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ADVISORY OPINIONS

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

July 1, 1998 - June 30, 1999

Numbers 293 - 311, 313, and 315

JULY 8, 1999

MINNESOTA CAMPAIGN FINANCE & PUBLIC DISCLOSURE BOARD
First Floor South, Centennial Building
658 Cedar Street
St. Paul, MN 55155-1603
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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, Minnesota Statute Chapter 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 Minnesota Statute Chapter 10A and Minnesota Statute Chapters 383B.041 - 383B.058.

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

- A request for an advisory opinion is nonpublic data and the advisory opinion to the requester is nonpublic data. The Board may publish an opinion that does not include the name of the requester or other identifying information unless the requester consents to the inclusion. The Board provides Consent for Release of Information forms to requesters. 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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THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requester

July 24, 1998

Issued to: Robert Maline, Treasurer
Jesse Ventura for Governor Volunteer Committee
7056 Aberdeen Curve
Woodbury, MN 55125

RE: Campaign fundraising activities

ADVISORY OPINION 293

SUMMARY

Fundraising through the sale of merchandise that will be custom made, using a corporate manufacturer/ distributor that regularly provides manufacturing and order-filling services to its clients, does not result in bundling of contributions or in a contribution from the manufacturer/distributor to the requester if fair market value is paid for the services. Fundraising through the sale of merchandise pursuant to a contract with retail outlets does not result in bundling of contributions or in a contribution from the retail entity if the retailer is paid fair market value for any services provided.

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 presented in your request letter or conveyed to Board staff:

1. The principal campaign committee you represent (the "Committee") plans to contract for the manufacture of products bearing the candidate's image and to sell these products as a means of fundraising.

2. The Committee intends to have the products manufactured by companies that regularly engage in custom manufacturing. The Committee will pay fair market value for the manufacturing services and will take ownership of the products after they have been manufactured.

3. The Committee is considering having clothing items manufactured by a company that also provides an order-filling service for its clients, commonly known as "pick and pack". Under this service, the company receives orders from buyers and conveys buyer information and the payment, or payment information, to the Committee. The Committee processes cash or credit card payments into its own account and then authorizes the distributor to pick the goods, pack them, and ship the order to the

purchaser. The Committee will pay for these services according to the distributor's established fee practices.

4. Sale of items the Committee offers will be to individuals only. All proceeds from the sale of the products would be reported as contributions from the individual purchasers as of the date the purchase is paid for. The Committee recognizes that limits and reporting requirements applicable to individual contributions apply to purchases made under your plan. The Committee also recognizes that all costs associated with the manufacture and distribution of this fundraising merchandise must be reported as campaign expenditures.

5. The Committee is also contemplating the manufacture of beer. The Committee recognizes that specific federal and state laws apply to the manufacture and distribution of beer and does not ask the Board's opinion regarding those issues.

6. The Committee contemplates consigning beer or clothing to liquor stores under a contract by which the store would act as the Committee's agent for the purpose of making the fundraiser sales; that is, collecting individual contributions. For sales over $20, the retailer will also obtain the individual's name and telephone number (or address and employment information) and forward them to the Committee. The liquor stores would be paid for their participation in this process.

7. Clothing may also be consigned to clothing stores using the same process that is used in liquor stores.

8. It is anticipated that all of the distributors involved will be corporations.

ISSUE ONE

Does the manufacture and sale of fundraising merchandise using the services of a "pick and pack" distributor, which ordinarily makes these services available to the public, result in a contribution to the Committee from the manufacturer/distributor or in the bundling of contributions?

OPINION

As long as the manufacturer/distributor is compensated at fair market value, the transactions are a purchase of services by the Committee, not a contribution from the manufacturer/distributor to the Committee. In the case of a manufacturer/distributor which makes its services available to the public, the fair market value of the services provided is the price the company's other clients would pay for the same services.

The described transactions do not constitute bundling of contributions. The pick and pack company is the Committee's contracted agent for the receipt of payments for merchandise sold. Forwarding the payment documents or payment information under contractual terms is not the delivery of contributions contemplated in Minn. Stat. § 10A.27, subd. 1.

ISSUE TWO

Does the consignment of manufactured items to a retail business and the subsequent sale by the business result in a contribution to the Committee from the business entity or in the bundling of contributions?

OPINION

No contribution from a business entity results if the retail business entities are paid fair market value for the services they provide.

Generally, a financial arrangement between the Committee and a retailer made at arms length will result in the payment of fair market value for the services. That is, there must be no special relationship between the retailer and the candidate, the candidate's committee, or the candidate's party. The retailer must base the compensation it demands on purely business factors and not on any political considerations.

The following factors, and any other relevant information, would be considered by the Board if it was required to determine whether market value was paid to the retailer for its services:

> Whether the Committee will retain ownership of the products and take back any unsold product, so there is no chance of loss to the retailer based on unsold merchandise.
>
> Whether the retailer has sold similar guaranteed sale products in the past and, if so, what has been the usual profit margin for this retailer and others under similar circumstances?
>
> If the retailer has not sold guaranteed sale merchandise in the past, what is its profit margin on similar merchandise that it handles in the regular course of its business?
>
> In establishing the compensation, what weight was given to the retailer's obligation to obtain and record additional information for certain sales?

In determining whether fair market value is paid for the services, the Board could also examine whether the motivation for taking on the merchandise is purely economic or was based on political considerations. The following factors could assist in that examination.

> Does the retailer, in the ordinary course of business, sell products similar to those offered by the Committee? If not, why is it willing to sell the Committee's products?
>
> If the particular retailer has not sold guaranteed sale merchandise in the past, why does it choose to do so now?
>
> Does the retailer have any personal relationship with the candidate or anyone on the candidate's principal campaign committee or any ties to the candidate's party?

While this list is not exhaustive, it should provide a basis for documenting the Committee's analysis and conclusion that the arrangements for compensation to the retailers results in the payment of fair market value for the services provided.

The Committee and the retailer should recognize that the retailer will be required to obtain additional information from an individual who purchases more than $20 worth of goods. At a minimum, the retailer would be required to obtain the purchaser's name and telephone number so that the Committee could later obtain the purchaser's address. Minn. Stat. § 10A.13, subd. 1(b). If a purchase is over $100, the Committee also would be required to obtain employment information. Minn. Stat. §10A.20, subd. 3.

The Board notes that there is a danger in having the retailer obtain only the name and telephone number of an individual who purchases more than $20 worth of merchandise. If the Committee is later unsuccessful in obtaining the donor's complete address, including zip code, the contribution is considered an anonymous contribution and must be sent to the Board for deposit in the General Account of the State Elections Fund. If employment information cannot be obtained from purchasers of over $100 in merchandise, the Committee will be in violation of reporting requirements for that contribution.

The Board recommends that the Committee inform purchasers of more than $20 worth of merchandise that that their purchase is a contribution to the committee. Although this notice is not required by Minnesota Statutes Chapter 10A, it would be a natural disclosure to make when obtaining the purchaser's name and address or contact information. This notice would allow a potential purchaser to make an informed decision as to whether or not to make the purchase, understanding that it constitutes a political contribution.

The described transactions do not constitute bundling of contributions for the reasons stated in Issue One of this opinion.

CAVEAT

In the fact situation presented, the Committee mentions how it plans to handle sales tax, income tax, and the issuance of political contribution receipts. The Committee also recognizes that the sale of beer is governed by statutes outside the scope of Minnesota Statutes Chapter 10A. The request presents potential issues that may be within the jurisdiction of the Minnesota Department of Revenue, federal or local taxing authorities, and agencies involved in the regulation of alcoholic beverages. The Board expresses no opinion on whether the Committee's plans for handling those matters would comply with relevant requirements.

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

July 8, 1998

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.

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

July 24,1998

RE: Requirement to register political committee

ADVISORY OPINION 295

SUMMARY

An association organized for the purpose of making volunteers available to candidates must register as a political committee if it raises or spends more than $100 in support of its activities.

FACTS

As an individual considering forming 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 intend to form (the Association) will be a voluntary association whose purpose will be the organization of volunteers who will from time to time assist candidates running for public office.

2. The Association plans to recruit and organize a group of individuals who would provide volunteer services to various candidates, such as literature drops, envelope stuffing, or get-out-the-vote telephone calling.

3. The Association will offer the services of its members to selected principal campaign committees. Candidate assistance will be provided at the discretion of the Association and only to candidates deemed acceptable to the Association. None of the Association's activities will be coordinated or controlled by, or otherwise influenced by, any candidate or principal campaign committee.

4. Volunteers will be members of the Association. The Association anticipates collecting funds from its members for such expenditures as the purchase of T-shirts for members bearing the Association's name; food and beverages to be provided to members at Association meetings or functions; and expenses for planning and organizing, such as post office box rental, voice messaging or paging service, telephone service, postage, supplies and related expenses.

5. The Association will not make monetary contributions to any candidate and will not make independent expenditures as that term is defined in Minn. Stat. § 10A.01, subd. 10b.

ISSUE

Must the Association described above register with the Board as a political committee pursuant to Minnesota Statutes Chapter 10A?

OPINION

The Association must register as a political committee within 14 days of the date it raises or spends more than $100 in the furtherance of its stated purposes.

The purpose of the Association is to influence the election of selected candidates by providing services them. Thus, it is a political committee. Minn. Stat. § 10A.01, subd. 15.

Money collected from an Association member is a contribution to the Association. Minn. Stat. § 10A.01, subds. 7 and 7a. An expenditure in furtherance of the Association's mission is an expenditures for the purpose of influencing the election of candidates. Minn. Stat. § 10A.01, subd 10.

Minn. Stat. § 10A.14 requires a political committee to register with the Board within 14 days of the date upon which it has accepted contributions or made expenditures in excess of $100.

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

July 24, 1998

RE: Definition of Independent Expenditures

ADVISORY OPINION 296

SUMMARY

Concepts of "agency" and "cooperation" used in the definition of independent expenditures require actual rather than implied agency or cooperation. Vote of candidate's honorary treasurer authorizing an expenditure constitutes express consent by the principal campaign committee to the expenditure.

FACTS

As the representative of a political committee registered with the Campaign Finance and Public Disclosure Board (Board), you ask the Board to respond to a series of hypothetical questions related to the definition of independent expenditures.

The hypothetical facts on which your request is based are stated below, along with the questions you raise.

The opinions expressed below assume that there is no involvement of any kind by the candidate, the candidate's principal campaign committee, or their agent, except as specifically described in the hypothetical situations.

Hypothetical # 1

A registered political committee is approached by an elected official such as a state senator/representative who is a member of her party's caucus. The elected official, although not involved with the campaign of a candidate, asks the political committee to consider an independent expenditure on behalf of the candidate.

Questions

1. Is the elected official an "agent" of the candidate under Minn. Stat. 10A.01 (10b)?

   Opinion: The official is an agent of the candidate under Minn. Stat. § 10A.01, subd. 10b, only if the candidate, the candidate's principal campaign committee, or an agent of the candidate has expressly consented to, requested, or suggested that the official undertake the described solicitation.

2. If the elected official is on a party committee established for the purpose of electing more of that party's candidates, is the elected official an agent of the candidate?

   Opinion: Although Minn. Stat. § 10A.01, subd. 10b, provides that if the party made the requested expenditure after it had a candidate on the ballot, the expenditure would not be considered independent, mere solicitation of another to make an expenditure which would benefit a candidate does not create a relationship of agency with the candidate's committee.

3. Under the scenario in question #2, is the independent expenditure "indirectly" being influenced by the candidate or the candidate's campaign?

   Opinion: The definition of independent expenditure does not rely on indirect influence by a candidate when determining whether an expenditure is independent, so it is not necessary for the Board to address this question.

Hypothetical #2

A political committee is funded and its contributions are determined by a club which has votes on independent expenditures. The entire club membership votes on political committee contributions. One of the members of the club serves as an honorary treasurer of a candidate.

Questions

1. Can the political committee make an independent expenditure on behalf of the candidate that the member of the club serves on that campaign committee?

   Opinion: No. The consent of a candidate's principal campaign committee to an expenditure prevents the expenditure from being considered independent. Participation by a member of the candidate's campaign committee in a vote to authorize an expenditure constitutes the express consent of the candidate's principal campaign committee to the expenditure.

2. If there is a board of directors of the club which makes the decision to fund an independent expenditure, is this an independent expenditure under Minn. Stat. 10A.01 (10b)?

   Opinion: If the candidate's honorary treasurer has had no involvement in selection of possible candidates for whom independent expenditures may be made and makes no statement or effort on behalf of the candidate's principal campaign committee, the expenditure is an independent expenditure.

3. What if the club member serves on the board of directors?

   Opinion: Participation by a member of the candidate's campaign committee in a vote to authorize an expenditure constitutes the express consent of the candidate's principal campaign committee to the expenditure.

4. If the answer to #3 is that this would not be considered an independent expenditure, what steps would need to be taken to sufficiently "wall off" the member so that an independent

expenditure could be made?

Opinion: In order to preserve the independence of the expenditure, the member must have no involvement in selection of possible candidates to benefit from independent expenditures and must make no direct or indirect statement or effort to influence any vote on a potential independent expenditure.

Hypothetical #3

A political committee decides to make an independent expenditure. It chooses to use the same advertising agency that the candidate has used to prepare advertising. Due to the agency's familiarity with the campaign, the independent expenditure uses the same colors, same font, and a similar design to the candidates advertising. The political committee pays all agency charges including design time, setup charges, printing costs, etc.

1. Is the advertising agency an "agent" of the campaign under Minn. Stat. 10A.01 (10b)?

   Opinion: No. An advertising agency is not the agent of a principal campaign committee unless the principal campaign committee has taken some affirmative action to make the agency its agent.

2. Is the political committee acting in "cooperation", "in concert with" or at the "request or suggestion of" the campaign by using the same advertising agency?

   Opinion: No. As long as there is no involvement of any kind by the candidate, the candidate's principal campaign committee, or their agent, the transaction is not in cooperation with, in concert with, or at the request or suggestion of the candidate's principal campaign committee.

3. What if the agency is a billboard company and the political committee uses the same colors?

   Opinion: The result is the same as described in the responses to questions 1 and 2.

4. What happens if the political committee uses advertising provided by a political party and not from the candidate's campaign?

   Opinion: The result is the same as described in the responses to questions 1 and 2. This opinion does not address the question of how the political party should treat the purchase or transfer of the advertising materials to the political committee.

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

July 24, 1998

RE: Definition of Lobbyist Principal

ADVISORY OPINION 297

SUMMARY

A political subdivision is not included in the categories of entities which may be lobbyist principals under Minnesota Statutes Chapter 10A.

FACTS

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

1. You are a member of the legislature.

2. You have been invited to take a trip to learn about a project with which you are involved in the legislature.

3. A Minnesota county is willing to pay your expenses for this trip.

4. The County has lobbyists registered with the Board.

5. No lobbyist has requested the county to make this trip available to you or to pay your expenses for it.

ISSUE

Is a gift to an official from a Minnesota county which retains a lobbyist a prohibited gift from a lobbyist principal?

OPINION

No. A Minnesota county is not a lobbyist principal; thus, a gift from a Minnesota county to an official is not a prohibited gift under Minn. Stat. § 10A.071 as long as the gift was not requested by a lobbyist.

A Minnesota county is a "political subdivision" as defined in Minn. Stat. § 10A.01, subd. 27.

Under Minn. Stat. § 10A.01, subd. 28, a "lobbyist principal means an individual or association . . . " (emphasis added).

In 1990, when the above definition of lobbyist principal was established, the definition of lobbyist was also revised. The legislature defined a lobbyist principal as "an individual or association . . . ". On the other hand, a lobbyist was defined as a person engaged by an "individual, association, political subdivision or public higher education system. . .".

Principles of statutory interpretation require that meaning be given to each word or phrase used in a statute. If the definition of "association" includes political subdivisions and public higher education systems, then those phrases in the definition of a lobbyist are redundant and have no meaning. The Board concludes that a political subdivision is something different from an individual or association.

A lobbyist principal must be "an individual or association". A political subdivision is neither; thus, a political subdivision is not a lobbyist principal even though it may have a lobbyist. The gift described in this request is not prohibited because the gift prohibition of Minn. Stat. § 10A.071 applies only to gifts given or requested by lobbyists or lobbyist principals.
(The Board reached a similar conclusion with regard to public higher education systems in Advisory Opinion 224.)

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

August 5, 1998

RE: Campaign expenditure definition; reporting contributions

ADVISORY OPINION 298

SUMMARY

A principal campaign committee's costs of producing a book about its candidate and the candidate's public policy positions are campaign expenditures. Donation of goods or services used in production of the book are contributions to the principal campaign committee.

FACTS

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

1. The Candidate you represent is running for office in the current election cycle. The general election will be conducted in November, 1998.

2. Between March, 1998, and May, 1998, the Candidate's principal campaign committee (the Committee) prepared and produced a book, which was published on June 2, 1998. Distribution of the book began on that date.

3. The book includes the Candidate's public policy positions. It also includes biographical information, information about the Candidate's accomplishments in state office, and a flattering foreword.

4. 1000 copies of the book were produced initially. The Committee intends to produce at least 2000 more copies of the book in August.

5. The book has been provided by the Committee free to anyone who requests it. Sale of copies of the book is also under consideration.

6. The Committee has an offer from a supporter to pay the costs of the book. You have a number of questions concerning the book and its financing. You also indicate that, if possible, the Committee would like to treat the costs of producing the book as noncampaign disbursements.

ISSUE ONE

Must the costs of production, publication, and distribution of the book be reported as campaign expenditures?

OPINION

Yes. Costs of producing, publishing, and distributing the book are campaign expenditures because the costs are incurred for the purpose of influencing the nomination or election of the candidate. Minnesota Statutes § 10A.01, subd. 10.

Use of principal campaign committee funds in general is controlled by Minnesota Statutes Chapter 211B, which is not under the jurisdiction of the Board. However, once spending has been determined to be appropriate, it must be reported as prescribed in Minnesota Statutes Chapter 10A. Chapter 10A recognizes two main categories of campaign spending, campaign expenditures and noncampaign disbursements.

Principal campaign committee spending is generally for the purpose of influencing the nomination or election of the candidate, since that is the main purpose for which the principal campaign committee exists. Only if spending falls within one of the specifically defined noncampaign disbursement categories may those categories be used.

In the case of the book the Committee has produced, there is nothing to suggest that it was for any purpose other than to influence the nomination or election of the Candidate. It is no different than any other piece of campaign literature in which candidates present their positions, outline their experience and qualifications, and generally portray themselves as the best person for the office. Such publications are, in fact, a cornerstone of most committees' efforts to influencing the nomination or election of their candidates.

The Board sees nothing about the subject book that suggests it should be treated differently than any other piece of campaign literature produced by a principal campaign committee.

ISSUE TWO

If goods or services were provided to the committee for production of the book, are those items contributions to the Committee. If so, how should they be valued?

OPINION

Goods and services provided by businesses are in kind contributions to the Committee unless the fair market value is paid for the goods or services. Minnesota Statutes § 10A.01, subd. 7b; Minnesota Statutes § 10A.20, subd. 3(b). Fair market value means the value you would have to pay to obtain equivalent goods or services in the marketplace.

Corporate contributions to principal campaign committees are prohibited under Minnesota Statute Chapter 211B. Therefore, the Committee must pay for any goods or services provided by a corporation.

A contribution of more than $100 from an association not registered with the Board is prohibited. If unregistered, non-corporate, businesses have contributed goods or services in

excess of $100, those contributions are prohibited unless the required disclosure was provided. Minn. Stat. § 10A.22, subd. 7.

Goods provided by individuals are in kind contributions to the committee and are valued at fair market value. Services provided by individuals who are volunteering their own personal time to the Committee do not constitute a contribution to the Committee. Minnesota Statutes § 10A.01, subd. 7. If the individual is paid by another person or entity while providing services to the Committee, the value of the services is a contribution from the entity paying for the services. Minn. Rules 4503.0500, subp. 4.

As noted above, if a provider of goods or services is paid fair market value for the goods or services, the transaction does not result in a contribution from the provider.

ISSUE THREE

How should the transaction be reported if a contributor of goods or services is subsequently paid for the goods or services?

OPINION

An in kind contribution occurs when the goods or services are provided to, and accepted by, the Committee. Such contributions must be reported on the Committee's next Report of Receipts and Expenditures.

Contributions may be returned to the contributor at any time. Payment for an in kind contribution is the same as returning the contribution.

The Committee should note, however, that if a contribution which is in excess of the donor's contribution limit is accepted, the facially excessive contribution violation is not cured by the subsequent return of the contribution.

Minnesota Statutes § 10A.15, subd. 3, provides that cash contributions may be returned within 60 days of the date of deposit or they are deemed accepted. A cash contribution which gave rise to a violation may be returned within 60 days to remedy the violation. It is appropriate to apply the substance of this remedy to in kind contributions as well.

An in kind contribution that resulted in a violation of Minnesota Statutes Chapter 10A, may be returned (or paid for) within 60 days of its acceptance to remedy the violation. This remedy relates only to Minnesota Statutes Chapter 10A violations and not to violations of the corporate contribution prohibitions of Minnesota Statutes Chapter 211B.

An in kind contribution which is later paid for should be reported on the contributions schedule of the Report of Receipts and Expenditures as of the date it was accepted. When it is paid for, a negative entry on the same schedule should be made below the initial entry, with an explanation that the negative entry results from payment for the in kind contribution. This transaction results in a decrease in the in kind contribution and the associated in kind expenditure.

At the same time, a campaign expenditure should be recorded for payment of the goods or services.

ISSUE FOUR

If a third party reimburses providers of goods or services or reimburses whoever originally paid for the goods and services, will that reimbursement be a contribution to the Committee from the third party?

OPINION

Yes. Whatever individual or entity ultimately pays the costs associated with an activity which is for the purpose of influencing the nomination or election of the candidate is the contributor.

ISSUE FIVE

Can the book, or its distribution, be restructured in some way so that its costs will not be campaign expenditures?

OPINION

The Board cannot conceive of any means by which the Committee could report the costs of the book as noncampaign disbursements.

The Board also notes that if the purpose of the book was not to influencing the nomination or election of the candidate, there may be some question under Minnesota Statutes Chapter 211B as to whether its production is a valid use of principal campaign committee funds.

You suggest that the Committee might sell the book if that would provide a means for avoiding treatment of its costs as campaign expenditures. However, whether the book is sold or not has no bearing on how its costs are reported. Costs of producing material which will influencing the nomination or election of the candidate are campaign expenditures regardless of whether those materials are eventually sold or given away.

If the Committee does sell the book, it should remember that sales of campaign materials such as buttons, T-shirts, bumper stickers, books, and the like are treated as fundraising proceeds. The full amount of each sale is a contribution from the purchaser.

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

August 5, 1998

RE: Independent expenditure definition

ADVISORY OPINION 299

SUMMARY

An expenditure by a party unit in a race where the party has a candidate on the general election ballot is not an independent expenditure. Such an expenditure is deemed to be an expenditure approved by the party's candidate and is a contribution to that candidate.

FACTS

Representatives of two separate state party organizations, acting separately, ask the Campaign Finance and Public Disclosure Board (Board) for advisory opinions based on the same facts, which are as follows:

1. Each state party organization (the Party) is a party unit as defined in Minn. Stat. § 10A.275, subd. 3.

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

3. Unless such an expenditure falls within the Minn. Stat. § 10A.275 definition of multicandidate expenditures, the Board has concluded that the expenditure is deemed to be an approved expenditure on behalf of the party's candidate on the ballot.

4. The Board has also previously stated that a party has a candidate on the ballot in a race when a candidate of the party files for the office that is the subject of the race.

Each party asks the Board to re-examine its conclusion as to when the party has a candidate on the ballot in a race.

BACKGROUND

Since the adoption in 1993 of Minn. Stat. §10A.01, subd. 10b, relating to independent expenditures, the Board has addressed specifically targeted questions regarding interpretation of the party unit independent expenditure provision stated in the last sentence of the subdivision.

In 1997 a party unit asked about making expenditures for publications naming the incumbent legislator in the district who was a member of another political party. Advisory Opinion 263 recognized four scenarios which might apply to an expenditure that specifically named the incumbent opponent:

(1) if the expenditure was made with the approval of a candidate, it was an approved expenditure
(2) if it was made before the party had a candidate on the ballot in the race and it expressly advocated the defeat of the opponent, it was an independent expenditure,
(3) if it was made before the party had a candidate on the ballot in the race and it did not expressly advocate the defeat of the opponent, it was a general party disbursement, and
(4) if it was made when the party had a candidate on the ballot in the race, the candidate was deemed to have approved the expenditure and it was an approved expenditure.

Advisory Opinion 263 also included the Board's first formal statement related to the provision of Minn. Stat. § 10A.01, subd. 10b, which states that:

> "an expenditure by a political party . . . in a race where the political party has a candidate on the ballot is not an independent expenditure".

The Board concluded that the quoted provision gave rise to a conclusive presumption that the party's candidate had approved such expenditures and that they would, therefore, constitute contributions to the candidate.

Without specific analysis or discussion, the Board stated that this presumption arose "when a candidate of the party will appear on the primary or general election ballot for the subject office in the district at the time the subject communication takes place".

The Board again considered party independent expenditures in Advisory Opinion 265, in which a political party presented a number of scenarios and asked whether under each scenario the party expenditure constituted a contribution to the candidate.

The facts of Advisory Opinion 265 presumed that under each scenario presented, no candidate of the party had yet filed for office. Therefore, the Board did not consider the presumption of approval which arises when the party has a candidate on the ballot, since the facts made it clear that the only conduct under examination occurred before the party had a candidate on either the primary election or the general election ballot.

The Board considered party unit independent expenditures for a third time in Advisory Opinion 291, in which the requester, a party unit, sought to have the Board declare the restriction on party unit independent expenditures to be unconstitutional.

The fact statement of Opinion 291 noted that the Board had previously interpreted the limitation on party unit independent expenditures as being in effect after a candidate of the party has filed for the office in question. However, the request which resulted in Advisory Opinion 291 did not seek re-examination or refinement of that position and the Board's response was limited to addressing the constitutional challenge.

The Board has not, until now, been requested to examine more carefully the question of when a party "has a candidate on the ballot", as that phrase is used in Minn. Stat. § 10A.01, subd. 10b. Now, two separate state party organizations have made that request. Their requests were combined for consideration and result in this Advisory Opinion.

ISSUE

What is the meaning and effect of the provision of Minn. Stat. § 10A.01, subd. 10b, which states that: "An expenditure by a political party or a political party unit . . . in a race where the party has a candidate on the ballot is not an independent expenditure"?

OPINION

The meaning and effect of the quoted provision is that party unit expenditures which expressly advocate the election or defeat of a clearly identified candidate in a race where the party has a candidate on the general election ballot are deemed to be made with the approval of the party's candidate and constitute contributions to that candidate.

This conclusion differs from the opinion expressed in Advisory Opinion 263, in which the Board stated that the party had a candidate on the ballot when a candidate has filed for the subject office. This change in position is made as a result of the Board's further study of the statutory provisions and examination of the statutory language.

In reaching the conclusion that the limitation is based on the general election ballot, we begin by looking at relevant statutory definitions.

The phrase "campaign expenditure" and the word "expenditure" have the same meaning in Minnesota Statutes Chapter 10A.

The definition of campaign expenditure may be paraphrased as follows:

> "Campaign expenditure" or "expenditure" means a purchase or payment made for the purpose of influencing the nomination or election of a candidate.
>
> Minn. Stat. § 10A.01, subd. 10 (1996) (emphasis added).

From this definition, it is clear that a campaign expenditure may be (1) to influence the nomination of the candidate, which means that it is related to the primary election or (2) to influence the election of the candidate, which means it is related to the general election.

Primary elections are for the purpose of choosing a party's nominee for the race in question. General elections are for the purpose of electing one party's candidate to office which is the subject of the race.

Independent expenditures are a subset of all campaign expenditures. The definition of an independent expenditure is as follows:

> "Independent expenditure" means an expenditure expressly advocating the election or defeat of a clearly identified candidate, which expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent."
>
> Minn. Stat. §10A.01, subd. 10b (emphasis added).

It is important to recognize that this definition does not include expenditures intended to affect the nomination of a candidate. The narrowly tailored independent expenditure includes only certain expenditures expressly advocating election or defeat of a candidate. Thus, all independent expenditures relate by definition to the general election.

Minn. Stat. §10A.01, subd. 10b, further provides that "an expenditure by a political party or a political party unit . . . in a race where the political party has a candidate on the ballot is not an independent expenditure".

The Board stated in Advisory Opinion 263 that the party has a candidate on the ballot once a candidate files for office. It is true that after filing (or at least after the time to withdraw the filing expires) the party has a candidate on the primary election ballot. However, our further consideration convinces us that it is incorrect to conclude that having a candidate on the primary election ballot triggers the time limitation on independent expenditures quoted above.

Since an independent expenditure always relates to the general election (it is to influence the "election or defeat", not the "nomination"), the limitation can only be triggered by having a candidate on the general election ballot.

Given this conclusion, it is necessary to decide whether the fact that a candidate of the party has filed for office and not withdrawn the filing means that the party has a candidate on the general election ballot.

While it is highly likely that the party will have a candidate on the general election ballot as a result of the filing, this future likelihood is not sufficient to trigger the limitation on independent expenditures, which is stated in the present tense: at a time when the party "has a candidate" on the ballot. The rules of statutory interpretation do not permit changing the meaning of a phrase which requires a present condition to one which requires only a future probability.

This analysis compels a single conclusion with respect to the limitation on independent expenditures. The limitation is applicable to a party that has a candidate on the general election ballot. This condition occurs as a result of the candidate's nomination as the party's candidate through the primary election process. When the primary election results are certified by the state canvassing board the ballot is defined. The actual date of physical manufacture of the paper or other embodiment of the ballot is not relevant.

The conclusion we reach in this Opinion is also consistent with the nature of independent expenditures, which are a constitutionally protected form of speech. Limiting the restriction on this speech to a time when the party has a single candidate on the general election ballot for the race is narrowly tailored to achieve the purpose of avoiding circumvention of spending and

contribution limits through party independent expenditures. The Board also notes that, although the question addressed herein was not squarely before the court, the Order issued July 24, 1998, in Republican Party of Minnesota, et al. v. G. Barry Anderson uses the point of nomination, i.e. when primary results are certified, as the point at which the attribution in Minn. Stat. §10A.01, subd. 10b, applies.

In Advisory Opinion 263, we stated, and we reiterate here, that the limitation of Minn. Stat. § 10A.01, subd. 10b, is based on the time the communication takes place, not the time the payment is made or the obligation to pay for the communication is incurred. Thus, prepayment for communications that will take place after the general election ballot has been defined is not a means to avoid the limitation of Minn. Stat. § 10A.01, subd. 10b. While the expenditure is made and reported as of the date the obligation is incurred, the expenditure is an expenditure "in a race" if the communication takes place after the ballot for the race has been defined.

Party units making independent expenditures are reminded of the requirement of Minn. Stat. § 10A.17, subd. 4, which describes the disclosure which must accompany any communication which is an independent expenditure.

Finally, we note that Minn. Stat. § 10A.275, which permits certain multicandidate expenditures which do not constitute contributions to the benefited candidates supersedes other statutory provisions. Thus an expenditure which falls within the definitions of multicandidate expenditures is not affected by Minn. Stat. § 10A.01, subd. 10b, or by this opinion.

We have concluded that the limitation on independent expenditures applies only after the general election ballot is defined. At that time there is only one candidate of the party on the ballot. Thus, an expenditure which would have been an independent expenditure but for the statutory limitation is an approved expenditure allocated as a contribution to the party's single candidate.

Because the presumption of approval by the candidate arises as a result of statute, the requirement that the party obtain written approval of the candidate prior to making such expenditures is not applicable. However, the Board cautions party units in this regard since a party expenditure attributed to the candidate by operation of law could put the candidate over the campaign expenditure limit or the party contribution limit if the candidate's treasurer is not aware of the expenditure ahead of time.

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

August 5, 1998

RE: Independent expenditure definition

ADVISORY OPINION 300

SUMMARY

An expenditure by a party unit in a race where the party has a candidate on the general election ballot is not an independent expenditure. Such an expenditure is deemed to be an expenditure approved by the party's candidate and is a contribution to that candidate.

FACTS

Representatives of two separate state party organizations, acting separately, ask the Campaign Finance and Public Disclosure Board (Board) for advisory opinions based on the same facts, which are as follows:

1. Each state party organization (the Party) is a party unit as defined in Minn. Stat. § 10A.275, subd. 3.

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

3. Unless such an expenditure falls within the Minn. Stat. § 10A.275 definition of multicandidate expenditures, the Board has concluded that the expenditure is deemed to be an approved expenditure on behalf of the party's candidate on the ballot.

4. The Board has also previously stated that a party has a candidate on the ballot in a race when a candidate of the party files for the office that is the subject of the race.

Each party asks the Board to re-examine its conclusion as to when the party has a candidate on the ballot in a race.

BACKGROUND

Since the adoption in 1993 of Minn. Stat. §10A.01, subd. 10b, relating to independent expenditures, the Board has addressed specifically targeted questions regarding interpretation of the party unit independent expenditure provision stated in the last sentence of the subdivision.

In 1997 a party unit asked about making expenditures for publications naming the incumbent legislator in the district who was a member of another political party. Advisory Opinion 263 recognized four scenarios which might apply to an expenditure that specifically named the incumbent opponent:

(1) if the expenditure was made with the approval of a candidate, it was an approved expenditure
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(3) if it was made before the party had a candidate on the ballot in the race and it did not expressly advocate the defeat of the opponent, it was a general party disbursement, and
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Advisory Opinion 263 also included the Board's first formal statement related to the provision of Minn. Stat. § 10A.01, subd. 10b, which states that:

> "an expenditure by a political party . . . in a race where the political party has a candidate on the ballot is not an independent expenditure".

The Board concluded that the quoted provision gave rise to a conclusive presumption that the party's candidate had approved such expenditures and that they would, therefore, constitute contributions to the candidate.

Without specific analysis or discussion, the Board stated that this presumption arose "when a candidate of the party will appear on the primary or general election ballot for the subject office in the district at the time the subject communication takes place".

The Board again considered party independent expenditures in Advisory Opinion 265, in which a political party presented a number of scenarios and asked whether under each scenario the party expenditure constituted a contribution to the candidate.

The facts of Advisory Opinion 265 presumed that under each scenario presented, no candidate of the party had yet filed for office. Therefore, the Board did not consider the presumption of approval which arises when the party has a candidate on the ballot, since the facts made it clear that the only conduct under examination occurred before the party had a candidate on either the primary election or the general election ballot.

The Board considered party unit independent expenditures for a third time in Advisory Opinion 291, in which the requester, a party unit, sought to have the Board declare the restriction on party unit independent expenditures to be unconstitutional.

The fact statement of Opinion 291 noted that the Board had previously interpreted the limitation on party unit independent expenditures as being in effect after a candidate of the party has filed for the office in question. However, the request which resulted in Advisory Opinion 291 did not seek re-examination or refinement of that position and the Board's response was limited to addressing the constitutional challenge.

The Board has not, until now, been requested to examine more carefully the question of when a party "has a candidate on the ballot", as that phrase is used in Minn. Stat. § 10A.01, subd. 10b. Now, two separate state party organizations have made that request. Their requests were combined for consideration and result in this Advisory Opinion.

ISSUE

What is the meaning and effect of the provision of Minn. Stat. § 10A.01, subd. 10b, which states that: "An expenditure by a political party or a political party unit . . . in a race where the party has a candidate on the ballot is not an independent expenditure"?

OPINION

The meaning and effect of the quoted provision is that party unit expenditures which expressly advocate the election or defeat of a clearly identified candidate in a race where the party has a candidate on the general election ballot are deemed to be made with the approval of the party's candidate and constitute contributions to that candidate.

This conclusion differs from the opinion expressed in Advisory Opinion 263, in which the Board stated that the party had a candidate on the ballot when a candidate has filed for the subject office. This change in position is made as a result of the Board's further study of the statutory provisions and examination of the statutory language.

In reaching the conclusion that the limitation is based on the general election ballot, we begin by looking at relevant statutory definitions.

The phrase "campaign expenditure" and the word "expenditure" have the same meaning in Minnesota Statutes Chapter 10A.

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Primary elections are for the purpose of choosing a party's nominee for the race in question. General elections are for the purpose of electing one party's candidate to office which is the subject of the race.

Independent expenditures are a subset of all campaign expenditures. The definition of an independent expenditure is as follows:

> "Independent expenditure" means an expenditure expressly advocating the election or defeat of a clearly identified candidate, which expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent."
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It is important to recognize that this definition does not include expenditures intended to affect the nomination of a candidate. The narrowly tailored independent expenditure includes only certain expenditures expressly advocating election or defeat of a candidate. Thus, all independent expenditures relate by definition to the general election.

Minn. Stat. §10A.01, subd. 10b, further provides that "an expenditure by a political party or a political party unit . . . in a race where the political party has a candidate on the ballot is not an independent expenditure".

The Board stated in Advisory Opinion 263 that the party has a candidate on the ballot once a candidate files for office. It is true that after filing (or at least after the time to withdraw the filing expires) the party has a candidate on the primary election ballot. However, our further consideration convinces us that it is incorrect to conclude that having a candidate on the primary election ballot triggers the time limitation on independent expenditures quoted above.

Since an independent expenditure always relates to the general election (it is to influence the "election or defeat", not the "nomination"), the limitation can only be triggered by having a candidate on the general election ballot.

Given this conclusion, it is necessary to decide whether the fact that a candidate of the party has filed for office and not withdrawn the filing means that the party has a candidate on the general election ballot.

While it is highly likely that the party will have a candidate on the general election ballot as a result of the filing, this future likelihood is not sufficient to trigger the limitation on independent expenditures, which is stated in the present tense: at a time when the party "has a candidate" on the ballot. The rules of statutory interpretation do not permit changing the meaning of a phrase which requires a present condition to one which requires only a future probability.

This analysis compels a single conclusion with respect to the limitation on independent expenditures. The limitation is applicable to a party that has a candidate on the general election ballot. This condition occurs as a result of the candidate's nomination as the party's candidate through the primary election process. When the primary election results are certified by the state canvassing board the ballot is defined. The actual date of physical manufacture of the paper or other embodiment of the ballot is not relevant.

The conclusion we reach in this Opinion is also consistent with the nature of independent expenditures, which are a constitutionally protected form of speech. Limiting the restriction on this speech to a time when the party has a single candidate on the general election ballot for the race is narrowly tailored to achieve the purpose of avoiding circumvention of spending and contribution limits through party independent expenditures. The Board also notes that, although

the question addressed herein was not squarely before the court, the Order issued July 24, 1998, in Republican Party of Minnesota, et al. v. G. Barry Anderson uses the point of nomination, i.e. when primary results are certified, as the point at which the attribution in Minn. Stat. §10A.01, subd. 10b, applies.

In Advisory Opinion 263, we stated, and we reiterate here, that the limitation of Minn. Stat. § 10A.01, subd. 10b, is based on the time the communication takes place, not the time the payment is made or the obligation to pay for the communication is incurred. Thus, prepayment for communications that will take place after the general election ballot has been defined is not a means to avoid the limitation of Minn. Stat. § 10A.01, subd. 10b. While the expenditure is made and reported as of the date the obligation is incurred, the expenditure is an expenditure "in a race" if the communication takes place after the ballot for the race has been defined.

Party units making independent expenditures are reminded of the requirement of Minn. Stat. § 10A.17, subd. 4, which describes the disclosure which must accompany any communication which is an independent expenditure.

Finally, we note that Minn. Stat. § 10A.275, which permits certain multicandidate expenditures which do not constitute contributions to the benefited candidates supersedes other statutory provisions. Thus an expenditure which falls within the definitions of multicandidate expenditures is not affected by Minn. Stat. § 10A.01, subd. 10b, or by this opinion.

We have concluded that the limitation on independent expenditures applies only after the general election ballot is defined. At that time there is only one candidate of the party on the ballot. Thus, an expenditure which would have been an independent expenditure but for the statutory limitation is an approved expenditure allocated as a contribution to the party's single candidate.

Because the presumption of approval by the candidate arises as a result of statute, the requirement that the party obtain written approval of the candidate prior to making such expenditures is not applicable. However, the Board cautions party units in this regard since a party expenditure attributed to the candidate by operation of law could put the candidate over the campaign expenditure limit or the party contribution limit if the candidate's treasurer is not aware of the expenditure ahead of time.

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

August 28, 1998

RE: Registration of Political Fund

ADVISORY OPINION 301

SUMMARY

An association which is not a political committee under Minnesota Statutes, Chapter 10A, must establish and register a political fund with the Board within 14 days after it raises or spends more than $100 to influence the nomination or election of candidates.

FACTS

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

1. The Association is a non-partisan coalition of citizens who are committed to the eliminate from Minnesota electoral campaigns conduct and materials the Association believes are inappropriate.

2. The intention of the Association is not to influence the election or defeat of candidates for office, but to educate candidates and hold them accountable with regard to the conduct of their campaigns and the content of their campaign materials.

3. The Association will act as an educational resource for candidates and also plans to distribute a code of conduct for candidates to follow. The code would encourage candidates to commit to a principled, truthful, and consistent with the principles of the Association.

4. The Association will not make any contributions to candidates, party units, or other political committees or political funds. It will not make independent expenditures advocating the election or defeat of a candidate. It will not endorse any candidate and will not urge its members or others to vote for or against any candidate.

5. If the Association believes that a candidate has engaged in unacceptable tactics, it may work with the candidate's principal campaign committee to eliminate those tactics. If that is deemed futile or is unsuccessful, the Association will bring the tactics to the attention of the public through use of the free media.

6. The Association will not take any action to publicly identify candidates who do not use unacceptable tactics, so as to influence their nominations or elections. If requested, the

Association would answer questions or serve as an educational resource for these candidates.

7. The Association wants to influence the overall election process in Minnesota rather than individual elections. However, the Association recognizes that if it publicly identifies what it believes to be unacceptable conduct or materials in a particular campaign, its public statements in that regard may have the effect of influencing that election.

ISSUE

Is the Association required to register with the Board as a political committee or political fund based on the activities described in the facts?

OPINION

If the Association raises or spends more than $100 for the purpose of influence the nomination or election of candidates, it must establish and register a political fund with the Board within 14 days.

The Association's stated purpose is to affect the conduct of the election process in Minnesota as a whole, not the outcome of any particular election. Many of the Association's activities, such as providing education or drafting a code of conduct, are not for the purpose of affecting the nomination or election of specific candidates. The Association's major purpose is not to influence the nomination or election of candidates, thus it is not a political committee. Minn. Stat. § 10A.01, subds. 15 and 16.

Even though the Association does not exist specifically to influence the nomination or election of candidates, it may still engage in activities which have that effect. If the ordinary and necessary consequence of an activity would be to influence the nomination or election of a candidate, then any costs incurred for the activity are expenditures within the meaning of Minn. Stat. § 10A.01, subd. 10.

Publication of information identifying specific candidates as using unacceptable tactics or materials in their activities or materials is considered to be for the purpose of influencing the nomination or election of those candidates and costs associated with the publication are expenditures.

The Association states that it intends to use the free media for its publicity activities. However, if the Association does raise or spend more than $100 for these public announcements, it must establish and register a political fund with the Board and conduct its political fundraising and spending through that fund. Minn. Stat. § 10A.4.

Media access that is given to the Association, but is usually sold to others, may constitute a contribution to the Association which would be included when determining whether more than $100 has been raised or spent.

The Association is advised to consult with Board staff if it begins to incur costs for publicity concerning individual candidates or their principal campaign committees.

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

August 28, 1998

Issued to: Minnesota Democratic-Farmer-Labor Party
Alan W. Weinblatt, Attorney
1616 Pioneer Building
336 North Robert Street
St. Paul, MN 55101

RE: Official Party Sample Ballot

ADVISORY OPINION 302

SUMMARY

A party may publish its official sample ballot under Minn. Stat. § 10A.275, subd. 1(b), in multiple versions and may distribute or publish the ballot multiple times. The sample ballot itself is limited to a ballot like representation which may include only minimal additional information.

FACTS

As the representative of the Minnesota Democratic-Farmer-Labor Party ("the DFL"), you ask the Campaign Finance and Public Disclosure Board ("the Board") for an advisory opinion interpreting Minn. Stat. § 10A.275, subd. 1(b), by posing questions which are restated in the Issues below.

ISSUE ONE

May a major political party, as defined in Minnesota Statutes Chapter 10A, prepare, display, mail or otherwise distribute more than one official party sample ballot?

OPINION

Minn. Stat. § 10A.275, subd 1(b), states that multicandidate expenditures include a party's costs of preparation and distribution of "an official party sample ballot" listing the names of at least three individuals whose names will appear on the ballot for the subject election. The Board does not interpret the use of "an" in this statute to mean that only a single official ballot may be prepared.

It is obvious that at least as many versions of an official sample ballot as there are versions of the official ballot must be permitted. It is also clear that different sample ballots may be required for the general and primary elections.

It is the opinion of the Board that a party may prepare, display, mail, or otherwise distribute its official sample ballot in multiple forms and on multiple occasions.

A party is not prohibited from providing a sample ballot in multiple versions to the same recipient or providing the same sample ballot to a recipient multiple times.

ISSUE TWO

Does the four page document provided qualify as a sample ballot?

OPINION

Only that part of the document titled "Official DFL Sample Ballot" and outlined with a border (the lower right corner of page 4) qualifies as a sample ballot for multicandidate expenditure purposes.

The first and third pages of the document consist of information for the purpose of influencing the nomination or election of a specific Governor/Lieutenant Governor slate of candidates. Reporting of the costs of these pages will depend on whether there was candidate involvement in their publication and on when the publication takes place. Depending on these factors, the costs may be approved expenditures which constitute contributions to the candidates. See Advisory Opinion 300 and Minn. Stat. § 10A.01, subds. 10a and 10b.

The second page of the document is a publication urging the election of DFL endorsed candidates as a whole. Costs of its preparation and distribution are multicandidate expenditures pursuant to Minn. Stat. § 10A.275, subd. 1(a).

The fourth page of the document includes the official sample ballot in the lower right corner. The proportional costs of production and publication of that part of the document are multicandidate expenditures for a party's official sample ballot.

The remainder of page four consists of information for the purpose of influencing the nomination or election of four specific candidates. Reporting of the proportional costs of those sections will depend on whether there was candidate involvement in the publication and on when the publication takes place. Depending on these factors, the costs may be approved expenditures which constitute contributions to the candidates. See Advisory Opinion 300 and Minn. Stat. § 10A.01, subds. 10a and 10b.

ISSUE THREE

What may be included in a document which constitutes the party's official sample ballot under Minn. Stat. § 10A.275, subd. 1(b)?

OPINION

Minnesota Statutes Chapter 10A does not specifically define what may be included in a party's official sample ballot. However, the plain language of the phrase "official sample ballot" suggests that the document must at least resemble a ballot.

The Board also notes that the costs of an official sample ballot are treated as multicandidate expenditures and, thus, are not attributable as contributions to the candidates listed on the ballot. This suggests that the ballot should be limited so that it does not become merely a mechanism by which general campaign advertising on behalf of candidates may be characterized as a multicandidate expenditure.

With those criteria in mind, the Board has reviewed that part of the document you provided which is identified as "Official DFL Sample Ballot". The Board concludes that that part of the document includes the elements that are required in a sample ballot as well as a number of elements which are optional but permitted.

Specifically, an official sample ballot must identify itself as such and must identify the party which has adopted the document as its sample ballot. If the sample ballot is produced as a separate publication, it must include statutory notices regarding the committee that paid for it.

The sample ballot must, pursuant to Minn. Stat. § 10A.275, subd. 1(b), include the names of at least three individuals whose names will appear on the actual official ballot for the election in question. These individuals may include local or federal candidates in addition to candidates registered with the Board.

The sample ballot may include a photograph of each candidate listed on the ballot along with the candidate's name and the office sought. The photographs should not be disproportionate to the ballot part of the document and no single candidate's photograph should be significantly larger than the others so as to give greater emphasis to that candidate.

The sample ballot may also include a designation of the election to which it applies, the date of the election, and a solicitation urging people to vote in that election.

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

August 28, 1998

Issued to: Minnesota Democratic-Farmer-Labor Party
Alan W. Weinblatt, Attorney
1616 Pioneer Building
336 North Robert Street
St. Paul, MN 55101

RE: Special Source Contribution Limit

ADVISORY OPINION 303

SUMMARY

The limit on contributions from lobbyists, political committees, political funds, and large givers is based on the campaign expenditure limit for the office sought by the candidate before any adjustments resulting from an individual candidate's status.

FACTS

As the representative of the Minnesota Democratic-Farmer-Labor Party ("the DFL") and a number of DFL candidates, you ask the Campaign Finance and Public Disclosure Board ("the Board") for an advisory opinion interpreting Minn. Stat. § 10A.27, subd. 11, by posing a question which is restated in the Issue below.

ISSUE

Is the Minn. Stat. § 10A.25, subd. 11, limit on contributions from lobbyists, political committees or political funds, and large givers increased for a candidate who is entitled to an increase in the candidate's campaign expenditure limit based on first time candidacy or a closely contested primary.

OPINION

No. The limit on contributions from lobbyists, political committees, political funds, and large givers established in Minn. Stat. § 10A.27, subd. 11, is based on the campaign expenditure limit applicable to the office, not an adjusted limit resulting from the status of the candidate with respect to the particular election.

Minn. Stat. § 10A.27, subd. 11, states that subject limit is based on the expenditure limit for the office sought by the candidate, not on the expenditure limit for a particular candidate running in a particular election for that that office.

Had the legislature intended the limit to be based on the particular candidate's expenditure limit, it easily could have written the statute to do so. An example of such a case is found in Minn. Stat. § 10A.31, subd. 7, in which a cap on public subsidy payments is established, based "on the expenditure limit for the candidate".

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

October 30, 1998

Issued to: John H. Herman
Leonard, Street and Deinard
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

RE: Lobbying Municipal Governmental Units

ADVISORY OPINION 304

SUMMARY

An individual becomes a lobbyist by spending five hours in a month communicating with or urging others to communicate with local officials of a metropolitan governmental unit. Local officials include only those persons who meet the statutory definition of a local official. The exception to the lobbyist definition for individuals engaged in the sale of goods or services extends to attorneys representing clients in such sales.

FACTS

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

1. You are an attorney in a firm that represents clients in a variety of matters before metropolitan governmental units.

2. You or members of your firm may represent companies selling insurance, financial services, business consulting, or educational services to a metropolitan governmental unit.

3. You may represent a client seeking a specific governmental approval from a metropolitan governmental unit. Examples of such approvals include zoning variances, conditional use permits, building permits, or business licenses.

4. You may also assist clients in preparing responses or appearing at administrative hearings related to the issuance of orders or the imposition of administrative penalties.

5. The services you provide to clients may also extend to representation in matters relating to redevelopment projects. Your activities in this area could include assisting your client in being selected for a redevelopment project, negotiating a redevelopment contract, or being awarded financial assistance such as tax increment financing or a grant.

Issue One

Is an attorney who represents a client in the process of selling insurance, financial services, business consulting, or educational services to a metropolitan governmental unit required to register as a lobbyist?

Opinion

No. An attorney assisting a client engaged in selling goods or services to be paid for with public funds is excluded from the definition of a lobbyist by the exception created in Minn. Stat. § 10A.01, subd. 11 (2)(b)(6).

This exception applies to individuals selling goods or services on their own behalf as well as to employees or independent contractors, such as attorneys, acting on behalf of sellers.

Issue Two

Is an attorney who represents a client in relation to an administrative order or penalty, or in seeking a specific governmental approval from a metropolitan governmental unit, required to register as a lobbyist?

Opinion

The lobbyist registration requirement does not depend on the nature of the governmental action involved. Rather, the registration requirement depends on the status and authority of the people who are influenced to bring about the desired action. To trigger the lobbyist registration requirement, an attorney must spend five hours in a month communicating directly with, or urging others to communicate with people who hold "local official" positions. Minn. Stat. § 10A.01, subd. 11.

Local officials of metropolitan governmental units include:

- elected metropolitan governmental unit officials
- appointed officials or employees who have the authority to make, recommend, or vote on as a member of the governing body, major decisions regarding the expenditure of public money. Minn. Stat. § 10A.01, subd. 25.

Many governmental decisions are made by people who do not meet the statutory definition of local officials. Communication with people who are not local officials does not trigger the lobbyist registration requirement unless that communication is to urge those people, in turn, to communicate with local officials to influence the governmental action. Minn. Stat. § 10A.01, subd. 11.

Even when you do communicate with local officials, lobbyist registration is triggered only by spending the requisite five hours in a single month in that communication (or urging others to engage in that communication). Time spent advising clients, preparing written materials, preparing or reviewing responses, observing or waiting during proceedings, and similar activities not involving direct communication are not included in the five hour threshold.

To determine whether a person is a local official, you may consult the list maintained by the Board pursuant to Minn. Rules pt. 4501.0400, subp. 1. Under that rule, each metropolitan governmental unit is required to identify the positions that constitute its local officials and report

them to the Board on an annual basis. While this list is informative, the statute does not provide that it is the authoritative source for determining who is a local official. Ultimately, the statutory definition controls.

Issue Three

Is an attorney who represents a client seeking governmental assistance for a redevelopment project required to register as a lobbyist?

Opinion

If the representation includes five hours in a month communicating with local officials of the metropolitan governmental unit or urging others to communicate with those officials, the attorney must register as a lobbyist.

The Board does not consider obtaining or negotiating a metropolitan governmental unit redevelopment project to be a sale of goods or services. Rather, the Board understands a redevelopment project to be a complex relationship in which the developer is ultimately granted the right to develop a project which the developer will own.

Typically, development projects will not be included in the exemption for sales of services discussed in issue one above. If the requester believes that participation in a specific redevelopment project should result in a different conclusion, that example could be considered in another request for an advisory opinion that includes specific facts concerning the project and the attorney's involvement.

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

February 1, 1999

RE: Multicandidate expenditure for political party fundraising effort on behalf of candidates

ADVISORY OPINION 305

SUMMARY

Multicandidate expenditure for party fundraising efforts need not take a particular form or use specific language; however, it must be clear that the undertaking is a fundraising effort. Other materials included with multicandidate fundraising materials may be recognized separately from the multicandidate expenditure. A political Party may include solicitation on its own behalf or on behalf of federal or local candidates with materials for multicandidate fundraising effort. Contributions resulting from multicandidate fundraising effort must be made directly to the candidate or the candidate's principal campaign committee.

FACTS

As attorney for the a political party (the Party) registered with the Campaign Finance and Public Disclosure Board (Board), you ask the Board for an advisory opinion based on the following facts:

1. The Party is a political party as defined in Minn. Stat. Chapter 10A.

2. The Party intends to make expenditures to conduct party fundraising efforts on behalf of its candidates and to report those expenditures as multicandidate expenditures pursuant to Minn. Stat. § 10A.275.

The party seeks Board advice with respect to the requirements for and limitations on party fundraising efforts under Minn. Stat. § 10A.275.

The Party has posed a series of questions which are repeated or paraphrased in the issues section below.

ISSUE ONE

Is there a specific form that a political party fundraising effort under Minn. Stat. §10A.275, subd. 1(d), must take (e.g., fundraising dinner; media solicitation; written/direct mail solicitation; telephone solicitation, in-person solicitation, etc.)?

OPINION

No. A fundraising effort that qualifies as a multicandidate expenditure under Minn. Stat. § 10A.275 may include any party activity that has as its purpose the raising of money for three or more of the party's candidates.

ISSUE TWO

How is the classification of fundraising materials as a multicandidate expenditure affected by the inclusion of materials that are for the purpose of influencing the nomination or election of a candidate or materials expressly advocating the election or defeat of a candidate?

OPINION

A multicandidate fundraising effort under Minn. Stat. § 10A.275 is defined by its purpose, which is to raise money for three or more of the party's candidates. If the materials or communications supporting the effort make it clear that this is the purpose of the effort, the multicandidate expenditure classification applies.

If other information is incorporated into, or included with, the communications supporting a party's multicandidate fundraising effort, there will be a point at which the those materials will be recognized in their own right and will not be considered a part of the multicandidate expenditure.

Without specific examples on which to base an opinion, the Board will cannot consider where or how the line between fundraising materials and other materials will be drawn.

ISSUE THREE

Must the content of a fundraising effort be equally devoted to each of the three or more candidates on whose behalf the solicitation is made?

OPINION

Yes. A fundraising effort conducted under Minn. Stat. § 10A.275 is a multicandidate effort. Therefore, materials or presentations should be on behalf of the candidate group generally and should not emphasize one candidate over another.

ISSUE FOUR

Must a political party fundraising effort under Minn. Stat. §10A.275, subd. 1(d) identify itself as such and identify the party which has adopted the effort as a fundraising effort?

OPINION

Classification of an activity as a multicandidate fundraising effort generally requires that written materials or verbal messages regarding the effort include a clear solicitation of money. Invitations to a fundraising event must identify the purpose of the event as fundraising.

You are referred to Minnesota Statutes Chapter 211B for guidance concerning the requirements for identification of the originator of political material. Chapter 211B is not under the jurisdiction of the Board.

ISSUE FIVE

Must the political party fundraising effort be intended to benefit three or more candidates who are subject to Chapter 10A, or may the effort be designed to assist local or federal candidates in addition to candidates registered with the Board? If local or federal candidates are included, does this affect the application of the exemption?

OPINION

A party fundraising effort under Minn. Stat. § 10A.275 must include at least three candidates subject to Chapter 10A. Only that portion of the effort that benefits Chapter 10A candidates constitutes a multicandidate expenditure. The same fundraising effort may also include the party's local or federal candidates. If such candidates are included, the costs of the effort must be divided between Chapter 10A candidates and other candidates on a reasonable basis. The proportion of the allocation attributable to Chapter 10A candidates is a multicandidate expenditure. The proportion attributable to non-Chapter 10A candidates is a general disbursement of the party.

It is to be noted that costs of a fundraising effort for three or more Chapter 10A candidates and for non-Chapter 10A candidates are all reported as general party disbursements. The only reason for allocating the costs is that a state party unit's share of funds from the political contribution checkoff program may be used for the multicandidate expenditure portion of the costs, while those funds may not be used for the non-multicandidate expenditure portion.

ISSUE SIX

May the fundraising effort also solicit funds on behalf of the political party sponsoring the effort, or will such solicitations on behalf of the party violate the "earmarking" prohibitions under Minn. Stat. §10A.16?

OPINION

The fundraising effort may also include a solicitation of funds for the party itself. Allocation of costs will be the same as described in Issue Seven. The earmarking prohibitions of Minn. Stat. § 10A.16 are not applicable to a party's solicitation of funds on its own behalf.

ISSUE SEVEN

If a political party sponsors a qualifying fundraising effort, may the political party collect and deliver contributions to the candidates on whose behalf the effort is conducted, or must contributions be delivered by the contributor directly to the candidate/campaign committee to avoid the bundling prohibitions of Minn. Stat. §10A.27, subd. 1?

OPINION

In any multicandidate fundraising effort, donors must issue their checks directly to the committee of the candidate to be benefited. They may be directed to mail their checks to the principal campaign committee, or, in the case of an event such as a dinner, a member of the candidate's principal campaign committee may be in attendance to accept the contributions.

The party's acceptance and delivery to principal campaign committees of checks made payable to candidate's principal campaign committees would constitute bundling under Minn. Stat. § 10A.27, subd. 1. The party's acceptance of checks made payable to the party with the intent that they be thereafter directed to particular candidates would constitute earmarking and be prohibited under Minn. Stat. § 10A.16.

ADDENDUM

In your advisory opinion request, you note that the Board recently issued advisory opinion 302, which related to the definition of a sample ballot, the costs of which are a multicandidate expenditure. You state that advisory opinion 302 "strictly limits the content" of a sample ballot and that it "requires" certain things of a sample ballot. You conclude by stating that your request is, in part, to clarify the applicability of advisory opinion 302 to political party fundraising efforts.

Your statements concerning the effect of advisory opinion 302 suggest a misunderstanding of the role advisory opinions play in the Board's administration of Minnesota Statutes Chapter 10A. The Board believes that this misunderstanding may be shared by others; thus, it takes this opportunity to clarify the role of advisory opinions.

Advisory opinions are, as the name suggests, opinions of the Board, not statements of law. They are advisory in nature, not binding on the requester or others. Thus, an advisory opinion cannot impose limits or requirements. Rather, it explains limits and requirements implicit in the statute being interpreted.

The advice given in an advisory opinion provides a safe haven for the requester who chooses to follow it. The Board is bound by its opinion in any subsequent Board proceeding involving the requester. The opinion is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the requester.

The Board does recognize that its opinions are used for guidance by others as they try to understand Chapter 10A. Thus, a goal of the Board is to be consistent in its interpretation of statutory provisions. As a result, recent advisory opinions can usually be taken as a representation of the Board's position on matters subject to interpretation.

Readers of advisory opinions are cautioned to recognize that each advisory opinion is based on particular facts and may not be relevant to even slightly different fact situations. Additionally, as subsequent requests for opinions on the same subject are considered, the issues are narrowed and become clearer. As a result, subsequent Board opinions on the same subject often become more refined and the Board's position may change. In any case, legal authority for Board action arises from statutes and administrative rules. Advisory opinions are a merely a reflection of the Board's understanding of the meaning and intent of those statutes and rules.

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a Consent For Release of Information signed by the requester

Issued: June 14, 1999

Issued to: Ventura For Minnesota, Inc.
David Bradley Olsen, Counsel
Henson & Efron Professional Association
1200 Title Insurance Building
400 Second Avenue South
Minneapolis, MN 55401

RE: Status of a nonprofit corporation as political committee; application of Minnesota Statutes Chapter 10A to nonprofit corporation's activities

ADVISORY OPINION 306

SUMMARY

Ventura For Minnesota, Inc. is not a political committee and is not required to establish a political fund based on its activities as presently described. Funding the educational or constituent services activities of the governor and lieutenant governor or paying for certain expenses of the governor and lieutenant governor, however, could require VMI to register a political fund with the Board. The Board is not authorized to issue an opinion whether VMI is permitted to make political contributions under an exception to the corporate contribution prohibition of Minn. Stat. § 211B.15.

FACTS

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

1. Ventura For Minnesota, Inc. (VMI) is a Minnesota nonprofit corporation. It is governed by its board of directors and its activities are carried out by its appointed corporate officers.

2. The Jesse Ventura For Governor Volunteer Committee (the Campaign Committee) is the principal campaign committee of Governor Jesse Ventura and Lieutenant Governor Mae Schunk. The Committee is registered with the Board and is subject to the provisions of Minnesota Statutes Chapter 10A.

3. During the course of the last election, the Campaign Committee paid to have certain concepts developed for its use in advertising and campaign materials. These concepts are intellectual properties that the Campaign Committee now owns, including the concept of the Jesse Ventura action figure, the "Thinker" parody, various slogans, and props, such as "Special Interest Man".

4. The ability to use the intellectual property rights owned by the committee is dependent on having both the right to the concepts themselves and the separate right to use the name and likeness of Jesse Ventura. The Campaign Committee owns the right to the concepts and was granted the right to use Jesse Ventura's name and likeness for campaign purposes only. Thus, the Campaign Committee does not have the authority to assign to others the right to use the name and likeness of Jesse Ventura for commercial purposes.

5. VMI has obtained the intellectual property rights to the concepts (not including the right to use the name and likeness of Jesse Ventura) from the Campaign Committee . VMI believes that it is not required to pay the Campaign Committee any consideration for these rights. However, VMI will abide by the Board's decision in this regard.

6. VMI independently obtained a non-exclusive license from Jesse Ventura to use his name and likeness in connection with the concepts and any derivative products developed by VMI.

7. One of VMI's purposes is to protect and manage the use of the name and likeness of Jesse Ventura while he is governor. It will do this in part by making efforts to stop the production and distribution of unauthorized Jesse Ventura merchandise. It will also accomplish this purpose by making licensed merchandise available at a reasonable cost to meet the public demand that exists. VMI believes that making licensed merchandise readily available is one of the best ways to eliminate the market for unlicensed products.

8. VMI will not engage in the manufacture or sale of any products. Rather, VMI will license the concepts and right to the Ventura name and likeness to manufacturer/ distributors who will be responsible for manufacture and distribution of the products under license. The manufacturer/distributors will make the wholesale products available for retail sale.

9. VMI has entered into license agreements for the manufacture and sale of sweatshirts, caps, a Jesse Ventura action figure, and other items. Under its license agreements, VMI retains the right to approve product and packaging design. With respect to the action figure, VMI approved a package design that included a replica of a Ventura campaign button containing the text "Jesse Ventura For Governor".

10. A representative of VMI brought samples of the action figure and its packaging to the Board's April 9, 1999, meeting. The Board had not previously been informed about the inclusion of the words "Jesse Ventura For Governor" on the packaging and expressed concern that the packaging might constitute campaign material. Later that day, VMI's board of directors met to discuss the possible packaging issue.

11. VMI's licensee informed VMI that the first shipment of the product was already en route to the purchasers and was legally the property of these purchasers. VMI's licensee later researched the possibility of placing stickers over the button image, but found that retailers would not permit it to do so. Without the retailers' consent, the

licensee had no legal right to enter stores or warehouses to change the text on the packaging.

12. VMI's licensee changed the packaging text from "Jesse Ventura For Governor" to "Jesse Ventura The Governor", effective for all new orders. All of the packaging with the original text had been used prior to the Board's April 9, 1999, meeting.

13. VMI states that it's board approved the packaging with the understanding that the button replica was nothing more than a historical reference, not unlike the references to Jesse having been a Navy Seal or a coach. VMI further states that it did not occur to its board that the sale of the action figure by independent retail outlets might be considered to be for the purpose of influencing a nomination or election as the result of the inclusion of a campaign button replica on the packaging. VMI states that its purpose in approving the packaging was not to influence the future nomination or election of Jesse Ventura as governor.

14. VMI's income will result solely from licensing and royalty fees paid by its licensees. All transactions between VMI and its licensees will be based on fair market value.

15. VMI will not accept contributions or donations from any individual or association.

16. VMI will not make any contribution to any principal campaign committee, political committee or political fund, or party unit, all as defined in Minnesota Statutes Chapter 10A, nor will VMI make any independent expenditure as defined in Minn. Stat. § 10A.01, subd. 10b.

17. It is VMI's stated intention, and a term of its articles of incorporation, that it will not engage in political activity. VMI does not intend to do any act for the purpose of influencing the nomination or election of a candidate or promoting or defeating a ballot question.

18. VMI will use its income for operating expenses and to engage in charitable activities, including the making of charitable contributions, and to engage in education, civic betterment, and social improvement activities.

19. VMI would also like to fund the education and constituent service activities of the governor and lieutenant governor and to pay "the non-personal expenses incurred by the governor and lieutenant governor incidental to and required by their serving in public office". At this time, VMI has not established procedures for making specific decisions regarding the funding of educational or constituent service activities of the governor and lieutenant governor or regarding payment for costs of serving in office, nor has it clearly defined the types of activities or costs that might be funded in these categories.

VMI asks the Board for an opinion regarding the transfer of intellectual property rights from the Campaign Committee to VMI and regarding VMI's activities. The Board has determined that prior to answering those requests, it must consider whether the activities of VMI make it a political

committee which would be required to register under and comply with the provisions of Minnesota Statutes Chapter 10A.

ISSUE ONE

Do the activities of Ventura For Minnesota, Inc. make it a political committee as defined in Minn. Stat. § 10A.01, subd. 15, or require it to register a political fund as defined in Minn. Stat. § 10A.01, subd. 16?

OPINION

The activities of Ventura for Minnesota, Inc., as described in the facts, do not make it a political committee under Minn. Stat. § 10A.01, subd 15. However, its future activities may require it to establish and register a political fund under Minn. Stat. § 10A.01, subd. 16, and Minn. Stat. §§ 10A.12 and 10A.14.

Minn. Stat. § 10A.01, subd. 15, defines a political committee as "any association . . . whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question." The definition depends on whether the major purpose of VMI is to influence the nomination or election of a candidate. In making that determination, the Board has considered the written materials submitted by VMI, as well as the testimony of VMI representatives at the Board's meetings of February 26, 1999, and June 14, 1999.

While VMI has multiple purposes, the Board concludes that its major purposes are those asserted by VMI. Those major purposes are to protect and manage the use of the name and likeness of Jesse Ventura while he is in office and to use its income for charitable, educational, civic, and social projects.

Because the Board concludes that VMI is not a political committee, VMI is not required to register with the Board or report any of its financial activities to the Board. However, even though its "major" purpose is not to influence the nomination or election of a candidate, it is possible that VMI will engage in certain more limited activities that are, in fact, to influence the nomination or election of the governor. In such a case, VMI will be required to establish a political fund and make its political expenditures through that fund.

VMI suggests that since the next gubernatorial election will not occur until the year 2002, its expenditures prior to that year can never be considered to be for the purpose of influencing the nomination or election of the governor. However, Governor Ventura is a "candidate" under Minn. Stat. § 10A.01, subd. 5, until he terminates his principal campaign committee. Expenditures to influence the nomination or election of a candidate may be made throughout an election cycle. Therefore, it is possible that certain of VMI's expenditures could be considered to be for the purpose of influencing the governor's nomination or election even if those expenditures occur prior to the actual election year.

At this time, VMI has not established procedures for making specific decisions regarding the provision of funding for education or constituent services activities of the governor and lieutenant

governor or payment for certain expenses of the governor and lieutenant governor, nor has it clearly defined the types of activities or costs that might be funded in these categories.

Without specific facts, the Board is unable to advise VMI whether any funding of education or constituent services activity or payment of expenses of the governor and lieutenant governor would be considered to be for the purpose of influencing the nomination or election of the governor. If such funding or payments are considered to be for the purpose of influencing the nomination or election of the governor, VMI would be required to establish and register a political fund, which would report to the Board, and to make the payments from that fund.

VMI expects to request a further advisory opinion when it has developed its procedures and plans regarding these matters.

ISSUE TWO

Does the inclusion of the text "Jesse Ventura For Governor" on some of the action figure packages result in a requirement that VMI register a political fund with the Board?

OPINION

The approval of inclusion of the text "Jesse Ventura For Governor" on the first run of packaging for the action figures was not "for the purpose of influencing the nomination or election" of Jesse Ventura. Therefore, VMI is not required to register a political fund with the Board as a result of that approval.

In the "Issue One" section of this opinion, the Board concluded that the major overall purpose of VMI was not to influence the nomination or election of a candidate. That meant that VMI as a whole was not a political committee. However, the Board noted that even an association that is not a political committee might engage in limited activities to influence the nomination or election of a candidate. If it does so, the association must form a political fund through which it conducts those political activities.

An entity is brought under the regulation of Minnesota Statutes Chapter 10A when it engages in activities that are "for the purpose of influencing the nomination or election of a candidate". The definitions of "political committee", "political fund", "contribution", and "expenditure" all depend on the "purpose" of the action undertaken. The Board presumes that any action that may have as its logical result the influencing of the nomination or election of a candidate is done for that purpose. In most cases, this presumption results in an accurate conclusion. However, this presumption may be contradicted by facts shown by the association, in which case, the Board will determine the association's "purpose" based on all of the evidence.

In concluding that VMI's packaging decision was not for the purpose of influencing the nomination or election of Jesse Ventura the Board considered the written statements and testimony of VMI representatives concerning VMI's motive and understanding in approving the packaging. The Board also considered VMI's reaction when the issue was raised. The initial reaction, at the April 9, 1999, Board meeting was one of surprise at the possibility that the packaging might be considered campaign material. VMI's subsequent reaction was to have the text changed on

future packaging and to explore ways to change existing packaging that was already en route to stores.

The Board believes that inclusion of the button replica on the packaging is not likely to influence the 2002 gubernatorial election. This lack of influence is consistent with the VMI's assertion that the packaging design was not for the purpose of influencing the nomination or election of a candidate. These facts, along with VMI's prompt action to change the packaging after the question was raised do provide support for the conclusion that approval of the text was not for the purpose of influencing the nomination or election of Jesse Ventura.

This opinion is limited to the present facts before the Board. It does not address any theoretical or real fact situation that may exist in the future as the 2002 elections draw closer.

ISSUE THREE

May the Campaign Committee convey the intellectual property rights to VMI without consideration?

OPINION

Minnesota Statutes Chapter 10A does not include any provision that would permit a principal campaign committee to give away its assets without consideration. The Board is unaware of any other applicable statute, with the exception of the provision for charitable contributions of up to $50 per year permitted in Minnesota Statutes Chapter 211B.

Minn. Stat. § 10A.24 requires that a terminating committee dispose of its physical assets at fair market value. The Board recognizes that this provision is not directly applicable to a non-terminating committee or to an intellectual property asset. However, the Board concludes that the principle of receiving fair market value should be applied to the transfer of any asset by any committee, unless the some other statute specifically governs the transaction.

Unless VMI and the Campaign Committee determine that some statute outside the Board's jurisdiction governs the transaction, VMI must pay the Campaign Committee the fair market value of the assets transferred. The parties must determine fair market value based on all of the factors that would be used in a similar transaction between unrelated parties. The Board assumes that this determination will include consideration of the cost to the Campaign Committee of having the concepts created, the Committee's retained rights, if any, to use the concepts in the future, and the fact that the Committee's transfer to VMI does not include the right to use the name and likeness of Jesse Ventura; a right that VMI has independently obtained from Jesse Ventura himself.

VMI must pay the Campaign Committee the determined value and the Campaign Committee must report the payment as miscellaneous income from the sale of an asset.

ISSUE FOUR

Do licensing and royalty fees paid to VMI constitute contributions under Minnesota Statutes Chapter 10A?

OPINION

Licensing and royalty fees paid to VMI are not contributions under Minnesota Statutes Chapter 10A. Under the stated facts, VMI itself is not a political committee or political fund. It does not intend to accept money within the definition of a contribution under Minn. Stat. § 10A.01, subds. 7 and 7a.

ISSUE FIVE

Does money spent by VMI for its stated purposes constitute corporate political contributions? If so, do the contributions fall within the nonprofit corporation exception to the general prohibition of Minn. Stat. § 211B.15 on corporate contributions?

OPINION

VMI's expenditures for charitable purposes do not constitute political contributions. On the limited facts available, it also does not appear that its expenditures for educational, civic, or social projects would constitute political contributions. Without additional facts, the Board is unable to issue an opinion whether payment for education or constituent service activities of the governor and lieutenant governor or certain expenses of the governor and lieutenant governor will constitute political contributions.

It is VMI's position that even if certain of its expenditures constitute political contributions, they are not prohibited by Minn. Stat. § 211B.15, which generally prohibits corporate contributions.

The Board's jurisdiction does not include interpretation of Minn. Stat. § 211B.15. The Board is charged only with informing its clients of the existence of the statute and its regulation of corporate contributions. Therefore, the Board cannot advise whether any political contribution made by VMI falls within an exception to the general prohibition applicable to corporate contributions.

ADDENDUM

VMI also asks the Board for an opinion that licensing and royalty fees paid to VMI do not constitute prohibited corporate contributions under Minn. Stat. § 211B.15. Minnesota Statutes Chapter 211B is not within the Board's jurisdiction and the Board cannot issue an opinion on its application.

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

March 19, 1999

RE: Definition of Constituent Services

ADVISORY OPINION 307

SUMMARY

Provision of bus transportation by a legislator's principal campaign committee so that the legislator's constituents may attend an educational day at the Capitol is a constituent service. Costs of constituent services are reported as noncampaign disbursements when incurred during a legislative session.

FACTS

As a member of the Minnesota Legislature, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts:

1. As an incumbent legislator, you want to help your constituents to better understand how state government works.

2. You would like to have an "educational day" at the Capitol for residents of your district. The day would occur during the legislative session and would include a meeting with you and others to give an overview of the legislative process and to answer questions. It would also include attendance by the group at a committee meeting, as well as meetings with other legislators or departments as requested by visiting constituents.

3. Your district is over 100 miles from St. Paul. Thus, many of your constituents, especially the elderly, would find it a hardship to make the trip on their own. To make this educational opportunity more easily available, you would like to provide charter bus transportation to the Capitol.

ISSUE

May an incumbent legislator use principal campaign committee funds to pay for bus transportation to the Capitol in St. Paul so that constituents can attend an educational day organized by the legislator? If so, may such costs be reported as noncampaign disbursements?

OPINION

An official may provide charter bus transportation to constituents to permit them to attend an educational day at the legislature.

Minn. Stat. § 10A.01, subd 10c, provides for the use of principal campaign committee funds for certain purposes, including "services for constituents". Minn. Rules, part 4503.0100, subp. 6, limits constituent services by excluding gifts, congratulatory advertisements, charitable contributions, and similar expenditures.

Beyond the limitations described in the Rule cited above, the Board believes that in order to be considered a constituent service under Minnesota Statutes Chapter 10A, the service provided must have some connection to the relationship between the official providing the service and the constituent.

Providing bus transportation to the Capitol so that constituents may attend an educational day organized by the legislator is directly related to the constituent-public servant relationship the official shares with the trip participants. The purpose of the trip is to facilitate each participant's ability to learn about the system in which the constituent-public servant relationship exists. The educational day may enable the constituents to better understand the legislative processes and may even help them better evaluate the performance of their elected officials.

The costs of constituent services during a legislative session are reported as noncampaign disbursements. If the constituent services are provided in an election year after the conclusion of the session, all or part of the cost is a campaign expenditure. See Minn. Stat. § 10A.01, subd. 10c(f).

This opinion does not extend to the provision of meals, refreshments, or side trips that may be associated with an event such as the one described in the facts. The Board also recognizes that the requester has chosen a reasonable means of providing the constituent service. The Board would not necessarily reach the conclusion expressed in this opinion if the requester wanted to charter an airplane or hire limousines to provide the desired transportation.

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

February 26, 1998

RE: Definition of Lobbyist

ADVISORY OPINION 308

SUMMARY

An association's board member, who spends no personal money, who does not have authority to spend money on behalf of the association, and who, without compensation, spends time communicating with public officials to urge them to take particular positions on legislation is not a lobbyist within the meaning of Minn. Stat. § 10A.01, subd. 11.

FACTS

You are an individual who asks the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. You serve on the boards of directors of numerous nonprofit organizations. You receive no pay or other consideration directly or indirectly for this service either from the associations on whose boards you serve or from any other individual or entity.

2. From time to time, you may spend more than five hours in a month talking with public officials on behalf of an organization on whose board you serve. You receive no pay or consideration directly or indirectly from any individual or entity for this time.

3. As a board member, you may vote on the approval of overall budgets and spending plans for the organization, but you do not have the authority to spend the association's money. That authority generally rests with the association's chief executive officer or in a similar position.

4. The associations on whose boards of directors you serve do, in some cases, have lobbyists who are registered with the Board.

5. You do not spend any of your own money for lobbying purposes.

ISSUE

Does an uncompensated member of the board of directors of an association become a lobbyist under Minn. Stat. § 10A.01, subd. 11, by spending more than five hours in a month communicating with public officials concerning the association's activities and concerns? Is the result different if the association is a lobbyist principal by virtue of having a paid lobbyist registered with the Board.

OPINION

The facts set forth in your request for this advisory opinion make it clear that none of the three threshold requirements for definition as a lobbyist applies. As long as those facts hold true, you are not required to register as a lobbyist with the Board.

In order to be defined as a lobbyist under Minn. Stat. § 10A.01, subd. 11, one of the following must be true:

1. the person must be authorized to spend money on behalf of an association and must spend more than $250 of the association's money for lobbying purposes in a calendar year;

2. the person must spend more than $250 of the person's own money for lobbying purposes in a calendar year; or

3. the person, for pay or other consideration, must spend more than five hours in a month communicating or urging others to communicate with public officials for the purpose of influencing their action.

The fact that an association on whose board you serve may have a paid lobbyist and, thus, may be defined as a lobbyist principal, does not change the above result.

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

March 19, 1999

RE: Lobbyist contributions to retirement party and gift

ADVISORY OPINION 309

SUMMARY

Donations for a retirement party or gift for a retiring public official are not contributions to the official's principal campaign committee. A donation made or requested by a lobbyist or lobbyist principal for a gift to a retiring official, who has taken another position by which the individual is still an official under Minn. Stat. § 10A.071, is prohibited. A donation of money or services made or requested by a lobbyist or lobbyist principal for a retirement party is subject to the prohibitions of Minn. Stat. § 10A.071.

FACTS

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

1. You recently retired from a position as a public official and have subsequently been appointed as a member of a metropolitan agency.

2. Some friends of yours would like to give a retirement party and present a gift in recognition of your service as a public official.

3. Guests at the party would include persons who are "officials" under Minn. Stat. § 10A.071 and may include lobbyists.

ISSUE

Are there any restrictions on contributions to fund a retirement party or a gift for an individual who has retired from a position as an elected public official but who is still a public official by virtue of being appointed as a member of a metropolitan agency?

OPINION

Contributions for a gift or retirement party for an elected public official are not contributions to the official's principal campaign committee. Thus, limitations and restrictions imposed by campaign finance laws do not apply.

As a recently appointed member of a metropolitan agency, you are still a public official pursuant to Minn. Stat. § 10A.01, subd. 18(t). Minn. Stat. § 10A.071 prohibits gifts given or requested by lobbyists or lobbyist principals to public officials. The fact that the proposed retirement party and

gift relate to an official position you no longer hold is not relevant as long as you are still within the group of persons classified as "officials" under the statute.

As a result of your status as an official, contributions to a gift for you are prohibited if they are given or requested by lobbyists or principals. If guests purchase tickets for the party and the ticket cost includes a contribution to a gift, a separate ticket price must be established for lobbyists, excluding the amount of the contribution to the gift.

If some of the costs of the retirement party itself are paid for by donations given or requested by lobbyists or lobbyist principals, those costs constitute a gift to any attending official, including yourself. As a result, lobbyists may not purchase tickets that they do not use for themselves or their guests, since the result would be to subsidize the party for any officials attending. Likewise, if lobbyists provide services in organizing the party, those services result in a gift to officials attending the party or to an official who sponsors the party. However, this gift is not prohibited by Minn. Stat. § 10A.071 if the services provided are of insignificant value.

The fact that lobbyists may be invited to the party does not, in itself, create a violation of any provision of Minnesota Statutes Chapter 10A.

You may also be a local official of a metropolitan governmental unit and, if so, you would also be subject to the gift prohibitions established in Minn. Stat. § 471.895. That statute, which appears to include a broader scope of givers than Minn. Stat. § 10A.071, is not within the Board's jurisdiction to interpret. Its possible application is mentioned here only so that you may consult your own legal counsel with respect to its applicability.

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

March 19, 1999

RE: Fundraising activities of political committee

ADVISORY OPINION 310

SUMMARY

A political committee may solicit its contributors to make contributions directly to candidates. Contributions collected by the political committee for delivery to candidates are subject to limits on contributions delivered by a political committee. A political committee may provide address lists or addressed envelopes to facilitate its contributors in making contributions directly to candidates. A political committee that has the right to direct its members to make contributions to a list of candidates is subject to the contribution attribution provisions of Minn. Stat. § 10A.15, subd. 3b.

FACTS

As the attorney for an association, you ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts which were included in your request for an advisory opinion or verbally conveyed to Board staff:

1. The association you represent is a political committee (the Committee) registered with the Board.

2. The Committee presently raises money through contributions, uses a small amount of its funds for administrative expenses, and donates the rest to candidates it supports.

3. The Committee is considering ways that it might change its fundraising strategy. In doing so, the Committee is concerned that it stay within the letter and spirit of the law.

4. The committee is considering reorganizing itself as a membership organization. If it did so, individuals and other political committees or political funds could become members. A small membership fee would be charged which would be used to pay the Committee's administrative costs. As a condition of membership, members would be required to make election cycle contributions of at least specified minimum amounts to candidates on a list prepared by the Committee. Individual donors would decide the timing, amounts, and recipients of their contributions. The Committee's requirements would be met as long as a donor's contributions to listed candidates during the election cycle reached the specified minimum.

5. All of the committee's activities are done independently of candidates, their representatives and their principal campaign committees. Each committee action is done without authorization or expressed or implied consent of, or in cooperation or in

concert with, or at the request or suggestion of that candidate, the candidate's principal campaign committee or the candidate's agent.

6. The solicitations contemplated will not include statements advocating the election or defeat of a candidate that might constitute independent expenditures.

The committee has presented several fundraising scenarios that it is considering. Each has been restated as an Issue in the sections below.

ISSUE ONE

May the Committee communicate with its contributors and ask them to make contributions to a list of candidates provided by the Committee?

OPINION

Yes, the Committee may communicate with its members and ask them to make contributions to a list of candidates provided by the Committee. Costs of such a solicitation are reported as general committee disbursements since the solicitation is made without such candidate or principal campaign committee involvement as would make the transaction an approved expenditure under Minn. Stat. § 10A.01, subd. 10a and does not include material that would make it an independent expenditure under Minn. Stat. § 10A.01, subd. 10b.

The solicitation described may require the Committee to file a solicitor's report with the Board under Minn. Stat. § 10A.20, subd. 14, which provides as follows:

"[A] . . . political committee . . . that directly solicits and causes others to make contributions to candidates or a caucus of the members of a political party in a house of the legislature, that aggregate more than $5,000 in a calendar year must file with the board a report disclosing the amount of each contribution, the names of the contributors, and to whom the contributions were given. The report for each calendar year must be filed with the board by January 31 of the following year. The report must cover the accumulated contributions made or received during the calendar year. "

ISSUE TWO

In the event that the solicitation described in Issue One is permitted, may the checks issued in response to the solicitation be sent to the Committee for distribution to the designated candidates?

OPINION

Collection of donor checks by a political committee for delivery to designated candidates (often referred to as "bundling") is not prohibited. However, the bundled contributions are subject to the provisions of Minn. Stat. § 10A.27, subd. 1, which provides that the treasurer of the recipient principal campaign committee may not accept contributions "made or delivered by any . . . political committee " in excess of the contribution limits applicable to the particular office.

Thus, the aggregate amount the Committee may contribute directly and deliver on behalf of other donors is subject to the single contribution limit set forth in Minn. Stat. § 10A.27, subd. 1, applicable to the candidate's office.

ISSUE THREE

If the solicitation described in Issue One is permitted, may the Committee ask contributors to mail the contributions directly to the specified candidates?

OPINION

Yes, the Committee may ask contributors to mail the contributions directly to the specified candidates. This solicitation method will not trigger the bundling limits of Minn. Stat. § 10A.27, subd. 1.

ISSUE FOUR

In the solicitation described in Issue One, may the Committee provide addresses or addressed envelopes to assist its contributors in making direct contributions to the candidates supported by the Committee?

OPINION

Yes, the Committee may provide addresses or addressed envelopes to assist its contributors in making additional contributions to the candidates supported by the Committee.

Costs of materials, preparation, and mailing of address lists or envelopes are reported as general committee disbursements since the solicitation is made without such candidate or committee involvement as would make the transaction an approved expenditure under Minn. Stat. § 10A.01, subd. 10a and does not include material that would make it an independent expenditure under Minn. Stat. § 10A.01, subd. 10b.

ISSUE FIVE

May the Committee reorganize itself as a membership organization in which a requirement of membership is that each member make contributions in a specified minimum aggregate amount to candidates on a list provided by the Committee? If so, may the Committee require its members to report to the Committee the contributions they make to meet their membership obligation?

OPINION

Organization of a political committee in which members are required to make contributions to candidates specified by the political committee is not prohibited by Minnesota Statutes Chapter 10A. However, the political committee would be subject to the attribution provisions of Minn. Stat. § 10A.15, subd. 3b.

Minn. Stat. § 10A.15, subd. 3b, applies to contributions that are directed to a principal campaign committee by a political committee. Directed contributions are attributable to the political committee that controls the contributions. Thus, the aggregate of such contributions to a candidate's principal campaign committee is subject to the contribution limit applicable political committee that controls the contributions.

The proposed membership structure would allow the Committee to provide a list of candidates to members, who would be required to make contributions totaling at least a specified minimum amount to candidates on the list.

The Committee's control of the list and the specified minimum amounts is sufficient to trigger application of the attribution rules of Minn. Stat. § 10A.15, subd. 3b, which is applicable when a political committee orders, commands, controls, or instructs its members to make certain contributions. The fact that an individual donor can determine the timing, amount, and recipient of individual contributions (subject to the restriction that the recipient must be on the list), is not sufficient to remove the plan from the scope of the statute.

Under the proposed membership plan the Committee is required to obtain contribution information from its members so that it may notify principal campaign committee treasurers of contributions that are attributable to the Committee pursuant to Minn. Stat. § 10A.15, subd. 3b.

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

Issued to: Mary Kiffmeyer, Secretary of State
180 State Office Building
100 Constitution Avenue
St. Paul, MN 55155

April 9, 1999

RE: Publishing candidate links on state government office's web site

ADVISORY OPINION 311

SUMMARY

Inclusion of candidate web site links on the Office of the Secretary of State's web site does not result in contributions to the candidates if every filing candidate for the same office has the same opportunity to have a link included.

FACTS

As Secretary of State for the State of Minnesota, you ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts which were included in your request letter or verbally conveyed to Board staff:

1. The Office of the Secretary of State (the Office) is authorized by statute to sponsor or participate in nonpartisan activities that promote voter participation.

2. One of the activities of the Office is to provide a worldwide web site that contains information about all candidate filings for federal, state, and county level offices. With the increasing use of the internet and the worldwide web, the Office anticipates that it will be requested to provide links from the web pages it maintains to the web sites of individual candidates.

3. The Office is willing to include on its web site links to all candidate web sites about which it is informed. There would be no charge for the inclusion of any candidate's link. Each link will be the same size and style. No candidate's link will be more accessible or displayed differently than the links of other candidates for the same office.

4. The Office expects to place the links on the candidate listing pages that are created when filings for office open. Any candidate who qualifies for placement on the ballot could have a link placed on the Office's page. Links will be removed when the candidate listings for the election are removed, shortly after the end of the election cycle for the office.

5. The Office does not plan to include candidate links on its site until filings open for the 2000 elections, although it may do so for special election candidates before that time.

6. The Office is considering a disclaimer on its worldwide web site that would inform users that (1) links to candidate sites are created based on web site addresses provided by the candidates, (2) the links are displayed for voter information purposes and not to influence the nomination or election of a candidate, and (3) the candidate web sites are not monitored or regulated by the Office.

The Office asks whether its maintenance of links to candidate worldwide web sites would constitute a contribution of services to the candidates listed.

ISSUE

Does inclusion on the Office of the Secretary of State's web site of links to web pages of candidates who have filed for office constitute a campaign contribution?

OPINION

Inclusion of candidate web site links on the Office of the Secretary of State's web site under the plan described in the facts does not result in contributions to the candidates whose links are included.

The Board's conclusion is based on the following facts unique to this situation:

1. The Office of the Secretary of State is a state agency charged with conducting activities that foster voter participation. The Office believes that inclusion of the subject links will help it perform this responsibility.

2. The Office will offer inclusion of links to all candidates who file for the specified offices without regard to party affiliation, perceived candidate viability, web site content, or other criteria. The links will be the same size and style. No candidate link will be more easily accessed than those of other candidates for the same office.

3. Pages containing the links will be removed within a short time after the end of the election cycle, thus ensuring that candidates in a prior election cycle will not benefit from the links before the time new candidates file for office and qualify for a link.

In reaching the conclusion expressed in this opinion, the Board has not relied on the disclaimer the Office proposes to include on its site and, therefore, expresses no opinion as to its effect.

The Board's jurisdiction extends only to candidates for state constitutional, legislative, and judicial offices. This opinion is not applicable to federal or local candidates.

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

June 14, 1999

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

RE: **Use of principal campaign committee funds for informational mailing**

ADVISORY OPINION 313
SUMMARY

Costs of informational mailing to constituents are reported as noncampaign disbursements for constituent services. Costs of mailing to another legislative district may be reimbursed by legislator from the other district or from the candidate individually. The question of whether costs of mailing outside a candidate's district are a permitted use of campaign funds is determined under Minn. Stat. § 211B.12, which is not in the Board's jurisdiction to interpret. Excess mailing pieces may be sold at their cost of production.

FACTS

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

1. In your capacity as a legislator, you received many calls from residents of the school district which includes your legislative district. These calls concerned cuts that the school district was making. Callers indicated that the school district was telling them that the cuts were necessary due to a lack of funding from the legislature. Calls were coming from school district residents who were your constituents as well as from residents who lived outside your legislative district.

2. In response to these inquiries, you produced an informational booklet titled "Education Finance" and mailed it to 12,000 households in the school district, including households in another legislator's district.

3. You developed the booklet yourself and paid for the printing and mailing with funds from your principal campaign committee.

4. You have about 1000 copies of the booklet still available that you may want to make available to non-profit organizations for distribution. You may also want to give other organizations the right to re-print the booklet at their expense.

ISSUE ONE

How should your principal campaign committee report the costs of the booklets that were mailed to your constituents?

OPINION

The costs of producing and distributing the booklet to your constituents must be allocated between noncampaign disbursements for constituent services and campaign expenditures.

The booklet consists of four 2-color pages and four black-and-white pages. It is the Board's opinion that the last 2-color page, which includes your positions on the issues, is campaign material. Thus, 1/4 of the cost of the 2-color section should be allocated as campaign expenditures. The remainder of the cost of the booklets distributed to your constituents should be reported as noncampaign disbursements for constituent services.

ISSUE TWO

Is it permissible or required that the other legislator whose constituents received the booklet share in the cost of its production and distribution?

OPINION

It is permissible that the other legislator pay all or some of the cost of production and mailing of the booklet to that legislator's constituents. If such a payment is made, the other legislator should report it as a noncampaign disbursement for constituent services, listing your principal campaign committee as the vendor. Your principal campaign committee should report the payment received as miscellaneous income. You should report the reimbursed part of the cost of production and mailing on schedule B-5, Other Disbursements, with a notation that the costs were reimbursed by the other legislator.

The Board has no jurisdiction to compel the other legislator to pay for the production and distribution of booklets into the that legislator's district.

ISSUE THREE

To the extent that the other legislator does not reimburse you, how should the costs of producing and mailing booklets to people who are not your constituents be reported?

OPINION

Minnesota Statutes Chapter 10A does not provide guidance in reporting this type of expenditure.

In general, use of principal campaign committee funds is governed by Minnesota Statutes Chapter 211B, which is not within the jurisdiction of the Board to interpret. However, the Board notes that Minn. Stat. § 211B.12 states that "use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns or is a noncampaign disbursement as defined in Minn. Stat. § 10A.01, subd. 10c".

None of the noncampaign disbursements defined in Minn. Stat. § 10A.01, subd. 10c, can be interpreted to include producing and mailing informational material to persons who are neither the legislators constituents nor persons entitled to vote for the legislator in the next election. Thus,

you must determine if the costs are permitted under the general provisions of Minn. Stat. § 211B.12.

If you determine that the costs of producing and mailing the booklet to households outside your district are not permitted, you may personally reimburse your committee for those costs. In such a case, the reimbursement should be reported as miscellaneous income. The costs of the booklets that are reimbursed should be reported on the schedule B-5, Other Disbursements, with a notation that the costs were reimbursed by the candidate.

If you determine that the costs of producing and mailing the booklet to households outside your district are permitted under Minn. Stat. § 211B.12, you should report those costs on schedule B-5, Other Disbursements, with a description of the disbursement's purpose and a notation explaining that the disbursement does not fit any of the other categories on the reporting form.

ISSUE FOUR

May you make extra copies of the booklet available to other organizations to distribute, or may you allow other organizations to reprint the booklet for distribution?

OPINION

With certain restrictions explained below, you may make the extra copies of the booklet available for distribution, or allow other entities to reprint it.

Your principal campaign committee paid for the production of the excess copies of the booklet. You may make those copies available to other entities at the committee's cost of production. Income should be reported as miscellaneous income with a notation that the income results from the sale of surplus booklets.

Your principal campaign committee does not have a financial investment in the design or development of the booklet, since you performed that task yourself. Assuming that were no other out-of-pocket costs to your principal campaign committee in design or development of the booklet, you may make the original electronic or paper source available to other entities for reprinting at no cost. If your principal campaign committee does have out-of-pocket costs in design or development of the booklet, it must charge a reasonable fee for the right to reprint the booklet.

If an entity distributes the booklet in its current form to voters in your district with your express or implied consent, a contribution to your principal campaign committee would result. Depending on the status of the entity distributing the booklet, this contribution may be prohibited or limited by other statutes. Such a contribution would be eliminated if the "Opinion Page" and references to you as the author of the publication were was deleted.

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 14, 1999

RE: Gift Prohibition; public official solicitation of contributions, membership in a group

ADVISORY OPINION 315

SUMMARY

Minnesota officials who are members of a multi-state membership organization are not required to pay additional charges to attend the organization's annual meeting even if the costs of the meeting are subsidized by contributions from lobbyists or lobbyist principals. Minnesota officials who are members of the meeting organizing committee may solicit lobbyists and lobbyist principals for contributions to the organization to subsidize costs of the annual meeting. Contributions to the organization are not prohibited gifts when they are used for the benefit of the organization as a whole.

FACTS

As the attorney for a number of public officials, you ask the Campaign Finance and Public Disclosure Board ("the Board") for an advisory opinion based on the following facts which were presented in your request letter or conveyed verbally to Board staff:

1. The State of Minnesota has purchased a membership in a national membership organization ("the Organization") of state legislators and other governmental officials. The Organization includes sub-units based on geographical region.

2. As a result of the state's purchase of a membership in the Organization, all Minnesota legislators become individual members of the Organization and of the sub-unit organized for the midwestern region (hereinafter referred to as "the Regional Unit".

3. The Organization is classified as a nonprofit 501(c)(3) corporation under federal law.

4. A majority of the members of the Organization are not "officials" as defined in Minn. Stat. § 10A.071, subd. 1(c). Likewise, a majority of the members of the Regional Unit are not "officials".

5. The Regional Unit holds an annual meeting for its members. The meeting in a future year will be held in Minnesota. A committee ("the Committee") will be formed to solicit monetary and in-kind donations to cover a significant part of the costs of this meeting. The Committee will consist of Minnesota officials, lobbyists, and others.

6. Prospective donors include lobbyists and lobbyist principals. Contributions will be solicited by members of the Committee, collected by a member who is not an official, and forwarded to the Organization for deposit in the Regional Unit's account.

7. Only contributions for the general support of the entire annual meeting are solicited. Individual event sponsorships are neither solicited nor accepted from contributors.

8. Contributors will be acknowledged in the annual meeting program and other annual meeting signs and literature as appropriate.

ISSUE ONE

May officials, as defined in Minn. Stat. § 10A.071, subd. 1(c), fully participate in the Regional Unit's future annual meeting in Minnesota without payment of additional charges due to underwriting of the event by lobbyists and lobbyist principals?

OPINION

Yes, Minnesota officials may fully participate in the Regional Unit's annual meeting without payment of additional charges.

Under Minn. Stat. § 10A.071, subsidy of an event by a lobbyist or lobbyist principal is a gift to officials attending the event. However, the statute includes the following exception:

> "(b) The prohibitions in this section do not apply if the gift is given:
> (1) because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group . . . "

The Regional Unit is a group within the meaning of the exception. A majority of the group's members are not officials (a term which is specifically defined and is limited to Minnesota officials). A gift to an official resulting from a contribution for the general support of a qualified group's annual meeting constitutes a gift given because of the official's membership in the group. The prohibitions of Minn. Stat. § 10A.071 are not applicable in such a case.

ISSUE TWO

Would solicitation of contributions for the annual meeting by Minnesota officials, as members of the Committee, result in a violation of Minn. Stat. § 10A.071 if a lobbyist or lobbyist principal makes a contribution as a result of the solicitation?

OPINION

No, solicitation of contributions by Minnesota officials who are members of the Committee does not result in a violation of Minn. Stat. § 10A.071.

Generally, solicitation by an official of a contribution to a nonprofit corporation does not result in a prohibited gift if the official will not personally benefit from the contribution. However, in this case the officials doing the solicitation will benefit if they attend the annual meeting. Nevertheless, in cases where the prohibitions of Minn. Stat. § 10A.071 are not applicable to the giving of a gift, they are also not applicable to the solicitation of that gift.

ISSUE THREE

Are contributions to the Regional Unit by lobbyists and lobbyist principals resulting from the solicitations described in this opinion prohibited by Minn. Stat. § 10A.071?

OPINION

No. As long as contributions to the Regional Unit by lobbyists and lobbyist principals are used to fund the annual meeting as a whole, they are not prohibited by Minn. Stat. § 10A.071.

The fact that the contributors will be acknowledged in various ways does not affect the status of the contributions under Minn. Stat. § 10A.071.