ADVISORY OPINIONS

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

July 1, 1997 - June 30, 1998

Numbers 273 - 292, 294

JUNE 30, 1998

MINNESOTA CAMPAIGN FINANCE & PUBLIC DISCLOSURE BOARD
First Floor South, Centennial Building
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ABOUT ADVISORY OPINIONS

- The Campaign Finance & Public Disclosure Board is authorized to issue advisory opinions on the requirements of the Ethics in Government Act, Minn. Stat. Ch. 10A, enacted in 1974 (see Minn. Stat. § 10A.02, subd. 12), and the Hennepin County Disclosure Law (see Minn. Stat. § 383B.055). Individuals or associations may ask for advisory opinions about these laws to guide their actions in compliance with Minn. Stat. Ch. 10A and Minn. Stats. §§ 383B.041 - 383B.058.

- Effective August 1, 1994:
  A written advisory opinion issued by the Board is binding on the Board in any subsequent Board proceeding concerning the person making or covered by the request and is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless:
  ..the Board has amended or revoked the opinion before the initiating of the Board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion;
  ..the request has omitted or misstated material facts; or
  ..the person making or covered by the request has not acted in good faith in reliance on the opinion.

- A request for an advisory opinion is nonpublic data and the advisory opinion to the requester is nonpublic data. The Board may publish an opinion that does not include the name of the requester or other identifying information unless the requester consents to the inclusion. The Board provides Consent for Release of Information forms to requesters. If the requester files a Consent form, the Board seeks public comment on the request before action is taken by the Board. Advisory opinion requests are discussed in meetings open to the public.

ABOUT THE BOARD

Mission Statement

- To promote public confidence in state government decision making through development and administration of disclosure, public financing, and enforcement programs which will ensure public access to information filed with the Board.

Members

- Six-member citizen body;
- Appointed by the governor; confirmed by a 3/5th vote of both houses of the legislature;
- One former legislator of each major party;
- Two individuals who have not been public officials, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding appointment to the Board;
- No more than three members of the Board shall support the same political party;
- No member of the Board may currently serve as a lobbyist.

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THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: October 13, 1997

RE: Gift to members of a group of conference receptions or meals

ADVISORY OPINION # 273

SUMMARY

Gift of meal or reception by lobbyist principal to all members of a membership organization may be exempt from gift prohibition if each criteria for application of Minn. Stat. § 10A.071, subd. 3(b)(1), is met.

FACTS

You are an official, as defined in Minn. Stat. § 10A.071, and ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. The State of Minnesota (the State) has purchased a membership in certain national organizations. By virtue of the State's membership, all officials in your position are individual members of the organizations.

2. You are also a member of the leadership body of each of these organizations. In one case, you were appointed to this position by the governmental unit in which you serve. In the other case, you were elected to your position by the membership of the organization.

3. The organizations each hold periodic meetings of their leadership bodies and conferences for their entire membership.

4. Leadership meetings may include receptions and dinners that are paid for in part either directly or indirectly by businesses and corporations which include lobbyist principals as defined in Minnesota Statutes, § 10A.01, subd. 28. These receptions and dinners are not open to the entire organization membership.

5. The organizations' member conferences may also include receptions or dinners that are paid for in part either directly or indirectly by lobbyist principals. These conference receptions or dinners are part the conference program and are included in the conference registration fee. They are open to all conference attendees, which include members of the sponsoring organization as well as some persons who are not members.

6. As a result of the payments by lobbyist principals, members of the organizations' leadership may not be required to pay for receptions or dinners associated with meetings of the leadership. As a further result of these payments, conference registration fees for all participants are less than would be required if the lobbyist principals did not participate.

7. Minnesota "officials", as defined in Minn. Stat. § 10A.071, subd. 1(c), do not comprise a majority of the leadership body or of the full membership of either organization.

ISSUE

Do dinners and receptions paid for in part by lobbyist principals at a conference or meeting as described in the facts fall within an exception to the Minn. Stat. § 10A.071 prohibition on gifts from lobbyist principals to officials?

OPINION

Yes. The gift of dinners or receptions as described in the facts falls within the exception provided in Minn. Stat. § 10A.071, subd. 3(b)(1), which is cited in full at the end of this opinion.

Generally, meals or receptions for Minnesota "officials" paid for in part with contributions from lobbyist principals are prohibited gifts. However, certain exceptions may remove a gift from the prohibition. The Board considers both the leadership body dinners or receptions and those dinners or receptions which are a part of the organizations' general membership conferences to fall within the exception for gifts given because of the recipient's membership in a group.

For the purposes of this request, the Board considers two possible groups. The first is the group which consists of the membership of the organization as a whole. The second is the group which consists of the leadership of each organization.

In Advisory Opinion 220, the Board stated that to constitute "membership in a group" within the meaning of the subd. 3(b)(1) exception, a certain level of formality in both the element of membership and the definition of the group is required. Those requirements are met with respect to both groups considered in this opinion.

Membership in the organizations is accomplished through the formality of the State becoming a member of the organization and the individual being one of the designated officials who is entitled to membership. Likewise, the leadership body of each organization consists of a defined group of positions, to which individuals are elected or appointed through a formal process. The leadership body has particular duties and obligations distinct from the duties and obligations of the general membership.

For the statutory exception to be applicable, an equivalent gift must be given to all members of the group. Making the gift available to all members of the group is sufficient to meet this requirement even if some members of the group do not accept it.

Under the facts of this opinion, the meals and receptions under consideration are available to all members of each group because they are a part of the organization's leadership body meeting or conference program and thus are offered to all members of the subject group.

This opinion does not apply to activities which are not a part of the leadership meeting or conference program, such as gifts of meals, side trips, or hospitality rooms made available to specific individuals or sub-groups attending conferences.

The final requirement of the exception is that a majority of the members in the group not be "officials" as defined in §10A.071. "Officials" include Minnesota public officials, local officials of Minnesota metropolitan governmental units, and Minnesota legislative employees. In the case of each group considered here, such "officials" constitute a minority of the group's membership.

Previous Opinions

Finally, the Board considers the conclusions reached in this opinion in relation to a number of its previous opinions. While advisory opinions do not set precedent, the Board recognizes that interested persons often seek understanding of the Board's interpretation by examining past Board opinions. Because this opinion stands in contrast to certain other opinions, the Board wishes to acknowledge that this opinion represents an evolution in Board interpretation of the "membership in a group" exception to the general prohibition on gifts to officials.

In Advisory Opinion 173, when considering a similar fact situation, the Board stated that being a member of the Executive Committee of the National Conference of State Legislatures did not constitute being a member of a group within the meaning of Minn. Stat. § 10A.071. This opinion signifies an abandonment of the result reached in Opinion 173.

In Opinion 175, the Board concluded that reduced conference fees due to lobbyist principal contributions to the sponsoring organization resulted in a prohibited gift. The Board concluded that being an attendee at a conference similar to those described in this request did not constitute being a member of a group. The analysis in the current opinion delves further into the definition of membership in a group and would result in an opposite conclusion if the request resulting in Opinion 175 was considered again.

In Opinion 179, the Board addressed a similar question, but the "group" under consideration was not one of those considered today. Re-examination of the facts in Opinion 179 could result in a different conclusion based on the reasoning we follow in this opinion.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: September 26, 1997

RE: **Definition of "opponent" for application of Minn. Stat. § 10A.25, subd. 10, releasing candidates from expenditure limits in certain situations.**

ADVISORY OPINION # 274

SUMMARY

"Opponent", as used in Minn. Stat. § 10A.25, subd. 10, means a candidate's opponents in a general election. The Board will notify an affected candidate when it becomes aware that the candidate is released from the expenditure limit as a result of the application of Minn. Stat. § 10A.25, subd. 10.

FACTS

As the representative of a candidate with a principal campaign committee registered with the Campaign Finance and Public Disclosure Board (Board), you ask the Board for an advisory opinion based on the following facts:

1. Several candidates of various parties are seeking nomination to the office sought by the candidate you represent.

2. Some of the candidates for this office have not yet entered into public subsidy agreements with the Board. The deadline for signing and filing such agreements is September 1, 1998. Candidates who have not yet signed a public subsidy agreement may include candidates of the same party as the candidate you represent as well as those with a different party affiliation.

3. You are aware that Minn. Stat. § 10A.25, subd. 10, provides certain circumstances under which a candidate who has signed a public subsidy agreement is released from the limit on campaign expenditures based on specified levels of contributions received or campaign expenditures made by an opponent who has not signed a public subsidy agreement.

4. You believe that the primary election for the subject office will be vigorously contested. You expect that in the primary some candidate who has not entered into a public subsidy agreement with the Board will receive contributions or make campaign expenditures at the levels stated in § 10A.25, subd. 10.

5. You ask the Board to interpret Minn. Stat. § 10A.25, subd. 10, with respect to the definition of a candidate's "opponent".

ISSUE ONE

Who is an "opponent" of a candidate for the purpose Minn. Stat. § 10A.25, subd. 10, which provides for the release of a candidate from expenditure limits based on specified actions of the opponent?

OPINION

"Opponent" as used in Minn. Stat. § 10A.25, subd. 10, refers to a candidate's general election opponent.

In reaching this conclusion, the Board begins by reviewing the common meaning of the word "opponent". Dictionaries define "opponent" as one who takes an opposite position, as in a contest. In the context of election campaigns, the Board concludes that the common meaning of "opponent" is a candidate seeking the same result as another in an election, where only one can prevail.

The common meaning of "opponent" limits the Board's consideration to two groups of possible opponents: (1) candidates for the same office in a general election and (2) candidates seeking the same party nomination in a primary election. Within each of these groups, only one candidate will prevail.

The common meaning of "opponent" precludes its application to candidates of <u>different</u> parties in a primary election, since they do not seek the same result, which is a to be the candidate of a particular party on the general election ballot.

Because both general election candidates and same-party primary election candidates are opponents in the general sense of the word, the Board must consider whether each possible interpretation yields a result consistent with the purpose of the statute.

Minn. Stat. § 10A.25, subd. 10, releases certain candidates from their expenditure limits based on fundraising or spending by an opponent who did not agree to the expenditure limit. The principal effect, and the presumed purpose, of Minn. Stat. § 10A.25, subd. 10, is to maintain a parity of expenditure limits between opponents, thus ensuring that candidates who originally agreed to limit expenditures are not at a financial disadvantage to those opponents who did not.

It is with this purpose in mind that the Board considers the effect of the two possible interpretations of "opponent".

The case for interpreting "opponent" to mean other candidates for the same office in a general election is clear. The common meaning of the word is not distorted by such an interpretation nor is a result reached which would be inconsistent with the purpose of the statute. If the conduct of one general election candidate meets the requirements of Minn. Stat. § 10A.25, subd. 10, it is necessary to release the other general election candidates from their limits in order to maintain parity in expenditure limits and prevent a single candidate from having a substantial financial advantage over the others.

The Board concludes that "opponent" as used in Minn. Stat. § 10A.25, subd. 10, includes opposing candidates in a general election. However, this conclusion leaves open the question of whether "opponent" should also be interpreted to include candidates of the same party in a primary election.

Under this second possible interpretation, if the conduct of one primary election candidate meets the requirements of Minn. Stat. § 10A.25, subd. 10, the other candidates of the same party would be

released from their expenditure limits. This result appears consistent with the purpose of the statute when examined at the primary election stage. However, possible unintended consequences, completely inconsistent with the statute's purpose, become obvious when the subsequent general election is considered.

If the primary election winner originally agreed to be bound by the expenditure limit, but was released before the primary under §10A.25, subd. 10, that candidate would proceed to the general election with no expenditure limit. However, that fact would not release other candidates in the general election from their expenditure limits.

Minn. Stat. § 10A.25, subd. 10, provides for a release from expenditure limits based on the actions of another candidate "who does not agree to be bound by the limits". The release is not triggered by an opponent who did agree to be bound by the limits but was later released.

The end result of this scenario would be a general election in which all candidates originally agreed to expenditure limits, but in which one was released from those limits by the conduct of a candidate no longer in the contest. The goal of parity in expenditure limits would be defeated and a situation which is fundamentally unfair would be established. Based on the possible unintended consequences of this interpretation, the Board concludes that "opponent" as used in Minn. Stat. § 10A.25, subd. 10, does not include candidates of the same party in a primary election.

ISSUE TWO

How does a candidate know if the candidate is released from the expenditure limit under Minn. Stat. § 10A.25, subd. 10?

OPINION

The Board will notify those candidates released as a result of an opponent's actions under Minn. Stat. § 10A.25, subd. 10(a)(1). This provision relates to an opponent's fundraising and spending up to 10 days before the primary election. In determining fundraising and spending levels, the Board will rely on the pre-primary election Reports of Receipts and Expenditures and 48-hour notices of large contributions filed with the Board.

The Board recognizes that these sources of information are not sufficient to disclose every case in which a release under subd. 10(a)(1) should occur. This insufficiency results from the fact that the release is based on fundraising or spending up to 10 days before the primary election. Pre-primary election Reports are due 15 days before the primary and will include expenditures only through the period 22 days before the primary. 48-hour notices filed after the pre-primary election Reports disclose only large donations; they do not disclose small donations or any expenditures.

For races which do not have contested primaries, the Board's notice of release will be mailed approximately September 4, 1998, which is the date by which all public subsidy agreements should be filed with the Board. (Public subsidy agreements are due by September 1, 1998, but may be filed by mail, necessitating a delay before the Board can make a determination of which candidates have not agreed to expenditure limits.)

For races which have contested primaries, the Board's notice of release will be mailed approximately one day after certification of the primary election results.

A release from expenditure limits based on the notice provided for in Minn. Stat. § 10A.25, subd. 10(b), which governs releases later than 10 days before the primary election, is effective upon receipt of a bona fide notice by the candidates to whom it is applicable. The Board will notify affected candidates when it receives such a notice.

In the event a candidate believes that a release from expenditure limits has been triggered by Minn. Stat. §10A.25, subd. 1(a)(1), and the Board has not notified the candidate of that fact, the candidate may request the Board's Executive Director to review the facts and issue a notice of release if appropriate. Subject to the deadlines discussed above, the Executive Director will respond to such a request by the end of the second business day following the day of the request.

A candidate may rely on a notice of release provided by the Board.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: September 26, 1997

RE: Definition of constituent services

ADVISORY OPINION 275

SUMMARY

The cost of signs advertising a legislator's status as an official, name, and telephone number must be reported as campaign expenditures.

FACTS

You are a member of the House of Representatives and ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. You are considering putting up signs in your district to advertise your office number.

2. You expect the text of the signs to read: "Legislative Questions? Contact State Representative - ---", followed by your name and telephone number.

3. You may also advertise the availability of Capitol tours. Those signs would also include your designation as a state representative along with your name and telephone number.

ISSUE

May the cost of the described signs be reported on your Report of Receipts and Expenditures as noncampaign disbursements for constituent services?

OPINION

No. The cost of the described signs must be reported as campaign expenditures.

Payments made by a candidate's principal campaign committee are generally reported as campaign expenditures. Minn. Stat. § 10A.01, subd. 10. Noncampaign disbursements, defined in Minn. Stat. § 10A.01, subd. 10c, are exceptions to this rule.

Constituent services, one of the noncampaign disbursements, are defined as follows:

> **Services for a constituent; constituent services.** "Services for a constituent" or "constituent services" means services performed or provided by an incumbent legislator or constitutional officer for the benefit of one or more residents of the official's district, but does not include gifts, congratulatory advertisements, charitable contributions, or similar expenditures. Minn. Rules 4503.0100, subp. 6.

Based on this definition and on the fact that an exception to the general principle is to be interpreted narrowly, the Board concludes that advertising your availability to answer questions is not the provision of a constituent service. However, it is possible that actual costs of assisting constituents who call as a result of these advertisements would be noncampaign disbursements for constituent services.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: September 26, 1997

RE: Consideration for transaction which would otherwise be a prohibited gift

ADVISORY OPINION 276

SUMMARY

Payment of consideration of equal or greater value for food and lodging removes the benefit from the definition of a gift under Minn. Stat. § 10A.071.

FACTS

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

1. The association you represent is a lobbyist principal which is interested in bills before the Minnesota legislature relating to a construction project.

2. Certain legislators may wish to conduct on-sight inspections of the subject of the construction project. You state that the purpose of the on-site observation would be to gain knowledge that can only be obtained through first hand viewing. The only practical way to view the subject of the project is by arranging an inspection trip with third parties. Your association will request these third parties to make inspection trips available.

3. The inspection trip trip is not available to the general tourist public, but is available to individuals having a business reason for taking the trip. For example, the trip has been made available to various magazine, newspaper, and radio reporters, and to certain federal officials and employees.

4. The third party providers have established rates for food and lodging during business related trips such as the one under consideration. Participants will be required to pay their food and lodging at these rates.

ISSUE ONE

Is the trip, as described in the facts, excluded from the definition of a gift under Minn. Stat. § 10A.071 based on the consideration to be paid for it?

OPINION

The trip, arranged by a lobbyist principal and taken by a public official, is a prohibited gift unless consideration of equal or greater value is paid by the official.

The trip is primarily educational and does not appear to include significant pleasure or entertainment value. The provision of transportation to the site is necessary to accomplish the inspection, but otherwise has negligible value. Thus, the value of the gift, for Minn. Stat. § 10A.071 purposes, is the value of the meals and lodging provided. It is this value on which the determination of adequate consideration must be based.

In a situation where operators limit the category of guests they will accept and also determine how much a guest must pay, the established price does not necessarily reflect the value of the food and lodging provided. Thus, the room and board rates set by operators may not be used as the sole basis for establishing the actual value of the meals and lodging provided.

In a similar situation, involving use of a corporate aircraft, the Board concluded that the value of the transportation should be determined based on the cost of commercial transportation of similar quality (Advisory Opinion 188). That reasoning is applicable to the present request.

One reasonable means of determining the value of the meals and lodging, for Minn. Stat. § 10A.071 purposes, is to base the value on the cost of meals and lodging of similar quality and quantity which could be purchased by a member of the public in commercial establishments.

ISSUE TWO

If consideration of equal or greater value is not paid, does the gift, nevertheless, fall within any exception to the general prohibition of gifts under Minn. Stat. § 10A.071?

OPINION

No. The only possible exception relevant to this gift is that of Minn. Stat. § 10A.071, subd. 3(a)(2), for services to assist an official in the performance of official duties. However, the Board does not consider the provision of food and beverages or lodging to be a service. Thus, the services exception is not applicable to the gift under consideration.

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requester

Issued: October 31, 1997

Issued to: The Honorable Ken Wolf
State Representative, District 41B
13319 Morgan Avenue South
Burnsville, MN 55337

RE: Gift of travel and lodging; use of principal campaign committee funds

ADVISORY OPINION 277

SUMMARY

A gift from a lobbyist principal of travel and lodging, even when passed through a non-lobbyist entity, is prohibited. Costs of attending the described meeting, which is directly related to legislative duties, are expenses of serving in public office. Such costs are noncampaign disbursements for which principal campaign committee funds may be used.

FACTS

You ask the Campaign Finance and Public Disclosure Board (the "Board") for an advisory opinion based on the following facts:

1. You are a state legislator, and thus a public official as defined in Minn. Stat. § 10A.071. In the legislature, you serve on the House Regulated Industries Committee.

2. You are also a member of the American Legislative Exchange Council (ALEC), which is a national organization for state legislators and others interested in state legislation. In order to become a member of ALEC, you applied to the organization and paid a membership fee.

3. You serve on ALEC's Telecommunications and Information Technology Task Force (the Task Force). This is one of several standing task forces which ALEC maintains. To become a member of the Task Force, you indicated your interest and were appointed by the National Chair of ALEC. No single state may have more than three legislators on the same task force. However, as a practical matter, anyone wanting to be on a particular task force gets appointed.

4. In addition to the legislators who comprise the public members of the Task Force, there are 12 corporate members representing various telecommunications and information technology industries. Approximately half of the corporate Task Force members are Minnesota Lobbyist Principals.

5. The Task Force budget is provided by an annual $5,000 dues assessment paid by each corporate member of the Task Force.

6. The Task Force holds periodic meetings, some of which are associated with conferences, which are open to all Task Force members. The Task Force offers to pay for the transportation, lodging and any conference costs for its public (legislative) members attending these meetings. The Task Force does not offer to pay for the same costs for representatives of its corporate members who attend the meetings.

7. You attend the meetings to keep yourself informed concerning federal regulations and national trends in regulated industries. The information you obtain is valuable to you in helping set policy for Minnesota; something that is a part of your responsibility as a member of the House Regulated Industries Committee. You attend these meetings solely to help you perform your duties as a legislator.

8. In the past you have used your own personal funds to pay for the expenses of attending these meetings.

You ask whether you may accept payment of travel, lodging, and conference costs from the Task Force consistent with the general gift prohibitions of Minn. Stat. § 10A.071. You also ask whether you may use principal campaign committee funds to pay these expenses.

ISSUE ONE

Is the payment of an official's travel, lodging, and conference costs under the described facts prohibited by Minn. Stat. § 10A.071?

OPINION

Yes, the payment of travel, lodging, and conference costs you describe results in a prohibited gift from a lobbyist principal.

The Task Force's budget is provided by corporations in the form of dues payments. Many of these corporations are lobbyist principals as defined in Minn. Stat. § 10A.01, subd. 28. The lobbyist principals provide these operating funds with the knowledge and intention that they will be used to benefit legislators, some of whom may be officials as defined in Minn. Stat. § 10A.01, Subd. 1(c).

Minn. Rules. part 4512.0300 provides that a gift is given by the association paying for the gift. The payment of dues to ALEC, coupled with the knowledge that the funds may subsequently be used to benefit officials, constitutes paying for the gift within the meaning of this rule. The fact that the corporate money is passed through ALEC, a conduit for the gift, does not isolate the corporations from their status as givers. Thus, the gift is prohibited because it is given by a lobbyist principal.

The Board has reviewed application of the various exceptions provided by Minn. Stat. § 10A.071. The only exception with possible application is that found in Minn. Stat. § 10A.01, subd. 3(b)(1), which excepts certain gifts given based on "membership in a group".

The Board has not considered whether participation in the Task Force constitutes "membership in a group" under the statute. It is not necessary to decide that issue because another criteria for application of the exception is clearly missing. For the exception to apply, the same gift must be given to all

members of the group. In this matter, the gift is given only to the legislative members of the Task Force, making the exception inapplicable.

ISSUE TWO

May you use principal campaign committee funds to pay travel, lodging, and conference costs to attend these meetings and report the cost as a noncampaign disbursement?

OPINION

Yes. Attendance at task force meetings and associated conferences is directly related to your service in public office. Your reason for attending them is to obtain information which will assist you in performing your duties as a legislator. You would not attend these events if you were not a legislator.

These facts provide a sufficient basis to conclude that the costs are expenses of serving in public office under Minn. Stat. § 10A.01, subd. 10c(j). Such costs are reported as noncampaign disbursements on your Reports of Receipts and Expenditures.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: October 31, 1997

RE: Application of gift prohibition exception for program participant

ADVISORY OPINION 278

SUMMARY

The exception to the gift prohibition for meals given to program speakers or participants requires that the individual participant accept an invitation to be a formal part of the program and thereby incur an obligation to appear and participate in a specific and significant manner.

FACTS

You ask the Campaign Finance and Public Disclosure Board (the "Board") for an advisory opinion based on the following facts which were provided by you or obtained by Board staff from the lobbyist principal involved:

1. You are a legislator, and thus an official as defined in Minn. Stat. § 10A.071, subd. 1(c).

2. You have been invited to attend a dinner hosted by a local society of the Minnesota Optometric Association, (the "MOA") which is a lobbyist principal as defined in Minn. Stat. § 10A.01, subd. 28.

3. The invitation to the dinner is addressed to "MOA members, State Legislators, and Guests". The letter you received indicated that the organization's local members would be contacting you about hosting you and your spouse at the dinner.

4. The MOA's local societies will be holding seven such dinners throughout the state. Every state legislator will be invited to one of the dinners. The dinners will be paid for by the MOA local society members.

5. The MOA provides overall organizational support for this series of dinners. The MOA's president, CEO, and executive director will appear at each dinner. The MOA's CEO will facilitate a formal dialogue between attending legislators and MOA members. There will also be a formal presentation by the MOA of information about optometry and the services MOA members donate to their communities.

6. The agenda for the dinner includes an item for "State Legislator's issues for 1998 Session". Time has been allotted in the dinner program for this agenda item, during which legislators in attendance will "have the opportunity to share issues of importance to [their] district[s] with those in attendance . . .". Legislative issues voted on in 1997 will be discussed, as will regulations proposed by state agencies. The allocation of time for this part of the program is not specific to a legislator, since any legislator who accepts the invitation by attending will be allowed to participate.

7. No legislators are named on the program. However, follow up contact is made with legislators and an agenda is made up of those who indicate that they will attend and speak. An attending legislator is not required to share any issues and no specific criteria have been established for a legislator's participation.

You ask whether, under the exceptions to Minn. Stat. § 10A.01, you may accept this dinner if you participate in the sharing of issues for the 1998 legislative session.

ISSUE

May a legislator accept a dinner given by, or at the request of, a lobbyist principal if the legislator speaks about legislative issues during a portion of the event set aside for that purpose?

OPINION

No. The gift of the dinner is prohibited by Minn. Stat. § 10A.071 and does not fit within any of the exceptions provided in the statute.

A gift given by, or at the request of, a lobbyist principal is prohibited unless it fits within one of the exceptions provided in Minn. Stat. § 10A.071. The significant involvement of MOA in organizing and participating in the subject dinners is sufficient to make MOA the requester of the gift even if an MOA member actually pays for the dinner.

The only exception with possible application to the dinners is the exception provided in Minn. Stat. § 10A.071, subd. 3(a)(7). That exception applies to a meal given by an organization "before whom the recipient appears to make a speech or answer questions as a part of a program".

In order for the exception to apply, the individual official's speech or participation must be a formal and significant part of the program. The official must be specifically invited to the event for the purpose of giving a speech or answering questions. The official must make a commitment to be a part of the program and must thereby incur an obligation to participate in a specific and significant manner.

The fact that you will be given an "opportunity" to share issues during a time designated for that purpose is not sufficient to bring the activity within the requirements of the exception. You have no obligation to attend and, if you do attend, you have no obligation to speak or answer questions. If you have indicated your intention to attend and speak and then do not do so, the event's program will, nevertheless, proceed without significant change. Under these circumstances, your voluntary participation would not entitle you to accept the gift of a dinner.

The Board notes two additional matters which may be relevant to your decision regarding this dinner. First, if you pay consideration of equal or greater value for the dinner, it is removed from the definition of a gift and from the prohibitions of Minn. Stat. § 10A.071. Second, depending on the particular event and your reasons for attending, it may be permissible to use principal campaign committee funds to pay for the cost involved. See Advisory Opinions 255 and 277 for a discussion of this issue.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: November 21, 1997

RE: Contribution limit for merged political funds

ADVISORY OPINION 279

SUMMARY

When two associations which each had a political fund merge, contributions from the pre-merger political funds are attributed to any new political fund formed by the merged associations for the purpose of determining whether the new political fund may make additional contributions to a candidate's principal campaign committee.

FACTS

As representatives of two political funds, you ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. The funds which you represent ("the Funds") are each registered with the Board and supported by a different association. The Funds are not related to each other.

2. The associations supporting the Funds serve similar constituencies and have related goals and objectives. As a result, the associations are considering a merger which would result in a single new association.

3. In the year of the merger, it is possible that each of the Funds may make contributions to candidates' principal campaign committees. In some cases, each Fund may make a contribution to the same candidate's principal campaign committee in the maximum amount permitted from a single entity.

4. You anticipate that after the merger, each of the Funds will terminate and a new fund will be established by the new association.

You ask the Board about the new political fund's right to make contributions to principal campaign committees to which one or both of the predecessor associations' funds have already contributed.

ISSUE

Are contributions from the political funds of associations which merge attributed to a new fund established by the post-merger association?

OPINION

Yes. When two associations merge, contributions from any political fund established by either of the associations prior to the merger are attributed to any new political fund established by the post-merger entity.

Each association currently has its own political fund, which is the "parent" for the association's contributions for reporting purposes pursuant to Minn. Stat. § 10A.15, subd. 3c.

If the two existing funds were not terminated after the merger, the new association would be required to establish a new fund as the parent for the two existing funds, or to designate one of the existing funds as the parent for the other. In either case, contributions from each fund would be attributable to the parent. Attribution of prior contributions to a single parent fund after the merger cannot be avoided by terminating the existing funds before to the merger.

In the case of a bona fide merger, attribution of contributions is applicable only for the purpose of determining whether additional contributions may be accepted from the new parent fund by a principal campaign committee which received contributions from the pre-merger funds.

The fact that pre-merger contributions to a principal campaign committee, when combined and attributed to the new parent, may exceed the limit on contributions from a single entity does not result in a contribution limit violation for the receiving principal campaign committee as long as no additional contributions are accepted after the merger.

The Board notes that creation of a new fund, to which prior contributions are attributed, will make it difficult for treasurers of principal campaign committees to know when aggregate contributions from the new fund have reached the maximum permitted. In view of this fact, you may wish to consider delaying the merger until each existing association has made all of its contemplated contributions to principal campaign committees for the year of the merger.

If associations do not elect this option, the new association's fund should notify principal campaign committees to which it contributes about the effect of this opinion.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: November 21, 1997

RE: Provision of local telephone directories to legislators

ADVISORY OPINION 280

SUMMARY

A gift from a lobbyist principal to a legislator of home district telephone directories falls within an exception to the gift prohibition because it is the provision of a service to assist an official in the performance of official duties.

FACTS

As the representation of a corporation (the Corporation) doing business in Minnesota, you ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. The Corporation is a lobbyist principal as defined in Minn. Stat. § 10A.01, subd. 28.

2. As a part of its business, the Corporation provides local telephone directories, which may include both white and yellow pages.

3. Legislators who live in the areas the Corporation serves receive copies of the directories at no charge at their homes.

4. The Corporation also gets regular requests from its legislator customers for an additional copy of the directories for use in their legislative offices. Legislators use their local directories to facilitate calling constituents in their home districts.

5. It is the Corporation's normal practice to charge for the provision of extra copies of the directory. However, if not prohibited by statute, the Corporation would like to provide legislators with their local area directories as a service.

ISSUE

Is the gift by a lobbyist principal to a legislator of a copy of the legislator's home district telephone directories prohibited under Minn. Stat. § 10A.071?

OPINION

No. The gift of local district telephone directories is not prohibited by Minn. Stat. § 10A.071. It falls within the exception to the general prohibition for provision of services to assist an official in the performance of official duties. Minn. Stat. § 10A.071, subd. 3(a)(2).

While this gift is not prohibited, it may be subject to a reporting requirement. Gifts valued at $5 or more must be disclosed on Schedule B of the Lobbyist Disbursement Report of the lobbyist who reports disbursements made by the principal.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: November 21, 1997

RE: Campaign expenditure limit increase for first time candidate

ADVISORY OPINION 281

SUMMARY

The campaign expenditure limit increase applicable to first time candidates applies in both election years and non-election years.

FACTS

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

1. The candidate you represent is running for the subject office for the first time.

2. The candidate has not run previously for any other office whose territory now includes a population that is more than one-third of the population in the territory of the new office.

You ask whether the 10% increase in the campaign expenditure limit, applicable to first time candidates applies only in an election year or in both an election year and other years.

ISSUE

Is the 10% increase in the campaign expenditure limit provided in Minn. Stat. § 10A.25, subd. 2(c), applicable in each year of an election cycle or only in the election year?

OPINION

For candidates who meet the qualifications of Minn. Stat. § 10A.25, subd 2(c), the 10% campaign expenditure limit increase provided therein applies to the campaign expenditure limit in each year of the election cycle.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: November 21, 1997

RE: Legal services provided by lobbyist to principal campaign committee

ADVISORY OPINION 282

SUMMARY

Legal services provided without charge by an attorney to a principal campaign committee are volunteer services provided by the attorney. However the value of any support or resources provided by the firm is a contribution to the candidate's principal campaign committee which may be limited or prohibited by Minnesota Statutes Chapter 10A. A donation of volunteer services to a principal campaign committee is not a gift to the candidate on whose behalf the principal campaign committee was established.

FACTS

You are an individual who asks the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts which you have conveyed to Board staff in conversations:

1. You are a lobbyist registered with the Board. You are also an attorney licensed to practice law in the state of Minnesota.

2. Your practice is organized as a partnership and you are a partner in the organization.

3. It is the policy of the partnership that the partners spend significant amounts of the regular business day engaged in activities designed to forward the business of the partnership.

4. The partners are compensated by sharing in the profits of the partnership according to an established formula. A partner's share of the profits is not dependent on the specific number of hours the partner works for the business or the amount the partner bills to clients.

   You have been asked by a candidate's principal campaign committee to provide legal services which it believes will, if successful, improve the candidate's chances for nomination or election in the next general election. The candidate on whose behalf the committee was established is a public official.

5. The principal campaign committee asks that you volunteer your time to provide these services.

6. If you accept this request, you would perform the services during your normal business day, often from your law office.

7. Neither you nor your firm would charge the principal campaign committee for your services. Your firm would charge the principal campaign committee for out of pocket expenses such

as filing fees or other costs, but would not charge for overhead items such as office expenses, local telephone service, or general secretarial and clerical service.

8. You believe that accepted procedure in your partnership would require you to notify the other partners that you intend to provide these services without compensation.

9. Your performance of these services would not result in a decrease in your share of partnership profits

10. If you accept the request to perform these services you will, nevertheless, have to perform all of your usual work for the partnership. The services requested by the principal campaign committee will have to be provided over and above your partnership obligations.

You ask the Board whether the performance of legal services under the circumstances described constitutes volunteer services provided to the principal campaign committee. You also ask whether the provision of these services is covered by Minn. Stat. § 10A.071 which prohibits gifts by lobbyists to public officials.

ISSUE ONE

Are legal services provided under the circumstances described in the facts considered volunteer services and, thus, not a contribution to the candidate's principal campaign committee and not subject to reporting requirements or contribution limits?

OPINION

Yes. The legal services you personally provide under the circumstances described are volunteer services. However, it is only your own personal time that is a volunteer service. The value of additional services and support provided by your firm is a contribution from the firm unless paid for by the principal campaign committee.

Volunteer services are restricted to services of an individual "volunteering personal time". Minn. Stat. § 10A.01, subd. 7. The services you describe would be performed in addition to your obligation to the partnership. Thus, they can be considered to be provided out of your personal time. However, the overhead of providing an office and all of the associated support provided by the firm is not a contribution of volunteer personal time.

Minnesota Rules, Part 4503.0500, subp. 4, sets forth the criteria for determining to whom a contribution is attributed. That subpart reads as follows:

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

The cost of legal services includes both the attorney's time and the many support and overhead items provided by the firm. While an attorney can volunteer personal time, the firm remains the provider of all of the support structure for the attorney's work. The cost of that support structure, unless paid for by the principal campaign committee receiving the services, is a contribution from the firm to the principal campaign committee.

The firm is an unregistered association. Thus, its contribution to a principal campaign committee is limited to $100 unless the contribution is made by a political fund established by the firm or is accompanied by the disclosure statement required by Minn. Stat. § 10A.22, subd. 7.

ISSUE TWO

Are your volunteer legal services a prohibited gift under Minn. Stat. § 10A.071 because you are a lobbyist?

OPINION

No. You are providing legal services for the benefit of the principal campaign committee. Such services are not a gift to the individual candidate on whose behalf the principal campaign committee operates. Therefore, the services are not within the scope of the prohibitions of Minn. Stat. § 10A.071.

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to Consent for Release of Information signed by requester

Issued: November 21, 1997

Issued to: Tanja Kozicky
Legal Counsel to the Governor
130 State Capitol
St. Paul, MN 55155

RE: Gift of greeting cards

ADVISORY OPINION 283

SUMMARY

A gift to the state, accepted by the Commissioner of Health under statutory authority, is not a prohibited gift to an official under Minn. Stat. § 10A.071 nor is it a contribution to an official's principal campaign committee. Where the gift is not for a lobbying purpose, its cost is not a lobbyist disbursement under Minnesota Statutes Chapter 10A.

FACTS

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

1. Hallmark Cards, Inc. ("Hallmark") has a national program called the Hallmark Immunization Greeting Card Program. Through the program Hallmark creates a specially designed congratulatory card to be given to parents of newborn babies reminding them of the importance of immunizations.

2. The cards will contain the following message: "Every Minnesota child is precious to us. Please remember that your baby needs his or her first shots by two months. We hope you will use the Minnesota Immunization Record to keep you up to date on all your child's shots." The first two sentences are standardized by Hallmark for all states using the program. The third sentence is tailored to Minnesota's immunization policy. The cards will be printed with the signatures of the Governor and the First Lady.

3. The cards will be given to the Minnesota Department of Health and will be included in the state's current health record folder which is already given to all new parents.

4. The Minnesota Department of Health has the authority to accept gifts from other sources pursuant to Minn. Stat. § 144.074. The gift of the cards will be accepted by the Commissioner of Health pursuant to this authority.

ISSUE

Does the gift from Hallmark Cards, Inc. to the Minnesota Department of Health of a greeting card which will be printed with the signature of the Governor and First Lady constitute a prohibited gift under Minn. Stat. § 10A.071, a campaign contribution to the Governor's principal campaign committee, or a lobbying disbursement by Hallmark?

OPINION

The card is a gift to the State of Minnesota, accepted by the Commissioner of Health pursuant to statutory authority. As such, it is not a gift to an official within the meaning of Minn. Stat. § 10A.071. Neither is it a campaign contribution to a candidate's principal campaign committee.
The gift is not for the purpose of influencing official action and, thus, its cost is not a lobbying disbursement reportable under Minnesota Statutes Chapter 10A.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: January 23, 1998

RE: Campaign Finance Laws applicable to nonprofit corporation

ADVISORY OPINION 284

SUMMARY

Minn. Stat. § 211B.15 severely restricts the rights of corporations to make political contributions or independent expenditures in Minnesota. This statute may also prohibit the use for these purposes of dues paid by for-profit corporations. Minnesota political committees are not limited in their fundraising solicitations to members of their affiliated associations.

FACTS

As the representative of an association, you ask the Campaign Finance and Public Disclosure Board ("Board") for an advisory opinion based on the following facts set forth in your request letter or conveyed to Board staff in telephone conferences:

1. The association you represent ("The National Association") is organized as a nonprofit corporation. It is a national membership organization which promotes the interests of its members.

2. The National Association's members include individuals, partnerships, sole proprietorships, for profit corporations, and limited liability corporations. The members pay annual membership dues to the National Association. These membership dues constitute the treasury funds of the National Association.

3. The National Association also has a separate pool of money received from corporate donors to be used for political purposes. These corporate funds are not commingled with the treasury funds of the National Association.

3. The National Association states that it has an affiliated political committee in Minnesota ("the Minnesota Committee") which is registered with the Board.

4. The purpose of the Minnesota Committee is to solicit and accept contributions which are used to make contributions to Minnesota legislative and constitutional office candidate

5. The National Association, acting outside of the Minnesota Committee, often sends communications to its members which may include sections urging the election or defeat of candidates in their respective states.

6. These communications regarding Minnesota candidates are not made with the authorization or expressed or implied consent of, or in cooperation or concert with, or at the request or

suggestion of, a candidate or committee established to support or oppose a candidate. These communications constitute independent expenditures under Minnesota Statutes, chapter 10A.

Based on the above facts, you ask the Board for opinions on three questions, which are re-stated in the four issues discussed below.

ISSUE ONE

May the National Association, using its treasury funds, mail communications to its Minnesota members which include sections which advocate the election or defeat of a Minnesota candidate for legislative or constitutional office? If so, what is the National Association's liability for reporting costs of such communications?

OPINION

Corporate political activity in Minnesota is generally governed by Minn. Stat. § 211B.15, a statute about which the Board provides factual advice, but does not issue opinions.

Minn. Stat. § 211B.15 provides, in part:

> "211B.15 Corporate political contributions.
>
> Subdivision 1. Definitions. For purposes of this section, "corporation" means:
> (1) a corporation organized for profit that does business in this state;
> (2) a nonprofit corporation that carries out activities in this state; or
> (3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state.
>
> Subd. 2. Prohibited contributions. A corporation may not make a contribution or offer or agree to make a contribution, directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate.
>
> Subd. 3. Independent expenditures. A corporation may not make an independent expenditure or offer or agree to make an independent expenditure to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "independent expenditure" means an expenditure that is not made with the authorization or expressed or implied consent of, or in cooperation or concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate."

Minn. Stat. § 211B.15 provides penalties for its violation:

> "Subd. 6. Penalty for individuals. An officer, manager, stockholder, member, agent, employee, attorney, or other representative of a corporation acting in behalf of the corporation who violates this section may be fined not more than $20,000 or be imprisoned for not more than five years, or both.

Subd. 7. Penalty for corporations. A corporation convicted of violating this section is subject to a fine not greater than $40,000. A convicted domestic corporation may be dissolved as well as fined. If a foreign or nonresident corporation is convicted, in addition to being fined, its right to do business in this state may be declared forfeited."

The statute also includes a limited exception for certain types of nonprofit corporations:

"Subd. 15. Nonprofit corporation exemption. The prohibitions in this section do not apply to a nonprofit corporation that:

(1) is not organized or operating for the principal purpose of conducting a business;
(2) has no shareholders or other persons affiliated so as to have a claim on its assets or earnings; and
(3) was not established by a business corporation or a labor union and has a policy not to accept significant contributions from those entities."

The Board does not express an opinion as to whether the National Association falls within the class of nonprofit corporations defined by the exemption.

If you conclude that the National Association falls within the nonprofit corporation exception, you will also need to consider whether it is, nevertheless, prohibited from using membership dues for political purposes because the membership dues include funds from for-profit corporations.

You are advised to seek your own legal counsel in order to make a determination as to whether the National Association may make the independent expenditures described.

The remainder of the discussion of this issue assumes that you have independently concluded that the independent expenditures you contemplate do not create a violation of Minn. Stat. § 211B.15 for either the National Association or its corporate members. The fact that the Board addresses the mechanism for making such expenditures should not be taken as a suggestion that the Board considers them allowable under Minn. Stat. § 211B.15.

If the National Association makes independent expenditures which aggregate more than $100 in a year, it must make those expenditures through a political fund. Minn. Stat. § 10A.12, subd. 1. The political fund must follow all of the record keeping and reporting requirements for political committees and political funds in Minnesota.

An association may transfer membership dues directly to its associated political fund **if not prohibited by other statutes.** Minn. Stat. § 10A.12, subd. 5. Thus, (if permitted by Minn. Stat. § 211B.15 or other statutes) the National Association could make its independent expenditures by transferring money from membership dues to a political fund and the fund could reimburse the association for the cost of the expenditures.

Alternatively, the National Association could pay the costs of producing and distributing the mailings, and treat those costs as contributions to an associated political fund. The political fund would show the value of the mailings as an in kind contribution received from the National Association. The political fund would report the use of this in kind contribution as independent expenditures affecting the various principal campaign committees named in the mailings.

The Board notes that the committee which you indicated is registered in Minnesota and affiliated with the National Association is registered as a political committee, not a political fund. In Minnesota, only

political funds have affiliated associations. Also, an association may make direct transfers of membership dues only to an affiliated political fund, not to a political committee. You should review with Board staff whether the Minnesota Committee is properly registered.

Issue Two

May the Minnesota Committee solicit contributions from individuals or entities who are not members of the National Association? If so, what contribution limits are applicable?

Opinion

Political committees and funds registered in Minnesota are not limited to any particular group of individuals in solicitation of contributions.

There is no limit on the amount of contributions which may be accepted from an individual or from another political committee or political fund registered with the Board.

The treasurer of a political committee or political fund may not accept more than $100 from an association not registered with the Board unless at the same time it obtains a disclosure report in accordance with the provisions of Minn. Stat. § 10A.22, subd. 7.

Corporate contributions are restricted by Minn. Stat. § 211B.15, as discussed in Issue One.

Issue Three

May the National Association use its pool of corporate political contributions to reimburse the Minnesota Committee for costs of overhead or fundraising?

Opinion

Minn. Stat. § 211B.15 governs the use of corporate funds for contributions to political committees and political funds in Minnesota as discussed in Issue One.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: February 5, 1998

RE: Application of noncampaign disbursement definitions to costs of a party upon candidate's retirement from public office

ADVISORY OPINION 285

SUMMARY

Costs paid by a principal campaign committee for a party given in an election year, after the general election, upon the retirement from public office of the principal campaign committee's candidate are noncampaign disbursements.

FACTS

You ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. You are an elected public official, as such, are a candidate with a principal campaign committee registered with the Board.

2. The office you hold is up for election in 1998. However, you have announced that you will retire at the end of your current term and will not be a candidate for election in 1998.

3. You would like to use some of the money remaining in your principal campaign committee to give a party to thank the staff of the office you hold for their services and to thank the many people who have participated over the years in the activities and initiatives your office.

4. The party would be given at the end of the year after the general election.

5. You ask the Board whether the costs of such a party would be a noncampaign disbursement under Minnesota Statutes, chapter 10A, so that you may use principal campaign committee funds to pay those costs.

ISSUE

May the costs of a party at the end of a candidate's service in public office, given to thank staff and others who have assisted in the official's public service, be paid for with campaign funds as a noncampaign disbursement?

OPINION

The candidate's principal campaign committee may use its funds to pay for a single party, in an election year, after the general election, when the candidate will no longer seek election to the office held.

In reaching this conclusion, the Board first considered whether the request fell within an existing noncampaign disbursement category and concluded that it did not.

The party you describe does not fit the noncampaign disbursement for expenses of the candidate for serving in office provided in Minn. Stat. § 10A.01, subd. 10c(j). The Board has generally limited use of this noncampaign disbursement to costs that directly assist the official in the continuing performance of public service, that enhance the official's ability to serve, and that would not be incurred if the official were not serving in office.

The party under consideration is not a party given in a general election year when a candidate's name will no longer appear on a ballot or the general election is concluded, as provided for in Minn. Stat. § 10A.01, subd. 10c(m). Use of this noncampaign disbursement is limited to candidates whose names appeared on the primary and/or general election ballots in the election year during which the party is given.

The Board notes that the party you propose is related in some ways to your service in office, although it does not have the direct relation to continued and improved service that the Board has recognized as sufficient for application of Minn. Stat. § 10A.02, subd. 10c(j). The party also bears many similarities to the post election party authorized by Minn. Stat. § 10A.01, subd. 10c(m), although it does not completely fall within the 10c(m) definition.

The Board has authority under Minn. Stat. § 10A.01, subd. 10c(s), to recognize payments not specifically listed in the statute as valid noncampaign disbursements and does so in this matter.

Your principal campaign committee may use its funds to pay for the party you describe. This opinion is based on the Board's understanding that principal campaign committee funds will be used for a single party, to be given in 1998, after the general election. This opinion is further based on the fact that 1998 is an election year for the office you hold and that your name would be on the ballot for that election if you had not decided to retire from this public office at the end of your current term.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: January 23, 1998

RE: Gift to officials of informational booklet

ADVISORY OPINION 286

SUMMARY

Gift to officials of an informational booklet which costs $4.60 to produce and which will be available in limited quantities to the public without charge is a gift of informational material of unexceptional value which is not prohibited by Minn. Stat. § 10A.071.

FACTS

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

1. The association you represent (the Association) is a lobbyist principal as defined in Minn. Stat. § 10A.01, subd. 28.

2. The Association is producing a booklet which is designed to increase awareness concerning individuals who are economically poor.

3. 5000 copies of the booklet will be produced at a cost of $4.60 per copy.

4. 4000 copies of the booklet will be distributed to targeted readers, including legislators and other persons who are "officials" under the Minnesota gift prohibition statute, Minn. Stat. § 10A.071. The remaining 1000 copies will be available to members of the public upon request without charge.

ISSUE

Does Minn. Stat. § 10A.071 prohibit distribution of the described booklet to persons who are "officials" as defined in the statute?

OPINION

No. The described booklet may be distributed under the exception to the general gift prohibition included in Minn. Stat. § 10A.071, subd. 3(a)(6), because it constitutes informational material of unexceptional value.

Your request indicates that you also intend to distribute the booklet to local officials. This advisory opinion applies only to the gift prohibition established in Minn. Stat. § 10A.071. The Board notes that gifts to local officials are also restricted by Minn. Stat. § 471.895, a statute not administered by the Board. You should consult your own legal advisors with respect to the effect of Minn. Stat. § 471.895 on the intended gift.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: January 23, 1998

RE: Gift to official of special seating rights at athletic event

ADVISORY OPINION 287

SUMMARY

A lobbyist principal is prohibited by Minn. Stat. § 10A.071 and Minn. Rules, part 4512, from giving or selling an official the right to sit in the box seating area it has leased for athletic events unless the right to purchase equivalent seating is available to members of the public.

FACTS

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

1. The association you represent (the Association) is a lobbyist principal in Minnesota.

2. The Association has entered into a license agreement with the University of Minnesota to use a loft (box seating) at Williams Arena for the Minnesota Gophers home basketball games. The loft contains a block of 24 seats.

3. The license includes the right to sit in the loft and also entitles the Association to season tickets for the 24 seats in the loft.

4. In order to use the loft seating, an attendee must have a ticket for one of the loft seats, which carries a face value of $22.50, as well as the Association's consent to use its licensed space.

5. The cost of the license for the loft exceeds the face value of the individual tickets for all games which are included in the license.

Based on these facts, you ask whether, under Minn. Stat. § 10A.071, the Association may sell its tickets to officials for the face value of $22.50 and allow the officials to view the games from its loft.

ISSUE

May a lobbyist principal allow an official to use its licensed box seating at an athletic event if the official pays for the ticket or the right to use the box seating area?

OPINION

No. The sale by a lobbyist principal to an official of a ticket to an event, along with the right to sit in the Association's licensed space is a prohibited gift under Minn. Stat. § 10A.071 and Minn. Rules, part

4512.0100, subp. 3, unless the equivalent right is available for purchase by members of the public on the same terms.

This request involves a potential gift of entertainment, which is included in the gift prohibition under Minn. Rules, part 4512.1000, subp. 3(A) as well as a potential gift of preferential treatment for purchases, which is a prohibited gift under Minn. Rules, part 4512.0100, subp. 3(C).

The right to attend a game and sit in the Association's box seating requires (1) the purchase of a ticket to get in to the game, and (2) the Association's invitation to share in the license rights it purchased to use the box seating area. The Association's cost for these combined rights is unrelated to the price printed on the ticket. Thus, giving an official the right to use this licensed space in consideration for payment of the amount printed on the ticket results in a prohibited gift of entertainment.

The minimum value one could place on the prohibited gift would be the difference between the amount paid by the official and the Association's actual pro-rated per seat cost for the loft space license. However, the giver's cost is not always determinative of the value of the gift under Minn. Stat. § 10A.071. Rather, the value of a gift is its fair market value. See also, Minn. Rules. part 4512.0400.

If there is a market through which members of the general public may purchase the right to sit in equivalent box seats for the same games to which the Association would invite officials, then this market may establish the value of the gift. In that case, contemporaneous payment by the official of the market value of the gift removes the transaction from the definition of a gift under Minn. Stat. § 10A.071.

However, if there is not a market through which members of the public may purchase rights equivalent to those the Association intends to make available to officials, then the transaction is prohibited by Minn. Rules part 4512.0100, subp. 3(C), and may not be undertaken regardless of the amount of consideration paid by the official.

Minn. Rules part 4512.0100, subp. 3(C) prohibits giving an official preferential treatment for purchases. The prohibition on giving an official preferential treatment for purchases prohibits the Association from permitting officials to purchase the right to sit in its box seating at athletic events unless the equivalent right is available for purchase by the general public on the same terms and conditions.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: March 27, 1998

RE: Definition of Lobbyist

ADVISORY OPINION 288

SUMMARY

An individual is not required to register as a lobbyist based on activities undertaken within the scope of the individual's employment by a public higher education system.

FACTS

As the representative of an organization, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts:

1. The organization you represent is a public higher education system (hereinafter referred to as the Public Higher Education System), as that term is used in Minn. Stat. § 10A.01, subd. 11, which defines a lobbyist.

2. One of the Public Higher Education System's employees is the director of a nonprofit council dedicated to educational issues.

3. Serving as director of this nonprofit council is a part of this individual's responsibilities as an employee of the Public Higher Education System. Both the employer and the employee consider this activity to be within the scope of the employment.

4. The employee's activities as director of the nonprofit council include spending time communicating with legislators to influence legislative action. The employee may spend more than 5 hours in a month engaged in such communications.

5. These communications are not on behalf of the Public Higher Education System, but are on behalf of the nonprofit council.

ISSUE

May an employee of a public higher education system be required to register as a lobbyist based on activities undertaken within the scope of the individual's employment, although not specifically on behalf of the employer?

OPINION

An individual does not become a lobbyist based on the individual's activities as an employee of a public higher education system.

Minn. Stat. § 10A.01, subd. 11 (b)(2) excludes from the definition of a lobbyist "an employee of the state, including an employee of any of the public higher education systems".

The statutory exclusion applies to employees of public higher education systems, while acting within the scope of their employment, regardless of the nature of the lobbying type activities they undertake.

The exclusion is limited to lobbyist status based on the individual's activities within the scope of employment as a public higher education system employee. Such an employee would be a lobbyist if the individual meets the statutory definition of a lobbyist based on activities outside of the individual's public higher education system employment.

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requester

Issued: April 24, 1998

Issued to: Richard J. Cohen
Attorney at Law
St. Anthony Main
219 S.E. Main Street, Suite 403
Minneapolis, MN 55414

RE: Application of gift prohibition to referral of legal client

ADVISORY OPINION 289

SUMMARY

Gift prohibition of Minn. Stat. § 10A.071 does not extend to referral of legal matters between attorneys.

FACTS

As an attorney licensed to practice law in the State of Minnesota, you ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. For various reasons, it is customary in legal practice to refer matters between attorneys.

2. Under certain circumstances, the referring attorney may be paid a referral fee.

3. On occasion, an attorney who is a lobbyist may have reason to refer a matter to an attorney who is an official as defined in Minn. Stat. § 10A.071, subd. 1(c).

You ask if the referral of a legal matter by an attorney who is a lobbyist to an attorney who is an official is prohibited by Minn. Stat. § 10A.071.

ISSUE

Is the referral of a legal client by an attorney who is a lobbyist to an attorney who is an official prohibited by Minn. Stat. § 10A.071?

OPINION

No. Referrals of legal clients are not gifts under the definitions established in Minn. Stat. § 10A.071, subd. 1(b) or the Board's administrative rules.

The referral of a legal client provides the recipient with, at most, a contingent opportunity to earn a legal fee. The actual fee, if earned, results from the services rendered by the recipient of the referral.

In additional to the provision of legal services, the realization of value from a referral is contingent on the referred client accepting the new attorney and is often further contingent on success on the merits of the referred matter.

None of the definitions of "gift" in statute or rule can reasonably be interpreted to include such a transaction.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: June 26, 1998

RE: Contributions to political committee by Indian tribe

ADVISORY OPINION 290

SUMMARY

Providing disclosure as specified in this opinion will fulfill contribution disclosure obligations of an Indian tribe under Minnesota Statutes Chapter 10A, provided that contributions from the Tribe are given to not more than three political committees or political funds in a year.

FACTS

As representatives of entities that wish to participate in the Minnesota political process, you ask the Campaign Finance and Public Disclosure Board (the "Board") for an advisory opinion based on the following facts:

1. You represent two entities. One of the entities is a federally recognized Indian tribe (the "Tribe") and the other entity is a political committee formed by the Tribe and registered with the Board (the "Committee").

2. The Tribe operates many businesses and programs for the benefit of its members, each of which may have many receipts and expenses associated with it.

4. The Committee has in the past reported receiving direct contributions of money from the Tribe and has reported making contributions to political committees registered with the Board under Minnesota Statutes, chapter 10A.

5. The Board has now questioned whether the Tribe is permitted, under Chapter 10A, to make direct transfers to the Committee without providing additional statutory disclosure at the time the transfer is made.

You request the Board's interpretation of Minnesota Statutes Chapter 10A with regard to a number of issues related to the Tribe's ability to make political contributions which will not result in Board action against either the Tribe or the recipient. Some of the issues raised in the request for this advisory opinion are outside the interpretation of Minnesota Statutes Chapter 10A, to which the Board is limited. This advisory opinion addresses only those issues seeking an interpretation of Minnesota Statutes Chapter 10A. The Board has attempted to extract the relevant issues from the request and your additional statements to the Board and to restate them so as to give the Tribe the guidance it requests.

ISSUE ONE

What disclosure will the Board accept by the Tribe when it makes a contribution to a political committee or political fund

OPINION

This opinion assumes that the Tribe does not accept political contributions, make approved expenditures, or make independent expenditures (all as defined in Minn. Stat. § 10A.01), any of which would require it to register as a political committee or political fund. (See Issue Two below).

With the above proviso, the Tribe may make contributions to political committees or political funds without triggering a Board inquiry related to improper or missing disclosure as long as:

(1) contributions are not made to more than three separate political committees or political funds in one year, and

(2) each contribution is accompanied by disclosure as more fully described in this opinion.

Minn. Stat. § 10A.22, subd. 7, permits contributions from certain associations not registered with the Board as long as financial disclosure is included with each contribution. If the Tribe provides substantially this same information, as further clarified by this opinion, with each of its contributions, no Board action will be undertaken to obtain additional disclosure from the Tribe.

The information to be provided should preserve and promote the valid disclosure purposes of Minnesota Statutes Chapter 10A, while not effectively preventing the Tribe from making contributions. The disclosure which will satisfy these criteria is based on Minnesota Statutes § 10A.20. However, the requirements of Minnesota Statutes § 10A.20 may be somewhat abbreviated for the Tribe, which is an entity not primarily involved in political activity.

The Tribe operates many businesses and programs for the benefit of its members. Requiring disclosure of each receipt and expense in excess of $100 (as would be required by a literal application of Minnesota Statutes § 10A.20) would require the Tribe to open to the public the detailed financial transactions of each of these businesses and programs. This information, which the Tribe categorizes as "private, confidential and governmental information", would include such details as individual receipts from all operations, with names and addresses of sources, and detailed disbursement records with the names and addresses of persons benefiting from the Tribe's programs.

In determining whether a subset of all financial information about the Tribe will meet the disclosure purposes of Minnesota Statutes Chapter 10A, the Board takes into consideration

the nature of the information which may be disclosed, the likely public benefit of the disclosure, and the likelihood that compelling the disclosure will effectively prevent the Tribe from making contributions.

The Board does not believe that it is the purpose of Minnesota Statutes Chapter 10A to require the Tribe to disclose detailed financial information unrelated to political activity in order to make a political

contribution. Disclosure of such information does not assist the public in making decisions regarding the nomination or election of candidates or votes on ballot questions. Because of the possible sensitive and confidential nature of this Tribal financial information, compelling its disclosure would likely have the effect of preventing the Tribe from making contributions.

In defining this limited disclosure statement which will be accepted from the Tribe, the Board notes that the Tribe is more like an unincorporated business than a political organization and that the reasoning of this opinion cannot be extended to an organization which has political activity as one of its major purposes.

The disclosure statement provided by the Tribe to each political committee or political fund receiving a Tribal contribution should include the information outlined below.

(a) The complete legal name of the Tribe and its full business address.

(b) The name and address of the individual who authorized the contribution. If the contribution was authorized by more than one individual or by a committee, the names and addresses of each individual involved in the authorization process.

(c) The amount and date of the contribution which is the subject of the disclosure statement, together with the name, address and Board registration number of the recipient political committee or political fund.

(d) A description of the source of funds which comprise the contribution, including sufficient detail for the public to understand what the actual source of the funds is. The description of a source of funds must include at least the following:

the name, if any, and general description of each operating entity or unit which is a source of the funds;

the nature of the business or activities carried on by each source entity;

if more than one source is involved, the percentage of the contribution attributable to each source.

(The Board recognizes that this source description requirement is somewhat vague. However, in this abstract discussion it is not possible to speculate on all possible sources which might be disclosed and the level of detail which would be sufficient to describe each. The Board directs the Executive Director to review all disclosure statements submitted under Minn. Stat. § 10A.22 and to request additional information from the donor if it appears appropriate to do so. If a description sufficient to meet the purposes of this provision cannot be obtained through voluntary disclosure by the donor, the Executive Director shall bring the matter to the Board for consideration.)

(e) The name, address, and employer, or occupation if self-employed, of each individual, political committee, or political fund who within the reporting period has made one or more transfers or donations in kind to the Tribe, together with the amount and date of each transfer or donation in kind, and the aggregate amount of transfers and donations in kind within the year from each source so disclosed. A donation in kind shall be disclosed at its fair market value.

This disclosure statement must include disclosure of corporate contributions. However, the Tribe is advised that such corporate contributions may be prohibited by Minn. Stat. § 211B.15.

(f) The sum of contributions to the Tribe during the reporting period;

If no such contributions have been received, the disclosure statement shall include an affirmative statement to that effect.

(Note that if more than $100 in such contributions have been received by the Tribe in a calendar year, the Tribe is required to register with the Board as a political committee, or to establish and register a political fund which may accept the transfers.)

(g) The name, address, and employer, or occupation if self-employed, of each individual or association who within the reporting period has made one or more donations of money, goods, or services, to the Tribe, which money, goods, or services, which are not restricted so as to preclude their use to influence the nomination or election of a candidate or to promote or defeat a ballot question. This disclosure is required regardless of whether such donations were ultimately used to influence the nomination or election of a candidate or to promote or defeat a ballot question. The disclosure shall include the amount and date of each such donation and the aggregate amount of all such donations within the year from each source so disclosed. A donation of goods or services shall be disclosed at its fair market value.

If no such donations have been received, the disclosure statement shall include an affirmative statement to that effect.

(h) Each loan made or received by the Tribe within the reporting period in aggregate in excess of $100, which is made or received for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question, continuously reported until repaid or forgiven, together with the name, address, occupation and the principal place of business, if any, of the lender and any endorser and the date and amount of the loan.

If no such loans have been made or received, the disclosure statement shall include an affirmative statement to that effect.

(i) The name and address of each individual or association to whom aggregate independent expenditures or approved expenditures, have been made by or on behalf of the Tribe within the reporting period in excess of $100, together with the amount, date and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question the expenditure is intended to promote or defeat, and in the case of

independent expenditures made in opposition to a candidate, the name, address and office sought for each such candidate.

(j) The sum of all independent expenditures and approved expenditures made by or on behalf of the Tribe during the reporting period.

If no such expenditures have been made, the disclosure statement shall include an affirmative statement to that effect.

(Note that if more than $100 in such expenditures have been made by the Tribe in a calendar year, the Tribe is required to register with the Board as a political committee, or to establish and register a political fund which may accept the transfers.)

(k) The amount and nature of any advance of credit incurred by the association for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question, continuously reported until paid or forgiven.

If no such advances of credit have been obtained, the disclosure statement shall include an affirmative statement to that effect.

(l) The name and address of each political committee, political fund, or principal campaign committee to which aggregate transfers in excess of $100 have been made within the reporting

period, together with the amount and date of each transfer. This statement must include the transfer which is the subject of the disclosure statement being provided.

(m) The sum of all transfers (monetary political contributions) made by the Tribe during the reporting period.

(n) Except for contributions to a candidate or committee for a candidate for office in a municipality as defined in section 471.345, subdivision 1, the name and address of each individual or association to whom aggregate disbursements in categories defined in Minn. Stat. § 10A.01, subd. 10c, in excess of $100 have been made within the reporting period by or on behalf of the Tribe, together with the amount, date, and purpose of each such disbursement.

If no such disbursements been made, the disclosure statement shall include an affirmative statement to that effect.

For the purposes of the disclosure described above, those words or phrases defined in Minn. Stat. § 10A.01 have the meanings given to them in that section.

The statement must include the greater of (a) 30 days prior to the date the contribution was made or (b) the period since the last day included on the previous Reports of Receipts and Expenditures filed by political committees or political funds registered with the Board.

The statement must be signed and certified as true by the treasurer or chief executive officer of the Tribe. If neither position exists, the statement must be signed and certified as true by a person duly authorized by the Tribe to issue the statement. The provisions of Minn. Stat. § 10A.22, subd. 1, relating to the signing of false or incomplete statements apply to a statement filed under Minn. Stat. § 10A.22, subd. 7.

ISSUE TWO

Under what circumstances must the Tribe register with the Board as a political committee or political fund?

OPINION

In Issue One, it was assumed that the Tribes limited its financial political activities to making contributions to not more than three political committees or political funds in a year. However, certain conduct of the Tribe could compel it to register as a political committee, in which case, it would be subject to the full reporting requirements applicable to political committees.

The general rule is that an organization that accepts contributions, makes contributions, or makes approved or independent expenditures of more than $100 to influence the nomination or election of a candidate or to promote or defeat a ballot question must register with the Board. Minn. Stat. § 10A.14, subd. 1. This rule applies to organizations that accept donations for general political purposes if those donations are ultimately used for activities that influence the nomination or election of a candidate or that promote or defeat a ballot question in Minnesota.

The procedure described in this Opinion, wherein the Tribe may make contributions to up to three political committees or political funds in a year with disclosure is based on a statutory exception to the usual requirement that making contributions of more than $100 triggers the registration requirement.

However, if the Tribe, acting outside of its Committee, accepts contributions or makes approved expenditures or independent expenditures, or makes contributions to more than three political committees or political funds in a year, the Tribe, itself, would be subject to the same registration and reporting requirements as any political committee or political fund.

Effect of this Opinion

Board staff is directed to take no further action to obtain disclosure from any Indian tribe that provides financial information with its contributions in accordance with this opinion.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: April 24, 1998

RE: Independent expenditures by party units

ADVISORY OPINION 291

SUMMARY

Campaign Finance and Public Disclosure Board will not make determination of constitutionality of Minn. Stat. § 10A.01, subd. 10b, which prohibits certain independent expenditures by party units.

FACTS

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

1. The association you represent is a political party unit as defined in Minnesota Statutes § 10A.275, subd. 3 (hereinafter referred to as "the Party Unit").

2. Minnesota Statutes § 10A.01, subd. 10b, defines independent expenditures and states that an expenditure made by a political party or a party unit in a race where the political party has a candidate on the ballot is not an independent expenditure.

3. The Board has interpreted this limitation to mean that an expenditure by a party unit in a race for which a candidate of the party has filed for office is deemed to be an approved expenditure on behalf of the candidate and, thus, is considered a contribution to the candidate and a campaign expenditure by the candidate.

4. In 1997, the U. S. Supreme Court decided the case of Colorado Republican Federal Campaign Committee vs. FEC (hereinafter referred to as "CRFCC"). In CRFCC, the Court examined certain statutes administered by the Federal Elections Commission (FEC) related to expenditures by political parties. In particular, expenditures similar to those defined as independent expenditures in Minnesota Statutes Chapter 10A were considered and found to be unconstitutional.

5. The Party Unit would like to make independent expenditures on behalf of its candidates during the 1998 elections. It would like to make such expenditures even after it has candidates on the ballots in races where it makes those expenditures.

6. The Party Unit believes that CRFCC is controlling over Minnesota Statutes § 10A.01, subd. 10b, and that the Board enforcement of the prohibition on independent expenditures by party units, even when the party unit has a candidate in the race, is unconstitutional.

You request that the Board review CRFCC and determine that any limitation on independent expenditures by party units is unconstitutional and that the Board will not enforce Minnesota Statutes § 10A.01, subd. 10b.

ISSUE

Is the prohibition on independent expenditures by a party unit in a race where the party has a candidate on the ballot, found in Minn. Stat. § 10A.01, subd. 10b, constitutional?

OPINION

In evaluating this request for advisory opinion, the Board first considers its role in issuing advisory opinions. That role is to issue and publish opinions "on the requirements of [Chapter 10A]." Minn. Stat. § 10A.02, subd. 12. An administrative agency's jurisdiction is limited and dependent entirely on the statute under which it operates.[1] The request for advisory opinion asks the Board to go beyond explaining the requirements of Chapter 10A to decide a constitutional issue.

Moreover, while the Board does not ignore constitutional law or other statutes in the course of administering Minnesota Statutes Chapter 10A, the authority to determine the constitutionality of laws resides ultimately in the judiciary.[2]

The Board acknowledges that CRFCC raises constitutional questions regarding limits on independent expenditures by party units. However, the statutory systems at issue are not identical.

Minn. Stat. § 10A.01, subd. 10b, limits party unit independent expenditures only during a particular time, whereas the federal statute imposed an overall limit. The state statute does not limit individual contributions to party units whereas the federal statute imposes a cap on individual contributions. Because of the differences between Minnesota Statutes and those at issue in CRFCC, it is inappropriate to announce through an advisory opinion an alternative application of Chapter 10A.

Minn. Stat. § 10A.01, subd. 10b, prohibits party unit independent expenditures only after there is a candidate on the ballot, which will occur in July, 1998. The requester therefore has sufficient time to request a court of competent jurisdiction to determine the constitutional issues raised.

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[1] McKee v. Ramsey County, 310 Minn. 192, 245 N.W.2d 460 (1976)

[2] Minnesota State Board of Health, by Lawson v. City of Brainerd, 241 N.W.2d 624, 308 Minn. 24, 40 n.5 (1976); see also, Quam v. State of Minnesota, 391 N.W.2d 803 (Minn. 1986) (Workers' Compensation Court of Appeals, as agency adjudicator, not authorized to determine validity of agency rules, as doing so violates separation of powers); Neeland v. Clearwater Memorial Hospital, 257 N.W.2d 366, 368 (Minn. 1977) (administrative agency lacked subject matter jurisdiction over constitutional claim; issue could be raised for first time on appeal); Matter of Rochester Ambulance Service, 500 N.W.2d 495, 499-500 (Minn. Ct. App. 1993) (same).

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: April 24, 1998

RE: Determination of Lobbyist Principal

ADVISORY OPINION 292

SUMMARY

An independent association that pays for a lobbyist's services is the lobbyist principal even if the payment for those services is made to the association's national affiliate.

FACTS

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

1. The association you represent is an independent state association (the "State Association") which is affiliated with a national association (the "National Association") dedicated to similar purposes.

2. The State Association is not governed or controlled by the National Association, but does collect national dues on behalf of the National Association and receives some support services from the National Association. The State Association sets its own policy and agenda.

3. The State Association retains the services of a lobbyist, who is an employee of the National Association. The State Association has complete discretion as to whether, and how, it will use the services of this lobbyist.

4. The State Association pays the National Association for all of the costs of the lobbyist's services. This payment is more than $500 per year.

You ask the Board for guidance with regard to determination of which association is the lobbyist principal.

ISSUE

If an independent association, having complete control over the services of a lobbyist, pays its national affiliate for those services, which entity is the lobbyist principal under Minn. Stat. § 10A.01, subd. 28?

OPINION

Under the facts presented, the independent State Association is the lobbyist principal.

When an independent entity, having full control over the services of a lobbyist, pays another entity in full for those services, the independent entity ultimately paying for the services is the lobbyist principal.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

RE: Definition of constituent services

ADVISORY OPINION 294

SUMMARY

Publication of a candidate's message at Christmas time is not a constituent service. Use of principal campaign committee funds for the publication must be reported as campaign expenditures.

FACTS

As the treasurer of a candidate's principal campaign committee, you ask the Campaign Finance and Public Disclosure Board (the "Board") for an advisory opinion based on the following facts:

1. The committee for which you are treasurer (the "Committee") publishes an annual message from the candidate in various newspapers in the district at Christmas time.

2. On its 1997 Report of Receipts and Expenditures, the Committee reported the expenses of publishing this message as noncampaign disbursements.

3. In a routine inquiry, Board staff advised you that Christmas greetings are generally considered campaign expenditures and requested your response.

4. The Committee then reviewed its advertising expenses and proposes to reclassify the Christmas message expenses as 25% campaign expenditures and 75% noncampaign disbursements.

5. The Committee has provided the Board with a copy of the 1997 message. The publication includes a general Christmas message, commentary on the flood of 1997 and the efforts of Minnesotans in overcoming that disaster, and a discussion of the candidate's views on a number of national issues and on how the state budget surplus should be used.

ISSUE

May the costs of publishing the candidate's message described in the facts properly be reported as 25% campaign expenditures and 75% as noncampaign disbursements?

OPINION

No. The use of principal campaign committee funds to publish the described message must be reported as campaign expenditures.

The only noncampaign disbursement under which the message might be considered is that for costs of services to constituents. However, a constituent service must be an actual service provided by the official for the benefit of district residents. Board rules specifically exclude from constituent services "congratulatory advertisements . . . or similar expenditures". Minn. Rules part 4503.0100, subp. 6.

Christmas messages, whether conveyed through advertisement or other distribution means, are not a service and thus may not be reported as noncampaign disbursements. Your message includes more than a Christmas greeting. However, the additional material, consisting of the candidate's positions on issues, does not change the character of the publication to make it a constituent service rather than a campaign expenditure.

The general use of funds collected for political purposes is governed by Minnesota Statutes, Chapter 211B, which is not within the Board's jurisdiction. The Board assumes that you have made your own determination that the use of principal campaign committee funds for your Christmas message is appropriate under Chapter 211B. The Board expresses no opinion on that question.