

State of Minnesota  
**Campaign Finance & Public Disclosure Board**  
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

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

Issued to: Trevor Potter  
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**ADVISORY OPINION 434**

**SUMMARY**

A company that provides internet-based contribution processing and delivery services for a fee paid by visitors who use the company's website to make contributions to candidates is not, through that service activity, making a contribution to the recipient candidates. As a result, the registration requirements of Chapter 10A and the restrictions on contributions from associations not registered with the Board do not apply to the company.

**FACTS**

On behalf of your client, Democracy.com, you have asked the Campaign Finance and Public Disclosure Board for an advisory opinion related to a business venture planned by the company. Your request is based on the following relevant hypothetical facts which you have provided.

Democracy Ventures, Inc. (d.b.a. Democracy.com) is a nonpartisan, for-profit corporation. Democracy.com plans to operate a website that will serve as an online national directory of federal, state, and local candidates for elected public office.

To establish its website, Democracy.com will create a separate web page, referred to as a "profile page," for each federal, state, and local candidate, including Minnesota state-level candidates. These web pages will only include publicly available information submitted by the candidates to the Minnesota Secretary of State on their affidavits of candidacy or to the Board on their principal campaign committee registration forms. For a fee, equal to the fair market value of the services provided, a visitor to the site may make a contribution to any included candidate.<sup>1</sup>

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<sup>1</sup> Democracy.com states that it will limit such contributions pursuant to the applicable Minnesota election-year and non-election year contribution limits and source prohibitions and that it will notify contributors of the laws governing disclosure of their contributions and will gather all necessary information from the contributors (full name, complete address, employer name or occupation if applicable, and lobbyist or committee registration number if applicable). The webpage also will require contributors to click a checkbox attesting, among other things, that they are eligible to make contributions under Minnesota law. While these features will likely be beneficial to a treasurer, they are not a requirement for the conclusions reached in this opinion. Regardless of Democracy.com's efforts, the obligation to obtain all required disclosure information and to comply with limits, source restrictions, and other requirements of Chapter 10A remains with the treasurer of the principal campaign committee.

Democracy.com will also allow candidates to take control of their Democracy.com web pages in exchange for payment of a fee that represents the fair market value of the services provided. In the case of a web page that has been taken over by a candidate, Democracy.com will act as a vendor to the candidate and will provide contribution processing and delivery services in exchange for payment by the candidate's principal campaign committee of transaction and processing fees representing the fair market value of the services provided.<sup>2</sup>

Other than providing services to those who pay for them, Democracy.com will not act to influence elections in any manner and will not advocate the election or defeat of any particular candidate, group of candidates, or political party. Democracy.com also will not promote the web page of any particular candidate or the web pages of any particular group of candidates or feature any particular candidate or group of candidates more prominently than another in the promotion of its website.

Democracy.com intends to transmit contributions to recipient candidates via check or direct deposit on a weekly basis. When a contribution is made to a candidate using one of Democracy.com's profile pages (and for those pages that candidates have taken control of if the candidates so agree), Democracy.com will deduct its transaction and processing fees from the total contribution amount before transferring the net amount to the recipient.

Other than the deduction of its fees, Democracy.com will not exercise any discretion or control over contributed funds. While funds processed by Democracy.com will be temporarily held in a Democracy.com merchant account, the funds will not be commingled with the treasury funds of Democracy.com and shall be required, pursuant to an agreement with the contributor, to be delivered promptly to the recipient candidate selected by the contributor. If for any reason the contribution cannot be transmitted or is not accepted by the recipient candidate, the entire contribution amount, including transaction and processing fees, will be promptly refunded to the contributor.

### **Question**

Does Democracy.com's plan to process and deliver contributions to Minnesota state-level candidates through a fee-based service provided to visitors to its website violate any provision of Chapter 10A or require any registration or reporting under Chapter 10A?

### **Opinion**

The registration and reporting requirements of Chapter 10A are triggered by making expenditures to influence the nomination or election of candidates or to promote or defeat a ballot question or by making contributions to candidates, party units, or political committees or funds.

Minnesota Statutes section 10A.27, subdivision 13, provides that an association that is not registered with the Board (which includes Democracy.com) may not contribute more than \$100 to a candidate

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<sup>2</sup> Democracy.com states that it understands that in Advisory Opinions 319 and 369, the Board concluded that a business model in which a company provided internet services, including contribution collection and processing services, to principal campaign committees for a fee did not result in a contribution by an unregistered association or a registration or reporting requirement under Chapter 10A. Based on its understanding of these opinions, Democracy.com has not specifically asked the Board to review its status with respect to the part of its business plan that calls for providing services directly to principal campaign committees. With respect to these services, the Board finds no significant differences between the Democracy.com business model and those described in Advisory Opinions 319 and 369. Thus, the Board concurs with Democracy.com's conclusion that its provision of services to candidates will not result in a contribution by an unregistered association or a requirement that it register as a political committee or fund or report to the Board.

unless the contribution is accompanied by a statement that meets the disclosure requirements of Chapter 10A.

The stated facts indicate that Democracy.com will not engage in any activity to influence the nomination or election of candidates or to promote or defeat a ballot question. Thus, by definition, it does not make expenditures that would trigger a registration requirement. As a result, Democracy.com is brought under the jurisdiction of Chapter 10A only if the transfers facilitated by its website constitute contributions made by Democracy.com itself to the recipient candidates.

In previous advisory opinions, the Board has concluded that providing contribution processing services to candidates for a fee does not result in the contributions being attributed to the processor. See Advisory Opinions 319 and 369. The present request differs from past Board opinions on the subject only in the fact that the fees for processing contributions are to be paid by the contributor rather than by the recipient. Democracy.com seeks guidance on whether this change in the payment relationships results in a different conclusion with respect to the application of Chapter 10A than was reached in previous advisory opinions.

The component of Democracy.com's business plan under review allows people who want to contribute to candidates to do so through Democracy.com's website. Under this plan, the contributor will pay a fee to cover the costs of collecting, processing, and distributing the contribution. This fee will reflect the fair market value of those services. The contribution sent to the candidate will be the net amount of the transaction after the fee has been deducted from the amount the contributor entered into the system.

In this case, Democracy.com will act as a vendor to the individual contributors, providing processing and delivery services. Because there is no business relationship between Democracy.com and the recipient candidate, the amount of the contribution to the candidate is the net amount actually received by the candidate. The fees paid by the contributor are the costs of a business transaction between the contributor and Democracy.com and do not involve the candidate.

The business model that changes the obligation for payment of its services from the candidate to the contributor does not affect the analysis of the transactions for Chapter 10A purposes.

The contributions described are contributions from the various contributors who use Democracy.com's website. They are not contributions from Democracy.com and, thus, do not trigger the disclosure requirements of Minnesota Statutes section 10A.27, subdivision 13.

Because Democracy.com, itself, makes no contributions and, according to the stated facts, engages in no activities to influence the nomination or election of candidates or to promote or defeat a ballot question, it is not required to register as a political committee or fund.

Issued: May 7, 2013

/s/ Andrew M. Luger  
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Andrew M. Luger, Chair  
Campaign Finance and Public Disclosure Board

## Relevant Statutes

**Minn. Stat. § 10A.14, subd. 1. First registration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must register with the board by filing a statement of organization no later than 14 days after the committee, fund, or party unit has made a contribution, received contributions, or made expenditures in excess of \$100, or by the end of the next business day after it has received a loan or contribution that must be reported under section 10A.20, subdivision 5, whichever is earlier.

**Minn. Stat. § 10A.27, subd. 13. Unregistered association limit; statement; penalty.** (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

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