

ADVISORY OPINION #104

SUMMARY

104. Donations-in-kind by a candidate to the candidate's principal campaign committee or payments by the candidate's principal campaign committee to lease or purchase a telephone for the candidate's automobile are reportable as campaign expenditures. Disposition of a committee asset must be at fair market value.

FACTS

You are a state senator who plans to run for election in 1990. You state that you need to install a telephone in your automobile during your campaign for the Senate in 1990.

You state that the options available to you are to lease a telephone during the campaign months in 1990 or to purchase the telephone.

You ask the Board to answer the following questions:

1. Would there be any ethical problems with either of these arrangements?
2. What is the proper disposition of a purchased telephone after election when it is no longer used for campaign purposes?

OPINION

A candidate who plans to expend resources for the purpose of influencing the candidate's nomination or election must determine whether the expenditure will be made from the candidate's own personal funds or from money deposited in the candidate's principal campaign committee depository.

If you spend your own money to purchase or lease a telephone in your automobile for the purpose of your campaign for the Senate in 1990, the amount spent is a donation-in-kind that must be approved by your committee treasurer beforehand. Minn. Stat. §§ 10A.01, subd. 10a, and 10A.17. Your treasurer must itemize your contribution and allocate the amount of the contribution as an in-kind campaign expenditure on the applicable periodic reports for 1990. Minn. Stat. § 10A.20. While there is no

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limit upon the amount that a candidate may contribute to the candidate's own campaign, the candidate's contributions are included in the aggregate contributions imposed by certain provisions of the public financing law. Minn. Stat. §§ 10A.27, subd. 5, and 10A.32, subd. 3.

If your principal campaign committee spends money from its depository to purchase or or lease a telephone in your automobile for the purpose of your campaign for the Senate in 1990, your treasurer must itemize the campaign expenditure and include the amount in total campaign expenditures on the applicable periodic reports for 1990. Minn. Stat. §§ 10A.02, subd. 10, and 10A.20.

The treasurer of a principal campaign committee must follow the recordkeeping and disclosure provisions imposed by Minn. Stat. Ch. 10A when receiving money into the committee depository, authorizing approved expenditures, or reporting on the committee's receipts and expenditures.

It is the opinion of the Board that a telephone or other capital good purchased by a principal campaign committee is to be counted among the "assets" of the committee, within the meaning of Minn. Stat. § 10A.24. A principal campaign committee may terminate its registration with the Board when it has "disposed of all its assets in excess of \$100 and filed a termination report with the Board". Minn. Stat. § 10A.24 (1988).

Items purchased by a principal campaign committee are among the assets of the committee. A committee may dispose of an asset. Any such disposition must be at fair market value.

This opinion addresses the provisions of Minn. Stat. Ch. 10A that appear to relate to your questions. Additional information may be found in Minn. Stat. Ch. 211B, the fair campaign practices act, regarding "legal expenditures" of funds collected for political purposes. Minn. Stat. Ch. 211B is not within the Board's jurisdiction, and, therefore, the Board is not authorized to interpret the requirements under that law.