

**ETHICAL PRACTICES BOARD**

**First Floor South, Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603**

Issued to:

Alan W. Weinblatt, Esq.  
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**RE: Change in Office Sought**

**ADVISORY OPINION #149**

**SUMMARY**

149. The campaign expenditure limit is increased by ten percent for the first time a candidate runs for a statewide office. If the same candidate seeks another statewide office the ten percent increase is not applicable to the candidate's expenditure limit for the second office. Minn. Stat. § 10A.25, subd. 2 (c) (1993 Supplement). When a candidate who sought nomination or election to one statewide office subsequently seeks nomination or election to another statewide office in the same election year, expenditures incurred by that candidate's principal campaign committees for all the statewide offices must be aggregated for purposes of the application of the limits on campaign expenditures. Minn. Stat. § 10A.25, subd. 2a (1992).

**FACTS**

As attorney representing Todd Otis, who is the DFL endorsed candidate for election to the office of Minnesota State Auditor in 1994, you request an advisory opinion from the Ethical Practices Board on matters related to certain campaign expenditure limit provisions of the Ethics in Government Act based upon your statement of the following facts:

1. Mr. Otis declared his candidacy for the position of state auditor in March, 1994. Prior to that declaration, Mr. Otis was a candidate for the office of governor of the state of Minnesota.
2. Mr. Otis' gubernatorial campaign "Citizens for Otis" is registered with the Ethical Practices Board. Mr. Otis' campaign for state auditor "Minnesotans for Otis" is also registered with the Board.
3. Mr. Otis signed and filed with the Board a Public Subsidy Agreement to abide by applicable campaign expenditure limits as a candidate for governor. Mr. Otis signed and filed with the Board Public Subsidy Agreement to abide by applicable

campaign expenditure limits as a candidate for state auditor.

4. The 1994 election year campaign expenditure limit for governor and lieutenant governor, running together, is \$1,725,920, and the 1994 campaign expenditure limit for state auditor is \$143,829. Minn. Stat. §§ 10A.25, subd. 2 (a), and 10A.255 (1993 Supplement).
5. Minn. Stat. § 10A.25, subd. 2 (c) provides that the expenditure limits listed above are increased by ten percent for candidate who is running for that office for the first time and who has not run previously for any other office whose territory now includes a population that is more than one-third of the population in the territory of the new office.
6. Minn. Stat. § 10A.25, subd. 2a provides that if a candidate makes expenditures from more than one principal campaign committee for nomination or election to statewide office in the same election year, the amount of expenditures from all of the candidate's principal campaign committees for statewide office for that election year must be aggregated of purposes of the application of the limits on campaign expenditures under subdivision 2, clauses (a) to (c).

You ask the Board to respond to the following questions:

#### **QUESTION ONE**

Does the provision of Minn. Stat. § 10A.25, subd. 2 (c) authorize a ten percent increase for Mr. Otis' expenditure limit against either the gubernatorial limit or the state auditor limit, and if so, which?

#### **OPINION**

Yes, the ten percent increase in campaign expenditure limit under Minn. Stat. § 10A.25, subd. 2 (c) applies to Mr. Otis' governor committee because the office of governor is the first statewide office for which Mr. Otis is a candidate within the meaning of Minn. Stat. § 10A.01, subd. 5. The ten percent increase in campaign expenditure limit under Minn. Stat. § 10A.25, subd. 2 (c) does not apply to Mr. Otis' state auditor committee because Mr. Otis has been a candidate for another statewide office that includes the same population and territory as the new office.

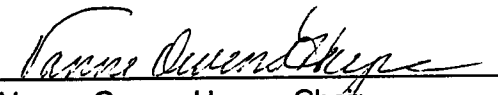
#### **QUESTION TWO**

Under Minn. Stat. § 10A.25, subd. 2a, do expenditures made by the Otis for Governor campaign under Sec. 10A.25, subd. 2 (a) (1) count against the expenditure limit that applies to the state auditor election under Sec. 10A.25, subd. 2 (a) (3)?

## OPINION

Yes. A candidate with principal campaign committees for more than one statewide office must aggregate the campaign expenditures of all the committees for statewide office for purposes of the application of the limits on campaign expenditures. Minn. Stat. § 10A.25, subd. 2a, and Minn. Rules pt. 4500.1200.

Issued: June 27, 1994

  
Vanne Owens Hayes, Chair  
Ethical Practices Board

### PERTINENT STATUTES AND RULES

Minn. Stat. § 10A.01 DEFINITIONS provides:

...  
Subd. 5. **Candidate.** "Candidate" means an individual who seeks nomination or election to any statewide or legislative office for which reporting is not required by federal laws. . . . An individual shall be deemed to seek nomination or election if the individual has taken the action necessary under the law of the state of Minnesota to qualify for nomination or election, has received contributions or made expenditures in excess of \$100, for the purpose of bringing about the individual's nomination or election. . . .

Minn. Stat. § 10A.25 LIMITS ON CAMPAIGN EXPENDITURES provides:

Subdivision 1. For the purposes of sections 10A.11 to 10A.34, a candidate for governor and a candidate for lieutenant governor, running together, shall be deemed to be a single candidate. Except as provided in subdivision 3, all expenditures made by and all approved expenditures made on behalf of the candidate for lieutenant governor shall be considered to be expenditures by and approved expenditures on behalf of the candidate for governor.

Subd. 2. (a) In a year in which an election is held for an office sought by a candidate, no expenditures made by the principal campaign committee of that candidate, nor any approved expenditures made on behalf of that candidate which expenditures an approved expenditures result in an aggregate amount in excess of the following:

- (1) for governor and lieutenant governor, running together, \$1,626,691\*;
- \* \$1,725,920 for 1994. Minn. Stat. § 10A.255 (1993 Supplement)

...  
(3) for . . .state auditor, \$135,559\*  
\* \$143,869 for 1994. Minn. Stat. § 10A.255 (1993 Supplement).

(c) The expenditure limits in this subdivision for an office are increased by ten percent for a candidate who is running for that office for the first time and who has not run previously for any other office whose territory now includes a population that is more than one-third of the population in the territory of the new office.

...  
**Subd. 2a. Aggregated expenditures.** If a candidate makes expenditures from more than one principal campaign committee for nomination or election to statewide office in the same election year, the amount of expenditures from all of the candidate's principal campaign committees for statewide office for that election year must be aggregated for purposes of the application of the limits on campaign expenditures under subdivision 2, clauses (a) to (c).

...  
Subd. 10. (a) The expenditure limits imposed by this section apply only to candidates whose major party opponents agree to be bound by the limits and who themselves agree to be bound by the limits as a condition of receiving a public subsidy for their campaigns.

Minn. Rules pt. 4500.1200 CHANGE OF OFFICE SOUGHT BY CANDIDATE provides:

Subpart 1. Contribution and expenditure limits. When a candidate, who sought nomination or election to one office, subsequently seeks the nomination or election to another office in the same election year, expenditures incurred and contributions received to influence the nomination or election to the first office will not be counted toward the campaign contribution and expenditure limits to the subsequent office sought.

Subp. 1a. Exception. A candidate with principal campaign committees for more than one statewide office who signs a public subsidy agreement for one of the offices must aggregate the campaign expenditures of all of the committees for statewide office for purposes of the application of the limits on campaign expenditures under Minn. Stat. § 10A.25, subd. 2, clauses (a) to (c).

...